

Birdon Group

Consignment Note Terms & Conditions

By requesting BIRDON to supply services or delivering Goods to BIRDON, the Customer agrees that the supply of all services shall be subject to these Conditions.

Any and all goods and services supplied by BIRDON are supplied subject to these Conditions. No person has the authority of BIRDON to accept Goods for carriage, or agree to supply services, other than pursuant to these Conditions or to waive or vary these Conditions.

BIRDON rejects any alternative terms proposed by the Customer.

1 Definitions

In these Conditions, and on the front of this Consignment Note, unless the context indicates otherwise:

BIRDON means Birdon Pty Ltd (ACN 002 810 255), Birdon Holdings Pty Ltd (ACN001 449 798) and their employees, servants, subsidiaries and associated entities.

Conditions means these Consignment Note Terms & Conditions

Customer means any party at whose request or on whose behalf BIRDON provides any Services, who may be the shipper, consignor, the receiver, the consignee, the owner of the Goods, the bailor of the Goods, or the entity/person acting on behalf of such party.

Dangerous Goods means such of the Goods as are, or become, in fact or at Law noxious, dangerous, hazardous, explosive, radioactive, inflammable or capable by their nature of causing damage or injury to other goods or to any person or animals or to anything in which Goods are carried, handled or stored.

Goods means the chattels, articles, goods, products or things tendered by the Customer for carriage, storage, bailment or other Services and includes the container or containers, unit load devices or other packaging containing the same and any other pallet or pallets delivered with the same to BIRDON.

GST means the goods and services tax imposed by or under a GST Law.

GST Law means the same as in the *A New Tax System (Goods and Services Tax) Act* (Cth) 1999.

Law means law means common law, principles of equity, and laws, by-laws made by parliament or authorised government authority including State, Territory and Commonwealth, local government laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them.

Perishable Goods means such of the Goods as are, in fact or Law, liable to deteriorate in quality and/or value and includes fruits, vegetables, dairy products and meats.

PPSA means the *Personal Property Securities Act* 2009 (Cth).

Service means the carriage, transport, movement, storage, consolidation, stowage, loading, discharge, delivery, customs clearance and/or any other service performed or arranged by BIRDON or its Subcontractors.

(a) **Subcontractor** includes any person, firm or company with whom BIRDON may arrange to affect any Services in respect of the Goods and any subcontractor of

such entity, and any person firm or company (other than Birdon) who performs the Services **Supply** means the same as in the GST Law.

Taxable Supply has the meaning given to it in Clause 18 of these Conditions.

Valuables means bullion, coins, precious stones, jewellery, antiques or works of art.

Words importing the singular include the plural and vice versa and words importing any gender include all genders and words importing a person include firm and corporation where appropriate.

Words such as 'including', 'such as' and similar expressions are not words of limitation.

2 BIRDON is not a Common Carrier

- (a) BIRDON is not a common carrier, does not accept the obligations or liability of a common carrier and reserves the right to refuse at its sole discretion to provide any Services or carry any goods.

3 Warranties

- (a) The Customer warrants:
 - (i) that the person delivering the Goods to BIRDON is authorised to provide instructions, sign the Consignment Note or waybill which includes these Conditions and warrants that he has the authority of the person owning or having an interest in the Goods or any part thereof;
 - (ii) the accuracy of all markings and brandings of the Goods, descriptions, mass, weights, measure, contents, quality, condition, values and other particulars furnished to BIRDON for the Services, carriage, customs, consular and any other purposes;
 - (iii) that the performance of any Services by BIRDON or arranged by BIRDON to effect the instructions of the Customer shall not be in breach of any Law;
 - (iv) that the carriage, discharge, storage, handling and delivery of the Goods do not give rise to any biosecurity risk and shall not be in breach of any biosecurity Laws, customs Laws or other prohibition;
 - (v) that the Goods are suitably prepared and packed to withstand the ordinary incidents and risks of handling, storage, loading, discharge, carriage and delivery, having regard to their nature; and
 - (vi) That the mass and the Verified Gross Mass provided by the Customer is accurate.
- (b) The Customer shall indemnify BIRDON and its Subcontractors against all loss, damage, expense and fine arising from any breach of the above warranties.
- (c) BIRDON shall be entitled (but under no obligation) at any time and from time to time to unpack and inspect the Goods. If BIRDON reasonably considers that additional measures are required to reasonably effect the Services BIRDON may (at its option):
 - (i) redeliver the Goods to the Customer;
 - (ii) cease the Services and abandon the Goods; or

- (iii) effect such additional measures the cost of which will be for the account of the Customer.
- (d) All warranties or guarantees express or implied (whether by custom or Law) in respect of the Services provided by BIRDON or any Subcontractor are excluded to the maximum extent permitted by Law.

4 Limitation and Exclusion of Liability

- (a) The Goods shall be and remain at the sole risk of the Customer throughout the Services.
- (b) BIRDON shall not be liable for any loss or damage to the Goods, or loss or damage suffered by the Customer, or any other person whatsoever, howsoever caused or arising, whether caused by breach of contract or the negligence of BIRDON or its servants, agents, employees, Subcontractors or otherwise.
- (c) BIRDON shall not be liable for any loss or damage resulting from or attributable to any advice, quotation, statement, representation or information, oral or written, made or given on behalf of BIRDON or its servants, agents, employees or Subcontractors as to the classification of, liability for, amount, scale or rate of customs duty, excise duty or other impost or tax applicable to any Goods in carriage or subject of any Service.
- (d) In all cases where liability has not been excluded or limited by these Conditions or by any mandatorily applicable statute, convention or Law, to the extent permitted by Law, the liability of BIRDON is limited to the lesser of:
 - (i) in the case of the supply of goods, any one or more of the following:
 - (A) the replacement of the goods or the supply of equivalent goods;
 - (B) the repair of the goods;
 - (C) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (D) the payment of the cost of having the goods repaired.
 - (ii) in the case of the supply of services:
 - (A) the supplying of the services again; or
 - (B) the payment of the cost of having the services supplied again.
- (e) BIRDON shall not be liable, for direct or indirect or consequential loss or damage including but not limited to loss of profit, revenue, opportunity, goodwill, reputation, market or contract.
- (f) In all cases where BIRDON's liability may not be excluded or limited as set out in clause (a) to (e), BIRDON's liability shall be limited to that which the relevant mandatorily applicable statute, convention or Law prohibits the exclusion of.
- (g) The defences and limits of liability set out in these Conditions shall apply in any action against BIRDON for loss, damage or delay whether the action be founded in contract, tort, negligence or otherwise.
- (h) Any relief from liability contained in these Conditions is to be read subject to any restriction on contracting out of liability provided in any legislation binding on BIRDON or its Subcontractors so that the provisions for relief contained in this

agreement are limited or rendered ineffective only to the extent required to give effect to that legislation but are otherwise fully effective and all the provisions hereof are severable and effective independently of any provisions which are null and void or ineffective by reason of any legislation.

- (i) Notwithstanding anything contained in these Conditions, BIRDON shall continue to be subject to any implied warranty provided for in the *Competition and Consumer Act 2010 (Cth)*, as amended, if and to the extent that that such warranty is applicable to the Services provided under these Conditions and prevents the exclusion, restriction and modification of such warranty.

5 Notice of Claims and Time Bar

- (a) Unless notice of loss or damage and the general nature of such loss or damage be given in writing to BIRDON within three days of delivery of the Goods the Customers agrees that its failure to provide such notice is evidence of the delivery by BIRDON in good order and condition and as described in the Consignment Note.
- (b) In any event the BIRDON and its Subcontractors shall be discharged from all liability in respect of loss or damage unless proceedings are commenced within one year after delivery of the Goods or the date when the Goods should have been delivered.

6 Warehousing

The Goods may, in the sole discretion of BIRDON, at any time be warehoused or otherwise held at any place or at any time be removed from any place at which they may be warehoused or otherwise held to any other place to be warehoused or otherwise held, in each and every case at the Customer's risk and expense and BIRDON will be entitled to charge for that warehousing in addition to all applicable charges for the carriage of the Goods or the provision of any Service hereunder.

7 Customer's Indemnity

- (a) The Customer shall indemnify BIRDON and its Subcontractors in respect of any claim, loss, damage, payment, fine, expense, duty, tax, impost or other outlay whatsoever, howsoever caused, whether arising directly or indirectly from any Service arranged or performed by BIRDON in respect of Goods and/or in respect of any such cost incurred as a result of any breach of these Conditions by the Customer.
- (b) Without limiting the generality of the foregoing, the Customer shall remain responsible to BIRDON for all charges (cash on delivery or otherwise) paid by BIRDON to any of its agents or Subcontractors which are not subsequently paid to BIRDON by the Customer or any consignee.
- (c) The Customer shall indemnify BIRDON in respect of:
 - (i) any loss or damage arising from any inherent defect, quality or vice of the Goods; and
 - (ii) the Customer's or any other person's failure to return any container or transport equipment involved in the performance of the Services by the date required under any engagement between BIRDON and the supplier of that container or transport equipment

8 Insurance

- (a) The Customer warrants that prior to delivering the Goods to BIRDON it has obtained cargo insurance on terms equivalent to Institute Cargo Clauses (A) 1/1/09 covering all risks of loss or damage to the Goods while they are in the custody or control of BIRDON or its Subcontractors.
- (b) The Customer agrees that it shall claim on its cargo insurance in respect of any such loss or damage and not against BIRDON or its Subcontractors.

9 Subcontracting

- (a) BIRDON and any Subcontractor shall be entitled to subcontract or arrange, on any terms, for the whole or any part of the Services to be performed by any other person.
- (b) Any exemption, limitation, condition herein contained and every right, exemption from liability, defence and immunity applicable to BIRDON or to which BIRDON is entitled shall be available and extend to protect all Subcontractors, every agent or servant of BIRDON, every other person by whom the carriage or Services or any part thereof is performed and all persons who are or may be vicariously liable for the acts or omissions of any of the persons other than BIRDON mentioned herein. Similarly, every right, exemption from liability, defence and/or immunity applicable to any Subcontractor shall be available and extend to protect BIRDON. BIRDON shall be deemed to be acting as agent or servant on behalf of all such persons who shall to this extent be deemed to be parties to these Conditions.
- (c) The Customer undertakes:
 - (i) that no claim or allegation shall be made, whether by the Customer or any other person who is or may subsequently be interested in the Services and/or the Goods, against any Subcontractor which imposes or attempts to impose upon such Subcontractor any liability whatsoever and howsoever arising (including liability arising from negligence or breach of contract, whether fundamental or otherwise, or wilful act or default of BIRDON or others) in connection with the provision of the Services and/or the Goods; and
 - (ii) that, if such claim or allegation should nevertheless be made, the Customer shall indemnify BIRDON and the Subcontractor against whom such claim or allegation is made against the consequences of such claim or allegation.

10 Routes and Procedures

- (a) BIRDON reserves the right to choose, deviate or vary the means, route, schedule and procedure to be followed in respect of the Services performed in respect of the Goods as BIRDON reasonably considers expedient and necessary. The Customer hereby authorises BIRDON to complete the Services with reasonable dispatch and to substitute alternate carriers or Service providers, choose the means, route, schedule and procedure and deviate without notice to the Customer and with due regard to the interests of the Customer substitute other means of transport or Service.
- (b) If at any time BIRDON reasonably concludes that it is impracticable, imprudent, unsafe, unlawful or against the interests of BIRDON or its customers to continue the Services or deliver the Goods to the place of delivery BIRDON may, without

notice to customer, discharge, unload and/or retain or deliver such Goods at any other place and the Customer shall accept delivery at that place.

11 Payment of Duties

The Customer authorises BIRDON and its Subcontractors, but with no obligation on the part of BIRDON and its Subcontractors, to advance any wharfage, dues, duties, taxes, imposts, outlays or charges at any port or place in respect of the Goods and the Customer indemnifies BIRDON for the reimbursement of such disbursements and for payment of any fine, expense, loss or damage incurred by BIRDON in connection therewith.

12 Brokerage and Commission

The Customer acknowledges and agrees that BIRDON may receive allowances, brokerages and commissions from shipping and forwarding agents, subcontractors, insurance brokers, and any other persons with whom BIRDON deals pursuant to this agreement and that BIRDON shall retain all such allowances, brokerage and commission for its own account and shall not be obliged to disclose receipt of the same or account to the Customer for all or any part of them.

13 Responsibility for Charges, Terms of Credit

- (a) The Customer shall pay all freight and charges in accordance with BIRDON's schedule of charges and freight rates applicable at the time of delivery of the Goods to BIRDON or as otherwise agreed between the Parties.
- (b) Such charges shall be calculated and charged at BIRDON's option, on volume, gross weight, measurement, value or quantity of the cargo and containers in which it is carried.
- (c) BIRDON shall be entitled (but under no obligation) to reweigh, remeasure, revalue or quantify or recount the Goods at any time and adjust the freight and charges accordingly. If an adjustment of the freight or charges is necessary, the cost of such process shall be for the Customer's account.
- (d) Freight and charges for the Services shall be deemed fully earned as soon as the Goods are delivered to BIRDON or its Subcontractor and shall be paid irrespective of whether or not the Goods are delivered by BIRDON in accordance with the contract or at all and whether damaged or otherwise.
- (e) The Customer shall not deduct, set off or withhold any amount against any money owing to BIRDON without the prior written consent of BIRDON.
- (f) Unless otherwise agreed by BIRDON in writing, the Customer must pay the full amount of each invoice in cash within seven days of receipt of BIRDON's invoice.
- (g) If payment is not made within the period set out above, or as otherwise agreed by BIRDON in writing, the Customer agrees to pay:
 - (i) interest at the rate of 5% per annum above Reserve Bank of Australia cash rate as applicable from time to time, such interest to be calculated daily from the day on which any amount becomes overdue for payment until the date of actual payment; and
 - (ii) the costs incurred in collecting the debt.

14 Remedies for non-payment

(a) **Lien**

BIRDON shall have a particular and general lien on all goods or cargo of the Customer in the possession or control of BIRDON or which may come into the possession or control of BIRDON for all amounts payable by the Customer to BIRDON (whether overdue or not).

BIRDON may refuse to deliver the Goods or cargo until all such amounts have been paid in full. If any such amount has been owing or continues to be unpaid for more than 30 days after first becoming due, BIRDON may at its discretion and having given 21 days' notice to the Customer or owner of the Goods or cargo, sell by public auction or private treaty deducting all expenses of detaining, storing and selling the same, apply the net balance of the sale proceeds towards amounts payable to BIRDON as aforesaid. Any excess sale proceeds and any cargo remaining unsold after all such amounts have been paid in full shall be payable to the Customer.

- (b) For the purposes of the lien, BIRDON will retain constructive possession of the Goods and the lien and rights granted by this clause will survive delivery of the Goods.

(c) **Suspension of Services**

If the Customer does not pay an invoiced amount or any sums payable by the Customer to BIRDON in full, BIRDON may:

- (i) elect not to continue to provide the Services; or
 - (ii) suspend the Services until payment of all amounts due is made.
- (d) Without prejudice to the above, BIRDON may take further action to recover any outstanding amounts due. Any costs, fees or disbursements incurred in the recovery of the outstanding amounts, together with any interest, will be added to the amount due.

15 Valuables, Dangerous Goods, Perishable Goods, Livestock, etc.

- (a) No Dangerous Goods, Valuables, Perishable Goods, livestock or plants shall be tendered to BIRDON without BIRDON's express written consent.
- (b) The Customer must advise BIRDON of such Dangerous Goods, Valuables, Perishable Goods, livestock or plants prior to or at the time of requesting Services. BIRDON may refuse to provide such Services at its sole discretion.
- (c) If the Customer delivers any such goods to BIRDON or directly or indirectly causes BIRDON to handle or deal with any such goods the Customer shall be liable for and indemnify BIRDON and its Subcontractors in respect of any loss, damage, liability, expense, fine, penalty, tax, duty, claim or demand, arising out of or in connection with such goods
- (d) Any such Valuables, Dangerous Goods, Perishable Goods, livestock or plants may be destroyed, abandoned, rendered harmless, or dealt with in the sole and absolute discretion of BIRDON or any other person in whose custody they may be at the relevant time.

- (e) If such Valuables, Dangerous Goods, Perishable Goods, livestock or plants are accepted pursuant to a written agreement, they may nevertheless be destroyed, abandoned, rendered harmless or dealt with if BIRDON consider such action reasonably necessary (at BIRDON's discretion). In the event that the Goods are destroyed or otherwise dealt with as aforesaid, BIRDON shall bear no liability therefor and the Customer shall indemnify BIRDON and its Subcontractors from and against all costs and expenses with respect thereto.
- (f) The Customer shall ensure that any of the goods referred to in (a) above (including their covering, packaging, containers and other devices they are carried in) shall be distinctly marked having regard to their nature. The Customer shall ensure that the Goods are packed in a manner adequate to withstand the ordinary risks of any Service having regard to their nature and in compliance with all Laws and regulations which may be applicable with respect to any Service. The Customer shall indemnify BIRDON against all claims, losses, damages, or expenses arising in consequence of any breach of this provision.
- (g) The Customer's compliance with (f) above in no way reduces or limits those rights afforded to BIRDON under (a) to (e) of this clause.
- (h) Goods of a perishable nature shall be stored, stowed and carried by BIRDON in ordinary packaging and containers without special protection, services or other measures unless BIRDON has agreed in writing to carry the Goods in a refrigerated, heated, electrically ventilated or otherwise specially equipped container or package or are to receive special attention in any way. The Customer shall not deliver to BIRDON any Goods which require refrigeration without giving written notice of their nature and the required temperature setting of the thermostatic controls before delivery of the Goods to BIRDON or its Subcontractor. The Customer warrants that the Goods have been properly pre-chilled and stowed in the container or packaging and that the thermostatic controls have been adequately set by the Customer before receipt of the Goods by BIRDON. The Customer's attention is drawn to the fact that refrigerated containers are not designed to freeze down Goods which have not been presented for stuffing at or below its designated carrying temperature and BIRDON shall not be responsible for the consequences of cargo presented at a higher temperature than that required for the transportation. If the above requirements are not complied with BIRDON shall not be liable for any loss of or damage to the Goods howsoever arising. The Customer is free to use its own temperature recording device. In no circumstance shall BIRDON be under any obligation to release temperature records or the extracted data log records of the container itself to the Customer or any other Person.
- (i) BIRDON shall in no event be held liable for damage to Goods due to condensation.

16 Sale and Disposal of Goods

In addition to the rights set out at clause 15, BIRDON and its Subcontractors shall be entitled at the cost and expense of the Customer, subject to compliance with any applicable Law, to sell or dispose of:

- (a) Goods which, in the opinion of BIRDON or Subcontractor, cannot be delivered by reason of the Goods being insufficiently or incorrectly addressed or by reason of the Goods not being collected or accepted by the consignee or for any other reason; and
- (b) any Perishable Goods which in the opinion of BIRDON or the Subcontractor appear to be deteriorating, if the Customer fails to adequately instruct BIRDON with respect thereto or fails to pay any costs and expenses necessary to implement the Customer's instructions. Where BIRDON sells or disposes of Goods:

- (i) it does so as principal, not as agent, and is not the trustee of the power of sale;
- (ii) the Customer must pay all costs, charges and expenses incurred by BIRDON in connection with the storage, sale or return of the Goods, which may be deducted from the proceeds of the sale of the Goods; and
- (iii) BIRDON is entitled to recover any deficit from the Customer where the proceeds of sale of the Goods do not satisfy the amounts payable to BIRDON.

17 Delivery

- (a) In the event that there is:
 - (i) delay in the delivery of the Goods to BIRDON or its Subcontractor; or
 - (ii) delay in the delivery of the Goods by BIRDON or its Subcontractor

by reason other than the default of BIRDON, the Customer shall be liable for BIRDON's expenses incurred by reason of the delay, including storage and demurrage costs as notified by BIRDON orally or in writing from time to time or available upon request.
- (b) BIRDON is authorised to deliver the Goods to the place nominated to BIRDON by either the Customer, consignee or their agents and it is expressly agreed that BIRDON shall be deemed to have delivered the Goods in accordance with these Conditions if it obtains a receipt or signed delivery docket for the Goods from any person at that place or other proof of delivery.
- (c) If the nominated place of delivery is unattended or if delivery cannot otherwise be effected, BIRDON in its sole discretion may either deposit the Goods at the nominated place or store the Goods at the risk and expense of the Customer, both of which will be deemed to be delivery of the Goods under these Conditions.
- (d) BIRDON reserves the right at its discretion to decline to deliver Goods until the identity of the receiver is established to the satisfaction of BIRDON or its Subcontractor.
- (e) Dates and times specified for completion of carriage or any other Services are estimates only and may be subject to change. BIRDON shall not be liable for failure to complete Services at such times, or dates or for any consequences of any delay.
- (f) BIRDON is not obliged to provide notice to the Customer, consignee or receiver of the time and date of arrival or delivery.

18 GST

- (a) Clause 19 applies if BIRDON is or may become liable to pay GST in relation to any Supply under these Conditions (a **Taxable Supply**). A Taxable Supply may comprise the whole or any part of the Services.
- (b) Unless otherwise stated, all charges quoted by BIRDON are exclusive of GST. In addition to such charges, the Customer must pay to BIRDON GST on a Taxable Supply of an amount equal to BIRDON's GST exclusive charge for the Taxable Supply multiplied by the GST Rate. GST shall be payable by the Customer without any deduction or set off for any other amount at the same time as BIRDON's GST exclusive charge is payable. In all other respects, GST shall be payable by the

Customer to BIRDON upon the same basis as BIRDON's GST exclusive charge is payable under these Conditions.

- (c) BIRDON must issue an Invoice to the Customer for the amount of GST referable to a Taxable Supply. BIRDON must include in such Invoice such particulars as are required by the GST Law in order that the Customer may obtain an input tax credit for the amount of GST payable on the Taxable Supply.
- (d) If the Customer makes default in the payment on the due date of any GST payable pursuant to this clause or pursuant to any GST Law, then without prejudice to any other remedies of BIRDON, the Customer shall pay to BIRDON upon demand the GST payable and an amount equal to the amount of any damages, penalty, interest or additional GST that may become payable by BIRDON arising out of the default of the Customer.
- (e) If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense.
- (f) If an adjustment event arises in respect of a supply made under or in connection with these Conditions, then:
 - (i) if the Supplier's corrected GST amount is less than the previously attributed GST amount, the Supplier will refund the difference to the Recipient; or
 - (ii) if the Supplier's corrected GST amount is greater than the previously attributed GST amount, the Recipient will pay the difference to the Supplier; and
 - (iii) the Supplier must issue an adjustment note to the Recipient. In this clause, a Supplier means the party that makes the Taxable Supply, and Recipient means the party that receives the Taxable Supply.

19 Regulation Compliance

- (a) Goods are accepted for Services by BIRDON subject to all applicable conditions and requirements imposed under any regulations, Law or otherwise by any governmental authority.
- (b) The Customer shall comply with (and will be solely responsible for compliance with) all applicable Laws and Government regulations of any State, Territory or country to, from, through or over which the Goods may be carried, including those relating to packing, carriage, storage, customs clearance, delivery or other Services in respect of the Goods, and shall furnish such information and provide such documents as may be necessary to comply with such Laws and regulations. BIRDON shall not be liable to the Customer for loss or expense due to the Customer's failure to comply with this provision. BIRDON will not be in breach of any of its obligations to the Customer or liable for any loss suffered by the Customer arising from or connected with BIRDON's compliance with any Law, including disclosing confidential information to government authorities.

20 General Average and Salvage

- (a) The Goods may be carried on deck and whether carried on or under deck will contribute to:
 - (i) General Average if any, which will be adjusted in accordance with the York/Antwerp Rules 1974; and

- (ii) any salvage services rendered to the carrying vessel, the Goods or cargo.
- (b) If salvage services are provided by BIRDON, salvage shall be paid for as if such salvage services were provided by a third party salvor.
- (c) The Customer shall defend, indemnify and hold harmless BIRDON in respect of any claims for general average and costs, and shall promptly provide any security requested by BIRDON for release of any Goods that are subject to the said claim for general average.

21 Enforceability

It is hereby agreed that if any provision or part of any provision of these Conditions is unenforceable, such unenforceability shall not affect any other part of such provision or any other provision hereof. Further, should BIRDON elect not to exercise any of its rights under these Conditions, under any other contract/agreement or under Law, such election shall not constitute a waiver of any rights relating to any other or subsequent breach by the Customer.

22 Force Majeure

Where BIRDON is unable to carry out any obligation under these Conditions due to any circumstance, matter or thing beyond its reasonable control (**force majeure**), BIRDON shall be excused from such obligation to the extent of such prevention, restriction or interference so caused.

23 Return of Goods

If the Customer, owner or consignee of the Goods is insolvent, placed under external administration, bankrupt or deceased, BIRDON is authorised to return any Goods to the shipper, exporter or supplier of those Goods, where BIRDON has not received authority from the shipper, exporter or supplier of the Goods to release the Goods to the Customer, owner or consignee.

24 PPSA

- (a) Terms used in this clause that are defined in the PPSA have the same meaning as in the PPSA.
- (b) Without limitation to other rights of BIRDON, from the time the Goods are in the possession of BIRDON or a Subcontractor, the Goods are subject to a continuing security interest in favour of BIRDON for the payment of all amounts due and owing by the Customer under these Conditions.
- (c) The Customer acknowledges and consents to BIRDON's registration and perfection of BIRDON's security interest under these Conditions for the purposes of the PPSA.
- (d) The Customer will not grant a security interest to another person, or allow any encumbrance to arise, in respect of the Goods.
- (e) To the extent permitted by Law, the Customer irrevocably waives any right it may have to:
 - (i) receive notices or statements under sections 95, 118, 121(4), 124(4), 125, 130, 132(3)(d) 132(4) and 135 of the PPSA; and

- (ii) redeem the Goods under section 142 of the PPSA;
 - (iii) reinstate these Conditions under section 143 of the PPSA; and
 - (iv) receive a verification statement.
- (f) The Customer will do all things and execute all documents reasonably necessary to give effect to the security interest created under these Conditions or comply with any reasonable request by BIRDON in connection with the PPSA.

25 Law and Jurisdiction

This agreement and these Conditions shall be governed by the laws of New South Wales, Australia and any dispute arising under this agreement shall be determined exclusively by the courts of New South Wales.

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