

PART B – Terms and Conditions

1. Definitions

In these Terms:

- 1.1 **Additional Services** has the meaning given in clause 4.6.
- 1.2 **BFS** has the meaning given in Part A.
- 1.3 **Business Day** means a day that is not a Saturday, Sunday or public holiday in the Jurisdiction as specified in Part A.
- 1.4 **Chain of Responsibility Laws** means the *Heavy Vehicle National Law* (as adopted in the relevant jurisdiction from the schedule to the *Heavy Vehicle National Law Act 2012* (Qld)), and related *Heavy Vehicle National Law Regulations* as enacted in the relevant jurisdiction (see <https://www.nhvr.gov.au/law-policies/heavy-vehicle-national-law-and-regulations>).
- 1.5 **Charges** means BFS's fees and charges for the Services calculated in accordance with the Rates Schedule, or as otherwise agreed between the parties in writing.
- 1.6 **Collection Address** means the relevant address specified in the EIDO or ECO (as applicable).
- 1.7 **Consignment** means the goods accepted from the Customer, including any container, trailer, packaging or pallets used to transport the goods.
- 1.8 **Contract** has the meaning given to it in clause 2.
- 1.9 **Customer** has the meaning given in Part A.
- 1.10 **Credit Account** means an account granted to the Customer by BFS which allows the Customer to pay for Services on credit, up to the Credit Limit.
- 1.11 **Credit Limit** means any credit limit approved by BFS in writing, as amended in accordance with clause 14.4.
- 1.12 **Destination Address** means the address specified as such in the EIDO or ECO (as applicable).
- 1.13 **EIDO** means the electronic import delivery order and other written document(s) (which may be emails or the submission of an online form made available to the Customer by way of an online platform operated by BFS) by which the Customer places an order for Services by BFS (excluding Services relating to export containers), and includes any 'cartage advice'.
- 1.14 **Equipment** means the vehicles, machinery, appliances, tools, pallets and containers, accessories and other equipment that BFS owns and uses to supply the Services.
- 1.15 **Estimated Delivery Timeframe** means the estimated delivery timeframe for the Consignment agreed between the Customer and BFS in writing.
- 1.16 **ECO** means the export container order and other written document(s) (which may be emails or the submission of an online form made available to the Customer by way of an online platform operated by BFS) by which the Customer places

an order for Services by BFS regarding an export container, and includes any PRA.

- 1.17 **NHVR** means the National Heavy Vehicle Regulator.
 - 1.18 **OHS** means occupational health and safety, or work, health and safety.
 - 1.19 **OHS Laws** means the OHS laws and regulations in place in the relevant jurisdiction(s) at the relevant time, including the *Occupational Health and Safety Act 2004* (Vic), and the *Occupational Health and Safety Regulations 2017* (Vic).
 - 1.20 **OHS Regulator** means the statutory OHS regulator in the relevant jurisdiction and includes the Victorian Workcover Authority (WorkSafe) and the equivalent entity in each relevant jurisdiction.
 - 1.21 **PPSA** means:
 - (a) the Personal Property Securities Act 2009 (Cth) (PPS Act) and any regulation made at any time under the PPS Act (each as amended from time to time); and
 - (b) any amendment made at any time to any other legislation as a consequence of the PPS Act.
 - 1.22 **PRA** means the pre-receival advice between the Customer and the Shipping Provider.
 - 1.23 **Rates Schedule** means BFS's then current rates schedule for the Services as provided by BFS to the Customer.
 - 1.24 **Recipient** means the recipient or 'consignee' of the Consignment as specified in the EIDO or ECO (as applicable).
 - 1.25 **Services** means the services set out in an EIDO, ECO or other written documentation exchanged between the Customer and BFS that are priced in the Rates Schedule (such as, loading, unloading, handling, transporting, storage of goods, fumigation services and quarantine services, including for export containers), and any Additional Services agreed by the parties.
 - 1.26 **Shipping Provider** means the shipping / vessel provider specified in the EIDO or ECO (as applicable).
 - 1.27 **Terms** means these Part B (Terms and Conditions) and any schedules and attachments.
- 2. Overview and formation of Contract**
- 2.1 The Contract consists of Part A, the EIDO or ECO (as applicable) and these Terms, and in the event of any conflict or inconsistency between them, the EIDO or ECO (as applicable) prevails.
- 3. Not a Common Carrier**
- 3.1 BFS is not a common carrier and will accept no liability as a common carrier. All Services are provided by BFS subject to the Contract only, and BFS may refuse, in its absolute discretion, to provide Services in respect of any EIDO or ECO.
- 4. EIDO and ECO**
- 4.1 The Customer may submit an EIDO or ECO (as applicable) with BFS for Services in a manner

- approved by BFS (for example, by email or by an online platform made available to the Customer by BFS).
- 4.2 The Customer acknowledges and agrees that it must submit an:
- 4.2.1 ECO for Services that relate to export containers; and
- 4.2.2 EIDO for all other Services.
- 4.3 The EIDO or ECO (as applicable) must be legible, complete and accurate and include all details required by BFS. These details will include, at a minimum (where relevant):
- 4.3.1 general details relating to the Consignment being the Customer name and contact details, specific Services requested to be performed by BFS, Recipient name and contact details, reference number, Delivery Address, vessel details (including Shipping Provider and estimated time of arrival), container details (including number and size), description of the content of the Consignment, bill of lading details and a weight declaration;
- 4.3.2 details regarding temperature control as per clause 11; and
- 4.3.3 the number of days within which the shipping container must be returned to the Shipping Provider.
- 4.4 An EIDO or ECO (as applicable) becomes binding:
- 4.4.1 in relation to Services other than Additional Services, upon submission of an EIDO or ECO (as applicable) by the Customer; and
- 4.4.2 in relation to Additional Services, when the Additional Services have been approved by BFS in writing. If the Additional Services are not approved by BFS in writing, then the EIDO or ECO (as applicable) will not become binding.
- 4.5 The Customer may cancel:
- 4.5.1 an EIDO up until a Consignment is delivered to the Destination Address, subject to payment of all reasonable expenses incurred by BFS in connection with the Consignment up to the date of cancellation; or
- 4.5.2 an ECO up until a Consignment is collected by BFS from the site nominated by the Customer for collection.
- 4.6 If the Services specified in the EIDO or ECO are not reflected in the Rates Schedule (**Additional Services**), BFS will contact the Customer to discuss BFS's ability to perform the Additional Services and the Charges that will apply. Additional Services will be provided and form part of the Services where BFS and the Customer agree on terms and price in writing.

- 4.7 Each EIDO or ECO will be subject to the Charges specified for the requested Services as set out in the Rates Schedule, or as otherwise agreed in writing between the parties (for example, if the Services are Additional Services).
- 5. Online platform**
- 5.1 If BFS provides the Customer with access to an online platform to facilitate the placement of an EIDO or ECO (as applicable), the Customer must:
- 5.1.1 ensure that its access credentials to the platform are kept confidential and secure at all times; and
- 5.1.2 only use the online platform for purposes associated with the Services.
- 5.2 The Customer acknowledges and agrees that access to the online platform is for the use of the Customer only and must not be shared with any other persons.
- 6. Services**
- 6.1 BFS must perform the Services with reasonable care and skill and to a standard expected of a competent provider of the Services, in accordance with the Contract and all applicable laws.
- 6.2 In performing the Services, BFS agrees to comply with its privacy policy (copy available on its website) and all applicable privacy laws.
- 6.3 The Customer:
- 6.3.1 acknowledges that BFS's performance of the Services is subject to, and may be affected by, laws, regulations and requirements of government authorities (including Chain of Responsibility Laws); and
- 6.3.2 consents to BFS taking all necessary steps to comply with any such requirements, and notwithstanding any other term of the Contract, this will not comprise a breach of the Contract by BFS.
- 6.4 BFS may subcontract the Services or any part of the Services to any party capable of providing the Services in accordance with these Terms, including specialist providers. BFS remains liable for the performance of the subcontractor.
- 7. Delivery and timeframe for EIDOS**
- 7.1 BFS's ability to meet the Estimated Delivery Timeframe will depend on BFS receiving all required information from the Customer in accordance with this Contract and in particular clause 4. Once BFS receives the information, BFS will collect the Consignment within 3 days from the date on which the stevedore notifies BFS of vessel availability.
- 7.2 If the Destination Address is unattended or the Recipient unreasonably refuses to take delivery of the Consignment, BFS will endeavour to contact the Customer for further instructions. In the event that the Customer is uncontactable or doesn't provide instructions, BFS will:

- 7.2.1 store the Consignment at BFS' nearest yard at the Customer's cost (in accordance with the Rates Schedule) and risk until such time as the Customer contacts BFS to make alternative arrangements; and
 - 7.2.2 the Customer must pay BFS a 'futile charge' in accordance with the Rates Schedule, which is a charge based on actual costs incurred by BFS.
- 7.3 BFS has total discretion over the route of transport for delivery of the Consignment. The Customer may, however, select the Customer's preferred delivery method from a list of approved methods offered by BFS (for example, conventional or side-loader) at the EIDO or ECO stage.

8. Export containers

- 8.1 Where Services involve export containers, the Customer must, when submitting an ECO:
- 8.1.1 advise BFS of any and all requirements in relation to empty containers, including the 'Empty Container Parts and Release Number' to allow for the collection of containers and delivery of the containers to the site notified to BFS in writing by the Customer;
 - 8.1.2 advise BFS of all relevant details regarding the ultimate export vessel for the Consignment;
 - 8.1.3 advise BFS if there is a requirement for the Consignment to be weighed; and
 - 8.1.4 provide BFS with a minimum of 2 Business Days' notice of the date on which the container is to be delivered to the Customer, and subsequently collected by BFS and transported to the wharf. BFS will collect and deliver the container and Consignment within these timeframes, provided that the Customer has complied with its obligations under this Agreement with respect to the order and provision of relevant information to BFS.

9. Warehousing

- 9.1 Subject to clause 9.2, if the Services include warehousing, the parties will agree on the duration and location of the storage and any applicable fees.
- 9.2 The Customer acknowledges and agrees that:
- 9.2.1 insurance of any goods is entirely the responsibility of the Customer whilst in storage;
 - 9.2.2 BFS is not responsible in relation to any hire charge or demurrage associated with any container or pallet used for storing the goods; and
 - 9.2.3 the Customer must ensure that any containers or pallets used for storing the goods are transferred to and from the relevant accounts of the hire company and that any documentation, reasonably requested by BFS, is provided to BFS.

10. Shipping containers

- 10.1 Where the Services include the return of the relevant empty shipping container to the Shipping Provider, the Customer must provide BFS with a minimum of 3 Business Days' notice (**Collection Period**) of its availability for collection. BFS will collect the container within the Collection Period and return it to the Shipping Provider.
- 10.2 BFS assumes no responsibility for any fees or penalties that the Shipping Provider may impose as a result of a failure to return any empty shipping container within the required timeframe unless caused by a breach of the Contract by BFS.

11. Temperature control for EDIOs

- 11.1 A Customer must specify in the EIDO:
- 11.1.1 if a Consignment is temperature controlled;
 - 11.1.2 whether it requires power; and
 - 11.1.3 the required temperature (**Set Point**).
- 11.2 If a Customer notifies BFS that a Consignment is temperature controlled, BFS will:
- 11.2.1 connect the relevant unit to power, but only if specifically requested to do so;
 - 11.2.2 check the temperature of the Consignment upon acceptance of the Consignment, and thereafter, once daily; and
 - 11.2.3 notify the Customer as soon as possible after becoming aware of any deviation from the Set Point.
- 11.3 BFS does not provide temperature control services. It will only provide the limited associated services set out in clause 11.2. BFS is not responsible for any loss flowing from a failure of a temperature controlled unit, except if the loss is caused by BFS breaching its obligations under clause 11.2 or this Contract generally.

12. Charges

- 12.1 In consideration of the Services, the Customer will pay the Charges to BFS.
- 12.2 The Charges will be based on the Rates Schedule, unless otherwise agreed in writing by the parties.
- 12.3 If the Customer has requested Additional Services, the Charges for those services will be as agreed by the parties in writing (and not based on the Rates Schedule).
- 12.4 BFS may change the Rates Schedule on 30 days' written notice to the Customer, and the revised rates schedule will apply to all EIDOs or ECOs (as applicable) submitted after the 30 day period.
- 12.5 The Customer acknowledges and agrees that:
- 12.5.1 BFS has no contractual relationship with the Shipping Provider and the Customer must pay all fees payable to the Shipping Provider in connection with the Consignment; and

- 12.5.2 the Customer is solely responsible for any and all applicable taxes, charges, duties, levies, broker fees, bond, and all other out-of-pocket expenses connected with the Consignment, and acknowledges that the Charges do not include payment of such amounts on behalf of the Customer.

13. Customer's Responsibilities

The Customer:

- 13.1 must ensure that the Consignment is packed in a proper way and to withstand the ordinary risks associated with the Services;
- 13.2 must comply with all applicable laws and regulations about the notification, classification, description, labelling, packaging (including requirements with respect to equal load weight distribution), load restraint (including the 'Load Restraint Guide' published by the National Transport Commission) and lawfulness of the Consignment;
- 13.3 if the content of the Consignment is not evenly distributed within the shipping container, the Customer must provide BFS with a load plan of the contents of the Consignment before requesting that BFS provide the Services;
- 13.4 must provide complete and accurate documentation required for customs clearance, as well as any related information required for BFS to comply with the requirements of any authority;
- 13.5 acknowledges that BFS does not verify the accuracy or completeness of any of information provided by the Customer in relation to the Consignment under this clause 13 or otherwise;
- 13.6 must advise BFS, in writing, if the Consignment contains any goods that must be held for biosecurity or under bond purposes;
- 13.7 must provide BFS with an accurate container weight declaration that complies with relevant requirements of the *Navigation Act 2012 (Cth)* at a time reasonably specified by BFS;
- 13.8 provide all documents, information and assistance reasonably necessary to allow BFS to comply with the requirements of any authority; and
- 13.9 must ensure that safe and adequate commercial loading and unloading facilities will be available at any place from which the Consignment is to be collected and delivered in accordance with this Contract.

14. Payment

- 14.1 Following completion of the Services set out in an EIDO or ECO (as applicable), BFS will issue the Customer with an invoice which sets out the Charges payable for the completed Services.
- 14.2 All invoices issued under clause 14.1 must be paid:
- 14.2.1 where there is an approved credit account, in accordance with the approved credit terms; or

- 14.2.2 in all other circumstances, within 7 days of the date of the invoice, unless otherwise agreed by BFS in writing.

- 14.3 Any Credit Account granted by BFS is subject to the Credit Limit. If, at any time, the Credit Account exceeds the Credit Limit (**Excess Amount**):

- 14.3.1 the Excess Amount automatically becomes due and payable and must be paid by the Customer to BFS on demand; and

- 14.3.2 payment for future Services must be made as per clause 14.2.2.

- 14.4 Subject to clause 14.5, by providing 30 days' prior written notice to the Customer, BFS may:

- 14.4.1 vary the Credit Limit, with the variation to apply only to future orders; or

- 14.4.2 terminate the Credit Account, so that all future supplies of Services to the Customer will be on the terms specified in clause 14.2.2.

- 14.5 If BFS has reasonable grounds to be concerned about the Customer's ability or willingness to pay its debts as and when they fall due, BFS may take any of the action set out in clauses 14.4.1 – 14.4.2 on a shorter notice period, provided the shorter notice period is reasonable in the circumstances.

- 14.6 If the Customer fails to make a payment on time, BFS may charge interest at a rate 4% higher than the prevailing rate under the *Penalty Interest Rate Act 1983* (Victoria) from the date on which the payment becomes overdue until such time as payment is received in full by BFS. Payments received from the Customer will be credited first against any default interest and secondly against payment of any outstanding invoices. The Customer is liable for all reasonable out-of-pocket costs incurred by BFS in collecting such amounts, including reasonable legal costs.

15. GST

- 15.1 In this clause 15, words that are defined in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* (**Act**) have the same meaning as their definition in the Act.
- 15.2 Except as otherwise provided by this clause, all consideration payable under the Contract in relation to any supply is exclusive of GST.
- 15.3 If GST is payable in respect of any supply made by BFS under the Contract then, subject to clause 15.4, the Customer will pay to BFS an amount equal to the GST payable on the supply at the same time and in the same manner as the consideration for the supply that is to be provided under the Contract.
- 15.4 BFS must provide a tax invoice to the Customer before BFS will be entitled to payment of the GST payable under clause 15.3

16. Risk and Title

- 16.1 The Consignment is at all times at the risk of the Customer, and not BFS.

- 16.2 BFS does not own or have title to any Consignment. All Consignments are held by BFS for the Customer as bailee to secure payment of the Services (“**Bailment**”). This Bailment may constitute a PPSA Lease for the purposes of the PPSA;
- 16.3 Ownership of and all title to BFS Equipment remains with BFS at all times and never passes to the Customer.
- 16.4 Insurance of the Consignment is the sole responsibility of the Customer.
- 16.5 BFS will maintain public liability insurance in the amount of \$20 million.
- 17. Labelling and Dangerous Consignments**
- 17.1 The Customer must label the Consignment accurately, completely and legibly and include the following details on the label: the Customer’s details (name, address and contact number), the Recipient’s details (name, address and contact number) and details relating to the Consignment such as its nature, weight, measurements and quality and volume.
- 17.2 If BFS cannot identify the Consignment as an identifying document or mark is lost, damaged, destroyed or defaced, BFS may open the Consignment to determine its content, ownership and destination.
- 17.3 The Customer must, at the time of placing an EIDO or ECO (as applicable), notify BFS if the Consignment will contain a ‘**Dangerous Good**’ as defined in The Australian Code for the Transport of Dangerous Goods by Road & Rail (or any replacement Code) and, if so, all relevant details relating to the Dangerous Good, including a description of the goods, the hazardous class of the goods and a copy of the bill of lading and/or ‘Multi Dangerous Goods Form’ (MO41).
- 17.4 If the Customer provides notification to BFS under clause 17.1, then BFS may refuse to fulfil the EIDO or ECO (as applicable) by written notice to the Customer, as Services in relation to Dangerous Goods are Additional Services.
- 17.5 If BFS determines that it will offer to fulfil the EIDO or ECO (as applicable) for a Dangerous Good:
- 17.5.1 it may do so subject to any conditions that it considers reasonable in the circumstances (which the Customer may accept or alternatively revoke its EIDO or ECO (as applicable));
- 17.5.2 the Customer must provide a written declaration disclosing the nature of the Dangerous Good and confirming its compliance with all applicable laws; and
- 17.5.3 the Customer must indemnify BFS against all loss, harm or injury caused by BFS’s provision of the Services with respect to any Dangerous Good, other than where such loss, harm or injury is caused by a breach of this Contract by BFS or BFS’s negligence, or the act or omission of a third party.

- 17.6 If, in the reasonable opinion of BFS, the Consignment contains a Dangerous Good that BFS has not been notified of under clause 17.1, BFS may, acting reasonably and based on its safety and risk assessment, return the Goods to the Customer, complete the Services, or Store the goods under clause 7.2 and the Customer must pay to BFS all reasonable costs incurred by BFS.

18. Chain of Responsibility Laws and other OHS Laws requirements

- 18.1 BFS and the Customer must comply with all applicable Chain of Responsibility Laws and OHS Laws.
- 18.2 The Customer will advise BFS of any OHS incident that it is required by OHS Laws to report to the OHS Regulator, immediately after becoming aware of the incident.
- 18.3 On request by BFS, the Customer will provide BFS with copies of any notices or other document received from, or provided by the Customer to, an OHS Regulator following a notifiable OHS incident under clause 18.2.
- 18.4 The Customer will advise BFS of any incident involving heavy vehicles under the Contract that it is required by Chain of Responsibility Laws to report to the NHVR, immediately after becoming aware of the incident.
- 18.5 On request by BFS, the Customer will provide BFS with copies of any notices or other document received from, or provided by the Customer to, the NHVR following an under clause 18.4.
- 18.6 BFS may procure, or cause the Customer to procure, an independent consultant to audit the Customer’s compliance with OHS Laws and/or Chain of Responsibility Laws by giving written notice to the Customer.
- 18.7 On request from BFS, the Customer will provide BFS with any documents related to its compliance with Chain of Responsibility Laws and/or OHS Laws within 7 days of such request, including details of investigations undertaken by an OHS Regulator or the NHVR.

19. Authorisations of Customer

The Customer represents and warrants that:

- 19.1.1 the person who delivers the Consignment to BFS for the Services is authorised to do so; and
- 19.1.2 the Customer is either the owner or the authorised agent of the owner of the Consignment and has full power and authority to deal with the Consignment.

20. Limitation and exclusion of liability

- 20.1 Where permitted by law and it is fair and reasonable to do so, and if the Services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, BFS’s total liability to the Customer for a failure to comply with a consumer guarantee under the Australian Consumer Law is limited to the resupply of the Services or the payment of the cost of resupply.

20.2 No party is liable to the other for any special, indirect or consequential loss arising under or in connection with this agreement, including any: loss of profits; loss of sales or business; loss of production; loss of agreements or contracts; loss of business opportunity; loss of anticipated savings; loss of or damage to goodwill; loss of reputation; or loss of use or corruption of information.

20.3 Both parties must notify the other of a possible claim as soon as practicable after becoming aware of it, and in any event within 20 Business Days.

21. Default

If a party (**Defaulting Party**):

21.1.1 becomes insolvent or ceases to conduct its business as a going concern, or applies for or consents to or otherwise obtains the appointment of a receiver, trustee, administrator, liquidator or similar appointment to the Defaulting Party or assets of the Defaulting Party, or if proceedings are instituted under any applicable insolvency law; or

21.1.2 commits any breach of the Contract and such breach has not been cured within 7 Business Days from the date of the other party (**Non-Defaulting Party**) providing written notice of such breach to the Defaulting Party,

then the Non-Defaulting Party may terminate the Contract with immediate effect.

22. Upon termination

If this Contract ends:

22.1.1 BFS must immediately cease providing Services (unless otherwise agreed between the parties);

22.1.2 all amounts due to BFS for Services rendered are payable on the later of 5 Business Days of the end of the Contract and BFS issuing a final invoice; and

22.1.3 where BFS is storing the Customer's Consignment, the Customer must collect the Consignment within 5 Business Days; and

22.1.4 the parties may pursue any other remedy available to it at law or in equity, and each such right and remedy may be enforced concurrently with any other right or remedy.

23. Lien

23.1 The Customer acknowledges and agrees that:

23.1.1 BFS has a lien over the Consignment and in any right in relation to or derived from the Consignment (including in any proceeds from, including without limitation any receivables of the Customer as a result of, the disposal of the Consignment or any part of them,

and any documents relating to the Consignment and in any other consignment of the Customer in the possession of BFS or any documents relating to those consignments); and

23.1.2 the lien described in clause 23.1.1 is for all sums payable by the Customer to BFS (irrespective of whether the sums are payable pursuant to the Contract or otherwise by law).

23.1.3 If any amount remains unpaid beyond the due date set out in BFS's invoice to the Customer (without BFS's express written consent) (Overdue Amount), BFS may, on 10 Business Days' written notice to the Customer (or, if the contents of the Consignment are perishable, any shorter notice period reasonably necessary to enable the sale of the perishable goods before they deteriorate), sell the contents of the Consignment as may be reasonably necessary to recover the Overdue Amount. BFS agrees to provide the Customer with any sale proceeds received in excess of the Overdue Amount. BFS agrees to sell the contents of the Consignment via a reputable auction house

24. Personal Property Securities Act 2009 (Cth)

Security for Consignments and/or Equipment Supplied

24.1 The Customer acknowledges and agrees that these Terms & Conditions ("**Terms**") constitute a security agreement for the purposes of the PPSA ("**Security Agreement**") and create a security interest in the Consignments and/or Equipment supplied by BFS from time to time and any proceeds of the supply of the Consignments and/or Equipment to secure payment for the Consignments and/or Equipment supplied ("**Security Interest**").

24.2 Each Consignment and/or supply of Equipment by BFS under these Terms is subject to the Security Agreement for the purposes of the PPSA.

24.3 BFS may lodge a financing statement on the Personal Property Securities Register ("**PPSR**") in respect of the Security Interest in the Consignment and/or Equipment and the proceeds of the Consignment and/or supply of Equipment, including as a purchase money security interest (as that term is defined in the PPSA) ("**PMSI**"), pursuant to these Terms.

General Security Agreement for Services Supplied

24.4 For the purpose of any general security agreement ("**General Security Agreement**"), "Collateral" means all The Customer's present and after-acquired personal property, including circulating and non-circulating assets. Collateral includes any personal property in respect of which The Customer have at any time, or may in the future have at any time, a sufficient legal or equitable right, title, interest or power to grant a

security interest either in The Customer's own right or as trustee of a trust.

- 24.5 The Customer acknowledges and agrees that:
- 24.5.1 In addition to any other Security Interest created by these Terms, these Terms also constitute a General Security Agreement for the purposes of the PPSA and create a security interest in The Customer's Collateral to secure payment for the Services supplied ("**Security Interest**");
- 24.5.2 Each supply of Services by BFS under these Terms is subject to the General Security Agreement for the purposes of the PPSA; and
- 24.5.3 BFS may lodge a financing statement on the PPSR in respect of the Security Interest in the Collateral pursuant to these Terms.

Assurances

- 24.6 The Customer must do all things, provide all information and sign all documents that are necessary and reasonably required to enable BFS to acquire a perfected Security Interest in the Consignment, Equipment and/or Collateral (as the case may be) including for the purposes of:
- 24.6.1 Ensuring that any Security Interest created under, or provided for, by these Terms:
- (a) Attaches to the Consignment, Equipment and/or Collateral that is intended to be covered by that Security Interest; and
 - (b) Is enforceable, perfected and otherwise effective; and
 - (c) Has the priority required by BFS.
- 24.6.2 Enabling BFS to prepare and register a financing statement or financing change statement;
- 24.6.3 Enabling BFS to register a PPS Lease pursuant to the PPSA (where applicable);
- 24.6.4 Enabling BFS to register a PMSI pursuant to the PPSA (where applicable);
- 24.6.5 Enabling BFS to register an ALLPAAP pursuant to the PPSA (where applicable); and
- 24.6.6 Enabling BFS to exercise and maintain any of BFS's rights or powers in connection with any such Security Interest.
- 24.7 If The Customer disposes of the Consignment or the Collateral, The Customer must:
- 24.7.1 Immediately pay any proceeds to BFS in reduction of all amounts owing by The Customer to BFS, which BFS may apply towards amounts owing by The Customer to BFS in such order as specified by subsection 14(6)(c) of the PPSA, unless

otherwise specified by BFS in writing; and

- 24.7.2 Not allow any other charge or security interest to exist over those proceeds without BFS's written consent if that security interest could rank ahead of BFS's Security Interest.

24.8 If a higher-priority security interest does arise in the Consignment, the Collateral and/or their proceeds of sale despite The Customer's obligations under this section, The Customer must:

- 24.8.1 Ensure that The Customer receives cash proceeds for the Consignment and/or Collateral of at least equal to the market value of the Consignment and/or Collateral; and
- 24.8.2 Immediately pay those proceeds to BFS in reduction of all amounts owing by The Customer to BFS, which BFS may apply towards amounts owing by The Customer to BFS in such order as BFS sees fit.

24.9 The Customer must never dispose of BFS's Equipment.

24.10 The Customer must not change The Customer's name, structure, status or partnership, or assign or sell The Customer's business to another party, or initiate any change to any registered documentation, or act in any other manner which would impact on BFS's registered Security Interest without BFS's prior written consent. The Customer agree that The Customer's liability under these Terms is not affected by such an event until a new application for credit in The Customer's new entity name as restructured or changed is made and approved by BFS in writing.

Exclusion of Notices and Other Obligations

24.11 To the extent permitted by law and for the purposes of sections 115(1) and 115(7) of the PPSA:

- 24.11.1 BFS does not need to comply with sections 95, 118, 121(4), 125, 129(2), 129(3), 130, 132(3)(d) or 132(4);
- 24.11.2 Sections 142 and 143 are excluded; and
- 24.11.3 For the purposes of section 115(7) of the PPSA, BFS does not need to comply with sections 132 and 137(3).

24.12 To the extent permitted by law, The Customer agrees to waive:

- 24.12.1 The Customer's rights to receive any notice that is required by any provision of the PPSA (including a notice of a verification statement) or any other law before a secured party or a receiver exercises a right, power or remedy; and
- 24.12.2 Any time period that must otherwise lapse under any law before a secured party or a receiver exercises a right, power or remedy.

24.13 If the law that requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer).

Provision of Information

24.14 The Customer agrees not to exercise The Customer's rights to make any request of BFS under section 275(6) of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.

24.15 The parties must not disclose information of the kind mentioned in section 275(1) of the PPSA, except in the circumstances where:

24.15.1 Disclosure is required by sections 275(7)(b) to (e) of the PPSA; and/or

24.15.2 BFS discloses information of a kind mentioned in section 275(1) of the PPSA to the extent that BFS is not doing so in response to a request made by an "interested person" (as defined in section 275(9) of the PPSA) pursuant to section 275(1) of the PPSA.

24.16 Notwithstanding the obligations of this section, The Customer shall only authorise the disclosure of information for the purposes of section 275(7)(c) of the PPSA, or request information under section 275(7)(d) of the PPSA, if BFS approve such disclosure or request for information in writing.

24.17 Nothing in this part prevents any disclosure of information by BFS that BFS believes is reasonably necessary to comply with any other obligations that BFS may have under the PPSA.

Other

24.18 If The Customer defaults in the timely performance of any obligation owed to BFS, BFS may enforce the Security Interest by exercising all or any of BFS's rights under these Terms, the general law and the PPSA.

24.19 Nothing in this part limits or is limited by any other provision of these Terms or any other agreement between the parties.

25. Customs and Quarantine

The Customer:

25.1 must notify BFS of any directions from Australian Quarantine Inspection Service as soon as practicable;

25.2 acknowledges that the Australian Quarantine Inspection Service may (among other things) require the Consignment to be treated, and such treatment may affect the condition of the Consignment to the extent that it is no longer suitable for its intended use;

25.3 agrees that BFS must comply with the directions of the Australian Quarantine Inspection Service at the Customer's cost, with such charges to be as

specified in the Rates Schedule or as otherwise reasonably determined by BFS based on the time and cost of the relevant action; and

25.4 BFS is not responsible for the actions of the Australian Quarantine Inspection Service or for any loss that may arise for the Customer as a result of BFS complying with the directions of the Australian Quarantine Inspection Service.

26. Force majeure

A party will not be liable or responsible for any failure to perform, or delay in performance of, any of its obligations under the Contract (other than an obligation to pay money) that is caused by any act or event beyond its reasonable control, was not caused by an act or omission of the party, and could not have been prevented, avoided, mitigated, remedied or overcome by the party taking steps a prudent and reasonable person would have taken in the circumstances (**Force Majeure Event**). A Force Majeure Event includes industrial action, war, and acts of God.

26.1 If a Force Majeure Event takes place that affects the performance of a party's obligations under the Contract:

26.1.1 that party must contact the other party as soon as reasonably possible to notify the other party; and

26.1.2 that party's obligations under the Contract will be suspended and the time for performance of that party's obligations will be extended for the duration of the Force Majeure Event.

26.2 Either party may terminate the Contract by written notice to the other party if a Force Majeure Event continues for more than 30 days.

27. General

27.1 The Contract:

27.1.1 constitutes the entire agreement between the parties about the subject matter contained in it; and

27.1.2 supersedes and cancels any contract, deed, arrangement, related condition, collateral arrangement, condition, warranty, indemnity or representation relating to the subject matter contained in it, that was imposed, given or made by a party (or an agent of the party) prior to entering into the Contract.

27.2 If a provision of the Contract is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable. If it is not possible to read down a provision as required by this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in the Contract.

27.3 A single or partial exercise or waiver of a right relating to the Contract does not prevent any other

exercise of that right or the exercise of any other right.

- 27.4 Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by the Contract.
- 27.5 The Contract may be executed in counterparts, all of which taken together constitute one document.
- 27.6 Subject to clause 27.6, BFS may vary or replace these Part B (Terms) by notifying the Customer in writing, including by email. Any amended or new terms and conditions take effect from the date of the Customer's next order. BFS agrees to provide the Customer with 30 days' written notice of the changes, unless the change is required to comply with a legal requirement, in which case, BFS will provide the Customer with as much notice as is reasonable in the circumstances.
- 27.7 The Contract is governed by the law in the State of Victoria and the parties agree to submit to the non-exclusive jurisdiction of the courts of that State.

28. Interpretation

28.1 In the Contract, a reference to:

- 28.1.1 a person includes a firm, partnership, joint venture, association or other corporate body;
- 28.1.2 a person includes the legal personal representatives, successors and assigns of that person;
- 28.1.3 any body which no longer exists or has been reconstituted, renamed, replaced or whose power or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purpose or objects of the first-mentioned body;
- 28.1.4 a reference to this or other documents includes the document as varied or replaced regardless of any change in the identity of the parties; and
- 28.1.5 a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form.