

**CONDITIONS OF CONTRACT
Incorporating
CONDITIONS OF CARRIAGE,
STORAGE AND HANDLING OF GOODS**



All dealings between the Customer and Border Express Pty Ltd are subject to the following Conditions unless otherwise expressly agreed in writing:

CONDITIONS COMMON TO CARRIAGE, STORAGE AND HANDLING OF GOODS

1. Agreement commencement

This Agreement shall commence on the earlier of the date in Schedule 1 (if completed) or the date the first Service is provided by Border Express.

2. Definitions

For the purposes of this document:

“**ADGC**” means the Australian Code for the Transport of Dangerous Goods by Road and Rail 07.

“**Act**” means the *Competition and Consumer Act 2010* (Cth) (as Amended).

“**Agreement**” means the contract incorporating these conditions.

“**Approved Dispatch System**” means a system for the transmission of electronic dispatch data; created by Border Express (currently two alternatives exist called “Gateway” and “TSLite”), or an approved system provided by a third party intermediary, or a Customer system approved by Border Express.

“**Border Express**” means the company Border Express Pty Ltd (ABN 82 000 533 880) and/or any related and/or associated companies, trusts and/or other entities trading as a business named Border Express, its servants and agents and/or any successors or assigns.

“**Charges**” mean Border Express’ charges under its rates schedule or other agreed rates, any surcharges, the charges in this Agreement, charges for Services outside of the standard Service, and any tax including a GST levied directly on a transaction or supply under these conditions.

“**Common Carrier**” means a Person which is in the regular business of transporting people and/or freight for a fee at *uniform rates*.

“**Conditions**” means the conditions contained in this Agreement.

“**Customer**” means the Person on whose behalf Border Express is undertaking the Service and who is therefore the Person subject to this Agreement. Customer includes all related and/or associated companies and/or other entities, all successors and/or assignees and in its own capacity and as trustee of each and every trust of which it is trustee.

Where the Person requesting the Service differs to the Person on whose behalf Border Express is undertaking the Service, then the requesting Person holds themselves out to be an agent of the Person for whom the service was undertaken and shall become the Customer should the initial Person fail to accept or fulfil its obligations as the Customer.

Customer has the same meaning as given to “consignor” under law.

“**Delay Days**” means where the transfer of Hire Pallets takes place at a future date to the movement date.

“**Dispute**” means any dispute between the parties relating to the interpretation of this Agreement or the performance of any party of its obligations under this Agreement.

“**Excluded Goods**” means each of the following items: currency; negotiable instruments; jewellery; gemstones; antiques; works of art; securities; drugs; weapons; living animals or plants; refrigerated/perishable goods; household and personal effects; second hand goods; dangerous Goods per clause 4.5.3, and any valuable documents.

“**Freight Unit**” means the largest discrete item of freight being moved. For example, where a number of items are loaded and packaged on a pallet for the purposes of the freight movement then the Freight Unit is the pallet and all items on it.

“**Freight Warranty**” means the warranty given by Border Express, in accordance with this Agreement, that the Service provided will meet the Customer’s requirements and not result in a loss to the Customer.

“**Freight Warranty Limitation Amount**” is the prearranged maximum amount payable for compensation under the Freight Warranty.

“**Goods**” means the Goods accepted from, or on behalf of, the Customer together with any container, packaging, or pallets received therein. Without limiting the above, Goods include Goods either in transit or in Storage.

“**GST**” means the tax imposed or sought to be imposed by the GST Acts.

“**GST Acts**” means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and the related imposition Acts of the Commonwealth.

“**Hire Pallets**” means pallets owned by, and the subject of hire charges from, third party pallet providers. These are most commonly Chep and Loscam.

“**IATA**” means International Air Transport Association.

“**IOU**” means the normal meaning attaching to “I owe you”.

“**Lien**” means a right to retain possession of another Person’s property pending discharge of a debt.

“**Paperless Dispatch**” is where Border Express has agreed to allow the Customer to dispatch Goods to Border Express without the need to generate printed consignment notes at the point of dispatch.

“**Person**” includes any individual, firm, corporation, trust or government authority.

“**POD**” means Proof of Delivery.

“**Receiver**” means any person to whom Border Express delivers or is intending to deliver the Goods. Receiver has the same meaning as given to “consignee” under law.

“**Sender**” means any Person from whom Border Express receives the Goods.

“**Service**” means the whole of the operations undertaken by Border Express in connection with the Goods including but not limited to transport, Storage, picking, packing, loading and unloading and associated tasks to be provided by Border Express or its Sub-Contractor(s) for the Customer pursuant to this Agreement.

“**SSCC**” The SSCC (Serial Shipping Container Code) is the GS1 identification key for an item of any composition established for transport and/or storage which needs to be managed through the supply chain. The SSCC is assigned for the life time of the transport item and is a mandatory element on the GS1 logistic label using application identifier (00). GS1 DataBar™ symbols can carry more information and identify smaller items than the current EAN/UPC bar code.

“**Storage**” means the whole of the storage operations undertaken by Border Express for the Goods but does not include collection of the Goods or their delivery when taken out of store.

“**Sub-Contractor**” means and includes:

- i. any Person with whom Border Express may arrange for the carriage of any Goods the subject of this Agreement, and
- ii. any person who is now or hereafter a servant, agent, employee, or sub-contractor of any of the persons referred to above.

“**Transport Document**” means a document complying with the requirements for dangerous goods transport documentation in accordance with Part 11 of the ADGC.

3. Limitation of conditions

- 3.1. All Goods are carried or transported, and all Storage and other Services are performed by Border Express subject only to these conditions.
- 3.2. Border Express shall not be bound by any agreement purporting to vary these conditions unless such agreement is in writing and signed on behalf of Border Express by an authorised officer.
- 3.3. These Conditions are subject to alteration from time to time by Border Express with notice as provided in this Agreement.
- 3.4. Border Express, in addition to acting for itself, also acts as agent of, and/or trustee for, each of its servants, agents and Sub-Contractors so they are entitled to the full benefit of these Conditions, including any exclusions or limitations of liability, to the same extent as Border Express
- 3.5. Border Express is not a Common Carrier and will accept no liability as such.
- 3.6. Border Express continues to be subject to any implied warranty provided by the Act and any applicable State Fair Trading legislation if and to the extent that the said Act is applicable to this Agreement and prevents the exclusion, restriction or modification of that warranty.
- 3.7. It is expressly agreed that all the rights, immunity, exemptions from and limitations of liability granted to Border Express by the provisions set forth in this Agreement shall have, and continue to have, their full force and effect in all circumstances. This applies whether or not they occur in the course of performance by Border Express of the Agreement, in events which are contemplated or foreseeable by Border Express and/or the Customer, or in events which would constitute a fundamental breach of the Agreement or a breach of a fundamental term thereof.

4. Customer warranties

The Customer warrants that:

- 4.1. Compliance with laws
The Customer has complied with all applicable laws and regulations, including any relating to:
 - i. the nature, condition, packaging, Storage or carriage of the Goods, and
 - ii. workplace health and safety. Border Express reserves the ability to conduct site assessments and inspect relevant records relating to any sites that it is required to visit.
- 4.2. Description of Goods
The Goods will be fully and accurately described, including their nature, weight and measurements; in writing on the label, the consignment note, and in the Paperless Dispatch System (if used).

Border Express relies on the details of description, items, pallet space, quantity, weight, quality, value and measurement supplied by the Customer. Border Express cannot be taken to have verified these details and does not admit their accuracy.
- 4.3. Packaging
 - 4.3.1. The Customer is responsible for, and will ensure:
 - i. that Goods are packaged in a manner adequate to withstand the ordinary risks of carriage and Storage without any special care in handling or movement, and
 - ii. the conformity of containers, packaging and pallets with any requirements of the Receiver.
 - 4.3.2. Where Border Express considers the packaging is not suitable for the transport or Storage of Goods, it may, at its absolute discretion, repackage those Goods and levy an additional charge for that Service.
- 4.4. Goods delivered
If Goods are delivered to Border Express, the Person delivering the Goods is authorised to do so and to sign on behalf of the Customer.

4.5. Dangerous Goods

4.5.1. The Customer is entirely responsible for compliance with all applicable laws and regulations governing the transport and Storage of dangerous Goods (including the ADGC and, where applicable, the Civil Aviation Regulations, International Air Transport Association (IATA) Regulations and the International Maritime Dangerous Goods Code). This includes ensuring compliance with the notification, classification, description, labelling, transport, packaging and storage of all Goods with a dangerous Goods classification.

4.5.2. A person who offers dangerous goods for transport by road must describe the dangerous goods on a Transport Document and supply the Transport Document to the driver.

4.5.3. Goods provided to Border Express shall never include any Class 1 - explosives, Division 6.2 - infectious substances or Class 7 – radioactive substances per the ADGC. Goods will also not include flammable or other dangerous Goods other than as are specifically and fully described and disclosed as such by the Customer in writing to Border Express (including on any consignment note and Transport Document relating to the Service).

4.5.4. If, in the opinion of Border Express, the Goods, either by themselves or in conjunction with any other Goods, are liable to become dangerous, flammable, explosive, volatile, offensive or of a damaging nature, the Goods may be retained, destroyed, disposed of, abandoned or otherwise rendered harmless. Should this occur, the Customer agrees that compensation does not arise to the Customer and the action does not prejudice Border Express' rights to any charges, including the cost of such action.

4.6. Incompatible Goods

Goods provided to Border Express will not include Goods which may be liable to damage other Goods or property, other than as are specifically and fully described and disclosed as such by the Customer in writing to Border Express (including on any consignment note relating to the Service).

4.7. Authority to inspect

Border Express is entitled to open any document, wrapping, package or other container (of whatever description) in which the Goods are placed or carried to inspect the Goods either to determine their nature or condition or to determine their ownership or destination.

4.8. Title to Goods

The Customer is either the owner, or the authorised agent of the owner, of any Goods or property that are subject to this Agreement. By entering into this Agreement the Customer accepts these conditions for the Customer as well as for all other Persons on whose behalf the Customer is acting and all other Persons having an interest in the Goods.

5. Acknowledgements by Customer

The Customer acknowledges and agrees expressly that:

- i. No representations have been made by Border Express or anyone on behalf of Border Express in connection with the Services and that the Customer has agreed to this Agreement after completing any investigations and enquiries to its satisfaction.
- ii. There are no other conditions, understandings, agreements, warranties or representations (express or implied) in any way extending, defining or relating to this Agreement in respect of the Services.

6. Indemnity

The Customer indemnifies Border Express against any:

- charges or losses incurred by Border Express arising from any failure by the Customer to conform with the warranties or this Agreement,
- loss, damage, expense, penalty, fine or liability whatsoever arising from a breach of this Agreement, and
- liability whatsoever (without limiting the foregoing, whether arising as a result of any breach of this Agreement, negligence or wilful act or omission or misconduct on behalf of Border Express) in respect of the Goods to any person (other than the Customer) who claims to have, who has or who may hereafter have any interest in the Goods or any part thereof.

7. Right to refuse articles

Border Express reserves the right in its absolute discretion to refuse providing Service in relation to:

- i. articles or Goods for any Person, or
- ii. any class of articles or Goods.

8. Collection of Goods

The Customer must, unless otherwise agreed, give at least twenty four (24) hours notice to Border Express of its intention to collect Goods or have them collected or redelivered

9. Cancellations

9.1. The Customer agrees to notify Border Express when cancelling any order.

9.2. The time period required for notification will vary depending upon the nature of the Service requested. A minimum of four (4) hours is required unless otherwise agreed.

9.3. Where Border Express incurs costs due to the cancellation of an order, the customer agrees to compensate Border Express for these costs.

10. Equipment to facilitate the Service

Border Express may lease, hire or use any device to manage the Goods; or container or pallet in which or on which the Goods may be placed or packed. A Charge may be levied where this equipment is not expressly included in the standard Charges of the Customer.

11. Method of effecting the Service

11.1. If the Customer instructs Border Express in writing to use, or it is expressly agreed that Border Express will use, a particular method of handling or storing the Goods or a particular method of carriage, whether by road, rail, sea or air, Border Express will give priority to that method. However, if Border Express cannot conveniently adopt the method, the Customer hereby authorises Border Express to handle, Store or carry the Goods by another method or methods.

11.2. The Customer acknowledges and agrees expressly that Border Express may consolidate the Goods with other compatible Goods.

12. Insurance

Insurance cover is not provided by Border Express and it is the responsibility of the Customer to implement whatever insurance cover the Customer requires at the expense of the Customer.

13. Loss, damage, deterioration or misdelivery of Goods

13.1. Exclusion of liability

Subject to the warranties implied by statute which cannot be negated, and the terms and conditions of the Freight Warranty if applicable:

13.1.1. It is the responsibility of the Customer to ensure that the Service is sufficient and suitable for the Customer's purpose.

13.1.2. Border Express gives no warranty in relation to the Service.

13.1.3. The Goods are at the risk of the Customer and not Border Express. Unless expressly agreed in writing, Border Express excludes all liability, and the Customer releases and indemnifies Border Express:

- *against* all loss, cost and expense; including indirect or consequential loss;
- *from* any claim;
- *by* any Person, including the Customer;
- *in* tort (including negligence), contract, bailment or otherwise;
- *for* loss of, damage to, deficiency in, deterioration or contamination to any Goods or other property; or injury to or death of any Person;
- *arising* out of any acts or omissions of Border Express including any delay or other failure to supply the Service or otherwise comply with these Conditions.

13.1.4. The exclusions, releases and indemnities above extend to loss of profits, business or anticipated savings or any other indirect or consequential damage and to economic loss and even if Border Express knows they are possible or otherwise foreseeable.

13.1.5. Even if Border Express breaches any of the conditions of this Agreement (including a fundamental breach of contract or breach of a fundamental Condition), all the rights, immunities and limitations of liability in this Agreement continue to have their full force and effect in all circumstances.

13.2. Notice period for claims

13.2.1. If, notwithstanding the other provisions of this Agreement, Border Express is liable for damage to, loss of, or delay in the delivery of Goods or any part thereof, no claim in respect of such loss, damage or delay may be made unless given in writing to Border Express within seven (7) days of the Service being undertaken.

In the event of alleged failure to undertake or properly undertake the Service, the claim is to be made within seven (7) days of when the Service would, in the ordinary course of business, have occurred.

13.2.2. The failure to notify a claim within the above time is evidence of satisfactory performance by Border Express of its obligations.

13.2.3. Despite any other condition, Border Express will be discharged from all liability for loss or damage for the carriage or Storage of Goods unless an action is brought within twelve (12) months from the date of the Service or removal of the Goods from Storage.

The date of the Service shall be the date of the consignment note or, if there is no consignment note, the date on which Border Express took delivery of the Goods or, if neither is applicable, the date the Service was invoiced.

13.3. Legal protection

13.3.1. Commonwealth, State and Territory legislation provides consumers with guarantees and rights in relation to certain transactions concerning goods and/or services (for example see www.consumerlaw.gov.au). Any rights the Customer may have under such legislation shall apply notwithstanding any inconsistent provisions in these Conditions which shall be read down to the extent necessary to comply with such legislation and which shall otherwise apply to the fullest extent legally permissible.

- 13.3.2. Border Express excludes from this Agreement, all conditions, warranties and terms implied by statute, general law or custom.
- 13.3.3. Consumer legislation may imply certain conditions and warranties into this Agreement for the benefit of the Customer. To the extent permitted by law:
- such conditions and warranties are expressly excluded; and
 - The liability of Border Express for breach of a condition or warranty implied by the Act shall hereby be limited to one or more of the following (the choice being at the discretion of Border Express):
 - i. in the case of Goods:
 - a. the replacement of the Goods;
 - b. the supply of equivalent Goods;
 - c. the repair of the Goods;
 - d. payment of the cost of repairing the Goods or of acquiring the equivalent Goods; or
 - e. payment of the costs of having the Goods repaired.
 - ii. in the case of Services:
 - a. supply of the Services again; or
 - b. payment of the cost of having the Service supplied again.

14. Customer obligations – Charges

- 14.1. The Customer shall pay to Border Express all Charges due, including but not limited to:
- i. the Charges in accordance with the quotation provided or, if no quotation exists, calculated in accordance with the Customer's schedule of charges or, if the Customer does not have a schedule of charges, calculated in accordance with Border Express' schedule of charges;
 - ii. any Charges or expenses not recouped out of the proceeds of sale of the Goods under Clause 25;
 - iii. the cost, expense or loss to Border Express of destruction or disposal under Clauses 17 and/or 25 or of opening or inspecting under Clause 4.7;
 - iv. compensation for any cost, expense or loss to Border Express' property or any Person caused by the Goods;
 - v. any proportional additional Charges if the Goods are at any time re-quantified, re-weighted or re-measured;
 - vi. interest and fees associated with late payment.
- 14.2. The Customer shall indemnify Border Express against any taxes, duties, excises, fines, penalties, payments, costs or expenses for which Border Express may become liable or be obliged to pay. This includes any expenses and charges to comply with any law or regulation or any order or requirement made under them, or with the requirement of any market, harbour, dock, railway, shipping, customs, excise or warehouse authority or other Person.
- 14.3. So as to better secure the liability of the Customer, the Customer and guarantor charges all their freehold and leasehold interests in land in which the Customer and guarantor now has, or may have acquired during the currency of this Agreement. The Customer and guarantor consents to the lodging of a caveat by, or on behalf of, Border Express upon the certificate(s) of title to any land so held by the Customer and guarantor, as evidence of the charge. The Customer and guarantor further agrees to execute such further or better securities over such certificates of title in such form as the solicitors for Border Express may prescribe and will provide such security or securities within fourteen (14) days of being called upon to do so.

15. Goods and Services Tax (GST)

- 15.1. Any term used in this Agreement which has a defined meaning in the GST Acts shall have the same meaning in this Agreement as is ascribed to that term in the GST Acts.
- 15.2. The Customer acknowledges that the charges listed in Border Express's published rate schedule and any special rates, ancillary charges and charges for the Freight Warranty quoted by Border Express to the Customer do not include GST.
- 15.3. The Customer must pay to Border Express, in addition to any other consideration for that supply, an amount equal to the GST payable by Border Express in connection with that supply (as determined by Border Express in good faith and not in contravention of the law).
- 15.4. Border Express shall provide the Customer with a tax invoice detailing the GST payable.

16. Trading terms

- 16.1. For Customers without a credit facility, payment is required at the time the request is made for the Service to be performed. Service will not commence until payment has been confirmed.
- 16.2. For Customers with a current credit facility, Charges are due upon the issue of an invoice. However, an extended period, of 7 days from the date of the invoice, is allowed for the payment to be received by Border Express. This time period is strictly enforced.
- 16.3. For the purposes of clarification:
- 16.3.1. The date of the invoice is the last date of the invoice period and not the date the invoice is generated, dispatched or received.
 - 16.3.2. The days allowed for extended payment are total days, not working days.
 - 16.3.3. Payment must be received by the last day of the extended payment period. If the last day falls on a weekend or a public holiday then payment is to be made on an earlier day that is a working day.

- 16.4. The Customer may request Border Express to collect the Charges from a Person other than the Customer, eg the Receiver, provided the Person has a current credit facility. While Border Express will use its best reasonable endeavours to collect its charges from that Person, nothing in this Agreement shall release the Customer from liability for the Charges. Accordingly, every special arrangement to the effect that Charges shall be paid by any Person other than the Customer shall be deemed to include a stipulation that if such other Person does not pay the said Charges by the date set for payment, then the Customer shall pay the Charges.
- 16.5. Any credit facility, credit limit or time period for payment is an indication only of the intention of Border Express at the time. Border Express may vary or withdraw credit at any time at its discretion and without any liability to the Customer or any other party.
- 16.6. Refunds
The Customer agrees that Border Express does not give cash refunds.

17. Overdue accounts

- 17.1. An account is overdue when payment is not received within the Customer's trading terms.
- 17.2. A debt is not settled until payment funds are cleared.
- 17.3. All monies owing by the Customer shall become immediately payable if Charges are not paid in accordance with the Customer's trading terms.
- 17.4. The Customer acknowledges that Border Express may withdraw Service where accounts are overdue. This withdrawal of Service may be temporary or permanent.
- 17.5. The Customer agrees to reimburse Border Express for any costs associated with recovering debts not settled within trading terms.
- 17.6. Lien
- 17.6.1. Border Express has a general lien on the Goods, and on any other goods of the Customer, for all Charges due or which become due on any account whether for Storage of Goods or any other Services provided by Border Express.
- 17.6.2. If the Charges are not paid when due, or the Goods are not collected when so required or designated, Border Express may, without notice and, in the case of perishable Goods immediately:
- i. remove all or any of the Goods and store them in a place and manner as Border Express thinks fit at the Customer's risk and expense;
 - ii. open and sell all or any of the Goods as Border Express thinks fit and apply the proceeds to discharge the Lien and costs of sale without being liable to any Person for any loss or damage caused; and/or
 - iii. deduct or set-off from any moneys due from Border Express to the Customer under any contract, debts and moneys due from the Customer to Border Express under these conditions or under any contract.
- 17.6.3. This action will not prejudice any other rights which Border Express may have under this Agreement or otherwise at law.
- 17.7. Right to set off
The Customer agrees that Border Express may set off any amount it owes to the Customer with any amount owed to Border Express by the Customer. As per the definition, Customer includes any related entity.
- 17.8. Interest
Interest may be charged on late payments at the rate as set out from time to time in Section 100 of the Civil Procedure Act 2005 (NSW) (or any statutory or regulatory modification or re-enactment thereof) plus a rate of 2% per annum.

TRANSPORTATION OF GOODS

18. Labelling

It is the Customer's responsibility to appropriately label the Goods. This includes:

- i. clear labelling of destination, ideally in an SSCC approved bar code format, and
- ii. labelling freight on both of the loading faces where the Freight Unit is designed to be lifted using a forklift, ie both sides where a forklift can access the Freight Unit using the holes at the base of the Freight Unit.

19. Acceptance of Goods

It is agreed that the Person providing any Goods to Border Express for carriage is authorised to sign the consignment note for the Customer.

20. Paperless Dispatch

- 20.1. All Paperless Dispatch consignments must be dispatched using an Approved Dispatch System.
- 20.2. The data transfer to Border Express must occur before 5pm of the day of pickup.
- 20.3. Data in the transfer file must match the items picked up. Additional Charges, due to the need to check and adjust the data, may apply if they do not match.

- 20.4. Where consignments sent by Paperless Dispatch contain dangerous Goods (DG), the Customer must provide to Border Express a DG Transport Document in addition to all DG details being contained in the electronic data file.
- 20.5. The Customer must use its best endeavours to control and monitor the transfer of accurate data to Border Express on a daily basis and understands that the failure to do so may result in late delivery of the Goods.
- 20.6. The Customer will provide Border Express with after-hours contact numbers and authorises Border Express to contact those numbers in the event that data is not received by Border Express and corrective action is required to be taken.

21. Loading/unloading

The Customer is responsible for, and must supply appropriate labour, processes and/or machinery for, loading the Goods at the Sender's premises and unloading the Goods at the Receiver's premises. This includes the use of appropriate loading/unloading exclusion zones for use by Border Express drivers.

22. Use of Sub-contractor

The Customer authorises Border Express to arrange with a Sub-Contractor or Sub-Contractors for the carriage of any Goods the subject of this Agreement. Any such arrangement shall be deemed to be ratified by the Customer upon delivery of the said Goods to such Sub-Contractor or Sub-Contractors who shall thereupon be entitled to the full benefit of these conditions to the same extent as Border Express. In so far as it may be necessary to ensure that such Sub-Contractors shall be entitled, Border Express shall be deemed to enter into this Agreement for its own benefit and also as agent for the Sub-Contractor or Sub-Contractors.

23. Route of travel

The Customer authorises any deviation from the usual routes or manner of cartage of Goods.

24. Delivery of Goods

Timing of delivery

- 24.1. Where delivery is scheduled for a particular day, taking into account the number of agreed transit days, delivery may occur at any time during that day and the delivery deadline will be considered met if delivery occurs at any time on that day.

For example, Goods going from Melbourne to Sydney typically have one transit day. These Goods will be picked up during the day, dispatched to Sydney overnight and will be delivered during the course of the next day.

- 24.2. An additional Charge may be levied if delivery is required by a specific time during the day.

Place of delivery

- 24.3. Border Express is authorised to deliver the Goods at the address given to Border Express by the Customer for that purpose.
- 24.4. Border Express will deliver Goods at intermediate points rather than at the delivery address only where special arrangements have been made between the Customer and Border Express.
- 24.5. Border Express shall be conclusively presumed to have delivered the Goods to the Receiver if Border Express obtains from any person present at the delivery address, confirmation of receipt of the Goods by way of signature on the consignment note or any other acknowledgment of receipt of the Goods (including electronic proof of delivery) which proof shall be binding on the Customer or any other person liable to pay the Charges.
- 24.6. If the delivery address is unattended, Border Express may at its option deposit the Goods at the Receiver address (which shall be conclusively presumed to be due delivery hereunder) or store the Goods.

Inability to deliver

- 24.7. Border Express may store the Goods if delivery cannot otherwise be completed, for example a problem with the labelling, inappropriate site access, or the driver believes the process of delivery poses a risk of injury to themselves or another person.
- 24.8. In the event that the Goods are stored by Border Express, the Customer shall indemnify Border Express for all costs and expenses incurred in relation to such Storage and Border Express shall be at liberty to re-deliver them to the Sender or Receiver from the place of storage at the sole cost and expense of the Customer.
- 24.9. The Customer must, within 14 days of a written request, make arrangements, satisfactory to Border Express, to accept delivery of Goods held. If the Customer fails to make such arrangements, the Goods shall be deemed abandoned by the Customer. Border Express may dispose of such abandoned goods in any manner it deems fit. The costs of Storage and sale are to be at the Customer's account, and the net sale proceeds applied against any debt owed by the Customer.

25. Charges - Transport

- 25.1. Border Express' charges shall be considered earned as soon as the Goods are loaded and dispatched from the Sender's premises.
- 25.2. A fuel surcharge may apply in addition to the standard charges. The surcharge is based on movements in the price of fuel from a base date. This percentage increase is multiplied by the proportion of costs relating to fuel nationally for Border Express. The applicable surcharge rate shall be advised periodically to Customers. The workings of how the surcharge is calculated are available on request.

- 25.3. In addition to any quoted or standard charge, the Customer will pay any reasonable charge for delays, handling, Storage and subsequent delivery caused by Border Express not being able to collect or deliver Goods for reasons outside the reasonable control of Border Express, including:
- goods not being ready for collection at the appointed place or time, including incomplete labelling; or
 - a lack of adequate access or egress for the purposes of pick-up or delivery of Goods
- 25.4. Border Express may charge for the Service by weight or measurement.
- 25.4.1. A measure of 250 kilograms per cubic metre applies to all consignments unless otherwise agreed in writing. The charge will therefore be based on the greater of the deadweight or the cubed weight using the measurements of the consignment, i.e. length x width x height x 250.
- 25.4.2. Weight and measurement shall include packaging, including any pallet on which the Goods reside.
- 25.4.3. Measurements are to be the furthest points of the Freight Unit representing the length, width and height.
- 25.4.4. Each dimension (length, width, height) of Goods is measured in metres rounded up to one (1) decimal place.
- 25.4.5. Freight Units described as a "pallet" carry minimum dimensions of 1.2m (long) x 1.2m (wide) x 0.2m (high). Care should be taken to use an accurate description. Freight Units with a smaller length and width are commonly referred to as a "skid".
- 25.5. The Customer warrants the accuracy of any information given to Border Express and on which Border Express reasonably relies in assessing any quotation or estimate of the resources necessary to carry out the work.
- 25.6. Border Express may from time to time re-weigh or re-measure the Goods and charge proportional additional freight, a surcharge and an administration fee if they prove to be wrongly described.
- 25.7. Border Express seeks to undertake administrative tasks electronically. Activities outside of standard practices may incur an additional service fee. Without limiting the scope of these charges, they include activities such as:
- i. providing a quotation where the Customer could have facilitated the quotation themselves on-line;
 - ii. manually entering a consignment note where the Customer could have facilitated the entry themselves on-line;
 - iii. invoices and statements requested to be sent by post rather than electronically;
 - iv. providing a POD where the POD was available on-line for the Customer to access it themselves; and
 - v. suburb and postcode data, received electronically, that does not conform with the Australia Post master list (refer <http://auspost.com.au/apps/postcode.html>).

26. **Freight Warranty**

26.1. Coverage and qualification

The Service will be subject to the terms of the Freight Warranty unless the Customer is ineligible or has elected prior to commencement of the Service that Freight Warranty is not to apply.

To be eligible for the Freight Warranty, Customers must qualify as an acceptable recipient of this service based upon a gross trading value.

26.2. Claim parameters

26.2.1. Any claim under the Freight Warranty for damage to or loss of Goods must be made in writing on a claim form supplied by Border Express. The claim form is to be sent to the address details listed in this Agreement or emailed to: salesadministrators@borderexpress.com.au.

26.2.2. The Customer must notify Border Express in writing of any Claim within the following time limits:

- a. where the Receiver has indicated in writing on the consignment note that loss or damage has occurred in respect of the Goods, within seven (7) days of the Service being undertaken; or
- b. where the Receiver has acknowledged that the Goods have been delivered and received in good order and condition, within twenty four (24) hours from the date of delivery of the Goods to the Delivery Address; or
- c. in respect of claims for non-delivery, within seven (7) days of the Service being undertaken.

26.2.3. The Customer may only make one (1) claim per consignment note.

26.2.4. The Customer must attach to any claim form (either physically or electronically), documentary evidence acceptable to Border Express (for example, receipt, valuation or tax invoice) as proof of value of the Goods.

26.2.5. Claims will only be paid by Border Express after the Customer has paid all outstanding Charges in respect of the consignment which is subject to the claim. For clarity, Charges include the charge for movement of the freight and the applicable Freight Warranty charge.

26.2.6. Where the Customer makes a valid claim and there are outstanding amounts owed by the Customer to Border Express, Border Express reserves the right to pay the claim either directly to the Customer or as a credit to the Customer's account.

26.2.7. Border Express reserves the rights of salvage on all goods where a claim has been paid.

26.3. Limitations

The Freight Warranty is subject to the following limitations:

- a. Claims are limited to loss of or damage to the Goods only. For the avoidance of doubt, the Freight Warranty does not cover any consequential loss or damage suffered by the Customer as a result of loss or damage to the Goods.
- b. The maximum amount that may be claimed from Border Express under the Freight Warranty is the lesser of:
 - i. the Freight Warranty Limitation Amount; and
 - ii. the cost price of the Goods, as supported by documentary evidence acceptable to Border Express (for example receipt, valuation or tax invoice from the seller of the Goods).
- c. GST and freight charges relating to the consignment covered by the Freight Warranty shall not be included in the calculation of any amount payable under the Freight Warranty in respect of the Goods and any payment by Border Express arising out of any Claim made by the Customer will be exclusive of GST.
- d. Where a claim has been paid in full for goods damaged, Border Express reserves the right to take possession of the goods as salvage and to dispose of such Goods as it sees fit.

26.4. Exclusions

Border Express will not be liable for any claims made by Customers in any of the following circumstances:

- a. Where the Customer has not selected a level of Freight Warranty to apply to the consignment or has not paid the Freight Warranty charge;
- b. Where the Customer fails to submit the claim to Border Express within the relevant time limits
- c. Where Border Express is in possession of an unendorsed proof of delivery form for the consignment;
- d. Where the Goods consigned are Excluded Goods;
- e. Where Border Express in its reasonable opinion considers the Packaging of the Goods to be inadequate for road transportation;
- f. Where the Goods are determined by Border Express to have been defective prior to the Service;
- g. Where damage, mechanical failure or other operational defect in the Goods could not, in the reasonable opinion of Border Express, have been caused by the Service;
- h. Where Border Express fails, delays or is unable to carry out its obligations under this Agreement due to strikes and/or lockouts (whether of Border Express' own employees or those of others and whether or not Border Express could have avoided the same by acceding to the demands of the employees responsible for such action), acts of God, war, terrorism, fire, flood, embargo, litigation, acts of government or any agency instrumentality or any political subdivision thereof or any other cause beyond the control of Border Express;
- i. Where Border Express has not been responsible for the total Service of the Goods;
- j. Where the Goods have not been packed in the original manufacturer's packaging or the equivalent;
- k. Where the delivery address is a post office box, a roadside drop or postal mail box.

27. Pallets

27.1. Border Express will not take responsibility for Hire Pallets unless there is a written agreement between Border Express and the Customer stating that different pallet trading rules apply.

27.2. Plain pallets are not returned or exchanged.

27.3. Transaction where **Sender** does not have a pallet account

27.3.1. Pickup by Border Express

If the Sender does not have a pallet account then Border Express will pick up the palletised freight but will not exchange pallets. It will be the Sender's responsibility to recover the Hire Pallets from the Receiver.

27.3.2. Delivery to a Border Express branch, ie no pickup by Border Express

Border Express will not exchange Hire Pallets when Hire Pallets are delivered directly to a Border Express branch.

Past experience has shown that when Hire Pallets are exchanged with third parties, eg couriers, in the belief that the Customer does not have a Hire Pallet account, a transfer docket often appears within a few days thereby resulting in a pallet imbalance.

The Customer must contact a Border Express pallet officer after the delivery to affect an exchange.

27.3.3. Delivery by Border Express

Where a pickup is per 27.3.1, the delivery will be made without an exchange as accounting for Hire Pallets is a matter between the Sender and Receiver.

27.4. Transaction where **Sender** has a pallet account and **Receiver** does not have a pallet account

27.4.1. Pickup by Border Express

Hire Pallets are to be transferred from the Sender to Border Express.

27.4.2. Delivery by Border Express

Hire Pallets are exchanged on a one for one basis upon delivery. No IOU or part exchange is permitted. Where an exchange pallet is not available, the pallet transfer from the Sender will be rejected thereby leaving the Hire Pallets on the Sender's pallet account.

27.4.3. Pickup from a Border Express branch ie no delivery by Border Express

Where Hire Pallets are picked up directly from a Border Express branch, either:

- a Hire Pallet must be exchanged, or

- the Receiver must hand unload the pallet into their vehicle and leave the Hire Pallet with Border Express.
- 27.5. Transaction where Sender and Receiver both have a pallet account
Pallets must be transferred direct from the Sender to the Receiver. Border Express will not accept transfers onto its account where the Receiver has a pallet account.
- 27.6. Delay Days on pallet accounts
- 27.6.1. Acceptable days delay
Transfers **onto** Border Express' sending branch pallet account are to be based upon a minimum of 35 days delayed transfer.
- 27.6.2. Applying Delay Days
Where the Delay Days applied by the Receiver exceed the Delay Days of the Customer, Border Express will adjust the transfer effective date on the pallet transfer docket so that it represents the Receiver's Delay Days plus the transit time as detailed in the Customer's rates.
- 27.6.3. Receiving Delay Days
No Delay Days can be applied by the Receiver to the Border Express pallet account.
- 27.7. Documentation for pallet transfers
- 27.7.1. Transfer of Hire Pallets onto an account (Pickup)
- a. Number of transfer docket copies
For the transfer of Hire Pallets onto another account, the Sender must provide the Border Express driver with the following copies of the pallet transfer docket:
- i. For Sender to Border Express pallet account in the sender's State – one copy.
 - ii. For Sender to Receiver's pallet account (Customer own pallets) – two copies (one for Border Express and one for the Receiver).
- b. Cross referencing of transfer docket
To be able to reconcile the transfer docket to Services provided, the consignment note number(s) need to be recorded as follows:
- i. Where the transfer docket relates to one consignment – enter the consignment note number in the reference field of the transfer docket, or
 - ii. Where the transfer docket relates to multiple consignments – enter "Refer attached" in the reference field of the transfer docket and attach a manifest of consignment notes to the docket.
- 27.7.2. Transfer of Hire Pallets off Border Express' account (Delivery)
Border Express will transfer Hire Pallets off the Border Express pallet account based upon the following:
- a. Normal transfer, ie Chep or Loscam docket
The Border Express driver will provide the Receiver with two copies of the pallet transfer docket. The Receiver is to sign both copies and give one back to the driver.
- b. Pallet transfer authority
The Receiver must provide the Border Express driver with a pallet transfer authority (in a format authorised by Border Express) in lieu of a pallet transfer docket.
- 27.8. Miscellaneous
- 27.8.1. Loan pallets
Border Express does not provide Hire Pallets in advance on loan.
- 27.8.2. Charge for Hire Pallets not recovered
A charge of \$50 per pallet will be levied on the Customer where Border Express can not balance the Hire Pallets used in providing Services for that Customer. For example, through an inability to retrieve pallets or complete a pallet transfer.
- 27.8.3. Variations
Matters of variation to this Agreement relating to pallets should be directed to Border Express' National Pallet Manager for written confirmation.
- 27.8.4. Pallets as Goods
The movement of pallets to replenish or clear Customers' stock holdings will be regarded as a normal freight movement and a charge is to be raised according to the Customer's rates.

STORAGE AND HANDLING OF GOODS

28. Right to store Goods

- 28.1. Border Express may refuse, at its discretion, to carry out Storage of the Goods.
- 28.2. Border Express is authorised to store the Goods in any place, store or warehouse and to remove the Goods from one place, store or warehouse to another without cost to Border Express.
- 28.3. Border Express, as principal or agent, may arrange for Storage of the Goods by any Sub-Contractor on any terms.

29. Removal of stored goods

- 29.1. Goods are stored at the pleasure of Border Express.
- 29.2. Border Express may give notice at any time in writing to the Customer requiring the Customer to remove Goods from Storage. The Customer must pay any Charges outstanding and then remove the Goods within thirty (30) days of the date of notice.
- 29.3. If the Customer does not comply with the notice to remove Goods, Border Express may (without prejudice to any other rights or obligations which it may have under this Agreement or otherwise at law) sell all or any of the Goods and apply the net proceeds against any amount owing by the Customer to Border Express.

30. Pick Bays

Pick Bays will be charged for a predetermined total number of bays occupied agreed with by the client. This can be varied at any time by the Client with fourteen (14) days' notice.

31. Order Close Off

All orders for next working day dispatch are to be received by 5:00 pm, unless alternate arrangements are made in writing.

32. Pallets

- 32.1. Storage will be charged for each week or part thereof for each standard pallet. This will be calculated on opening balance plus receipts.
- 32.2. A standard pallet is no greater than 1.4 metres high x 1.2 metres depth. Any pallet which exceeds this dimension will be restacked, if practicable, to be within standard dimensions. Charges will apply for the time taken and will be charged at our standard labour rates. Any pallet not able to conform to a standard pallet will be charged as multiple standard pallet units.

33. Charges – Storage and handling

33.1. Stock taking

Unless otherwise agreed, all counting of stock in a specific stock take will occur at our standard labour charge. If provision of lifting equipment is required this will be charged according to our standard rates of charge. Transport to and from the site of lifting equipment will be charged at cost plus 20%.

33.2. Charges

Border Express' Charges are earned as soon as the Goods are delivered to Border Express and whether redelivered to the Customer or not and whether damaged or not.

34. Overdue Charges

If any Charges are overdue for seven (7) days, Border Express:

- does not have to make the Goods available to any Person, and
- may at any time require the Customer to remove the Goods.

35. Border Express' Liability

The Customer acknowledges the Goods are stored entirely at the risk of the Customer, and Border Express accepts no liability for the Goods whatsoever.

No warranty is given by Border Express that the Goods will be stored in a location secure from theft.

36. Claims

- 36.1. If Border Express is liable for damage to or loss of the Goods or any part of the Goods, no claim for the loss or damage may be made unless notice of the claim is lodged in writing within 7 days of the date of removal of the Goods from Storage.
- 36.2. The failure to notify a claim within the above time is evidence of satisfactory performance by Border Express of its obligations.
- 36.3. Despite any other condition Border Express will be discharged from all liability for loss or damage or the Storage of the Goods unless an action is brought within twelve (12) months of the date of removal of the Goods from Storage.

GENERAL CONDITIONS APPLICABLE TO THIS AGREEMENT

37. Force majeure

- 37.1. Non-performance by either party caused by acts of god, government, fire, riot, war, strike, natural catastrophe or other circumstances beyond the control of the party, will be excused as long as the hindrance to performance exists; provided however, Border Express may terminate this Agreement if such hindrance occurs over a forty-five day period or more than thirty days over a six month period.
- 37.2. If either party is affected by a Force Majeure event it will promptly notify the other and the parties enter into good faith discussions to agree to alternative arrangements that are fair and reasonable.

38. Severability

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect other provisions of the Agreement and this Agreement shall be constructed as if it did not contain the invalid, illegal or unenforceable provision.

39. Dispute resolution

39.1. Parties to attempt resolution

It is the desire of the parties to resolve a Dispute as quickly and with as minimal cost as possible. The parties must use their best endeavours to resolve the Dispute between themselves without delay.

In the event of a Dispute not being resolved by the usual staff of the parties, a representative of the owners or a very senior executive of the parties, plus any other persons invited by these persons, must meet to attempt to resolve the Dispute within fourteen (14) days of written notice being received for such a meeting.

39.2. Mediation

39.2.1. If the parties cannot resolve the Dispute within seven (7) days following the parties meeting due to a formal request to do so, either party may require, by written notice, the Dispute to be referred to mediation.

39.2.2. The mediator to be appointed must be agreed by the parties within five (5) days of the written notice, but failing agreement, appointed by the President for the time being of the Institute of Arbitrators and Mediators Australia (IAMA).

39.2.3. Mediation must occur within fourteen (14) days of selection or nomination of a mediator, on such procedural terms as agreed or, failing agreement, as stipulated by the mediator.

39.2.4. The costs of any mediation must be shared equally by the parties, other than their own costs of them and their advisers considering and attending.

39.2.5. Any determination made by the mediator shall be advisory in relation to the Dispute. Nothing in this clause will be interpreted to prevent the parties from agreeing that the determination is or will be binding.

39.2.6. Unless a party has complied with this clause, that party may not commence court proceedings or arbitration relating to a Dispute except where that party seeks urgent interlocutory relief in which case that party need not comply with this clause before seeking relief.

40. Termination of Agreement

40.1. This Agreement will continue until terminated, using appropriate notice, by Border Express or the Customer.

40.2. A minimum of one month's notice must be given unless a shorter period is mutually agreed.

41. Personal Properties Securities Act 2009 (Cth) (PPSA)

39.1 You (and any guarantor) consent to Border Express effecting and maintaining a registration on the register (in any manner Border Express consider appropriate) in relation to any of the goods Border Express carry for you under these terms and conditions in the event that you fail to pay the carriage costs and any other monies owing relating to the goods and you agree to sign any documents and provide all assistance and information to Border Express required to facilitate the registration and maintenance of any security interest. Border Express may at any time register a financing statement or financing change statement in respect of a security interest. You waive the right to receive notice of a verification statement in relation to any registration on the register of a security interest in respect of the equipment. Your agreement to this clause constitutes an intention to create or provide for a security interest in the goods pursuant to Section 8 (1) (a) of the PPSA.

39.2 You (and any guarantor) undertake to do anything (in each case including executing any new document or providing any information) that is required by Border Express.

- i. So that Border Express acquires and maintains one or more perfected security interests under the PPSA in respect of this Agreement;
- ii. To register a financing statement or financing change statement; and
- iii. To ensure that the security position of Border Express and rights and obligations, are not adversely affected by the PPSA.

42. Bankruptcy and Insolvency

The Customer shall be in default of these Terms if it commits an act of bankruptcy, insolvency, appoints an insolvency practitioner and/or calls a formal meeting of creditors.

43. Director's Guarantee

If the Customer is a company or trust, then the company or trust agrees that it will procure its directors or trustees to sign a Deed of Guarantee and Indemnity with Border Express to secure the charges incurred by the Customer from time to time.

44. Governing Law

These Conditions shall be governed and construed in accordance with the laws of the State of New South Wales and the parties submit to the exclusive jurisdiction of the Courts of that State. Any proceedings against Border Express shall be brought in that State and not elsewhere.

45. Notice

45.1. The Customer shall notify Border Express in writing of an address to which Border Express may forward any notice to the Customer, and shall promptly notify Border Express in writing of any change of such address.

45.2. Any notice to be given shall be sufficiently given if:
a. Given personally to a person of appropriate seniority; or
b. Sent by ordinary post:

- In the case of Border Express to the Customer, to the last address of the Customer known to Border Express;
 - In the case of the Customer to Border Express, to the registered office of Border Express.
- c. Sent by electronic mail (email):
- In the case of Border Express to the Customer, to the last email address of the Customer known to Border Express;
 - In the case of the Customer to Border Express, to info@borderexpress.com.au.

45.3. Any notice sent by ordinary post shall be deemed to be delivered two working days after the date of postage.

45.4. Notification of amendment to this Agreement may be posted on the Border Express web site.

Accepted in agreement with our Conditions of Contract	
On behalf of _____	ABN: ____ - ____ - ____ - ____ - ____
Name: _____	Title: _____
Signature: _____	Date: ____ / ____ / ____
On behalf of Border Express Pty Ltd	ABN: 82 000 533 880
Name: _____	Title: _____
Signature: _____	Date: ____ / ____ / ____

SCHEDULE 1

Item

1. Commencement date

The agreed date for commencement of this Agreement is the ____ (day) of _____ (month), 20__ (year).

2. Primary Customer

Legal Name: _____

Australian business Number (ABN): _____

Registered Address: _____

Address for correspondence: _____

(leave blank if same as above) _____

Email address for correspondence: _____

Telephone: _____

Facsimile: _____

3. Special conditions

SCHEDULE 2 - GUARANTEE, INDEMNITY AND CHARGE

To BORDER EXPRESS PTY LTD:

1. **We guarantee** payment to Border Express of all monies and performance of all obligations including any past, present and/or future indebtedness and/or obligation of the **Customer** and/or any of us arising from any past, present and/or future dealings(s) with Border Express.
2. **We indemnify** Border Express against all loss and/or damage arising from any past, present and/or future dealing(s) with the Customer and/or any of us including all legal costs on an indemnity basis.
3. **We jointly and severally agree:**
 - a. That this Agreement constitutes a "security agreement" for the purposes of the *Personal Property Securities Act 2009* (CTH) ["PPSA"], that Border Express has and/or will have a "security interest" in respect of all services provided or to be provided by Border Express whether present or after acquired for the purposes of the PPSA and that PPSA Section 125, 130, 132(3)(d), 132(4), 135 & 157 shall not apply to any such security interest;
 - b. To pay to a stake-holder nominated by Border Express the amount which Border Express certifies is payable before being entitled to dispute whether or not that amount is payable;
 - c. That this Agreement shall remain effective notwithstanding any conduct or event (including any arrangement or deed of company arrangement whether or not agreed to by Border Express) which but for this clause may have released or varied any obligation of the Customer and/or any of us and even if the Customer and/or any of us execute(s) in favour of Border Express any later agreement, guarantee and/or security;
 - d. That any payment which is subsequently avoided by any law relating to insolvency shall be deemed not to have been paid;
 - e. That we sign both in our personal capacity and as Trustee of every trust of which we are trust; and
 - f. To notify Border Express within 7 days of any material change in the legal structure and/or management of the Customer including:
 - i. any sale or disposition of any part of the business of the customer and/or of any trust of which the Customer is Trustee;
 - ii. any change in director, shareholder, management, partnership and/or trusteeship;
 - iii. any new charge, mortgage and/or security given to any supplier and/or financier; and/or
 - iv. any involvement in any franchised business in any capacity.
4. **Charge:** We charge in favour of Border Express with payment of all monies owed to Border Express by the Customer and/or any of us (whether pursuant to this Agreement or otherwise) all our estate and interest in any land and/or in any other assets whether tangible and/or intangible in which we now have any legal and/or beneficial interest and/or in which we later acquire any such interest and we agree to execute on request a registrable mortgage in favour of Border Express.
5. **Consideration:** Border Express agrees at its discretion to grant credit from time to time to the Customer and/or to forbear from taking any legal action against the Customer for the time being.
6. **Proper law:** We agree that this Agreement and any claim or dispute between Border Express, the Customer and/or any of us shall be governed by the law applicable in the State nominated by Border Express and we agree to submit to the jurisdiction of the appropriate Court nominated by Border Express in the capital city of that State. If no State is nominated then New South Wales shall be deemed to be the nominated State.
7. **Several guarantors:** If more than one of us is named and/or intended to sign as **Guarantor(s)** we each agree to be bound and liable for the full amount owed to Border Express even if all of us don't sign and whether or not any amount is extinguished and/or comprised in any way. Border Express may make any arrangement and/or compromise with any of us, obtain additional guarantees, indemnities and/or securities from any party and/or release and/or compromise with any of us and/or any other party without otherwise affecting our joint and several liability to Border Express. Neither Border Express nor the Customer is required to sign this Agreement.
8. **Credit limit:** Any credit granted by Border Express to the Customer is at the discretion of Border Express and shall not affect our joint and several liability.
9. **Privacy Act:** We hereby consent to Border Express (subject to its obligations under the *Privacy Act 1988* (Cth)) at any time collecting, using and/or disclosing commercial and/or consumer information about us:
 - a. which relates to but is not limited to identity, credit history and/or solvency;
 - b. for the purpose(s) of assessing creditworthiness, risk and/or solvency and/or enforcing any rights of Border Express; and/or
 - c. by arrangement with any authorised agent(s), credit provider(s) and/or reporting services(s) and the like (including any banker(s), the ASIC, ITSA etc). Border Express may refuse to grant credit if any information to which it is entitled is inaccurate or not provided and otherwise agrees to allow us access to all such information. This Agreement may be produced as conclusive evidence of our consent.
10. **Severability:** Any part of this Agreement shall be severable without affecting any other party of this Agreement.
11. **Acknowledgement of liability:** We agree that:
 - a. The Customer is indebted to Border Express for an amount which is not less than the sum noted below as at the date noted below;
 - b. Our guarantee is unlimited;
 - c. Border Express does not need our consent in providing credit in excess of any credit limit sought and/or imposed;
 - d. Border Express may be owed more than any acknowledged debt amount; and
 - e. All obligations under this Agreement are additional to and do not (save to the extent of any inconsistency) invalidate any obligations any of us may have under any other agreement with Border Express.

12. Definitions:

- a. "Border Express" means each of **THE PARTIES** listed below as "**BORDER EXPRESS**" jointly and severally;
- b. "We" and "us" means any and all of **THE PARTIES** listed below as the "**Customer**" (or if there is no entry the party described as the Customer on Page 1 of any applicable Application for Commercial Credit Account and security Agreement or the like), all related and/or associated companies, trusts and/or other entities, all successors and/or assigns, each trust of which the Customer is Trustee (unless expressly excluding in writing), any party or parties who acquire, have any beneficial interest in and/or conduct any part of the business of the Customer or any trust of which the customer is Trustee *until notice is given pursuant to sub-clause 3(f) of this Agreement) and each member of any franchise/network group of which the Customer is a member (whether as franchisee, franchisor or otherwise).

- 13. **Demand:** We agree that our liability to Border Express arises without any demand by Border Express upon the Customer and/or any of us.
- 14. **Stamp Duty:** We agree to pay any stamp duty applicable to this Agreement and/or to any document created pursuant to clause 4 of this Agreement.
- 15. **Attornment:** To give effect to our obligations arising under this Agreement we irrevocably appoint any lawyer for Border Express as attorney for each of us.
- 16. **Read and understood:** We have each read and understood this document before signing it (*refer below) and have signed it freely and voluntarily.

THE PARTIES:

A. BORDER EXPRESS: Border Express Pty Ltd ACN 000 533 880 and/or associated companies, trusts and/or other entities and/or any successors and/or assigns whether trading as "Border Express" and/or otherwise.

B. Customer:

	(**PLEASE COMPLETE – refer below)
 ACN (if applicable).....

C. Guarantor(s)

	(Full name of first Guarantor – please print)
	(Full home address of first Guarantor – please print)
	(Full name of second Guarantor – please print)
	(Full home address of second Guarantor – please print)

D. Current debt Acknowledged

	\$
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DATED:

SIGNED in accordance with sub-clause 3(e) of this agreement by the Guarantor(s) in the presence of a witness:

1.
(Signature of first Guarantor)

2.
(Signature of second Guarantor)

Signature of Witness	Signature of Witness
.....

Name of Witness – please print	Name of Witness – please print
.....