

## Terms and Conditions of Trade

### 1. Definitions

- 1.1 "STS" shall mean Blaxford Pty Ltd T/A Sunexpress Transport Solutions, its successors and assigns or any person acting on behalf of and with the authority of Blaxford Pty Ltd T/A Sunexpress Transport Solutions.
- 1.2 "Sub-Contractor" shall mean and include:
- (a) railways or airways operated by the Commonwealth or any state or any other country or by any corporation; or
  - (b) any other person or entity with whom STS may arrange for the carriage or storage of any Goods the subject of the contract; or
  - (c) any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in clause 1.2(a) and 1.2(b).
- 1.3 "Customer" means any person/s requesting STS to provide the Services (or person/s acting on behalf of and with the authority of the Customer) as specified in any invoice, document or order, and if there more than one person requesting the Services is a reference to each person jointly and severally.
- 1.4 "Consignee" shall mean the person to whom the Goods are to be delivered by way of STS' Services.
- 1.5 "Services" shall mean all services supplied by STS to the Customer (including, but not limited to, anything done or to be done in relation to the Goods, or the provision of any services ancillary to the Goods such as moving, storing or leaving the Goods at any warehouse, yard, terminal, wharf or other place or area, loading or unloading the Goods from any vehicle, vessel or other conveyance, stowing or packing the Goods, or fumigating, transshipping, or otherwise handling the Goods, or anything else done in relation thereto), including the offering of any advice or recommendations.
- 1.6 "Goods" shall mean cargo together with any container, packaging, or pallet(s) to be moved from one place to another by way of STS' Services.
- 1.7 "Dangerous Goods" means Goods so classified in the Dangerous Goods Code or which are or may become noxious, dangerous, hazardous, inflammable, explosive or damaging (including waste, contaminated or radioactive material, or capable of causing death, injury, or damage to any person or property whatsoever, and include (for the purpose of this agreement) Goods likely to harbour or encourage vermin or other pests and all such Goods as fall within the definition of hazardous and dangerous Goods in the legislation governing cartage by road or rail in the States and Territories of Australia.
- 1.8 "Price" shall mean the cost of the Services (plus any GST where applicable) as agreed between STS and the Customer subject to clause 4 of this contract.
- 1.9 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

### 2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for, or accepts Services provided by, STS.
- 2.2 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 Customer and STS.
- 2.3 These terms and conditions are to be read in conjunction with STS' quotation, consignment note, agreement, airway bills, manifests, or any other forms as provided by STS to the Customer. If there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail.
- 2.4 The use of a Customer's own form (and/or terms and conditions) shall in no way derogate from these conditions, the whole of which shall, notwithstanding anything contained in any such form (and/or terms and conditions), constitute terms of the agreement so entered into. Any provisions in any such form (and/or terms and conditions) which is contrary to any provisions of these Terms and Conditions shall, to the extent of such inconsistency, be inapplicable.
- 2.5 None of STS' agents or representatives are authorised to make any representations, statements, promise, warranty, conditions or agreements not expressed by the manager of STS in writing, nor is STS bound by any such unauthorised statements.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.7 These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on STS's website. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.
- 2.8 STS shall be entitled to rely on the accuracy of any weights and/or dimensions, dangerous goods declarations and other information provided by the Client to enable STS to operate within the requirements of the law and any applicable legislation. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, STS accepts no responsibility for any loss, damages, fines, penalties or costs however resulting from these inaccurate weights, dimensions, dangerous goods declarations or other information supplied or omitted.

### 3. Change in Control

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

#### **4. Price and Payment**

- 4.1 At STS' sole discretion the Price shall be either:
- (a) as indicated on invoices provided by STS to the Customer in respect of Services provided; or
  - (b) the Price as at the date of provision of the Services according to STS' current price list; or
  - (c) STS' quoted Price (subject to clause 4.2) which shall be binding upon STS provided that the Customer shall accept in writing STS' quotation within thirty (30) days. STS shall reserve the right to withdraw or revise any quotation; and
  - (d) have been calculated by weight, measurement or value, on the basis of particulars furnished by, or on behalf of, the Customer. STS may, at any time, open any container or any other package or unit in order to re-weigh, or re-value or re-measure or require the Goods to be re-weighed, or re-valued or re-measured and charge proportional additional freight accordingly.
- 4.2 STS reserves the right to change the Price:
- (a) if a variation to STS' quotation is requested or required (including as to the nature or quantity of the Goods, nature and location of the collection and/or delivery address, facilities available for packing, loading or unloading, weather conditions or delays beyond the control of STS, delivery times or date or otherwise, etc.);
  - (b) to reflect any increases to STS in the cost of providing the Services which are beyond the reasonable control of STS (including, without limitation, increases in the cost of labour or materials, foreign exchange fluctuations, or increases in taxes or customs duties or insurance premiums or warehousing costs).
- 4.3 Time for payment for the Services being of the essence, the Price will be payable by the Customer on the date/s determined by STS, which may be:
- (a) on delivery of the Goods;
  - (b) the date specified on any invoice, consignment note, airway bill, manifest 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 Customer by STS.
- 4.4 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction) or by any other method as agreed to between the Customer and STS.
- 4.5 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by STS nor to withhold payment of any invoice because part of that invoice is in dispute.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to STS an amount equal to any GST STS must pay for any provision of Services by STS under this or any other agreement. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer 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.
- 4.7 Receipt by STS 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 STS' ownership or rights in respect of the Services, and this agreement, shall continue.

#### **5. Customer's Responsibility**

- 5.1 The Customer expressly warrants to STS that the Customer 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 Customer accepts these conditions of contract for the Consignee as well as for all other persons on whose behalf the Customer is acting.

#### **6. Delivery**

- 6.1 STS is authorised to deliver the Goods at the address given to STS by the Customer for that purpose and it is expressly agreed that STS shall be taken to have delivered the Goods in accordance with this contract if at that address STS obtains from any person a receipt or a signed delivery docket for the Goods.
- 6.2 STS may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract.
- 6.3 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery for the purposes of this agreement.
- 6.4 It is the Customer's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery.
- 6.5 Any time specified by STS for the delivery of Goods is an estimate only and STS will not be liable for any loss or damage incurred by the Customer 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 STS is unable to deliver the Goods as agreed solely due to any action or inaction of the Customer then STS shall be entitled to charge the Customer any additional costs incurred by STS as a direct consequence of any resultant delay or rescheduling of the delivery.

#### **7. STS is not a Common Carrier**

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

#### **8. Customer-Packed Containers**

8.1 Subject to any written special instructions to the contrary, the Customer is solely responsible for the safe and proper packaging of the Goods (including the manner in which the Goods have been packed, the suitability of the Goods for carriage or manner or packaging and/or the condition of the packaging, etc.) and for any loss suffered or incurred by any person (including the Customer) through any such failure.

**9. Nomination of Sub-Contractor**

9.1 The Customer hereby authorises STS (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 Customer 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 STS. In so far as it may be necessary to ensure that such Sub-Contractor shall be so entitled STS shall be deemed to enter into this contract for its own benefit and also as agent for the Sub-Contractor.

**10. STS' Servants or Agents**

10.1 The Customer undertakes that no claim or allegation shall be made against any servant or agent of STS 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 STS and any such servant or agent against all consequences thereof.

**11. Method of Transport**

11.1 If the Customer instructs STS to use a particular method of carriage whether by road, rail, sea or air STS will give priority to the method designated but if that method cannot conveniently be adopted by STS the Customer shall be deemed to authorise STS to carry or have the Goods carried by another method or methods.

**12. Route Deviation**

12.1 The Customer shall be deemed to authorise any deviation from the usual route or manner of carriage of Goods that may in the absolute discretion of STS be deemed reasonable or necessary in the circumstances.

**13. Charges Earned**

13.1 STS' charges shall be considered earned in the case of Goods for carriage as soon as the Goods are loaded and dispatched from the Customer's premises.

**14. Demurrage**

14.1 The Customer will be and shall remain responsible to STS for all its proper charges incurred for any reason. A charge may be made by STS in respect of any time in excess of STS' published sliding scale of loading and unloading times relative to the size of the delivery in six (6) minute increments for delays occurring other than from the default of STS. Such permissible delay period shall commence upon STS reporting for loading or unloading. Labour to load or unload the vehicle shall be the responsibility and expense of the Customer or Consignee.

**15. Dangerous Goods**

15.1 Unless otherwise agreed in advance in writing with STS the Customer or his authorised agent shall not tender for carriage or for storage any explosive, inflammable or otherwise Dangerous Goods. The Customer shall be liable for and hereby indemnifies STS for all loss or damage whatsoever caused by any Dangerous Goods.

**16. Consignment Note**

16.1 It is agreed that the person delivering any Goods to STS for carriage or forwarding is authorised to sign the consignment note for the Customer.

**17. Loss or Damage**

17.1 Subject to any statutory provisions imposing liability in respect of the loss of or damage to the Goods (including but not limited to chilled, frozen, refrigerated or perishable Goods):

- (a) STS shall not be under any liability for any damage to, loss, deterioration, misdelivery, delay in delivery or non-delivery of the Goods (whether the Goods are or have been in the possession of STS or not) nor for any instructions, advice, information or service given or provided to any person, whether in respect of the Goods or any other thing or matter, nor for any consequential or indirect loss, loss of market or consequences of delay; and
- (b) the Customer will indemnify STS against all claims of any kind whatsoever, howsoever caused or arising brought by any person in connection with any matter or thing done, said or omitted by STS in connection with the Goods.

**18. Insurance**

18.1 The Customer acknowledges that:

- (a) the Goods are carried and stored at the Customer's sole risk and not at the risk of STS; and

- (b) STS is under no obligation to arrange insurance of the Goods and it remains the Customer's responsibility to ensure that the Goods are insured adequately or at all; and
- (c) under no circumstances will STS be under any liability with respect to the arranging of any such insurance and no claim will be made against STS for failure to arrange or ensure that the Goods are insured adequately or at all.

#### **19. Lien**

- 19.1 STS shall have a right to take a particular and general lien on any Goods the property of the Customer or a third party owner which are in the possession or control of STS (and any documents relating to those Goods) for all sums owed at any time by the Customer or a third party owner to STS (whether those sums are due from the Customer on those Goods or documents, or on any other Goods or documents), and STS shall have the right to sell such Goods or cargo by public auction or private treaty after giving notice to the Customer. STS shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods or cargo, from the proceeds of sale and shall render any surplus to the entitled person.
- 19.2 Notwithstanding clause 19.1 nothing shall prejudice STS' rights to use any of STS' other rights and remedies contained in this contract to recover any outstanding charges or fees payable in respect of the Goods that were not recovered out the sale of the Goods in accordance with clause 19.1 and no exception shall be taken upon the grounds that the Price realised is less than the full market value of the Goods.

#### **20. Claims**

- 20.1 Notwithstanding clauses 17 and 18, in the event that the Customer believes that they have any claim against STS then they must lodge any notice of claim for consideration and determination by STS within seven (7) days of the date of delivery, or for non-delivery within thirty (30) days of the anticipated date of delivery or the removal or destruction of the Goods.
- 20.2 The failure to notify a claim within the time limits under clause 20.1 is evidence of satisfactory performance by STS of its obligations hereunder.

#### **21. The Commonwealth Competition and Consumer Act 2010 and Fair Trading Acts**

- 21.1 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 21.2 STS acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 21.3 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, STS makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Services. STS' liability in respect of these warranties is limited to the fullest extent permitted by law.
- 21.4 If the Customer is a consumer within the meaning of the CCA, STS' liability is limited to the extent permitted by section 64A of Schedule 2.
- 21.5 If STS is required to rectify, re-provide, or pay the cost of re-providing the Services under this clause or the CCA, but is unable to do so, then STS may refund any money the Customer 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 Customer which were not defective.
- 21.6 If the Customer is not a consumer within the meaning of the CCA, STS' liability for any defective Services is:
  - (a) limited to the value of any express warranty or warranty card provided to the Customer by STS at STS' sole discretion;
  - (b) otherwise negated absolutely.

#### **22. Cancellation**

- 22.1 Without prejudice to any other remedies STS may have, if at any time the Customer is in breach of any obligation (including those relating to payment) STS may suspend or terminate the provision of Services to the Customer and any of its other obligations under the terms and conditions. STS will not be liable to the Customer for any loss or damage the Customer suffers because STS exercised its rights under this clause.
- 22.2 STS may cancel any contract to which these terms and conditions apply or cancel the provision of the Services at any time before the Services have commenced by giving written notice to the Customer. On giving such notice STS shall repay to the Customer any sums paid in respect of the Price. STS shall not be liable for any loss or damage whatever arising from such cancellation.
- 22.3 In the event that the Customer cancels the provision of the Services, then the Customer shall be liable for any loss incurred by STS (including, but not limited to, any loss of profits) up to the time of cancellation.

#### **23. Default and Consequences of Default**

- 23.1 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 one half percent (2.5%) per calendar month (and at STS' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 23.2 If the Customer owes STS any money the Customer shall indemnify STS from and against all costs and disbursements incurred by STS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, STS' contract default fees, and bank dishonour fees).

- 23.3 Further to any other rights or remedies STS may have under this contract, if a Customer has made payment to STS, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by STS under this clause 23 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.
- 23.4 Without prejudice to STS' other remedies at law STS shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to STS shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to STS becomes overdue, or in STS' opinion the Customer will be unable to meet its payments as they fall due; or
  - (b) the Customer has exceeded any applicable credit limit provided by STS;
  - (c) the Customer 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 Customer or any asset of the Customer.
- 24. Personal Property Securities Act 2009 ("PPSA")**
- 24.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 24.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all:
- (a) Goods that have previously been carried and any Goods that will be carried in the future by STS to the Customer; and/or
  - (b) collateral (account), being a monetary obligation of the Customer to STS for Services that have previously been provided, and will be provided in the future by STS to the Customer.
- 24.3 The Customer 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 STS 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 24.3(a)(i) or 24.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, STS 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 STS;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of STS.
- 24.4 STS and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 24.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 24.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 24.7 Unless otherwise agreed to in writing by STS, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 24.8 The Customer must unconditionally ratify any actions taken by STS under clauses 24.3 to 24.5.
- 24.9 Subject to any express provisions to the contrary (including those contained in this clause 24), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 25. Security and Charge**
- 25.1 In consideration of STS agreeing to provide the Services, the Customer 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 Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 25.2 The Customer indemnifies STS from and against all STS' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising STS' rights under this clause.
- 25.3 The Customer irrevocably appoints STS and each director of STS as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 25 including, but not limited to, signing any document on the Customer's behalf.
- 26. Privacy Act 1988**
- 26.1 The Customer agrees for STS 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 Customer in relation to credit provided by STS.
- 26.2 The Customer agrees that STS may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:

- (a) to assess an application by the Customer; and/or
  - (b) to notify other credit providers of a default by the Customer; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.
- 26.3 The Customer consents to STS being given a consumer credit report to collect overdue payment on commercial credit.
- 26.4 The Customer agrees that personal credit information provided may be used and retained by STS 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 Customer'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 Customer; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Services.
- 26.5 STS may give information about the Customer 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 Customer including credit history.
- 26.6 The information given to the CRB may include:
- (a) personal information as outlined in 26.1 above;
  - (b) name of the credit provider and that STS is a current credit provider to the Customer;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the Customer'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 Customer no longer has any overdue accounts and STS has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of STS, the Customer has committed a serious credit infringement;
  - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 26.7 The Customer shall have the right to request (by e-mail) from STS:
- (a) a copy of the information about the Customer retained by STS and the right to request that STS correct any incorrect information; and
  - (b) that STS does not disclose any personal information about the Customer for the purpose of direct marketing.
- 26.8 STS will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 26.9 The Customer can make a privacy complaint by contacting STS via e-mail. STS 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 Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).
- 27. Conditions of Storage**
- 27.1 STS will prepare an inventory of Goods received for storage and will ask the Customer to sign that inventory. The Customer will be provided with a copy of the inventory. If the Customer signs the inventory, or does not do so and fails to object to its accuracy within seven (7) days of receiving it from STS, then the inventory will be conclusive evidence of the Goods received. The inventory will disclose only visible items and not any contents unless the Customer ask for the contents to be listed, in which case STS will be entitled to make a reasonable additional charge.
- 27.2 STS is authorised to remove the goods from one warehouse to another without cost to the Customer. STS will notify the Customer 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).
- 27.3 The Customer is entitled upon giving STS reasonable notice to inspect the Goods in store but a reasonable charge may be made by STS for this service.
- 27.4 Subject to payment for the balance of any fixed or minimum period of storage agreed the Customer may require the Goods to be removed from the store at any time on giving STS not less than five (5) working days' notice. If the Customer gives STS less than the required notice STS will still use their best endeavours to meet the Customers' requirements, but shall be entitled to make a reasonable additional charge for the short notice.
- 27.5 The Customer agrees to remove the goods from storage within twenty-eight (28) days of a written notice of requirement from STS to do so. In default, STS may after fourteen (14) days' notice to the Customer SELL ALL OR ANY OF THE GOODS by public auction or, if that is not reasonably practicable by private treaty and apply the net proceeds in satisfaction of any amount owing by the Customer to STS.

**28. General**

- 28.1 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 that 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.
- 28.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which STS has its principal place of business, and are subject to the jurisdiction of the Manly Local Court in New South Wales.
- 28.3 Subject to clause 21, STS shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by STS of these terms and conditions (alternatively STS' liability shall be limited to damages which under no circumstances shall exceed the Price).
- 28.4 The Customer agrees that STS may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for STS to provide Services to the Customer.
- 28.5 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.
- 28.6 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.