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NATIONAL HEAVY HAULAGE PTY LTD

TERMS AND CONDITIONS OF HAULAGE

1. INCORPORATION OF AUSTRALIAN FEDERATION OF INTERNATIONAL FORWARDERS MODEL STANDARD TRADING CONDITIONS OF CONTRACT

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- (a) Subject to paragraphs 1(b) and 1(c) below, the Model Standard Trading Conditions of Contract produced by the Australian Federation of International Forwarders that are current at the Start Date are incorporated into these Terms and Conditions of Haulage as though each clause in the Model Standard Trading Conditions of Contract is a sub-clause of this clause 1, and shall form part of the Contract between the Sender and the Company.
- (b) The Model Standard Trading Conditions of Contract are amended as follows:
- (i) in the definition of "Company" in clause 1, the words "(insert name and ACN of company)" are deleted and replaced by the words "National Heavy Haulage Pty Ltd ACN 152 329 096";
- (ii) in the definition of "Customer" in clause 1, the words "identified in the Consignment Note as the Sender and" are inserted immediately before the words "with whom this Contract is made"; and
- (iii) replacing all incidents of the word "Customer" with the word "Sender".
- (c) If there is any inconsistency between the Model Standard Trading Conditions of Contract as amended by paragraph 1(b) and the remainder of these Terms and Conditions of Haulage, these Terms and Conditions of Haulage prevail to the extent of the inconsistency.

2. INTERPRETATION

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2.1 Definitions

The following definitions apply.

**Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Brisbane.

**Carbon Costs** means any costs and expenses arising from:

- (a) a requirement to pay a tax, duty, excise, charge, levy, impost, or any reduction in Fuel Tax Credit or other financial requirement under a Carbon Scheme;
- (b) a requirement for the Company or a Related Body Corporate to obtain and surrender permits or pay a unit shortfall charge or other charge under a Carbon Scheme in respect of greenhouse gas emissions;
- (c) an increase in the costs of goods and services provided to the Company which are used in connection with this Contract as a result of a Carbon Scheme; and
- (d) monitoring, gathering information and preparing reports to comply with a Carbon Scheme.

**Carbon Scheme** means the Clean Energy Legislation or any other law which has as one of its objectives the reduction, offset or management of greenhouse gas emissions, including:

- (a) any other legislation for the establishment of a greenhouse gas emissions trading scheme in Australia, which includes a requirement for the surrender of permits in specified circumstances;
- (b) any mechanism including a tax, duty, charge, levy impost or other financial requirement relating to the reduction, offset or management of greenhouse gas emissions, fuel or energy use;
- (c) the *National Greenhouse and Energy Report Act 2007 (Cth)*; and
- (d) any other requirement to undertake action to reduce, minimise or offset greenhouse gas emissions, fuel or energy use;

and includes all regulations, legislative instruments, others, determinations, directives and guidelines (however named) made under that legislation as promulgated, supplemented or amended from time to time.

**Clean Energy Legislation** means the Clean Energy Act 2011 (Cth), the Clean Energy (Consequential Amendments) Act 2011 (Cth), the *Clean Energy Regulator Act 2011 (Cth)*, the *Climate Change Authority Act 2011 (Cth)*, the Clean Energy (Unit Shortfall Charge—General) Act 2011 (Cth), the Clean Energy (Unit Issue Charge—Fixed Charge) Act 2011 (Cth), the Clean Energy (Unit Issue Charge—Auctions) Act 2011 (Cth), the Clean Energy (Charges—Customs) Act 2011 (Cth), the Clean Energy (Charges—Excise) Act 2011 (Cth), the Clean Energy (International Unit Surrender Charge) Act 2011 (Cth), the Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment Act 2011 (Cth), the Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment Act 2011 (Cth), the *Clean Energy (Fuel Tax Legislation Amendment) Act 2011 (Cth)*, the *Clean Energy (Excise Tariff Legislation Amendment) Act 2011 (Cth)*, the *Clean Energy (Customs Tariff Amendment) Act 2011 (Cth)*, the *Clean Energy (Household Assistance Amendments) Act 2011 (Cth)*, the *Clean Energy (Tax Laws Amendments) Act 2011 (Cth)* and the *Clean Energy (Income Tax Rates Amendments) Act 2011 (Cth)* and includes all regulations, legislative instruments, others, determinations, directives and guidelines (however named) made under that legislation as promulgated, supplemented or amended from time to time.

**Conditions** means these Terms and Conditions of Haulage (which include by incorporation the Model Standard Trading Conditions of Contract). For the avoidance of doubt, a reference to "these Conditions" in the Model Standard Trading Conditions of Contract means these Conditions.

**Confidential Information** means information that:

- (a) relates to this Contract or the business, assets or affairs of a party; and
- (b) is made available by or on behalf of the disclosing party to the receiving party, or is otherwise obtained by or on behalf of the receiving party; and
- (c) is by its nature confidential or the receiving party knows, or ought to know, is confidential.

Confidential Information may be made available or obtained directly or indirectly, and before, on or after the date of this Contract.

**Consignment Note** means the Consignment Note provided by the Company, completed for the purpose of this Contract, and describing the Sender, the Receiver, and the Goods.

**Contract** means the agreement between the Sender and the Company comprising the Consignment Note and these Conditions.

**Delivery Time** means the date and time (if applicable) specified as the Delivery Time in the Consignment Note.

**Dispute** means any dispute or difference between the parties arising out of, relating to or in connection with this Contract or Services, including any dispute or difference as to the formation, validity, existence or termination of this Contract.

**Force Majeure Event** means any occurrence or non-occurrence as a direct or indirect result of which a party is prevented from or delayed in performing any of its obligations (other than a payment obligation) under this Contract and that is beyond the reasonable control of that party.

**Fuel Tax Credit** has the meaning given in the *Fuel Tax Act 2006* (Cth).

**GST** includes:

- (a) any additional tax, penalty, fine, interest or other charge relating to GST; and
- (b) an amount an entity is notionally liable to pay as GST or an amount which is treated as GST under the GST Law.

**Government Agency** means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person including a statutory corporation; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law or public function.

**Handling** means loading, unloading, handling, installing, removing, assembling, erecting, carrying, conveying, transporting, Storing, delivering or otherwise dealing with the Goods in any way, and Handle and Handled have similar meanings.

**Indemnified Parties** means:

- (a) the Company and all Subcontractors;
- (b) any third party providing any services in connection with the performance of the Services or this Contract;
- (c) every employee, servant or agent of the Company or of a Subcontractor;
- (d) every other person (other than the Company) by whom any services are provided in connection with the performance of this Contract; and
- (e) all persons who are or may be vicariously liable for the acts or omissions of any persons described in paragraphs (a), (b), (c) or (d) of this definition.

**Information** includes any information, approval, certificate, licence, authorisation, permit, permission, registration, consent or other right or entitlement required or reasonably desirable for the performance of the Services.

**input tax credit** includes any notional input tax credit.

**Insolvency Event** means, in respect of a party:

- (a) an event which results in a party being:
  - (i) in liquidation or provisional liquidation or under administration;

- (ii) or any of its property being, subject to the appointment of a controller as defined in the *Corporations Act 2001* (Cth) or an analogous person;
  - (iii) taken under section 459F(1) of the *Corporations Act 2001* (Cth) to have failed to comply with a statutory demand;
  - (iv) unable to pay its debts or is insolvent;
- (b) the person dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason;
  - (c) taking any step that could result in the Sender becoming an insolvent under administration as defined in section 9 of the *Corporations Act 2001* (Cth); or
  - (d) entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors

**Law** means any law (including subordinate or delegated legislation or statutory instruments of any kind and any international treaties, conventions or declarations) in force in Australia or any jurisdiction in which the Services will be performed and also any judgment, order, policy, guideline, official directive or request (even if it does not have the force of law) of any Government Agency or regulatory body within Australia.

**Liability** means, in relation to a person, any liability or obligation however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

**Loss** includes any loss, damage, Liability, fine, penalty, charge, payment, customs or excise duty (or other impost or tax), cost or expense (including any legal cost and expense on a full indemnity basis) however it arises and includes loss of profits, loss of revenue, loss of opportunity and consequential loss to the full extent recoverable at law.

**Model Standard Trading Conditions of Contract** means the Model Standard Trading Conditions of Contract produced by Australian Federation of International Forwarders Ltd ACN 008 576 681 referred to in clause 1(a), a copy of which is available from the Company's website at [www.nationalheavyhaulage.com.au](http://www.nationalheavyhaulage.com.au) or upon request from the Company.

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

**Receiver** means the person described as the Receiver in the Consignment Note.

**Receiver's Address** means the address of the Receiver noted in the Consignment Note.

**Related Body Corporate** has the meaning given in the *Corporations Act 2001* (Cth).

**Start Date** means the date the Sender accepts these Conditions pursuant to clause 3.

**Store**, in relation to the Goods, means to keep, maintain, store or place the goods in a suitable location at the Company's discretion, including placing the Goods in the custody, supervision or possession of a Subcontractor, and Storing and Storage have similar meanings.

**Transport Infrastructure** has the same meaning as in the *Transport Infrastructure Act 1994* (Qld).

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## 2.2 Rules for interpreting these Conditions

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting these Conditions, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
  - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (ii) a document (including this document) or agreement, or a provision of a document (including this Contract) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (iii) a party includes a successor in title, permitted substitute or a permitted assign of that party;
  - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
  - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) A reference to **information** is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.
- (g) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (h) A reference to **dollars** or **\$** is to an amount in Australian currency.

## 2.3 Non Business Days

If the day on or by which the Sender must do something under this Contract is not a Business Day:

- (a) if the act involves a payment that is due on demand, the Sender must do it on or by the next Business Day; and
- (b) in any other case, the Sender must do it on or by the previous Business Day.

## 2.4 The rule about "contra proferentem"

These Conditions are not to be interpreted against the interests of a party merely because that party proposed these Conditions or some provision of them or because that party relies on a provision of these Conditions to protect itself.

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## 3. SENDER'S ACCEPTANCE OF THESE CONDITIONS

The Sender accepts these Conditions and enters into, and agrees to be bound by, this Contract upon:

- (a) signing the Consignment Note; or
- (b) submitting the Goods to the Company, whether the Sender signs the Consignment Note or not.

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## 4. AGREEMENT TO HAUL GOODS

### 4.1 Company's undertakings

The Sender requests and the Company agrees to, on behalf of the Sender:

- (a) provide the Services; and
- (b) make all reasonable efforts to deliver the Goods to the Receiver on or before the Delivery Time.

### 4.2 Exceptions to Company's undertakings

Despite clause 4.1, nothing requires the Company to:

- (a) do or refrain from doing anything in contravention of any Law ;
- (b) act in a way that could reasonably put the Company's business, reputation, or good will at risk; or
- (c) prioritise the interests of the Sender or Receiver over the Company's own legitimate commercial or business interests.

### 4.3 Sender's undertakings

- (a) The Sender requests and authorises the Company to Handle the Goods in any way incidental to or reasonably required in the course of providing the Services.
- (b) The Sender must ensure:
  - (i) the Goods will be suitably packaged, labelled, and fit and ready for Handling by the Company and for the provision of the Services;
  - (ii) the Sender has given the Company all Information reasonably required for, incidental to, or likely to be relevant to the provision of the Services; and
  - (iii) the Receiver or their representative will be present at the Receiver's Address on or before the Delivery Time to:
    - (A) receive the Goods; and
    - (B) provide written confirmation of receipt of the Goods to the satisfaction of the Company.

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- (c) Without limiting in any way any other provision of these Conditions, the Sender represents and warrants it has disclosed to the Company all Information that is reasonably likely to be material to an assessment by the Company of the risks the Company assumes by entering into this Contract.

#### 4.4 Term

The rights and obligations of the parties under this Contract begin on the Start Date and, unless terminated earlier, end on the date that is the later of:

- (a) two years after the date the Goods are delivered; and
- (b) the date the Sender satisfies its obligations under clauses 6 Insurance, 8 Indemnity, 10 Invoicing and Payment, and 12 Dispute Resolution.

### 5. DELIVERY

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#### 5.1 Delivery

The Goods are deemed to be delivered as requested by the Sender at the time the Goods are placed at or made available at the Receiver's Address.

#### 5.2 If delivery is prevented

- (a) If the Goods cannot reasonably be delivered for any reason, including if the Receiver refuses to accept delivery of the Goods, the Sender:
- (i) agrees to arrange for the Goods to be collected from the Company as soon as possible; and
- (ii) unless otherwise agreed, authorises the Company to Handle the Goods as the Company, in its absolute discretion, considers reasonable or appropriate in the circumstances.
- (b) Without limiting in any way any other provision of these Conditions, the Sender shall be liable for, and indemnifies the Company against, any Loss incurred by the Company arising or resulting directly or indirectly from the Company's inability to deliver the Goods.

#### 5.3 Time not of the Essence

Notwithstanding any other provision of these Conditions, time is not, and shall not be construed to be of the essence with respect to the performance of the Services.

### 6. INSURANCE

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- (a) The Sender must, from the Start Date and for the duration of the Services:
- (i) insure, and keep insured, the Goods against all risks of theft and Loss of any kind to their full replacement value;
- (ii) maintain public liability insurance for a minimum value of \$20 million written on a per occurrence basis; and
- (iii) maintain worker's compensation insurance, as required by law.
- (b) If the Company requests, the Sender must have the Company noted as an interested party on the insurance policies referred to in clause 6(a).

- (c) The Sender must provide the Company with copies of the insurance policies or certificates of currency for the insurance policies referred to in clause 6(a) on the later of:

- (i) the Start Date; and
- (ii) five business days before the Company Handles the Goods,

and at any other time upon written request by the Company.

- (d) Despite any other provision of these Conditions, if the Sender fails to effect and maintain insurance as required under this clause 6, the Company may effect such insurance on the Sender's behalf and recover from the Sender all costs incurred by the Company as a debt due and payable.

### 7. LIMITATION OF LIABILITY

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Without limiting any other provision of these Conditions, to the full extent permitted by Law:

- (a) every warranty, condition, liability or representation concerning the Services is expressly excluded; and
- (b) the Indemnified Parties shall not be liable for any Loss of any kind incurred by the Sender or their employees or agents in relation to or arising from this Contract, even if due to the negligence of an Indemnified Party.

### 8. INDEMNITY

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To the full extent permitted by Law and without limiting in any way any other provision of these Conditions, the Sender indemnifies each Indemnified Party against, and must pay an Indemnified Party on demand the amount of, every Loss directly or indirectly incurred or suffered by an Indemnified Party arising from or in relation to, or in connection with this Contract.

### 9. SUBCONTRACTING

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For the avoidance of doubt and without limiting in any way any other provision of these Conditions, if the Company subcontracts the whole or any part of the Services to a Subcontractor:

- (a) the Sender authorises the Company to act as agent on its behalf for the purpose of the arrangement with the Subcontractor and to deliver or consign the Goods to the Subcontractor as the Company, in its absolute discretion, considers reasonable or appropriate;
- (b) the Company accepts no liability whatsoever for any Loss arising in relation to the Goods as a result of, in relation to, or incidental to any agreement or arrangement with a Subcontractor, including as a result of the misconduct or negligence of the Subcontractor;
- (c) the Goods remain at the sole risk of the Sender; and
- (d) the Company's obligations under this Contract will be subject to any terms and conditions imposed, to the extent they are not otherwise excluded by these Conditions, by:
- (i) Law;

- (ii) a Subcontractor; or
- (iii) an owner, operator, or manager of Transport Infrastructure upon or by which the Goods are carried or conveyed.

## 10. INVOICING AND PAYMENT

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### 10.1 Invoicing

- (a) The Company will invoice the Sender following delivery of the Goods.
- (b) The Sender must pay all invoices within 14 days from the date of each invoice.

### 10.2 Payment

- (a) The Sender must make each payment to the Company in the method specified in the relevant invoice and, if no method is specified, by delivering an unendorsed bank cheque for the invoice amount to the Company's place of business on or before the due date.
- (b) The Sender must make each payment to the Company without any set-off or counterclaim or any other deduction and (to the extent permitted by law) free and clear of, and without deduction or withholding for or on account of, any tax.

### 10.3 Failure to pay invoice

- (a) The Company reserves the right to charge the Sender interest on each amount that is not paid when due, from (and including) the day on which it falls due to (but excluding) the day on which it is paid in full, at the rate calculated in accordance with clause 10.3(b). This interest must be paid on demand.
- (b) Interest on an unpaid amount accrues each day at a rate equal to the sum of the official cash rate published by the Reserve Bank of Australia on the website [www.rba.gov.au](http://www.rba.gov.au) for that day and 3% per annum, and is capitalised (if not paid) every seven days.
- (c) The Company may employ a debt collection agency to obtain payment of any amount owed by the Sender that is not paid when due. The Sender shall be liable for any costs incurred by the Company in the collection of any unpaid amount, which the Sender must pay to the Company upon demand.

### 10.4 Security

- (a) The Company may, by written notice to the Sender, require the Sender to provide security for the performance of the Sender's outstanding obligations in such form and amount as the Company determines in its absolute discretion if at any time:
  - (i) the Company reasonably forms the opinion that the Sender's financial standing, creditworthiness or credit standing has altered materially and adversely from the Start Date; or
  - (ii) the Sender fails to pay an invoice when due.
- (b) The Sender must provide or convey any security to the Company within 14 days of receiving notice under clause 10.4(a).
- (c) This clause 10.4 is without prejudice to any other right or remedy of the Company.

## 11. IMPOSTS

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### 11.1 Interpretation

Terms defined in the GST Law have the same meaning in this clause unless the context otherwise requires.

### 11.2 Later adjustment to price or GST

If there is an adjustment event in relation to a supply which results in the amount of GST on a supply being different from the amount in respect of GST already recovered by the supplier, as appropriate, the supplier within 14 days of becoming aware of the adjustment event:

- (a) may recover from the recipient the amount by which the amount of GST on the supply exceeds the amount already recovered by giving 7 days written notice; or
- (b) must refund to the recipient the amount by which the amount already recovered exceeds the amount of GST on the supply to the extent that the supplier is entitled to a refund or credit from the Commissioner of Taxation; and, if so,
- (c) must issue an adjustment note or tax invoice reflecting the adjustment event in relation to the supply to the recipient within 28 days of the adjustment event.

### 11.3 ABN withholding

All payments made under this Contract are subject to any withholding required by law.

### 11.4 Carbon

- (a) If the Company, or a Related Body Corporate of the Company, directly or indirectly incurs or will incur Carbon Costs in connection with the Company's performance of its obligations under this Contract, then the Sender must reimburse the Company the full amount of those Carbon Costs.
- (b) The Company must include details of all Carbon Costs for which the Company is entitled to reimbursement from the Sender in accordance with clause 11.4(a) in invoices issued to the Sender under clause 10.1(a).

## 12. DISPUTE RESOLUTION

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### 12.1 Application

Any Dispute must be determined in accordance with the procedure in this clause 12.

### 12.2 Negotiation

- (a) If any Dispute arises, a party to the Dispute (**Referring Party**) may by giving notice to the other party or parties to the Dispute (**Dispute Notice**) refer the Dispute to each party's nominated senior management representative (**Senior Representative**) for resolution. The Dispute Notice must:
  - (i) be in writing;
  - (ii) state that it is given pursuant to this clause 12.2;
  - (iii) include or be accompanied by reasonable particulars of the Dispute including:
    - (A) a brief description of the circumstances in which the Dispute arose;

- (B) references to any:
    - (I) provisions of this Contract;
    - (II) acts or omissions of any person,
    - (III) relevant to the Dispute;
  - (C) where applicable, the amount in dispute (whether monetary or any other commodity) and if not precisely known, the best estimate available.
- (b) Within 5 Business Days of the Referring Party giving the Dispute Notice (**Resolution Period**), the Senior Representative from each of the parties to the Dispute must meet at least once to attempt to resolve the Dispute. The parties must not delegate the function of the Senior Representative to any other person.
  - (c) The Senior Representatives may meet more than once to resolve a Dispute. The Senior Representatives may meet in person, via telephone, videoconference, internet-based instant messaging or any other agreed means of instantaneous communication to effect the meeting.
  - (d) Each party warrants that their Senior Representative shall have full authority to resolve any Dispute.

### 12.3 Conditions precedent to expert determination or litigation

- (a) Where a Dispute is not resolved within the Resolution Period, the Dispute must be resolved by expert determination in accordance with the procedure set out in clauses 12.4 to 12.10.
- (b) Subject to clause 12.11, a party must not refer a Dispute to expert determination or commence court proceedings in respect of any other Dispute unless:
  - (i) a Dispute Notice has been given; and
  - (ii) the Resolution Period has expired.

### 12.4 Expert determination

- (a) Any expert determination is to be conducted:
  - (i) by an independent and impartial industry expert agreed between the parties; or
  - (ii) if the parties cannot agree on an expert within 5 Business Days of the end of the Resolution Period or the expert agreed between the parties:
    - (A) is unavailable;
    - (B) declines to act;
    - (C) does not respond within 10 Business Days to a request by one or both parties for advice as to whether he or she is able to conduct the determination; or
    - (D) does not make a determination within 10 days after the time required by clause 12.9,

the expert determination is to be conducted by an independent and impartial industry expert appointed by the Chairman of the Queensland state Chapter of the Institute of Arbitrators and Mediators Australia (**IAMA**); and

- (iii) in accordance with the IAMA Expert Determination Rules.
- (b) To the extent of any inconsistency between the terms of this Contract and the IAMA Expert Determination Rules, the terms of this Contract prevail.

### 12.5 Agreement with expert

- (a) The expert will not be liable to the parties for anything arising out of, or in any way connected with, the expert determination process, except in the case of fraud.
- (b) The parties must enter into an agreement with the appointed expert on such terms as are reasonable having regard to the qualifications of the expert, the functions the expert is to perform, the expertise that the expert is to bring to the task and the responsibility that the expert is to undertake (**Expert Determination Agreement**).
- (c) The parties must not withhold agreement to:
  - (i) any term that the expert requests be included in the Expert Determination Agreement, provided the term is reasonable and does not conflict with this clause 12; or
  - (ii) any reasonable fees and disbursements the expert requests to be set out in the Expert Determination Agreement.

### 12.6 Not arbitration

An expert determination conducted under this clause 12 is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.

### 12.7 Procedure for determination

The expert:

- (a) will not be bound by the rules of evidence;
- (b) may proceed in any manner he or she thinks fit;
- (c) may conduct any investigation which he or she considers necessary to resolve the Dispute;
- (d) may examine such documents, and interview such persons, as he or she may require and may make such directions for the conduct of the determination as he or she considers necessary;
- (e) must disclose to the parties any:
  - (i) interest he or she has in the outcome of the determination;
  - (ii) conflict of interest;
  - (iii) conflict of duty;
  - (iv) personal relationship that the expert has with either party, or either party's representatives, witnesses or experts; and
  - (v) other fact, matter or thing which a reasonable person may regard as giving rise to the possibility of bias; and
- (f) must not communicate with one party without the knowledge of the other party.

## 12.8 Costs

Each party will:

- (a) bear its own costs in respect of any expert determination; and
- (b) pay an equal portion of the expert's costs.

- (ii) pay any costs incurred by the Company in Handling the Goods after termination; and
- (iii) immediately make arrangements with the Company for the Goods to be collected from the Company.
- (d) The Sender has no claim against the Company for any Loss arising from the termination of this Contract.

## 12.9 Conclusion of expert determination

- (a) Unless otherwise agreed between the parties, the expert must notify the parties of his or her decision upon an expert determination conducted under this clause 12 within 20 Business Days from the acceptance by the expert of his or her appointment or such longer period as the parties may agree.
- (b) The parties must do all things necessary to give effect to and comply with the determination of the expert.

## 12.10 Determination of expert

The determination of the expert:

- (a) must be in writing and must include the expert's opinion with respect to the matters in question and the reasons for the decision; and
- (b) will be final and binding on the parties.

## 12.11 Summary or urgent relief

Nothing in this clause 12 will prevent a party from instituting proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.

## 12.12 Continuance of performance

Despite the existence of a Dispute, the parties must continue to perform their respective obligations under this Contract.

## 12.13 Survive termination

This clause 12 survives the expiry or termination of this Contract.

## 13. TERMINATION

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- (a) The Sender may not terminate this Contract except under clause 14.4 without the Company's consent, which may be withheld at the Company's absolute discretion.
- (b) The Company may terminate this Contract in whole or in part by notice to the Sender if:
  - (i) the Sender is subject to an Insolvency Event;
  - (ii) the Sender fails to remedy a breach of these Conditions within seven days of receiving notice of the breach from the Company; or
  - (iii) the Company considers it may be prevented from delivering the Goods on or before the Delivery Time due to circumstances that were not foreseeable by the Company at the Start Date.
- (c) If the Company terminates this Contract, the Sender must:
  - (i) indemnify the Company for any Loss incurred prior to termination;

## 14. FORCE MAJEURE

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### 14.1 Notice and suspension of obligations

If a party is affected, or likely to be affected, by a Force Majeure Event:

- (a) that party must immediately give the other party prompt notice of that fact including:
  - (i) full particulars of the Force Majeure Event;
  - (ii) an estimate of its likely duration;
  - (iii) the obligations affected by it and the extent of its effect on those obligations; and
  - (iv) the steps taken to rectify it; and
- (b) the obligations under this Contract of the party giving the notice are suspended to the extent to which they are affected by the relevant Force Majeure Event as long as the Force Majeure Event continues.

### 14.2 Effort to overcome

A party claiming a Force Majeure Event must use its best endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as possible. This does not require a party to settle any industrial or commercial dispute in any way that it considers inappropriate.

### 14.3 Alternative supply

During any period in which a party is not performing obligations because of a claimed Force Majeure Event, the other party may (but need not) make alternative arrangements for the performance, whether by another person or otherwise, of any obligation which the party claiming the Force Majeure Event is not performing without incurring any liability to that party.

### 14.4 Termination

- (a) If a Force Majeure Event continues for more than one month, either party may terminate this Contract by giving at least 14 days' notice to the other party.
- (b) In the event of termination under paragraph (a), neither party is liable to the other except to the extent of rights or obligations which accrued before the termination.

## 15. CONFIDENTIALITY

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### 15.1 Confidential Information

Subject to clause 15.3, the parties agree not to:

- (a) use any Confidential Information except to the extent necessary to exercise their rights and perform their obligations under this Contract; or

- (b) disclose any Confidential Information except in accordance with clauses 15.2 or 15.3.

### 15.2 Disclosures to personnel and advisers

- (a) A party may disclose Confidential Information to an officer, employee, agent, contractor, Subcontractor, or legal, financial or other professional adviser only if:
  - (i) the disclosure is necessary to enable the party to perform its obligations or to exercise its rights under this Contract; and
  - (ii) prior to disclosure, the party states their obligations in relation to the Confidential Information under this Contract and obtains an undertaking from the person to comply with those obligations.
- (b) A party that discloses Confidential Information under clause 15.2(a) must ensure that any person to whom Confidential Information is disclosed keeps the Confidential Information confidential and does not use it for any purpose other than as permitted under paragraph 15.2(a).

### 15.3 Disclosures required by law

The parties may disclose Confidential Information if required:

- (a) by law or by order of any court or tribunal of competent jurisdiction; or
  - (b) by any Government Agency, stock exchange or other regulatory body,
- provided:
- (c) to the extent possible, they notify the other party of the requirement or anticipated requirement to disclose the Confidential Information;
  - (d) they consult with and follow any reasonable directions of the other party to minimise disclosure; and
  - (e) if disclosure cannot be avoided, they:
    - (i) only disclose Confidential Information to the extent necessary to comply; and
    - (ii) use reasonable efforts to ensure any Confidential Information disclosed is kept confidential.

### 15.4 Survival of obligations

Despite clause 4.4, the obligations in this clause 15 survive any termination or expiry of this Contract.

## 16. PERSONAL PROPERTY SECURITIES

- (a) A term used in the PPS Act has the same meaning when used in this clause 16.
- (b) The Sender grants a security interest over the Goods in favour of the Company to secure the performance by the Sender of each of its payment and other obligations in connection with this Contract and the payment of any liability of the Sender to the Company in connection with this Contract including any claims, damages, expenses, losses or liabilities which the Company suffers or incurs in connection this Contract.
- (c) The Sender and the Company agree that:

- (i) any security interest granted by the Sender over the Goods in accordance with clause 16(b) is a security interest over:

- (A) the Goods; and
  - (B) any proceeds of the Goods;
- (together, the **Collateral**); and

- (ii) such security interest attaches to the Collateral at the time the security interest is granted.

- (d) The Sender acknowledges that the Company may register a financing statement in relation to the Company's security interest. The Sender waives its right under section 157 of the PPS Act to receive notice of any verification statement relating to the registration of any such financing statement or any related financing change statement.
- (e) If the Sender defaults in the timely performance of any of its obligations described in clause 16(b), the Company may, in its absolute discretion, retain or sell any Collateral. To the extent that Chapter 4 of the PPS Act would otherwise apply to an enforcement by the Company of its security interest in the Collateral, the Company and the Sender agree that the following provisions of the PPS Act do not apply:

- (i) to the extent that section 115(1) of the PPS Act allows them to be excluded: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 138B(4), 142 and 143; and
- (ii) in addition, to the extent that section 115(7) of the PPS Act allows them to be excluded: sections 127, 129(2) and (3), 132, 134(2), 135, 136(3), 136(4), 136(5) and 137.

- (f) The Sender must do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Company reasonably requests for the purposes of ensuring that the Company's security interest is enforceable, perfected and otherwise effective (including enabling the Company to apply for any registration, or give any notification, in connection with the Company's security interest so that the security interest has the priority required by the Company).

## 17. NOTICES

### 17.1 Notices

- (a) A notice, consent or other communication under this Contract is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail, fax or electronic form such as an email.
- (b) A notice, consent or other communication that complies with this clause is regarded as given and received:
  - (i) if it is delivered, when it has been left at the addressee's address;
  - (ii) if it is sent by mail, two Business Days after it is posted;
  - (iii) if it is sent by fax, when the sending fax machine produces a confirmation report that the



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transmission has been sent and received successfully; and

- (iv) if it is sent in electronic form when the email message enters the addressee's information system.
- (c) The Sender's address, fax number and email address are those noted in the Consignment Note or notified to the Company from time to time.
- (d) The Company's address, fax number and email address for notices are below.

Address: Level 3/ 68 Marine Parade  
Southport BC QLD 4215  
Email Address: info@nationalheavyhaulage.com.au

## 18. ASSIGNMENT

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- (a) The Sender may only assign, encumber, declare a trust over or otherwise deal with its rights under this Contract with the written consent of Company.
- (b) The Company may assign, encumber, declare a trust over or otherwise deal with its rights under this Contract without the consent of any other party, and may disclose to any potential holder of those rights, or an interest in those rights, any information relating to this Contract or any party to it.

## 19. GENERAL

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### 19.1 Governing law

- (a) This Contract is governed by the laws of the State of Queensland.
- (b) Each party submits to the jurisdiction of the courts of Queensland and of any court that may hear appeals from any of those courts, for any proceedings in connection with this Contract.

### 19.2 Liability for expenses

- (a) Subject to paragraph (b), each party must pay its own expenses incurred in negotiating and executing this Contract.
- (b) The Sender must indemnify the Company against, and must pay the Company on demand the amount of, any duty that is payable on or in relation to this Contract and the transactions that it contemplates.

### 19.3 Giving effect to documents

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that any other party may reasonably require to give full effect to this Contract.

### 19.4 Variation of rights

The exercise of a right does not prevent any further exercise of that right or of any other right. Neither the exercise of a right nor a delay in the exercise of a right operates as an election or variation of the terms of this Contract.

### 19.5 Operation of this Contract

- (a) Subject to clause 19.5(b), this Contract contains the entire agreement between the parties about its subject

matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Contract and has no further effect.

- (b) Any right that a person may have under this Contract is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of these Conditions which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Contract enforceable, unless this would materially change the intended effect of these Conditions. Subject to clause 9(d), in the event of any inconsistency between this Contract and any conditions incorporated into a bill of lading, waybill, consignment note or other transport document issued in relation to the Goods, the terms of this Contract shall prevail.

### 19.6 Operation of indemnities

- (a) Each indemnity in these Conditions survives the expiry or termination of this Contract.
- (b) A party may recover a payment under an indemnity in these Conditions before it makes the payment in respect of which the indemnity is given.

### 19.7 Exclusion of contrary legislation

Any legislation that adversely affects an obligation of the Company, or the exercise by the Company of a right or remedy, under or relating to this Contract is excluded to the full extent permitted by law.