

## FLEX Contract Logistics Pty Limited Terms & Conditions

Please read all the following conditions carefully. You will be bound by these conditions if we provide services at your request or on your behalf. Please note that:

- Our services are priced based on the exclusions and limitations set out in these conditions;
- The goods at your risk. To the extent permitted by law, we will not be liable for any loss of or damage to goods, unless you prove that the loss or damage was caused by our negligence or wilful misconduct;
- The conditions provide for various exclusions of liability and limits on our liability for loss of or damage to goods. These exclusions and limits are set out in clause 15;
- The general effect of these provisions is that, even if you prove we have been negligent, you may not be able to recover the full value of any lost or damaged goods;
- Because of these considerations, we recommend that any goods are covered by an appropriate insurance policy taken out by you, or by the owner of the goods; and
- If we store goods for you, you must take out a policy of insurance over those goods (see clause 12).

### 1. Definitions and Interpretation

#### 1.1 In these Terms:

**Australian Consumer Law (ACL)** means Schedule 2 of the *Competition and Consumer Act 2010* (Clth).

**Carriage** means, in respect of Goods, the whole of the operations and services undertaken by FLEX in relation to those Goods (whether gratuitously or not), including the loading, unloading, handling, collection, carriage, transportation, delivery and/or Storage of the Goods, towing a trailer and the provision of any advice concerning the collection, carriage, transportation, delivery and/or Storage of the Goods;

**Chain of Responsibility Law** means the *Heavy Vehicle National Law* as enacted in any Australian state, the *Road Traffic (Administration) Act 2008* (WA) and the *Road Traffic (Vehicles) Act 2012* (WA) and any other Commonwealth, state or territory law dealing with the obligations of parties involved in the transport of goods by road;

**Charges** means the amounts and charges calculated in accordance with, or as set out in, the Rates Schedule and other amounts, charges and rates that may be agreed between the Sender and FLEX in writing from time to time;

**Claims** includes all manner of actions, claims, causes of action, arbitrations, debts, dues, costs, interest, demands, verdicts, judgements, fines and penalties, both at law or in equity or arising under the provisions of any statute;

**Confidential Information** means in respect of a party, all trade secrets and knowhow, financial information and other commercially valuable information, whether oral, graphic, electronic, written or in any other form, that is not generally available to the public at the time of disclosure other than by reason of a breach of these Terms or that is in fact, or should reasonably be regarded as, confidential to the party to whom it belongs or relates; **Consequential Loss** includes any lost revenues, lost profits, lost business, lost data or data use, lost goodwill or anticipated savings, liquidated damages, incidental damages, indirect damages, consequential damages, special damages, economic damages, punitive damages; **Damage** means physical damage and includes deterioration, evaporation and contamination;

**Dangerous Goods** has the same meaning as in the Australian Code for the Transport of Dangerous Goods by Road and Rail;

**Delivery Location** means the place advised by the Sender to FLEX as the place to which the Goods are to be delivered;

**FLEX** means FLEX Contract Logistics Pty Limited (ACN 655 634 003); **FLEX**

**Indemnified Party** means each of:

- (a) FLEX;
- (b) the Related Bodies Corporate of FLEX;
- (c) each employee, Subcontractor and agent of FLEX; and
- (d) each employee, Subcontractor and agent of each Related Body Corporate of FLEX.

**Force Majeure Event** means any event beyond the control of FLEX including acts of God, lightning, meteorites, earthquakes, cyclones, floods, landslides, storms, explosions, fires and any natural disaster, acts of war, acts of public enemies, terrorism, public disorder, riots, civil commotion, malicious damage, vandalism, sabotage, explosions, nuclear accidents, strikes, labour disputes and other industrial disturbances, any border closure or road closure or congestion of roads, any quarantine or customs restriction, epidemic or pandemic, cyber warfare, cyberattacks, ransomware attacks, cyber sabotage, any interruption of power supply or scarcity of fuel or any accident, collision or breakdown of a vehicle, crane, machinery or equipment;

**Fuel Levy Schedule** means the schedule of fuel levies charged or imposed by FLEX from time to time, as issued or published by FLEX from time to time;

**Goods** means goods of any type or description whatsoever whether originally contracted for in the Order, substituted for or added to an Order, together with any containers, packaging or pallets supplied by or on behalf of the Sender;

**GST** has the same meaning as in *A New Tax System (Goods and Services) Act 1999*;

**Losses** includes all Claims, losses, costs (including legal costs on a solicitor and own client basis), expenses, damages and injury, including Consequential Loss;

**Order** means a request by the Sender to FLEX to transport or store Goods;

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

**Rates Schedule** means the schedule of rates and charges for Carriage of Goods agreed between FLEX and the Sender as amended by FLEX from time to time;

**Receiver** means the person to whom the Goods are, or are to be delivered or to whom the Goods are addressed;

**Re-delivery Request** means a request in writing from the Sender or the Receiver to FLEX to unload the Goods at an address other than the Delivery Location in accordance with clause 9;

**Re-delivery Location** means the location advised by the Sender or the Receiver to FLEX in a Re-delivery Request as the location to which the Goods are to be delivered;

**Related Body Corporate** has the meaning given to that term in the *Corporations Act 2001* (Cth);

**Relocation Time** means FLEX's reasonable estimate of the time it would take the vehicle to travel from the last delivery carried out by that vehicle to the first pickup location for an Order, which will be a minimum of thirty (30) minutes;

**Sender** means the person that has submitted an Order with FLEX;

**Store or Storage** means receiving Goods into a storage location operated by or on behalf of FLEX, storing Goods and handling inbound and outbound Goods at the storage location;

**Subcontractor** includes any person who, pursuant to a contract or arrangement with any other person (whether or not FLEX), performs or agrees to perform the Carriage or any part thereof;

**Terms** means these terms and conditions.

1.2 Unless the context otherwise requires:

- (a) references to a party to these Terms includes the executors, administrators, successors and permitted assigns of that party;
  - (b) references to any statute, ordinance or other law includes all regulations and other instruments thereunder and all consolidations, amendments, re-enactments or replacements thereof;
  - (c) wherever 'include' or any form of that word is used, it will be construed as if it were followed by '(without being limited to)';
  - (d) words importing the singular include the plural and vice versa, words importing a gender include other genders and references to a person must be construed as references to an individual, firm, body corporate, association (whether incorporated or not), government and governmental, semi-governmental and local authority or agency;
  - (e) where any word or phrase is given a defined meaning in these Terms, any other part of speech or other grammatical form in respect of such word or phrase has a corresponding meaning; and
  - (f) headings included in these Terms are for convenience only and must be disregarded in the construction of these Terms.
- 1.3 Inconsistency
- (a) These Terms must be read in conjunction with FLEX invoices, the Order, the Rates Schedule and other documentation as provided by FLEX to the Sender from time to time.
  - (b) If there is any inconsistency between these Terms and any terms and conditions printed on any FLEX invoice, any Order, the Rates Schedule or other documentation, these Terms will prevail to the extent of the inconsistency.

## 2. Acceptance

Any request by the Sender to use the services of FLEX constitutes acceptance of these Terms by the Sender.

## 3. Negation of liability as a common carrier

FLEX is not a common carrier and does not undertake the obligations or liability of a common carrier. FLEX reserves the right to refuse Carriage or transport of Goods for any person or entity in its absolute discretion.

## 4. FLEX Obligations

4.1 FLEX will:

- (a) take reasonable care to protect and safeguard the Goods and to follow any special handling requirements notified to FLEX by the Sender;
- (b) provide the Carriage exercising the degree of skill, care and efficiency that would be expected from a competent provider of Carriage;

- (c) at its own expense, hold all licences as may be required by law in connection with the Carriage;
- (d) to the extent the Carriage comprises Storage, account for all Goods received and use modes of Storage appropriate to the nature of those Goods;
- (e) use reasonable endeavours to deliver the Goods to the address nominated by the Sender and to effect delivery at the date and time requested by the Sender (subject to compliance with all law, including Chain of Responsibility Law); and
- (f) use reasonable endeavours to comply with the Sender's reasonable and lawful directions.

4.2 To the extent permitted by law, any conditions, guarantees, terms and warranties which would otherwise be imposed or implied into these Terms are excluded. Without limitation, this exclusion applies to any conditions, guarantees, terms or warranties of merchantability or of satisfactory quality applying to the Carriage.

## **5. Sender Obligations**

5.1 The Sender must:

- (a) comply with all obligations and best practices in relation to the Chain of Responsibility Law;
- (b) reasonably assist FLEX in complying with their obligations under the Chain of Responsibility Law;
- (c) comply with all laws (including the Australian Code for the Transport of Dangerous Goods by Road and Rail) relating to the nature, packaging, labelling, Storage and Carriage of the Goods;
- (d) ensure that the loading of the Goods onto FLEX's vehicle does not cause the vehicle to exceed any dimension or mass limit under the Chain of Responsibility Law;
- (e) where the Goods require special treatment or handling, provide written notice to FLEX of the special treatment required;
- (f) ensure that the Goods are packed in a manner adequate to withstand the ordinary risks of Storage, transportation and Carriage having regard to the nature of the Goods;
- (g) ensure that any containers, packaging or pallets conform with any requirements of FLEX as notified from time to time;
- (h) not tender for Carriage any Goods which are or may become dangerous, inflammable or offensive, or Goods which are or may become liable to damage any property whatsoever without presenting a full description disclosing the nature of such Goods; and (i) comply with these Terms.

## **6. Chain of Responsibility Law**

- 6.1 FLEX, the Sender and Receiver must comply with all law, including Chain of Responsibility Law.
- 6.2 The Sender must not impose any requirement on FLEX that would directly or indirectly encourage or require FLEX or any person on behalf of FLEX to speed, drive while fatigued or otherwise perform the Carriage in an unsafe manner or in breach of law.

## **7. Sender Warranties and Indemnities**

7.1 The Sender warrants that:

- (a) the Sender has fully and adequately described the Goods, the nature, weight and measurements of the Goods and complied with all applicable laws (including laws with respect to notifications, classification, description, labelling, transport and packaging of the Goods);
- (b) safe and adequate commercial loading/unloading facilities and equipment will be available at any place from which any Goods are to be collected and at the Delivery Location;
- (c) any person who delivers the Goods to FLEX for Carriage for or on behalf of the Sender is authorised to do so and to sign any note or documents in respect of the Goods for the Sender; and
- (d) the Sender has the authority of each person that has an ownership or other interest in the Goods to deal with the Goods in accordance with, or as contemplated by, these Terms.

7.2 If any person, other than the Sender, makes a Claim or commences proceedings against FLEX alleging an interest in any part of the Goods, then the Sender indemnifies each FLEX Indemnified Party from and against all Losses suffered or incurred by any one or more FLEX Indemnified Party arising from or in connection with a breach of the warranties or obligations of the Sender set out in clauses 5 and 7.

7.3 FLEX holds for itself and on trust for each other FLEX Indemnified Party the benefit of each indemnity in these Terms expressed to be for the benefit of a FLEX Indemnified Party.

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## **8. Right to Subcontract**

8.1 FLEX shall be entitled to subcontract the whole of or any part of the Carriage on such terms as FLEX thinks fit.

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## **9. Delivery of Goods**

9.1 FLEX is authorised to deliver the Goods to the Delivery Location or, if the Sender or the Receiver makes a Re-delivery Request, to the Re-delivery Location. It is expressly agreed that FLEX will be taken to have delivered the Goods if FLEX has delivered the Goods to either the Delivery Location or the Re-delivery Location.

9.2 If the Delivery Location or Re-delivery Location (as applicable) is unattended, or if delivery cannot be effected by FLEX (whether due to lack of equipment at the relevant location or otherwise), FLEX may, in its absolute discretion:

- (a) deposit the Goods at the Delivery Location or the Re-delivery Location (if applicable) and such action shall constitute valid delivery by FLEX;
- (b) return the Goods to the Sender and charge the Sender any costs incurred by FLEX in the unsuccessful delivery attempt; or
- (c) Store the Goods, in which case the Sender must pay or indemnify FLEX for all costs and expenses incurred by FLEX in connection with such Storage.

9.3 In the event that FLEX Stores the Goods under clause 9.2(c), FLEX will deliver the Goods to the Receiver at a time mutually agreed between the parties. The Sender must pay any costs incurred by FLEX for the initial delivery, the re-delivery and Storage fees.

9.4 FLEX, acting reasonably, may refuse to accept a Re-delivery Request for any reason, including the following:

- (a) the Receiver has not completed and executed the relevant delivery or re-delivery documentation in a form satisfactory to FLEX;
- (b) access to the premises at the Re-delivery Location is restricted in which case clause 9.2 will apply; or
- (c) FLEX has not received reasonable notice of the Re-delivery Request or has already commenced or completed delivery of the Goods to the Delivery Location (or both).

9.5 For the purposes of the Rates Schedule and the calculation of the Charges, the Sender acknowledges and agrees that:

- (a) Relocation Time is added to every Carriage depending on the vehicle size, duration of the Carriage and start and finishing locations of the Carriage;
- (b) for a Carriage which is to be invoiced by FLEX on hourly rates, the time for such Carriage is calculated from when the driver arrives at the first pickup location to when the driver finishes at the last delivery location. Relocation Time is then added; (c) for 'depot to depot' Carriages:
  - (1) the time for such Carriage commences and concludes at the FLEX local branch of operation, with a minimum time of 60 minutes; and
  - (2) no Relocation Time is added.

## 10. Handling of Goods

10.1 If the Sender expressly or implicitly instructs FLEX to use, or it is expressly or implicitly agreed that FLEX will use, a particular method of handling or Storing the Goods or a particular method of Carriage, FLEX will give priority to that method but if FLEX cannot conveniently adopt that method, the Sender authorises FLEX, acting reasonably, to adopt another method.

10.2 FLEX may, acting reasonably, notwithstanding any prior instruction or agreement between the Sender and FLEX, select the route of Carriage or place of Storage of the Goods.

10.3 If any identifying document or mark in respect of the Goods is lost, damaged, destroyed or defaced:

- (a) FLEX may open any wrapping, packaging or container to inspect the Goods in order to determine any one or more of the nature, condition, ownership and destination of the Goods; and
- (b) in the event of 10.3(a) occurring, to the fullest extent permitted by law, FLEX accepts no liability for any Losses howsoever arising or incurred.

## 11. Storage

11.1 Where Goods are Stored by FLEX at the request of the Sender, the Sender will provide:

- (a) an address to which notices will be sent; and (b) an inventory of the Goods to be Stored.

11.2 FLEX may remove the Goods from a place of Storage to another place of Storage at its discretion.

11.3 Storage charges do not include removing, packing, unpacking, inspecting, stowing, restoring or delivering.

11.4 The Sender must give 48 hours' notice to FLEX of its intention to remove Goods from Storage.

11.5 FLEX will not be obliged to allow an inspection of the Goods or to deliver up any Goods in Storage:

- (a) to any person other than the Sender or a person authorised in writing by the Sender; or
  - (b) in circumstances where any amount is due by the Sender to FLEX on any account whatsoever.
- 11.6 The Sender will remove its Goods from Storage within seven days of receipt of written notice from FLEX.
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## 12. Insurance

- 12.1 FLEX has no obligation to, and does not, arrange insurance for the Goods. Insurance for the Goods and the Carriage of the Goods is the responsibility of the Sender and is at the cost of the Sender.
- 12.2 The Sender must:
- (a) effect and maintain an insurance policy in its own name that covers loss of or Damage to the Goods while FLEX is providing Storage with respect to the Goods, and which includes a waiver by the insurer of any rights of subrogation against FLEX; and
  - (b) provide a certificate of currency in respect of the policy referred to in clause 12.2(a), within seven days of receiving a request from FLEX.
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## 13. Return of Pallets

The Sender is at all times responsible for the return of any pallets used in the Carriage of the Goods to the pallet owner or other person nominated by the pallet owner. The Sender may request FLEX, in writing, to collect and return pallets as required under this clause. If FLEX agrees to collect and return any pallets as requested by the Sender, the Sender must pay FLEX an amount as shown in, or calculated in accordance with, the Rates Schedule, or such other amount as may be agreed in writing between FLEX and the Sender. The Sender must not transfer any pallets to any account FLEX may have with a pallet owner.

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## 14. Extension of Exemptions to Subcontractors

Every exemption, limitation, condition and provision contained in these Terms and every right, exemption from liability, defence and immunity of whatsoever nature applicable to FLEX to which FLEX is entitled under these Terms shall also be available and shall extend to protect:

- (a) all Subcontractors;
- (b) every servant, employee or agent of FLEX or of a Subcontractor;
- (c) every other person by whom the Carriage or any part thereof is performed or undertaken; and
- (d) all persons who are or might be vicariously liable for the acts or omissions of any person falling within clauses 14(a), (b) or (c),

(each a **Benefiting Party**), and for the purposes of this clause 14 FLEX is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of each Benefiting Party.

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## 15. Risk and liability

- 15.1 The Goods will be loaded, collected, carried, transported, unloaded, delivered and Stored at the risk of the Sender.
- 15.2

To the extent permitted by law, neither FLEX nor any Subcontractor nor any other person who undertakes the Carriage will, under any circumstances, be under any liability whatsoever (whether in contract, tort, bailment or otherwise) for any:

- (a) loss of the Goods;
- (b) Damage to the Goods; or
- (c) misdelivery, delay in delivery or nondelivery of the Goods,

whether in the course of Carriage or otherwise, unless the Sender proves that such loss, Damage, misdelivery, delay in delivery or nondelivery was caused by the negligence of FLEX.

15.3 Any liability of FLEX under clause 15.2 will be reduced proportionately to represent the extent to which the Sender's (or any other person's) negligent or wrongful act or omission caused the loss, Damage, misdelivery, delay in delivery or nondelivery of the Goods.

15.4 Notwithstanding any other provision of these Terms, to the extent permitted by law, FLEX will not be liable for:

- (a) any loss of or Damage to Goods caused by:
  - (1) a Force Majeure Event;
  - (2) FLEX following the Sender's instructions;
  - (3) the Goods becoming infected or contaminated with any virus, bacteria, fungi, pathogen, disease, mould, vermin or like condition;
  - (4) vibration, road conditions, weather or weather events of any kind whatsoever;
  - (5) the Goods being inherently defective or in such a condition that they cannot be loaded, unloaded or transported by road without Damage;
  - (6) inherent vice or the nature of the Goods;
  - (7) a decline in value, or loss of value as a result of the Goods becoming past their 'use by' or expiry date;
  - (8) where such loss becomes apparent as the result of a stock count or stocktake;
  - (9) where such loss or Damage comprises mechanical, electrical or electronic breakdown, derangement, or malfunction of the Goods;
  - (10) insufficiency or unsuitability of packing or preparation of the Goods to withstand the ordinary risks associated with the Carriage;
  - (11) loss of or Damage to Goods comprising ordinary wear and tear; or
- (b) loss or damage suffered in connection with any delay in the delivery or collection of Goods.

15.5 Notwithstanding any other provision of these Terms, FLEX's liability arising from any loss of Goods, Damage to Goods or misdelivery, delay in delivery or nondelivery of Goods during Carriage (but not Storage) is limited, at the option of FLEX, to:

- (a) supplying the Carriage that was supplied with respect to the lost, Damaged or mis/nondelivered Goods, again; or
- (b) payment of the cost of having the Carriage that was supplied with respect to the lost, Damaged or mis/nondelivered Goods, supplied again.

15.6 Notwithstanding any other provision of these Terms, the maximum aggregate financial liability of FLEX in relation to or in any way connected with any loss of Goods or Damage to Goods in or misdelivery, delay in delivery or nondelivery of Goods in Storage is limited to \$5000 for each incident. For the purposes of this subclause, 'incident' means any event which results in loss



of Goods or Damage to Goods and all claims that result from the one original cause will be considered, for the purpose of this subclause, to have arisen from the same incident.

15.7 The limitations of liability set out in clauses 15.5 and 15.6 do not apply to the extent that any loss of or Damage to Goods is caused by FLEX engaging in malicious conduct, deliberate or wilful misconduct, fraud or criminal conduct.

## 16. Charges

16.1 The Sender must pay to FLEX, in accordance with these Terms:

- (a) all Charges; and
- (b) such other amounts payable by the Sender to FLEX under these Terms.

16.2 All Charges are exclusive of GST. FLEX may at any time, in its absolute discretion, amend the Rates Schedule by giving fourteen (14) business days' written notice to the Sender. If the Sender does not agree to the amended Rates Schedule the Sender may cancel any Order which FLEX has not yet fulfilled or commenced.

16.3 A fuel levy may apply in addition to the Charges in accordance with the Fuel Levy Schedule. The fuel levy may be changed by FLEX by giving at least three (3) business days' notice of the change to the Sender.

16.4 Additional costs and charges may apply for Carriage of Goods to areas outside of metropolitan areas, in accordance with the Rates Schedule.

16.5 FLEX may charge the Sender an additional amount in respect of any delay in loading or unloading in accordance with the Rates Schedule, unless such delay arose solely from the default of FLEX. Any labour or the use of mechanical equipment, or both, to load and unload the Goods shall be the responsibility of, and at the expense of, the Sender.

16.6 Where the Sender cancels an Order within two (2) hours before the scheduled pick-up time or if the Goods are not available to be loaded at the scheduled pick-up time, FLEX may charge the Sender the minimum hours in accordance with the Rates Schedule in the case of an hourly hire job, or 50% of the quoted job.

16.7 The Charges shall be considered payable as soon as the Goods are loaded and dispatched from the Sender's premises or accepted for Storage (whichever occurs first) and the Sender will be and remain responsible to FLEX for all its proper charges incurred for any reason.

16.8 If the Sender instructs FLEX that FLEX's Charges will be paid by the Receiver or any other third party and the Receiver or third party does not pay FLEX's Charges within seven (7) days of the date on which those Charges become payable, the Sender must pay such

## 17. Invoicing

17.1 If the Sender has an account with FLEX then, FLEX will invoice the Sender weekly and the Sender must pay FLEX the full amount stated in each invoice in Australian dollars within 14 days of the date of the invoice, or as otherwise agreed between FLEX and the Sender in the Rates Schedule.

17.2 If the Sender defaults on the payment of any money payable under these Terms and the amount remains outstanding for a period of more than 7 days, then:

- (a) all sums then owed to FLEX will become, at the option of FLEX, immediately due and payable;
- (b) FLEX may suspend performance of the obligations of FLEX under these Terms until the amount outstanding is paid in full;
- (c) FLEX may charge interest on the amount outstanding at a rate of 0.05% per week, with such interest being payable on the written demand of FLEX, this rate being a genuine

estimate of the damages suffered by FLEX as a result of the payment default; and (d) FLEX may suspend the access of the Sender to the online portal of FLEX.

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## **18. Road Tolls**

- 18.1 If road tolls are incurred in connection with the Carriage, the Sender agrees to reimburse FLEX for an amount equivalent to those toll amounts with an additional 10 per cent fee, and such reimbursement amounts will be added to, and payable at the same time as, the Charges.
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## **19. Lien**

- 19.1 FLEX will have a general lien on the Goods (and any documents relating to the Goods) and over any other goods of the Sender in the possession of FLEX (and any documents relating to such goods) for an amount equal to all sums owing by the Sender to FLEX on any account whatsoever.
- 19.2 If the Charges are not paid when due, FLEX shall have the right to, in addition to any other rights FLEX may have:
- (a) Store the Goods as FLEX thinks fit, and charge the Sender for such Storage; and
  - (b) open any packaging and sell any part or all of the Goods as FLEX thinks fit and apply the proceeds of sale to discharge the lien and costs of sale without notice to the Sender.
- 19.3 The parties agree that the lien arising under these Terms:
- (a) attaches to the Goods when the Goods are accepted by FLEX; and
  - (b) is a security interest.
- 19.4 On request by FLEX, the Sender must promptly do anything for the purposes of ensuring that any security interest created under, or provided for by, these Terms is enforceable, perfected (including perfection by registration), maintained and is otherwise effective. Anything that is required to be done under this clause will be done at the Sender's expense. The Sender agrees to reimburse FLEX's costs in connection with any action taken by FLEX under or in connection with this clause.
- 19.5 The parties agree that, to the extent permitted by the PPSA:
- (a) sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA do not apply (unless the Sender is otherwise notified in writing by FLEX); and
  - (b) any right to receive a notice, statement or verification statement under sections 129, 130, 132, 134, 135 or 157 of the PPSA is waived.
- 19.6 Terms used in this clause have the same meaning as under the PPSA.
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## **20. Nature of goods and packaging**

- 20.1 FLEX does not accept the following Goods for Carriage unless otherwise agreed in writing: (a) Dangerous Goods;
- (b) jewelry & precious metals;
  - (c) cash & bonds;
  - (d) livestock; or (e) explosives.
- 20.2 If, in the opinion of FLEX, acting reasonably, the Goods are or are likely to become of a dangerous, inflammable, explosive, volatile, offensive or damaging nature, FLEX, acting

reasonably, may at any time destroy, dispose of, abandon or render harmless those Goods without compensation to the Sender and without prejudice to the rights of FLEX to receive any payments from the Sender (including Charges) pursuant to these Terms.

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## 21. Claim

- 21.1 Subject to any rights the Sender may have under the Australian Consumer Law or other law which may not be lawfully excluded or modified under these Terms:
- (a) all Claims against FLEX must be made in writing to the office of FLEX in the State in which the Order is made within seventy-two (72) hours of delivery being effected; and
  - (b) failure by the Sender to notify FLEX of a Claim within the time referred to in clause 21.1(a) is evidence of satisfactory performance by FLEX of the obligations of FLEX under these Terms.
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## 22. Driver Tracking

- 22.1 Driver tracking is available in limited circumstances only. The Sender acknowledges and agrees that:
- (a) driver tracking may not be available for a Carriage; and
  - (b) driver tracking may not be accurate.
- 22.2 The Sender must not make any Claim against FLEX in respect of, or in connection with, any one or more of the matters set out in clause 22.1 or with respect to driver tracking generally.
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## 23. Variations to Terms

- 23.1 These Terms may be changed by FLEX from time to time by FLEX giving fourteen days' notice of the amendment to the Sender by doing any of the following:
- (a) sending notice of the amendment to the Sender at any address (including an email address) supplied by the Sender; or
  - (b) publishing the amended terms on its website.
- 23.2 No variation of these Terms proposed by the Sender is binding on FLEX unless such variation is in writing and signed by or on behalf of FLEX.
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## 24. Cubic conversion

FLEX may, in its absolute discretion, choose to apply cubic conversion of  $1\text{m}^3 = 333\text{kgs}$  to any Goods.

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## 25. Relationship of Parties

Unless these Terms expressly provide otherwise, nothing in these Terms may be construed as creating a relationship of partnership, of principal and agent or of trustee and beneficiary.

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## 26. Disputes

- 26.1 If a dispute arises relating to these Terms or any Carriage of Goods (except in regard to payments due to FLEX), the parties agree to negotiate to settle the dispute with the assistance

of an independent expert agreed upon between FLEX and the Sender. If FLEX and the Sender cannot reach agreement upon the appointment of an independent expert, then either FLEX or the Sender may request the then current Chair (or the Chair's designated representative) of The Resolution Institute to appoint such an independent expert. The costs of the independent expert shall be borne equally between FLEX and the Sender.

26.2 If FLEX and the Sender are unable to resolve a dispute within 30 days of the appointment of the independent expert, then either FLEX or the Sender may commence legal proceedings to resolve the dispute.

26.3 Nothing in this clause 26 shall prevent either FLEX or the Sender from seeking urgent interlocutory relief from the courts.

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## 27. Confidentiality

27.1 A party must not, during or after the term of these Terms, disclose to any person any Confidential Information of the other party except (and only to the extent required): (a) to give effect to or enforce these Terms;

(b) to obtain advice from, or make confidential disclosure to, accounting, financial, legal or other professional advisors or insurers;

(c) to its directors and managers;

(d) if required by law or legally binding order of any court, government, semi-government authority or judicial body; or

(e) with the prior written consent of the disclosing party.

27.2 Without limiting clause 27.1, a party must not, during or after the term of these Terms, use or attempt to use any Confidential Information of the other party in any manner which may cause injury or loss to the other party or in any manner other than that contemplated by these Terms.

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## 28. Terms

28.1 These Terms constitute the whole contract between FLEX and the Sender with respect to the subject matter of these Terms and no earlier agreement, understanding or representation, whether oral or in writing, in relation to any matter dealt with in these Terms will have any effect from the date of these Terms.

28.2 Each Order is not a separate contract but forms a part of these Terms between FLEX and the Sender, together with any credit application, guarantee and indemnity or other contractual documents.

28.3 Subject to law and whether or not the Sender has executed a copy of these Terms:

(a) each offer or request made by the Sender to FLEX for the supply of the Carriage of Goods shall be deemed to be made subject to these Terms; and

(b) each supply of the Carriage of Goods by FLEX to the Sender shall be deemed to be made in accordance with these Terms, despite any contrary provision in any offer or request made by the Sender to FLEX, or otherwise.

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## 29. Governing Law and Jurisdiction

These Terms are governed by the laws in force in New South Wales and the parties submit to the exclusive jurisdiction of the courts of New South Wales in respect of all matters arising out of or relating to these Terms, their performance or subject matter.

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## 30. Waiver

These Terms, or any part of these Terms, may only be waived or varied if such waiver or variation is in writing signed by an authorised representative of FLEX.

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## 31. Invalidity

If the whole or any part of a provision of these Terms is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of these Terms shall have full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.

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## 32. Assignment

- 32.1 The Sender must not assign any of the rights of the Sender pursuant to these Terms without the prior written consent of FLEX, which may be refused in the absolute discretion of FLEX. Any consent by FLEX will not release the Sender from any obligation of the Sender pursuant to these Terms.
- 32.2 FLEX may assign all or any of the rights of FLEX pursuant to these Terms.
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## 33. No Agency

The Sender will not by virtue of these Terms be, or for any purpose be deemed to be, an agent of FLEX.

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## 34. Force Majeure Event

- 34.1 If, because of a Force Majeure Event, FLEX is unable to carry out an obligation under this Agreement:
- (a) FLEX must give the Sender prompt written notice and reasonable particulars of the Force Majeure Event and, so far as is known, the probable extent that FLEX will be unable to perform or be delayed in performing its obligation; and
  - (b) the relevant obligations of FLEX and the Sender (other than any obligation of the Sender to pay money), so far as they are affected by the Force Majeure Event, will be suspended during the continuance of the Force Majeure Event.
- 34.2 If FLEX gives a notice under clause 34.1(a), the parties must meet promptly and, in any event within fourteen (14) days, and each use reasonable endeavours to reach a mutually acceptable solution to alleviate any hardship or unfairness caused to either party as a result of the Force Majeure Event.

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