

CLC DELIVERIES PTY LTD ("CLC")
(A.C.N. 002 243 085)
STANDARD TERMS & CONDITIONS OF CONTRACT FOR TRANSPORT SERVICES

NB: THESE TERMS & CONDITIONS EXCLUDE OR LIMIT THE LIABILITY OF CLC FOR LOSSES AND DAMAGES. CUSTOMERS ARE ADVISED TO READ THEM CAREFULLY AND TO CONSIDER PURCHASING APPROPRIATE INDEMNITY OR INSURANCE COVER TO ENSURE THEIR INTERESTS ARE ADEQUATELY PROTECTED.

1. These terms and conditions (hereinafter referred to as "Conditions") shall apply to provision of Services and except where otherwise expressly provided or where such meaning would be repugnant to or manifestly inconsistent with the context in which the word or expression appears:
- (a) "Charges" means the prices, fees and charges being consideration due and payable to CLC for provision of Services to the Consignor in accordance with the Rates Schedule(s) applicable to the Consignor and the Surcharges Schedule and any other agreement between CLC and the Consignor applicable to the particular consignee
 - (b) "CLC" means CLC Deliveries Pty Ltd (A.C.N. 002 243 085) howsoever trading (including as Hunter Express, CLC Couriers, Advance Transport Systems, Advance Couriers Australia and Alpha Couriers) its employees, agents and subcontractors
 - (c) "consignment" means goods (together with any containers, packaging, pallets or similar items containing holding or accompanying the goods) accepted by CLC from Sender for the purpose of supplying Services
 - (d) "consignment note" (which term shall, except to the context in which it appears, include a prepaid consignment note) means either;
 - (i) a document in a form approved by CLC raised by CLC or the Sender to accompany a consignment; or
 - (ii) an entry on CLC's form known as a run sheet, identifying the Sender and Consignee of the consignment to which (i) or (ii) relates and used to obtain a recipient's signature as proof of delivery ("POD") of the consignment.
 - (e) "Consignor" means the person with whom CLC contracts to provide Services except in the case of a quotation by CLC where it means the person to whom the quotation has been issued, in 19 where it means the recipient of the quotation, advice etc referred to therein and 25 where it means the person whose credit worthiness is being assessed
 - (f) "Consignee" means the intended recipient of the consignment as advised to CLC by or on behalf of the Consignor
 - (g) "Contract" means the contractual relationship between CLC and the Consignor arising from placement of an order by the Consignor with CLC to provide Services to the Consignor and acceptance by CLC of that order
 - (h) "Credit Account Application" means the document so or similarly titled by which the Consignor requests CLC to establish a credit account on its behalf against which charges are debited and subsequently invoiced by CLC
 - (i) "dangerous goods" means goods classified as such by any Dangerous Goods Code or similar instrument applicable to the goods or which are or may become dangerous, volatile, offensive, noxious, hazardous, inflammable, poisonous, corrosive, explosive or radioactive or which are or may become liable to injure people or cause damage to the environment or any property whatsoever
 - (j) "goods" means the wares and other tangible items of property (including liquids and bulk materials) comprised in a consignment and any receptacle, container, packaging or pallet in or on which they are contained or with which they are stored or handled.
 - (k) "invoice" (and "invoicing") in relation to an invoice issued by CLC means a tax invoice for the purposes of the A New Tax System (Goods and Services) Tax Act, 1999 (as amended) or any other legislation imposing a goods and services tax or value added tax with respect to provision of Services
 - (l) "loss" and "damage" in relation to goods shall include concealed damage, deterioration, contamination or evaporation and all loss or damage consequential upon loss or damage to goods (including but not limited to actual or potential loss of profit or custom or damage to reputation and all costs, expenses, fines and other amounts arising as a consequence of or incidental to such loss or damage) "normal trading hours" means the time between 7.00am and 6.30pm Monday to Friday excluding public holidays
 - (m) "owner's risk" means that, subject only to the provisions of these conditions, CLC shall not be liable for loss or damage to goods
 - (n) "pallet" means any mobile platform or container made of wood, metal, plastic or other material used for storage and/or transportation of goods (including liquids) and includes equipment referred to as "skids" and "pallecons";
 - (p) "prepaid consignment note" means a consignment note referred to in (d) above supplied by CLC to the Consignor and paid for by the Consignor at the time of supply at a charge agreed with CLC on condition that where later used by the Consignor to accompany a consignment that consignment will not be subject to any additional charges so long as the consignment does not exceed certain maximum weight and/or volume limits or is not consigned to a place other than an agreed place
"POD" means proof of delivery of a consignment as referred to in (d) above
 - (q) "Rate Schedule" means a written schedule addressed and supplied by CLC to a Consignor by which charges can be calculated having regard to such factors as the type of service supplied, the number and size of goods, minimum charge, place of pick-up and delivery, weight, distance and transit time
 - (r) "Services" means the whole or any part of the operations and services (including computer systems and programs) used performed or supplied by CLC in connection with a consignment including but not limited to the collection, carriage, transportation, delivery and/or storage of the consignment
 - (s) "Sender" means the person (including a Consignor) from whom CLC accepts a consignment for the purpose of supplying Services
 - (u) "subcontractor" includes any person who pursuant to a contract or arrangement with any other person (whether or not CLC) performs or agrees to perform Services or any part thereof
 - (v) "surcharge" means a charge payable pursuant to and invoiced in accordance with the Surcharges Schedule
 - (w) "Surcharges Schedule" means a document so or similarly titled and produced by CLC listing charges in addition to those set forth in a Rates Schedule
 - (x) "tender" (and "tendered") in relation to goods consigned to CLC includes goods picked up from a Sender (other than the Consignor) on the instructions of the Consignor
 - (y) "weight" includes mass
 - (i) the singular includes the plural and vice versa;
 - (ii) any gender includes the other genders;
 - (iii) "person" includes natural person, partnership, corporation, unincorporated association, regulatory body or governmental or semi-governmental organisation;
 - (iv) reference to any legislation includes reference to regulations and other subordinate statutory instruments
 - (t) reference to numbers and letters is reference to corresponding clauses and sub-clauses in these Conditions.
2. (1) Except where otherwise expressly agreed in writing by CLC:
- (a) each and every Contract for supply of Services shall be subject to these Conditions and to payment by the Consignor of charges in accordance with operative Rate and Surcharges Schedules;
 - (b) these Conditions will prevail over any contractual conditions (written or otherwise) used or relied upon by the Consignor; and

- (c) when the Consignor tenders goods to CLC the Consignor shall thereby be and be deemed to be bound by these Conditions and to payment of charges in accordance with operative Rate and Surcharges Schedules.

(2) No person (including an employee, agent or subcontractor of CLC) has any authority from CLC to waive or vary any of these Conditions or the application of the operative Rate and Surcharges Schedules unless the waiver or variation is in writing and signed by a director, so described, of CLC.

(3) The terms of the Consignor's or Sender's documentation shall not diminish or negate the application of these Conditions or operative Rate and Surcharges Schedules to the provision of Services.

3. (1) For the purposes of these Conditions the expressions "operative Rate Schedule" and "operative Surcharges Schedule" and expressions of similar import mean the Rate Schedule(s) and Surcharges Schedule(s) in force and binding on the Consignor at the time the Services were performed by CLC for the Consignor.

(2) The Consignor acknowledges and agrees that:

(a) subject to 3(2)(b), CLC may at its discretion review and increase charges set forth in an operative Rate Schedule at any time after the expiration of 6 calendar months following that Rate Schedule coming into force provided however that:

- (i) any such increase shall only take effect upon expiration of a period of at least one month's written notice by CLC to the Consignor of such proposed increase; and
(ii) such increases shall not take effect at intervals of less than 6 months;

(b) CLC shall have the right to review and increase charges set forth in the operative Rate Schedule in the event that:

(i) over a continuous period of at least 21 days the Consignor's average weekly expenditure for Services is less than the minimum average weekly expenditure indicated the Consignor's Credit Account Application; or

(ii) any invoice issued by CLC to the Consignor has not been paid in full by the Date Payable noted on the invoice; provided however that:

(ba) any such increase shall only take effect upon expiration of a period of at least one month's written notice by CLC to the Consignor of such proposed increase; and

(bb) the right conferred on CLC under 3(2)(b)(ii) shall not derogate from the right of CLC to suspend supply of Services in those circumstances.

(3) CLC shall have the right at any time and from time to review and increase existing charges set forth in the operative Surcharges Schedule or impose new charges provided that such increase or imposition does not take effect less than one month following notification of such increase by CLC.

(4) For the purposes of 3(3) notification shall be deemed to have been given by CLC from and including the day upon which details are displayed on its internet web site and it shall be the absolute responsibility of the Consignor to ensure awareness of those details.

(5) CLC may charge by weight, measurement (volume) or value and may at any time reweigh, re-measure or revalue or require the goods to be reweighed, re-measured or revalued and levy and recover proportional additional charges accordingly.

(6) Where in the case of a prepaid consignment note the actual weight and/or measurements (volume) of the consignment exceeds the maximum limit as to weight and/or measurements (volume) or is consigned to a place other than an agreed place, CLC shall be entitled to levy and recover proportional additional charges accordingly. In the case of the consignment being directed to a place other than an agreed place, the additional charge shall be based on the difference between the prepaid charge and the charge normally levied by CLC on a similar consignment sent to the destination nominated by the Sender.

(7) Where the goods are charged by measurement (volume) then unless otherwise stipulated by CLC in writing they shall be charged at the rate of 250 kgs per cubic metre.

(8) For the purpose of calculating the chargeable weight of goods, CLC reserves the right to round up the weight of the goods, whether calculated by actual weight or by measurement (volume), to the next whole kilogram.

(9) Where CLC or any agent or subcontractor of CLC weighs or reweighs, measures or re-measures, values or revalues any goods by electronic or mechanical device or by any other means, the weight, measurements (volume) or value so determined shall be deemed to be accurate and correct for the purpose of determining charges to be invoiced and unless manifestly and demonstrably wrong shall be conclusive for that purpose.

4. Quotations by CLC are given on the basis of immediate acceptance and subject to the right of withdrawal or revision by CLC with or without notice and without need to show cause to the Consignor.

5. (1) In addition to charges payable pursuant to the operative Rate and Surcharges Schedules, the Consignor shall be liable to CLC for all costs fees and expenses incurred for any reason in the provision of Services including the cost to CLC of labour and material required to re-pack or palletise or otherwise rectify or render secure the packaging of goods to the extent which CLC considers in its absolute discretion to be required for the proper provision of Services.

(2) Notwithstanding the provisions of 5(1):

(a) CLC shall not be obliged to expend such labour or material and shall incur no liability whatsoever in consequence of either doing or not doing so;

(b) whether or not CLC expends such labour and material, the goods shall be at the owner's risk; and

(c) the Consignor shall at all times be solely responsible for the conformity of any containers, packaging, pallets or similar items with any requirements of the Consignee and any liability or expense incurred by CLC from any failure to so conform.

6. (1) CLC is not a common carrier and accepts no liability as such and may in its absolute discretion:

(a) refuse (without need to show cause) provision of Services to any person (including the Consignor) whether before or after collection of goods or transportation by CLC has occurred;

(b) without limiting the generality of 6(1)(a), refuse to pick up or deliver freight where, in the absolute discretion of CLC, facilities and resources available at the point or pick-up or delivery (as the case may be) are not adequate to properly and safely effect loading, unloading or other handling of goods;

(c) open any document, envelope, package or other container in which goods are placed or packaged to inspect the goods to determine the nature or condition of the goods, or, where any consignment note or identifying document or mark is lost, damaged or destroyed, to ascertain the ownership or intended destination of the good provided however that CLC shall not be obliged to do so and shall incur no liability whatsoever in consequence of either doing or not doing so.

(2) Any refusal pursuant to 6(1)(a) or (b) shall be conditional upon refund of any moneys paid by the Sender for Services not supplied subject to the right of CLC to charge a fee applicable in accordance with the operative Surcharges Schedule or otherwise in accordance with these Conditions.

7. Where CLC supplies prepaid consignment notes for the purpose of providing Services, those prepaid consignment notes are not transferable and moneys paid for them are not refundable other than where required by law.

8. The Consignor warrants and agrees that any person who purports to tender goods to CLC on behalf of the Consignor (or any Sender from whom CLC picks up goods at the direction or in accordance with the instructions of the Consignor) is authorised by the Consignor to do so, to sign the relative consignment note and to accept these Conditions on behalf of the Consignor and any person having an interest in the goods.

9. Where the Consignor is not the owner of the goods tendered to CLC, it warrants its authority to act as agent of the owner of, or any other person having an interest in, the goods for all purposes in connection with provision of Services and is authorised to accept and is accepting these Conditions not only for itself but as agent for and on behalf of all other persons who are or may hereafter be interested in the goods.
10. The Consignor indemnifies and shall keep indemnified CLC in respect of all liability whatsoever or howsoever arising (including, without limitation, from negligence by a or omission by CLC or any other person) to any person in connection with provision of Services or the goods generally.
11. The Consignor for itself and the Sender (where they are not identical):
- (1) warrants that it has provided any necessary instructions and information regarding handling, care and control of the goods and the provision of Services with respect to them; and
 - (2) warrants that it has complied with all laws and regulations relating to the nature, description, condition, packaging, labeling, storage and transportation of the goods and that the goods are packed in a manner adequate to withstand the ordinary risks associated with performance of Services having regard to the nature of the goods; and
 - (3) warrants that it shall provide to CLC any assistance, information and documentation that may be necessary to enable CLC to comply with such laws and regulations; and
 - (4) warrants the accuracy of all markings and brandings of the goods and all particulars furnished to CLC for the purpose of provision of Services; and
 - (5) warrants that appropriate and adequate equipment and personnel will be available at points of pick-up and delivery to carry out loading and unloading activities where the size and/or nature of the consignment so requires; and
 - (6) agrees that it is the responsibility of the Consignor to ensure the conformity of any containers, packaging or pallets supplied by the Sender with any requirements of the Consignee; and
- (7) indemnifies and holds harmless CLC against all loss and damage arising and all costs and expenses incurred as a consequence of failure to comply with the warranties referred to in 11(1), (2), (3) and (5), the agreement referred to in 11(6) and any inaccuracy or omission in respect of matters referred to in 11(4).
12. (1) The Consignor shall not tender to CLC any dangerous goods without presenting to CLC a full and accurate description disclosing the nature of the goods and, where relevant, how Services should be provided with respect to the goods and in any event shall be liable for and shall indemnify and hold harmless CLC from and against all claims for death, bodily injury, loss, damage, expense or penalty caused by those goods.
- (2) If in the opinion of CLC the goods are or are liable to become dangerous goods, CLC may at any time, at the cost and without compensation or liability to the Consignor, take such action in respect of the goods as it considers appropriate including retention, destruction, disposal, abandonment or rendering harmless of the goods AND any such action shall be without prejudice to CLC's right to payment from the Consignor of all charges as would have been payable if the goods concerned had been delivered undisturbed and intact as well as the costs of taking action pursuant to this Clause.
13. (1) CLC and any subcontractor may subcontract on any terms all or any part of the Services.
- (2) Every exemption, limitation, condition and liberty herein contained and every right, power, authority, exemption from liability, defence and immunity of whatsoever nature applicable to CLC or to which CLC is entitled hereunder shall also be available and shall extend to protect:
- (a) all subcontractors;
 - (b) every employee or agent of CLC and of every subcontractor;
 - (c) every other person (except CLC) by whom Services or any part thereof are performed; and
 - (d) all persons (including CLC) who are or may be vicariously liable for the acts or omissions of any person falling within (a), (b) or (c) hereof.
- (3) For the purpose of this Clause 13, CLC is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all persons (except CLC) falling within 13(2)(a), (b), (c) and (d) who shall to that extent be deemed to be parties to the Contract.
- (4) The Consignor:
- (a) warrants that no claim or allegation inconsistent with this Clause 13 shall be made by the Consignor or any other person who is or may hereafter be interested in the provision of Services and/or the goods; and
 - (b) indemnifies and shall keep indemnified CLC and each person referred to in 13(2) against all claims including liability for legal costs incurred by CLC in relation to any such claim on a full indemnity basis.
14. (1) If the Sender expressly or impliedly instructs CLC to perform Services in a particular way (whether as to means or route of carriage, place of storage or otherwise) CLC shall endeavour to give priority to that way but in any event the way of providing Services shall be at the sole discretion of CLC and the Consignor authorises CLC in its absolute discretion to adopt any way of providing Services other than the way instructed or agreed.
- (2) The Consignor authorises any deviation from the customary or usual means or route of carriage or place of storage (if any) as CLC may in its absolute discretion deem desirable or necessary.
- (3) CLC may comply with all orders, directions or recommendations made by a government or regulatory agency in relation to the goods and /or provision of Services without recourse to the Sender.
- (4) Pending forwarding and delivery, the goods may be warehoused or otherwise held at any place or places when deemed necessary at the sole discretion of CLC at the owner's risk and the Consignor's expense.
15. (1) CLC is authorised to deliver goods to the Consignee at the address nominated by the Consignor or Sender or Consignee and shall be deemed to have delivered the goods in accordance with the Contract if at that address it obtains a signature acknowledging receipt of delivery from or on behalf of the Consignee by a person who holds himself out to be or to have the authority of the Consignee.
- (2) An acknowledgement of receipt of the goods in good order and condition shall be conclusive in favour of CLC that the goods were delivered and received without loss or damage.
- (3) The Consignor agrees without exception that the signature of any person at pick-up made on behalf of CLC is only acknowledgment of the number of separate visible items, not of the accuracy of the nature, weight, dimensions or volume of all of any of the goods comprised in the consignment.
- (4) If the nominated place for delivery is unattended at the time delivery is attempted during normal trading hours or at the time specified by the Consignor (and agreed to by CLC) or if delivery cannot otherwise be effected for any reason whatsoever beyond the control of CLC, CLC may in its absolute discretion and without having to obtain prior instructions from the Consignor or Sender:
- (a) leave the goods at the nominated place which shall be conclusively presumed to be delivery of the goods in accordance with the Contract; or
 - (b) without being obliged to do so, store the goods pending redelivery or return; and
 - (c) attempt redelivery of the goods at the nominated place for delivery; and/or
 - (d) return the goods to the Consignor or Sender.
- (5) Storage, each attempt at redelivery and return of goods in accordance with 15(4)(b), (c) and (d) above shall be at the owner's risk and expense of the Consignor. Unless otherwise agreed in writing, the minimum charge payable for:
- (a) each attempt at redelivery shall be the same as the charge payable as a successful attempt; and
 - (b) return of the goods shall be the charge normally payable to CLC for goods being delivered from the place of storage or intended delivery (as the case may be) to the place where return is effected.
- (6) Should an attempt by CLC to pick up goods at the place nominated by the Consignor during normal trading hours or at a time specified by the Consignor (and agreed to by CLC) be rendered futile because at such time or place:
- (a) the Consignor or other person nominated by the Consignor is not in attendance; or

- (b) without reasonable prior notice to CLC a consignment is not available for prompt pick-up; or
- (c) for any other reason whatsoever beyond the control of CLC, then CLC shall be entitled to impose and the Consignor shall be liable to pay a charge in accordance with the operative Surcharges Schedule and otherwise adequate to reasonably compensate CLC for each such attempt.
- (7) If for any reason beyond the control of CLC (including time involved in waiting for a consignment to be available for collection or for loading or unloading to commence or to be carried out) a pick-up or delivery cannot be completed within 10 minutes of arrival of CLC's vehicle at the nominated place within normal trading hours then CLC shall be entitled to impose and the Consignor shall be liable to pay a charge in accordance with the operative Surcharges Schedule and otherwise sufficient to reasonably compensate CLC for the time taken up by such delay.
- (8) The Consignor acknowledges and agrees that in some circumstances, due to the nature or location of nominated address for pick-up or delivery (such as remoteness, accessibility or distance from the nearest depot of CLC or its local sub-contractor), or the characteristics of the goods (such as their weight or bulk), or the lack of resource available to effect pick-up or delivery (such as fork-lifts or other appropriate equipment), it will be impracticable for CLC to effect pick-up or delivery at the address nominated by the Sender in which case it will be necessary for:
 - (a) the Sender to drop off the goods at a place nominated by CLC (or its sub-contractor); or
 - (b) the Consignee to pick-up the goods at such a nominated place; and
- (c) the Consignor to pay CLC's reasonable charges, if any, attributable to additional cost and expense caused by such circumstances.

16. Without limiting the force and effect of relief from liability conferred on CLC by these Conditions:

- (1) Any claim by a Consignor against CLC for loss and/or damage to goods and/or other property allegedly caused in the course of provision of Services by CLC must be made in writing by the Consignor containing all relevant details and substantiated with all appropriate documentation, and:
 - (a) where the claim relates to alleged damage to goods or any other property, must be made within 48 hours of delivery;
 - (b) in the case of alleged loss, must be made within 48 hours from the time the goods allegedly lost should in the ordinary course have been delivered; or
 - (c) where the claim arises from any other cause (including with respect to CLC's charges) must be made within 14 days from the Period Ending date shown on CLC's relative invoice.
- (2) Where a claim is made within the relevant prescribed period and CLC makes written request of the claimant for further particulars, the time period prescribed in 16(1) shall be deemed to be extended for a further 7 working days from the date that the request was made and to expire at 5.00pm on the day marking the expiration of that period except where that day is not a working day in which case it shall expire at 5.00pm on the next working day.
- (3) Consideration of claims made outside these periods will be entirely at the discretion of CLC and failure to notify a claim within the relevant prescribed period will be evidence of satisfactory performance by CLC of its obligations under the Contract.
- (4) A claim will not be valid or eligible for consideration if based only on absence of evidence of proof of delivery endorsed on the Consignor's paperwork if that evidence is provided by CLC's consignment note and vice versa.
- (5) A claim for loss of or damage to goods or other property will not be valid or eligible for consideration by CLC if at the time of delivery (provided the Consignee or some other person is in attendance at the place of intended delivery) an acknowledgement referred to in 15(2) is made by the Consignee or that other person.
- (6) CLC shall promptly consider and give written notice to the Consignor of its decision with respect to any claim validly submitted, and, unless manifestly wrong or unreasonable, the decision of CLC shall be final and conclusive.
- (7) Where CLC does not give written notice of its decision regarding a claim within 14 days from expiration of the prescribed period or the extended period referred to in 16(1) and (2), in the absence of written agreement between CLC and the claimant to the contrary, CLC will be deemed to have rejected the claim.
- (8) CLC's charges shall be deemed fully earned as soon as the goods are received from the Sender and (unless paid by the Consignee) shall be payable in full by the Consignor without deduction or set-off for any outstanding credit claims which, if approved, will be the subject of adjustment against subsequent invoices or direct reimbursement by CLC.
- (9) The Consignor (and any party seeking to claim through the Consignor) shall be completely and forever barred from bringing suit against CLC with respect to a consignment unless:
 - (a) the claim giving rise to the alleged cause of action has been the subject of a valid claim made to CLC in accordance with 16(1); and
 - (b) the claim has been rejected wholly or in part by CLC or is deemed to have been rejected pursuant to 16(7); and
- (c) the proceedings are commenced against CLC within 14 days from rejection or deemed rejection of the claim (as the case may be), AND it is acknowledged and agreed that these provisions may be adduced by CLC as an absolute bar and estoppel in any proceedings brought in contravention of these provisions.

17. (1) Unless otherwise agreed in writing, CLC's invoices shall be payable no later than 14 days from the Period Ending date shown on each invoice.

- (2) CLC reserves the right to round up the GST-exclusive total of each invoice to the next 10 cents before calculating the GST-inclusive total of the invoice.
- (3) In the event that the Consignor does not pay all or any part of an invoice in accordance with 17(1), the Consignor shall upon payment becoming overdue become liable to pay to CLC in addition to the unpaid invoiced amount an amount representing whichever from time to time is the greater of:
 - (a) a late payment fee as shown in the operative Surcharges Schedule; and
 - (b) interest at a rate 2% per annum greater than interest on a pre-judgment debt under the provisions of S.100 of the Civil Procedure Act, 2005 (NSW).
- (4) The Consignor irrevocably agrees that an amount calculated by either or both alternatives set forth in 17(3) is properly and fully recoverable as a genuine and substantially accurate pre-estimate of damages which will be suffered by CLC from non-payment of any invoiced amount in accordance with 17(1) and (2) and do not constitute a penalty such as might otherwise render it unrecoverable by CLC in any legal proceedings against the Consignor.

18. (1) Unless CLC has agreed in writing to insure or arrange insurance against loss of or damage to a consignment then CLC shall have no responsibility whatsoever for insuring or arranging insurance and incur no liability whatsoever for not insuring or arranging insurance of that consignment which shall be the sole responsibility of the Consignor.

- (2) If CLC has agreed in writing to insure or arrange insurance for a consignment, then, subject to 21, the liability of CLC is limited to the amount, if any, it is liable to pay under such insurance for physical loss of or damage to goods contained in the consignment provided however that any such liability shall be based on the cost of purchase or manufacture like goods or in the case of repairable damaged goods the cost of repair and in each case excluding GST except to the extent that the Sender is not legally able to claim an adjustment by way of refund or reduction in or an input tax credit with respect to GST paid or payable to replace or repair lost or damaged goods (as the case may be).
- (3) Subject to 18(1) and (2), all consignments and goods are at the owner's risk and, unless expressly agreed in writing, CLC shall not be responsible in tort or contract or otherwise (including as bailee) for any loss of or damage to goods or misdelivery or failure to deliver or delay in delivery of goods (including perishable goods) either in transit or in storage, for any reason whatsoever including (without limiting the generality of the foregoing) the negligence or breach of contract or wilful default of CLC or others, and, this sub-clause 18(3) shall apply to all such loss of or damage to goods or misdelivery or failure to deliver or delay in delivery of goods as aforesaid whether or not the same occurs in the course of:
 - (a) performance by CLC of the Contract; or
 - (b) events which are in the contemplation of or are foreseeable by CLC and/or the Consignor; or
- (c) events which would constitute a fundamental breach of these Conditions or the Contract or a breach of a fundamental term thereof.

- (4) For the avoidance of doubt, the Consignor acknowledges and agrees that the provisions of 18(3) also apply to pallets (whether or not laden with goods) and to dockets relating to the transfer, exchange, hire or de-hire of pallets taken into the custody and control of CLC in the course of provision of Services to the intent and effect that CLC shall not be liable in any way to the Sender or to the owner of a such a pallet or docket for the hiring or other charges and fees payable in respect of the pallet or for damage to or loss of the pallet or docket and the Consignor shall indemnify and hold harmless CLC from and against all claims and demands to pay such charges and fees or to make good any damage to or loss of any pallet or docket.
- (5) Subject to 18(1) and (2), in the event that any loading, unloading, handling, removal, dismantling, assembly or erection of any kind whatsoever is involved in performance of the Contract it is undertaken strictly on the basis that CLC accepts no liability for any loss, damage or injury of any kind whatsoever, however caused or incurred or occurring during any part of the relevant activity. This disclaimer extends to include not only loss of or damage to itemised goods or equipment itself, but loss, damage or injury to any person, property or thing caused during the activity and to any loss or damage consequentially or otherwise arising from any such loss, damage or injury aforesaid.
- (6) Goods are accepted by CLC on condition that it shall not be responsible for the collection on behalf of the Consignor or any other person of payment of moneys (in cash or otherwise) from the Consignee or any other person for the goods and/or charges payable to CLC, and, when goods are tendered to CLC with instructions to collect such payment and CLC fails to comply with those instructions:
- CLC shall not be liable to the Consignor or any other person for such failure; and
 - the Consignor shall indemnify CLC against any claim or demand brought against it arising from such failure; and
 - the Consignor shall nevertheless be liable for payment in full of all CLC's charges relating to provision of Services with respect to those goods.
- (7) Every instruction to CLC to the effect that charges shall be paid by a person other than the Consignor shall be deemed to include a stipulation that if the nominated person does not pay those charges within 7 days of delivery or attempted delivery of the goods, then those charges shall become due and payable by the Consignor on or before the Date Payable shown on the invoice including those charges sent to the Consignor.
19. (1) CLC shall not be liable in negligence or contract or otherwise for loss, damage, costs fines or penalties incurred by the Consignor or any other person resulting from or arising out of or in connection with any quotation, advice, statement, representation or information given or made by or on behalf of CLC to the Consignor or others as to classification of or any matter material to the valuation of or the liability for or the amounts, scale or rate of customs or excise duty or other impost, tax or rate charged in respect of the goods or any other item whatsoever.
- (2) In giving or making any such quotation, advice, statement, representation or information, CLC relies solely on the particulars provided by the Consignor who warrants that those particulars accurately and completely describe all aspects of the goods and the transactions relating to the goods.
20. (1) Without limiting or prejudicing other legal and equitable rights and remedies available to it, CLC shall have both a general and a particular lien over the goods and/or any freight or other items of the Consignor (and any documents relating thereto) of the Consignor in the custody or under the control of CLC for any moneys owing to CLC by the Consignor whether in connection with the carriage of the goods or otherwise. CLC shall have the right to sell or dispose of any or all of the goods or other items as agent for and at the expense of the Consignor by public auction or private treaty without notice to the Consignor to satisfy that obligation and all costs incurred by CLC for storage or in relation to the sale, including legal costs on a full indemnity basis.
- (2) Any such sale shall not prejudice or restrict the entitlement of CLC to recover moneys owing by the Consignor to CLC and not covered by the proceeds of sale.
- (3) The lien conferred on CLC by 20(1) shall extend to allowing CLC without liability to withhold delivery and retain possession of the goods, other items and documents referred therein pending payment of the moneys owing whether or not the goods, other items and documents are or reasonably appear to be the property of the Consignor.
- (4) The Consignor shall indemnify and keep indemnified CLC from and against all liability whatsoever to any other person arising from any action taken by CLC pursuant to the provisions of this clause 20.
21. In all cases where liability of CLC has not been excluded, whether by these Conditions, by statute or otherwise, the liability of CLC whatsoever and howsoever arising is limited to:
- AUD100 or the value of the goods the subject of the Contract at the time the goods were received by CLC, whichever is the lesser; or
 - in the case of a proven breach of any warranty implied by the Trade Practices Act, 1974, supplying the Services again or to the payment of the cost of having Services supplied again.
22. (1) Any relief from liability in these Conditions is to be read subject to any restriction on contracting out of liability and to any implied terms, conditions and warranties imposed by any legislation (including the Trade Practices Act 1974) binding on CLC so that the provisions for relief in these Conditions are limited or rendered ineffective only to the extent required to give effect to that legislation but are otherwise fully effective or independent of any provisions which are void or ineffective by reason of the legislation.
- (2) In the absence of any such implied term, condition or warranty, CLC gives no warranty or undertaking:
- as to time of pick-up or delivery of goods; or
 - that it will inform the Sender of the expected or actual time of pick-up or delivery, and may in its discretion cancel the supply of Services at any time without liability to any person.
23. If any provision or part of any provision in these Conditions or in the Contract is or becomes unenforceable that unenforceability shall not affect the enforceability of the balance of the provision or any other provisions.
24. These Conditions and the Contract shall be governed and construed in accordance with the laws in force from time to time in the State of New South Wales and shall be subject to the jurisdiction of the courts of that State.
25. In applying for credit facilities from CLC, the Consignor expressly agrees:
- to the disclosure of personal, financial and other information to CLC from a credit reporting agency;
 - to the disclosure of personal, financial or other information by CLC to a credit reporting agency;
 - that CLC may contact any trade reference or other credit reference at any time or from time to time for the purpose of assessing the credit worthiness of the Consignor;
 - that CLC may receive from any credit provider or may supply to any credit provider any credit information whether by way of report, record, data or otherwise relating to the credit worthiness of the Consignor for the purposes of exchange of information, assessing credit worthiness, and notification of default at any time by the Consignor.
26. (1) CLC has the right at any time and from time to time to amend these Conditions without specific notice, written or otherwise, to the Consignor. All such amendments shall have full force and effect on and from the date upon which the amendments are incorporated in the Conditions displayed on CLC's internet website (www.hunterexpress.com.au > forms > standard terms and conditions of contract for transport services).
- (2) *It shall be the absolute responsibility of the Consignor to ensure at all times that it has or has access to an up-to-date copy of these Conditions a written copy of which CLC will make available on request.*