

Please read all of the following conditions carefully as they contain disclaimers and exclusions. You will be bound by these conditions if we carry or store goods for you. If both you and the consignee are each operating a business then, unless you participate in our Loss and Damage Warranty:

- o the Goods will be at your sole risk and our services are priced on this basis; and
- o we will not be liable for any loss of or damage to the Goods, or other losses you suffer, regardless of the cause of that loss or damage.

We recommend that you take out your own insurance cover over the Goods.

1. **Entire Agreement:** (a) The terms and conditions governing the relationship between Allied Express and the Customer, for any Services provided by Allied Express to the Customer are set out in full within important notices A-F in the Application for Credit Account form (formally known as the "Proposal for Rates and Services") and the following 23 clauses. These Terms and Conditions (as varied by Allied Express from time to time) apply to all dealings between Allied Express and the Customer unless the conditions are varied in writing at the hand of Allied Express' Chief Financial Officer, Director or Chief Executive Officer. (b) No terms or conditions sought to be imposed by the Customer on Allied Express shall apply, and hand written amendments to the Application for Credit Account or these conditions shall have no effect, unless authorised in accordance with clause 1(a). (c) All rights, conditions and guarantees implied or imposed by law as they relate to the parties shall be excluded unless contained within the terms and conditions herein or unless such rights, conditions or guarantees cannot be excluded in which case they are taken to form part of these terms and conditions. (d) The Customer agrees that the terms and conditions set out within this contract shall apply to all past, present and future dealings with Allied Express. Allied Express shall be entitled to rely on the terms and conditions notwithstanding that the Customer may have an accrued account balance as at the date of entering into this contract. (e) Nothing in this clause limits the ability of Allied Express to update its schedule of fees and charges for the Services provided to the Customer in accordance with clause 3. (f) The Customer warrants that the Customer is the owner of the Goods or has authority to deal with them and has full rights, powers and authority to enter into this contract. (g) The failure of Allied Express to take action to enforce any rights under this contract or the granting of any time or indulgence will not be construed as a waiver of those rights nor as a waiver of the rights of Allied Express to enforce its rights at a later time. (h) These conditions (with the exception of any rates, which may be amended as provided for in clause 3(d)) may be varied by Allied Express provided Allied Express provides 30 days' written notice to the Customer.
2. **Common Carrier:** Allied Express is not a common carrier and reserves the right to refuse the carriage of any Goods without giving any reason for such refusal.
3. **Payment & Charges:** (a) The Customer undertakes to pay Allied Express the amount of the charges for any Services rendered, calculated at the rates set forth in the rate schedule in force within seven (7) days of the date of any invoice/statement issued by Allied Express relating to such Services. (b) The Customer notes and acknowledges that the rates in the rate schedule are not fixed for any time period and may be increased from time to time in accordance with industry custom, external influences or at Allied Express' absolute discretion. (c) The rates and charges applicable to the Customer are those as notified in writing by way of rates schedule, the Customer's weekly statement of account, any one invoice issued in respect of such service, or as published from time to time on Allied Express' website [www.alliedexpress.com.au](http://www.alliedexpress.com.au) (or applicable pages located on that domain) or by any other written

notice sent to the postal address for the Customer as noted in this application.

- (d) Any increase to rates and charges is deemed to be accepted by the Customer on the earlier of (i) 7 days from the date the change was notified to the Customer by any of the means set out in clause 3(c) and (ii) 7 days from the date of statement or invoice containing the charge.
- (e) In addition to charges set out in the rates schedule, the Customer shall pay Allied Express for all Additional Charges. The Additional Charges are as notified in writing to the Customer and/or as published from time to time on Allied Express' website [www.alliedexpress.com.au](http://www.alliedexpress.com.au) (or applicable pages located on that domain), or if none, then at the cost to Allied Express plus 5%.
- (f) The Customer shall not be entitled to withhold payment for any of the following reasons: the making of an insurance claim by the Customer, the making of a Loss and Damage Warranty claim by the Customer, Allied Express' failure to provide a POD (see clause 4), transportation by other means than requested, any claim to a cross claim or set-off against Allied Express.
- (g) The Customer hereby acknowledges that this contract will be used as a bar to any proceedings commenced against Allied Express and as a bar to any defence in proceedings commenced by Allied Express while any payment for any account remains outstanding.
- (h) Invoices for Services paid for by credit card will attract a surcharge of 2.2% for American Express and 1.25% for Visa or Mastercard.
- (i) Any discounts on charges which have been offered to the Customer are contingent upon the Customer observing and complying strictly with this contract (including payment of invoices within trading terms). Discounts to all invoices will cease to apply if payments are not made within trading terms.
- (j) Charges will be applied to freight based on measurements taken by Allied Express' dimensioner and/or Allied Express' employees if measured manually and not information supplied by the Customer.
- (k) A certificate signed by Allied Express' Chief Financial Officer, Director or Chief Executive Officer as to the dimensioner's reading and/or employee's manual measurement for any freight is conclusive proof of the measurements for the freight described within that certificate.
- (l) Additional Charge information:
  - All accounts below a specified weekly minimum trade will attract an account keeping fee. Details of minimum values and fees can be found on Allied Express' weekly invoice, and/or at [www.alliedexpress.com.au](http://www.alliedexpress.com.au).
  - Proof of delivery (where provided) is available on our website. Allied Express can provide copies of PODs from time to time, however excessive requests (in the opinion of Allied Express) will result in a service charge. The non-provision of a POD is not a valid reason to withhold payment.
- (m) Additional Charge information for Allied Overnight Express (AOE) customers (Please see your quotation/rates schedule or AOE Additional Services sheet for further information):
  - A minimum pick up fee will apply for prepaid, local overnight, road express and overnight express consignments. If the transport value of the entire pick up exceeds minimum pick up fee, then the minimum pick up fee does not apply.
  - A redelivery charge will apply where an attempt to deliver fails due to receiver being unavailable or unable to sign for delivery.
  - Where a specific delivery time is requested for a delivery, a pre-alert charge will apply.
  - In some country and regional areas, onforwarding charges will apply.
  - A full listing of all miscellaneous charges accompanies your rates schedule, and is also available on request.
  - Overnight Express is a time critical consignment which travels by aircraft or (when guaranteed aircraft uplift to meet our delivery standards is not available), by modern safe express vehicles.
  - Consignment notes are to be completed clearly and correctly. If no service level is specified, Overnight Express rates will be the default service level applied.
  - All uncrated machinery will be charged in line with normal cubic conversion rules, and with a minimum height of 1.5 metres.

• A surcharge for Freight Oversized Home Deliveries (“FOHD”) will apply at the rates notified in writing to the Customer and/or as published at [www.alliedexpress.com.au](http://www.alliedexpress.com.au)

• Multiple Item Home Deliveries must be presented to Allied Express as a consolidated (matched) consignment and not as individual items on separate pallets.

• All Mattress products not collapsed into cartons (full sized inner spring mattress) must be shipped fully protected in a thick plastic inner sleeve as well as an outer carton/cardboard covering.

• In addition, prepaid satchels, stickers or prepaid consignment notes:

o are not to be used for Dangerous Goods or valuable items;

o do not have Loss and Damage Warranty cover available;

o are valid for six months from purchase, and are non-refundable and non-transferable;

o are not to exceed the indicated weight – where this does occur, the item will be charged at negotiated or standard overnight express service rates with the cost of the prepaid item being returned; and

o do not allow multiple prepaid items on the one item or multiple prepaid items to the same destination – where this occurs, the item will be charged at negotiated or standard overnight express service rates with the cost of the prepaid item being returned.

**4. Delivery:** (a) Goods are deemed to be in transit notwithstanding that the carriage of the Goods may have been interrupted by Allied Express and/or may have been diverted from the usual route for such carriage.

(b) Freight shall be considered earned as soon as the Goods are loaded and despatched. Cancellation fees apply.

(c) Allied Express reserves the right to use, or may use, any method/s of carriage at its absolute discretion including road, rail, sea or air and may deviate from any usual route or method of carriage or storage of Goods and the Customer is deemed to have authorised such method/s or routes.

(d) The Customer must comply with all applicable laws (including the Australian Code for the Transport of Dangerous Goods by Road and Rail, Civil Aviation Regulations and International Maritime Dangerous Goods Code) relating to the notification and/or description on the consignment note or in another written form.

(e) Allied Express may subcontract the Services in its discretion on any terms whatsoever.

(f) Allied Express may charge for frustrated delivery to cover Allied Express’ costs and expenses thereof.

(g) The Customer acknowledges that Allied Express will use its best endeavours to provide PODs on request (surcharge may apply), although accepts that PODs may not be available to the Customer for all deliveries. The Customer agrees that it has no right to demand a POD nor is Allied Express liable to the Customer for failing to provide a POD and it is agreed that any of the following: a statement signed by the delivery driver that delivery was made, driver’s run sheet, Personal Data Authority confirmation, Agent’s consignment note, signed label, POD run sheet or driver run book of that delivery, is conclusive proof of delivery notwithstanding the absence of a POD.

**5. Liability & exclusion of bailment:** (a) To the fullest extent permitted by law, Allied Express’ obligations as a bailee are excluded. Allied Express will not be responsible or liable for any loss of, or Damage to, or incorrect delivery of, or delay in the delivery of, any Goods (including perishable Goods).

(b) Allied Express will not be responsible for any Consequential Loss suffered by the Customer or any other person, howsoever caused or arising.

(c) Allied Express will not be liable to any person for any loss or damage resulting from or attributable to any quotation, statement, representation or information, oral or written, made or given on behalf of Allied Express or Allied Express Personnel as to the classification of, liability for, amount, scale or rate of customs duty, excise duty or other impost or tax applicable to any Goods the subject of any Services.

(d) The exclusions of liability in this clause apply whether or not any loss or Damage is caused by the negligence and/or recklessness and/or wrongful act, wilful negligence or misconduct of Allied Express or Allied

Express Personnel.

(e) The Customer expressly agrees that this contract contains no clause, condition, guarantee or warranty express or implied, which would make Allied Express responsible for any loss of Goods, Damage to Goods or incorrect delivery, non-delivery or delay in the delivery of Goods. This clause shall not be construed so as to exclude or limit any liability of Allied Express which arises under the *Australian Consumer Law* (Cth) and cannot be excluded. To the extent that it may be permitted by that legislation, the liability of Allied Express, if any, shall be limited to the supplying again of any services to be supplied by Allied Express to the Customer or the payment by Allied Express to the Customer of the cost of having such services supplied again.

(f) Nothing in clauses 5(a) and (b) shall limit Allied Express’ obligations pursuant to the “Loss and Damage Warranty” where taken out by the Customer at the point of order of service.

(g) The Customer undertakes to indemnify Allied Express in respect of any liability, cost (including legal and recovery costs on a solicitor and client basis) or expense whatsoever and howsoever arising:

- in connection with the Goods to any person (other than the Customer) who is found to have any interest in the Goods; and
- incurred as a result of any breach of the terms, conditions or warranties in this contract by the Customer.

(h) The Customer undertakes to indemnify Allied Express in respect of any claim, loss, damage, payment, fine, expense, duty, tax, impost, or other outlay whatsoever or howsoever caused, arising directly or indirectly from the Services.

(i) The Customer will not tender for the provision of Services any explosive, inflammable or Dangerous Goods and will be liable for all loss and damage of whatever nature (whether foreseeable or not) arising out of the performance of Services in respect of Dangerous Goods (whether declared as such or not), occasioned by any person, including Allied Express.

(j) It is the responsibility of the Customer to package the Goods appropriately for the provision of the Services.

(k) Allied Express is authorised to deliver the Goods at the address given to Allied Express by the Customer and the Services will be deemed performed if at that address Allied Express obtains from any person a receipt or signed delivery docket for the Goods. If the nominated place of delivery should be unattended, Allied Express may at its option deposit the Goods at that place or store the Goods. If the latter, the Customer must pay or indemnify Allied Express for all costs associated with such storage. If the Goods are stored, Allied Express may charge for re-delivery.

(l) The Customer acknowledges that it is aware that Allied Express is not an insurer of Goods (either warehoused or in transit) and that Allied Express does not effect insurance on behalf of the Customer. The Customer notes that under these conditions, subject to clause 5(f) and its obligations pursuant to the “Loss and Damage Warranty”, Allied Express has no liability for loss of or damage to the Goods and that the Customer should arrange its own insurance.

(m) Notice in writing of any claim intended to be made under this contract must be given to Allied Express within 14 days after the date of delivery or, in the case of non-delivery within 30 days from the date the Services should have been completed, or the Goods should have been delivered, and unless so given and made the claim however so made shall be extinguished and will not be enforceable against Allied Express.

(n) Every exemption, limitation, condition and liberty contained in these conditions and every right, exemption from liability, defence and immunity applicable to Allied Express or to which Allied Express is entitled under these conditions will also be available to and will extend to protect:

- all Allied Express Personnel and every employee or agent of Allied Express Personnel;
- every other person (other than Allied Express) by whom the Services or any part of the Services are undertaken; and
- all persons who are or are found to be vicariously liable for the acts or omissions of any person falling within clause 5(n).

**6. Pallets:** (a) Allied Express will only participate in pallet exchange if it

agrees in writing with the Customer to do so. If Allied Express agrees to participate in pallet exchange, it does so on the conditions set out in this clause (pallet trading rules).

(b) Allied Express will only accept Chep or Loscam pallets from the Customer if the Customer has a Chep or Loscam account. The Customer must provide details of that account to Allied Express prior to commencement of trading.

(c) The Customer must confirm prior to trading with Allied Express the type of Hire Equipment that will be used with Allied Express. Allied Express will not be liable for any loss or replacement of Hire Equipment lost or misplaced in transit under any circumstances.

(d) Consignee with Chep or Loscam Account: (i) If the Customer's Consignee has a Chep or Loscam account the Customer must:

- \* Attach two copies of the pallet transfer docket to the consignment with all necessary details, including the Consignee's Chep or Loscam pallet account details, the consignment or manifest number;
- \* Notify the Consignee of these pallet trading rules, and make sure the consignee understands these rules, in order to prevent pallet discrepancies arising at the point of delivery.

(ii) Allied Express will obtain the Consignee's signature on the pallet transfer docket and a copy of same, together with proof of delivery which (where available) will be scanned and posted on Allied Express' website [www.alliedexpress.com.au](http://www.alliedexpress.com.au).

(iii) Allied Express will not accept any pallets onto its Chep or Loscam accounts. All transfers must be made direct to the Consignee's Chep or Loscam pallet account.

(e) Consignee absent Chep or Loscam Account: (i) If the Customer's Consignee does not have a Chep or Loscam account, the Customer must:

- \* Provide either a Chep or Loscam Exchange Movement docket or an IOU to Allied Express on delivery of the freight to Allied Express;
- \* Obtain Allied Express' driver's signature by way of receipt on the Chep or Loscam Exchange Pallet docket or IOU. Allied Express will not accept Exchange Pallet dockets or IOU's which are not signed as proof that Allied Express has accepted pallets; and
- \* Ensure the Consignee has the exchange pallets available. If the Consignee does not have exchange pallets available Allied Express will hold the Customer and/or the sending party accountable and deduct the pallets owing from the dispatch quantity.

(ii) Allied Express will not return empty Hire Equipment to the Customer and/or sending party and will instead de-hire pallets owing to Chep or Loscam and deliver same to the Chep or Loscam depot during Allied Express' weekly delivery run. The Customer will pay Allied Express' usual delivery charges for delivery of the empty de-hired pallets to Chep or Loscam.

(f) If freight is delivered to an Allied Express depot on pallets, the Customer may request Allied Express to exchange pallets at the Allied Express depot provided the Customer supplies all required documentation (such as Exchange Movement dockets or similar) in the Customer's format to state that the freight was supplied on a hire pallet.

(g) Allied Express will not carry empty pallets to pick up destinations under any circumstances.

(h) Allied Express accepts no responsibility for loss or damage to pallets left at the address of the Consignee (whether attended or not).

It is the Customer's responsibility to manage Hire Equipment that is dispatched with an Allied driver in accordance with this clause 6. The role of an Allied Express on site supervisor and driver is limited to signing transfers off and other documentation set out in this clause 6 in accordance with pallet counts.

(i) The Customer accepts responsibility to recover pallets from Consignees in circumstances where Allied Express' drivers are unable to carry out pallet exchanges on delivery. Allied Express' drivers will accept exchanges from Consignees and return to Customers within 48 hours at the Customer's cost. Return rates will be charged.

(j) All claims relating to pallets or Hire Equipment must be made within 180 days from the date of dispatch. Claims made after this period will be rejected. Claims include rejections and corrections to previously raised pallet transfers.

(k) All pallet discrepancies older than 3 months will require 1 month for Allied Express to reconcile. Pallets will only be honored once all completed documentation (as requested by Allied Express) is provided by the Customer to enable reconciliation.

(l) If the Customer gives Allied Express plain pallets, the Customer must obtain a signature from an Allied Express representative by way of receipt of those pallets. Claims for plain pallets will be rejected without signed receipts. Allied Express is not required to return plain pallets the same age or quality and functional plain pallets shall be regarded as identical to those supplied regardless of age or condition.

(m) The Customer releases Allied Express from all liability, claims and demands relating to pallets except as made in accordance with this clause 6.

**7. Title and PPSA :** (a) The Customer grants Allied Express a security interest pursuant to the PPS Act in all Goods the subject of the Services and held in Allied Express' possession.

(b) While the Customer complies with these terms and conditions Allied Express will not seek to register its interest in the Goods, but shall do so in the event of a breach of these terms by the Customer, including payment outside of the above trading terms (in relation to any service, unrelated to the Goods or otherwise).

(c) The Customer will, upon request, execute any documents, provide all necessary information and do anything else required by Allied Express to ensure that the security interest constitutes a "Perfected Security Interest" as defined in the PPS Act, in order for the interest to have priority over all other security interests in the Goods not already registered.

(d) In the event that the Customer is in breach of these terms and Allied Express takes steps to register its interest then the Customer agrees to pay upon demand all of Allied Express' expenses and legal costs (on a solicitor and client basis) in or in connection with the registration of a financing statement or financing change statement relating to the security interest created by this contract.

**8. Charge and Security:** (a) in this clause 'Property' shall mean real property while the PPS Act is in force and both real and personal property if the PPS Act is repealed or no longer applies to personal property.

(b) The Applicant hereby charges in Allied Express' favour all of its estate and interest in any property that it owns now or in the future with due payment to Allied Express of all monies owing or which may become payable in accordance with this contract.

(c) Allied Express has a lien on the Goods and all associated documents and on any goods in which the Customer may have an interest, and which may have come into Allied Express' possession for any reason. The lien is a general lien for all monies owing, or alleged by Allied Express to be owing, by the Customer to Allied Express.

(d) Without prejudice to any other rights Allied Express may have under law, if charges are not paid when due, or the Goods are not collected when required or designated, Allied Express may, without notice, and immediately:

- remove all or any of the Goods and store them as Allied Express thinks fit at the Customer's risk and expense; and
- open and sell all or any of the Goods as Allied Express thinks fit (whether by private treaty or public auction, including auction on an internet based platform) and apply the proceeds to discharge any lien and costs of sale without being liable to any person for any loss caused.

(e) Allied Express shall render the surplus (if any) of the monies arising from any sale to the party entitled thereto. Any such sale shall not prejudice or affect the right of Allied Express to recover from the Customer the balance of any charges due or payable in respect of any Services, or the detention and/or sale.

**9. Uncollected Goods:** (a) If Goods are undeliverable for whatever reason Allied Express undertakes to hold those Goods in safe keeping for a period of 28 days. The cost of the storage shall be paid by the Customer and Allied Express will be entitled to retain the Goods until such time as the storage fees have been paid.

(b) If after the period of storage noted in clause 9(a) the Goods are not

collected (and regardless of whether Services have been paid for and regardless of any notice being provided to the Customer that the Goods are being held) then the Customer authorises Allied Express (without prejudice to any other rights Allied Express may have under any legislation) to dispose of the Goods by way of public auction and apply the proceeds of disposal firstly in payment of the storage and attempted delivery (if any) fees, secondly against any auction costs and any incidental costs of Allied Express (including the costs of its employees or agents or solicitors in arranging the sale or disposal of the Goods).

(c) If, in the opinion of Allied Express, the costs associated with the sale will exceed the proceeds to be obtained from same then the Customer authorises Allied Express to dispose of the Goods by any means after 28 days, be that by donation to charity or otherwise.

**10. Storage:** (a) Goods are stored at the Customer's sole risk. Allied Express accepts no responsibility in tort or in contract or otherwise for the loss of or Damage to any Goods howsoever arising and whether or not such loss or Damage was occasioned wholly or in part by the negligence or recklessness of Allied Express or Allied Express Personnel or any act, omission, default, neglect, breach of duty or breach of contract by Allied Express or Allied Express Personnel. The provisions of this clause shall apply irrespective of the manner in which, or the time at which, or the reason whereby any such loss or Damage may occur and notwithstanding that such loss or Damage may be the fault of Allied Express.

(b) Allied Express shall have liberty to store, warehouse and land the Goods in any place, store or warehouse whatsoever and every such dealing with the Goods shall be deemed to be within the scope of this contract.

(c) The Customer warrants that except where the receipt for the Goods is endorsed with the word "Dangerous" or "Hazardous", the Goods are not Dangerous Goods.

(d) All charges for storage and other Services shall be calculated in accordance with the Allied Express' rates schedule as notified in writing to the Customer and/or as published on [www.alliedexpress.com.au](http://www.alliedexpress.com.au).

(e) All charges for storage shall accrue from day to day and shall be payable from time to time on demand. No accounting reconciliation (or like) conducted by Allied Express shall waive Allied Express' rights to demand payment under this clause.

(f) Charges for storage and other Services do not include insurance which, if required, must be effected by the Customer.

(g) The Customer shall indemnify Allied Express against any duties or other moneys which Allied Express is called upon or obliged to pay in respect of the Goods to any person and howsoever arising. Without in any way limiting the generality of this Indemnity, it is to include liability on the part of the Customer to indemnify Allied Express in respect of any payment it may be called upon or obliged to pay to an Authority, as well as any person and whether the obligation to pay the said duties or moneys arises by reason of any law or by reason of liability arising in contract, in tort, or by reason of the existence of any lien, security interest, charge, bill of sale, mortgage or other hypothecation of the Goods or under any hire purchase agreement.

(h) The indemnity hereby conferred upon Allied Express shall continue in full force and effect whether or not the Goods are or have been pillaged, stolen, lost, damaged or destroyed and shall not be affected in any way if such pillaging, stealing, loss, damage or destruction has occurred or been brought about wholly or in part by the negligence or any default, omission, neglect or breach of duty or obligation of Allied Express or Allied Express Personnel.

(i) Allied Express may at any time and in its absolute discretion give 28 days' notice to the Customer to remove its Goods from storage. If the Customer does not remove the Goods, without prejudice to any other rights Allied Express may have under law, Allied Express may dispose of the Goods in accordance with clause 8(d) of this contract.

(j) Allied Express may without notice and at the Customer's expense remove and if thought fit dispose of or destroy all or any of the Goods which in the opinion of Allied Express shall be or become deteriorated objectionable or unwholesome, a source of danger or contamination or

Dangerous Goods.

(k) In the event of a Store Warrant being issued by Allied Express in respect of the Goods, Allied Express shall not be bound to deliver or release such Goods specified in the Store Warrant except upon production of the Store Warrant in question. Allied Express may dispense with production of the Store Warrant upon the Customer furnishing such evidence as to the ownership of the Goods and whereabouts of the Store Warrant as Allied Express may require and upon the Customer entering into or producing such bond, guarantee or other security as Allied Express may require.

(l) Allied Express shall not be required to deliver the Goods to any person other than the Customer, or a person authorized in writing by the Customer to receive the Goods.

(m) Allied Express shall be entitled to subcontract any part of the warehousing in its absolute discretion and shall be entitled to move the Goods between warehouses under its control from time to time. Any requests by the Customer for the Goods to be transported or moved shall, if accepted by Allied Express, be transported on Allied Express' standard terms and conditions prevailing at the time of the request.

**11. Recovery, Interest and Suspension of Account:** (a) Allied Express may, at its discretion, charge interest on overdue accounts at the rate of 2% higher than the rate prescribed by s.100 of the *Uniform Civil Procedure Act 2005* (NSW).

(b) The Customer will pay to Allied Express all costs and expenses incurred in the recovery, or attempted recovery, of overdue accounts including all costs and expenses payable to mercantile agents, solicitors (on a solicitor and client basis) and third parties in securing any account balance, outstanding or otherwise).

(c) The costs recoverable under clause 11(b) shall extend to the costs in defending actions, or advice incidental to the account, while overdue, notwithstanding that same is not categorised as debt recovery.

(d) If at any time the Customer is outside of the payment trading terms contained herein, cancels a pick up or order, seeks and/or obtains an alternate service provider or is in breach of any other term of this contract then Allied Express may suspend or cancel the Customer's credit account and/or cease Services as at that date, including where Goods are in transit or warehoused awaiting delivery.

(e) If the account is cancelled or suspended then Allied Express will be at liberty to take steps to immediately recover all monies owing for Services provided or contracted without regard to credit terms.

**12. Credit Limit:** Allied Express may increase or decrease the Customer's credit limit or cancel the Customer's account such that all moneys become immediately due and payable, at its sole discretion and without notice to the Customer.

**13. Change in Ownership:** The Customer must advise Allied Express' Chief Financial Officer, Directors or National Credit Manager in writing within 1 day of any change in ownership of the partnership, business or company, including a change in shareholding of more than 25% (aggregated), together with any change in the directors, whether or not guarantors to this contract.

**14. Jurisdiction & Disputes:** (a) The Customer hereby acknowledges that this contract is made in the State of New South Wales and submits to the non-exclusive jurisdiction of the courts of that state.

(b) Where a dispute arises as to the payment of the Customer's account the Customer agrees to pay into an interest bearing trust account of Allied Express or its solicitors all monies claimed outstanding by Allied Express before being entitled to dispute the debt. The Customer acknowledges that this clause will operate as a bar to proceedings commenced against Allied Express and as a bar to any defence in proceedings commenced by Allied Express until such time as payment required by this clause is made.

**15. Chain of Responsibility Law:** (a) Allied Express and the Customer must comply with Chain of Responsibility Law.

(b) The Customer must not impose any requirement on Allied Express that would directly or indirectly encourage or require Allied Express or Allied Express Personnel to speed, drive while fatigued or otherwise perform the Services in an unsafe manner.

**16. Force Majeure:** Allied Express will not be liable to the Customer and shall not be taken to have failed to perform its obligations to deliver the Goods as a result of Force Majeure.

**17. Credit Information and Privacy:** (a) The Customer authorises Allied Express to share credit information regarding this contract with third parties and to conduct due diligence by contacting third parties to verify the information contained in this application, or any other document, and investigate or make enquiries from time to time with those third parties as Allied Express sees fit so to assess credit worthiness at any point in time.

(b) The authority given in clause 17(a) is an irrevocable authority and this contract may be used as evidence of the Customer's consent when contacting third parties.

**18. Notices:** Any notice to be given by Allied Express to the Customer shall be sufficiently given if sent by prepaid ordinary mail enclosed in an envelope addressed to the Customer at the address nominated on this account or his/her or its last known address. Any notice posted pursuant to the provisions hereof shall be deemed to be delivered the next business day after the date of postage. The deemed service provisions of this clause shall apply notwithstanding any evidence of the Customer in relation to actual notice or lack thereof.

**19. Joint and Several:** If this application is completed in the name of a partnership then the partners of that business at any one time shall be jointly and severally liable to Allied Express for any outstanding account and this will be so notwithstanding any agreement, compromise or arrangement with one or more of the partners.

**20. Insolvency:** The Customer shall be in breach of this contract if at any time it becomes the subject of bankruptcy proceedings, enters into bankruptcy, goes into liquidation either compulsorily or voluntarily, if a receiver, receiver and manager or administrator is appointed in respect of the whole or any part of its assets, if it makes an assignment for the benefit of or composition with its creditors generally or threatens to do any of these things, or any judgment is made against the Customer or any similar occurrence under any jurisdiction affects the Customer.

**21. Restraint:** (a) The Customer, its servants and agents hereby covenant with Allied Express that it will not engage, directly or indirectly, the services of any of Allied Express' drivers either during the life of this contract or within a period of 180 days from the date of termination of this contract unless express written consent is obtained from Allied Express. Such consent will not be unreasonably withheld by Allied Express.

(b) The Customer expressly acknowledges that Allied Express' drivers have entered into contracts with Allied Express which contain restraint of trade covenants to the effect that drivers will not either work for Allied Express' clients (such as the Customer), or through another carrier, do work for Allied Express' clients, for a period of 180 days after termination of their contract with Allied Express.

(c) The Customer acknowledges that Allied Express has developed its systems (which comprise confidential information) over many years and has expended money, time and resources in recruiting and training and developing its driver fleet. Allied Express will further expend money in training its drivers to do work for the Customer. It is accordingly reasonable that the Customer enters into this covenant.

(d) For the purposes of this clause "any Allied Express driver" means a driver engaged by Allied Express who was doing work for the Customer as at the date of termination of the contract, or has done work for the Customer at any time in the six months prior to termination of the contract, and, "directly or indirectly" means either the Customer hiring an Allied Express driver directly, or engaging another transport company or person which either has hired Allied Express' driver, or hires Allied Express' driver prior to or shortly after commencing work for the Customer to provide the same or similar services to the Customer or otherwise establishing a means by which Allied Express' driver does the same or similar work for the Customer or a company engaged by the Customer as that driver was doing whilst engaged by Allied Express.

**22. Consumer Contract and Small Business Contract**

Where this contract is a Consumer Contract or a Small Business Contract,

Allied Express will not rely on or exercise any rights pursuant to clauses 3(g), 3(k), 5(h), 7, 8(b), 9(c), 11(c), 11(d) or 14(b) of this contract.

**23. Interpretation:**

"Additional Charges" means fuel surcharges, account keeping fees, minimum pick up fees, excessive POD requests, late fees, costs and expenses associated with delays in loading or unloading, labour to load or unload the vehicle (with same being the responsibility of the Customer).

"Allied Express" means Allied Express Transport Pty Ltd (ACN 001 787 962) and Allied Overnight Express Pty Ltd (ACN 074 596 491) and each of their subsidiaries, divisions, related entities, assignees and successors.

"Allied Express Personnel" means the directors, officers, agents, employees and subcontractors of Allied Express.

"Authority" includes any legal or administrative authority exercising any jurisdiction within an Australian state or territory.

"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.

"Consequential Loss" means any indirect or consequential loss; loss of use; loss of product or production; delayed, postponed, interrupted or deferred production; inability to produce, deliver or process; loss of profit, revenue or anticipated revenue; loss of bargain, contract, expectation or opportunity; punitive or exemplary damages; in each case arising from or in connection with the performance of the Services and whether or not foreseeable at the time of entering into this contract or at the time a request for Services is made.

"Consumer Contract" means a contract within the meaning of that term as defined in section 23 of the Australian Consumer Law (Cth).

"Customer" means the person named on page 1 of the Credit application form, or if an existing account holder, the person holding that account.

"Damage" means physical damage and includes deterioration, evaporation and contamination.

"Dangerous Goods" includes Goods that have been classified as dangerous in the Australian Code for the Transport of Dangerous Goods by Road and Rail, goods that are 'dangerous goods' within the meaning of that term under the *Civil Aviation Act 1988* (Cth) and Goods that are or may become noxious, dangerous, flammable or damaging or that may harbour or encourage vermin or other pests, or that are or may become liable to harm any property whatsoever.

"Force Majeure" means acts of God, lightning, 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 road closure or congestion of roads, any quarantine or customs restriction, any interruption of power supply or scarcity of fuel or any accident, collision or breakdown of a vehicle, crane, machinery or equipment.

"Goods" means the cargo accepted from the Customer and includes any container or packaging supplied by or on behalf of the Customer.

"Hire Equipment" means Chep pallets, Loscam pallets and cages, and any other equipment hired for the purpose of transporting freight.

"POD" means proof of delivery of the Goods.

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

"Services" means the whole of the operations and services undertaken by Allied Express or any person on behalf of Allied Express in respect of the Goods (whether gratuitously or not), including loading, unloading, packing, handling, unpacking and storage of the Goods, towing a trailer and the provision of any advice.

"Small Business Contract" means a contract within the meaning of that term as defined in section 23 of the Australian Consumer Law (Cth).

In these terms and conditions:

(a) a reference to laws includes statutes, regulations, proclamations, orders, bylaws, requirements and approvals;

(b) a reference to a person is to be construed as a reference to an

- individual, body corporate, unincorporated association, partnership, joint venture or government body;
- (c) headings are included for convenience only and do not affect the interpretation of these conditions;
- (d) words importing the singular include the plural and vice versa and words importing a gender include other genders;
- (e) where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (f) wherever 'include' or any form of that word is used, it will be construed as if it were followed by '(without being limited to)';
- (g) terms used have the same meaning as under the PPS Act;
- (h) if any provision of this contract is invalid, illegal or unenforceable, that provision will, to the extent that it is invalid, illegal or unenforceable, be treated as severed from this contract, without affecting the validity and enforceability of the remaining provisions; and
- (i) all indemnities survive the termination or expiration of any agreement incorporating these conditions.