

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



All dealings for the provision of the Services by Border Express are subject to the following Conditions unless otherwise expressly agreed in writing:

CONDITIONS COMMON TO CARRIAGE, CREDIT, HANDLING AND STORAGE OF GOODS

1. Agreement commencement

This Agreement shall commence on the earlier of the date in Schedule 1 (if completed) or the date the Service is first provided by Border Express under this Agreement. These Conditions are accepted by the Customer ordering the Services.

2. Definitions

For the purposes of this document:

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

“**ACC**” 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 “Border Express Online” and “TSLite”), or a system approved by Border Express.

“**Border Express**” means Border Express Pty Ltd (ABN 82 000 533 880) and any “related entity” (as that term is defined in the *Corporations Act 2001.*), its servants, agents and/or any successors or assigns.

“**Charges**” mean amounts as stated under the rates schedule or other agreed rates; any surcharges and any tax including a GST levied directly on a transaction or supply under these conditions; fuel surcharge; Freight Warranty charge; amounts or liabilities owing to Border Express under this Agreement; any expenses and charges incurred by Border Express 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; and Border Express’ reasonable costs of undertaking tasks in relation to the actual or anticipated provision of the Services (if not otherwise provided for).

“**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 as lawfully varied from time to time.

“**Cubed Weight**” is the cubic area (linear length x width x height) of the Freight Unit (not the individual items making up the Freight Unit) multiplied by a conversion factor

“**Customer**” means the Person at whose request or on whose behalf Border Express is undertaking the Service. Customer includes a Customer’s 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 a duly authorised 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.

“**Day**” means 7:30am to 5:30pm.

“**Deadweight**” means the motionless weight of the Goods

“**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 Goods (as that term is defined in the PPSA) 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 approved by Border Express, such as 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.

"PPSA" means the *Personal Property Securities Act (2009)* (Cth) and its regulations (as amended from time to time)

"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).

"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 any Person who Border Express may arrange to provide the Services, and any Person that Person may arrange to provide the Service.

"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 (or such Sub-Contractor as may be used by Border Express or Border Express' Sub-contractor) subject only to these Conditions.
- 3.2. Border Express and any Sub-contractor are entitled to the full benefit of these Conditions, including any exclusions or limitations of liability.
- 3.3. Border Express is not a Common Carrier and will accept no liability as such.
- 3.4. Border Express continues to be subject to any implied warranty provided by the ACC and any applicable State Fair Trading legislation if and to the extent that the said ACC is applicable to this Agreement and prevents the exclusion, restriction or modification of that warranty.
- 3.5. It is expressly agreed that all the rights, immunity, waivers, indemnities, exemptions from and limitations of liability granted to Border Express by the provisions set forth in this Agreement shall survive any lawful or unlawful termination of this Agreement by either party or by operation of law, and continue to have, their full force and effect in all circumstances.
- 3.6. The Customer and Border Express agree that the terms of this Agreement may be altered unilaterally by Border Express giving 30 days written notice. Clerical errors are subject to correction without notification. The Customer has the right to terminate the Agreement, within the notice period, if it does not agree with the changes proposed by Border Express and the changes are materially detrimental to the Customer.

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 (including chain of responsibility obligations under the *Road Transport Compliance and Enforcement Act 2006* (Cth)), 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 at all times be fully and accurately described, including their nature, weight and measurements; including in writing on the label, the consignment note, in quotation requests and in the Paperless Dispatch System (if used).
- 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 has complied 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 warrants that it is either the owner of the Goods, or the duly authorised bailee or agent of such owner for the purposes of entering into this Agreement.

5. Warranties by Border Express

Border Express warrants that it complies with all applicable laws and regulations relating to the Services.

6. Acknowledgements by Customer

The Customer acknowledges and agrees that no representations have been made by 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.

7. 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,
- 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, and
- any costs and expenses of enforcement, or defending, its rights under this Agreement (including any and all mercantile agents fees and legal costs on an indemnity basis).

8. 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.

9. 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.

10. Cancellations

10.1. The Customer agrees to provide Border Express with no less than four (4) hours' notice (unless otherwise agreed) when cancelling any order.

10.2. Where Border Express incurs Charges due to the cancellation of an order, the Customer agrees to compensate Border Express for these Charges.

11. Equipment to facilitate the Service

Border Express may use any property, equipment or device to provide the Services. A Charge may be levied where this property, equipment or device is not expressly included in the standard Charges of the Customer.

12. Method and timing of effecting the Service

12.1. If the Customer instructs Border Express in writing to use a particular method of handling or storage, route or time window in providing the Services, Border Express will give priority to that instruction. However, if Border Express cannot conveniently do so, the Customer authorises Border Express to provide the Services by another method, route and/or time convenient to Border Express.

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

13. **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.

14. **Loss, damage, deterioration or misdelivery of Goods**

14.1. **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:

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

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

14.1.3. 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.

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

14.1.5. The Customer irrevocably waives any entitlement to allege or claim (except if permitted by Border Express) and hereby agrees to forever hold Border Express harmless from any apportionment which may be sought against Border Express, under either Part 4 *Civil Liability Act (2002) (NSW)* or any equivalent law in any other state or otherwise.

14.2. **Notice period for claims**

If 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, any claim must be given in writing to Border Express within seven (7) days of when the Service would, in the ordinary course of business, have occurred.

Border Express will be discharged from all liability for loss or damage for the Service 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.

14.3. **Legal protection**

14.3.1. Subject to the consumer guarantees provided for in the ACC or other legislation (including the Australian Consumer Law), Border Express does not give any express or implied warranties and makes no representations in relation to its Services including quality, completeness, accuracy, suitability, acceptability or fitness for purpose in relation to its Services.

14.3.2. The Customer should make and rely upon the Customer's own assessments and enquires to verify the accuracy of the information provided by Border Express.

14.3.3. Border Express' liability under any non-excluded implied warranty is limited to:

- (a) In the case of Services; the cost of having the Services supplied again; and
- (b) In the case of Goods; the lowest of the cost of replacing the Goods, acquiring equivalent Goods or having the Goods repaired.

15. **Customer obligations – Charges**

The Customer shall immediately pay to Border Express all Charges as and when they become due and upon notice by Border Express.

16. **GST**

16.1. Unless a contrary intention appears, any term used in this Agreement shall have the same meaning in this Agreement as defined in the GST Acts.

16.2. The Customer acknowledges that the charges listed in Border Express' 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.

16.3. 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).

17. Trading terms

- 17.1. 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.
- 17.2. For Customers with a current credit facility, Charges are immediately due upon the issue of an invoice. However, an extended period is allowed for cleared funds to be received into the bank account of Border Express within seven (7) calendar days of the date of the invoice. This time period is strictly enforced.
- 17.3. For the purposes of this clause, the date of the invoice is the last date of the invoice period as applied by Border Express to the Customer and not the date the invoice is generated, dispatched or received.
- 17.4. 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.
- 17.5. The Customer may request Border Express to collect the Charges from a Person other than the Customer. Failure by such Person to pay, or if such payment is later void or voidable, then the Customer's obligation to pay shall be deemed to have continued.
- 17.6. 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, suspend or discontinue provision of credit or the Services at any time at its discretion and without any liability to the Customer or any other party.
- 17.7. This Agreement is a "Security Agreement" for the purposes of the PPSA, and the security interest/s attaching under it apply to all supplies from time to time of the Services. Each supply of the Services is not a separate Security Agreement for the purposes of the PPSA.
- 17.8. The Customer agrees that Border Express does not give cash refunds.
- 17.9. All monies owing by the Customer shall become immediately payable if Charges are not paid in accordance with these terms.
- 17.10. Border Express is granted and may exercise a Lien over the Goods until all monies are paid.
- 17.11. 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.
- 17.12. Interest may be charged on late payments at the rate provided for from time to time by the Supreme Court (NSW) for the purposes of 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, or at a rate of 10% per annum until payment in full, whichever is the greater.

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. Paperless Dispatch

- 19.1. All Paperless Dispatch consignments must be dispatched using an Approved Dispatch System.
- 19.2. The data transfer to Border Express must occur before 5pm of the day of pickup.
- 19.3. 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.
- 19.4. 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.
- 19.5. 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.
- 19.6. 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.

20. 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.

21. Delivery of Goods

- 21.1. 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.
- 21.2. An additional Charge may be levied if delivery is required by a specific time during the day.

- 21.3. Border Express is authorised to deliver the Goods to the Receiver's address given to Border Express by the Customer for that purpose. If such delivery address is unattended, Border Express may at its option deposit the Goods at such address (which shall be conclusively presumed to be due delivery hereunder) or store the Goods.
- 21.4. 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.
- 21.5. 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.
- 21.6. Border Express may at its option store the Goods and levy Charges against the Customer if delivery cannot be completed as agreed, 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.
- 21.7. Border Express shall be at liberty to re-deliver the Goods to the Sender or Receiver from the place of storage at the sole cost and expense of the Customer.
- 21.8. The Customer must, within 7 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, then without prejudice to any other rights of Border Express, 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.

22. Charges - Transport

- 22.1. Border Express' charges shall be considered earned as soon as the Goods are loaded and dispatched from the Sender's premises.
- 22.2. A fuel surcharge (as advised from time to time) may apply. The workings of how the fuel surcharge is calculated are available on request.
- 22.3. The Customer will pay any 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.
- 22.4. Border Express may charge for the Service by weight or measurement.
 - 22.4.1. A measure of 250 kilograms per cubic metre applies to all consignments unless otherwise agreed in writing. The charge will 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, rounded up to the nearest whole kilogram.
 - 22.4.2. Weight and measurement shall include packaging, including any pallet on which the Goods reside.
 - 22.4.3. Measurements are to be the furthest points of the Freight Unit representing the length, width and height.
 - 22.4.4. Each dimension (length, width, height) of Goods is measured in metres rounded up to one (1) decimal place.
 - 22.4.5. 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".
- 22.5. 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.
- 22.6. Border Express 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>).

23. Freight Warranty

23.1. 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.

23.2. Claim parameters

- 23.2.1. 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.
- 23.2.2. The Customer must notify Border Express in writing of any Claim within the following time limits:
- 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
 - 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
 - in respect of claims for non-delivery, within seven (7) days of the Service being undertaken.
- 23.2.3. The Customer may only make one (1) claim per consignment note.
- 23.2.4. 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.
- 23.2.5. 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.
- 23.2.6. 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.
- 23.2.7. Border Express reserves the rights of salvage on all goods where a claim has been paid.

23.3. Limitations

The Freight Warranty is subject to the following limitations:

- 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.
- The maximum amount that may be claimed from Border Express under the Freight Warranty is the lesser of:
 - the Freight Warranty Limitation Amount; and
 - 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).
- 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.
- 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.

The provisions of clause 13.3 of this Agreement apply as if the Customer were a "consumer" for the purposes of the Act.

23.4. Exclusions

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

- Where the Customer has not selected a level of Freight Warranty to apply to the consignment or has not paid the Freight Warranty charge;
- Where the Customer fails to submit the claim to Border Express within the relevant time limits
- Where Border Express is in possession of an unendorsed proof of delivery form for the consignment;
- Where the Goods consigned are Excluded Goods;
- Where Border Express in its reasonable opinion considers the Packaging of the Goods to be inadequate for road transportation;
- Where the Goods are determined by Border Express to have been defective prior to the Service;
- 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;
- 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;
- Where Border Express has not been responsible for the total Service of the Goods;
- Where the Goods have not been packed in the original manufacturer's packaging or the equivalent;
- Where the delivery address is a post office box, a roadside drop or postal mail box.

24. Pallets

- 24.1. Border Express will only take responsibility for Hire Pallets under the terms included below unless a separate written agreement is in place.
- 24.2. Equipment
Border Express will only accept the transfer of good quality CHEP or Loscam wood pallets onto its accounts. The transfer of other CHEP or Loscam equipment will not be accepted. Plain pallets are not returned or exchanged.
- 24.3. Pallets on pickup/branch drop
- 24.3.1. Direct Transfer (Sender to Receiver) - Border Express prefers the sender to transfer pallets direct to the receiver. Two copies of the pallet transfer docket are to be provided to Border Express.

- 24.3.2. Transfer to Border Express - Transfers to a Border Express pallet account are also acceptable in accordance with delay day rules, documentation requirements and the receiver having a pallet account.
- 24.3.3. Delay Days - Transfers onto a Border Express pallet account are to be based upon a 7 day delayed transfer from pickup date. Where delay days are also applied by the receiver, Border Express will adjust the effective date of the transfer so that it represents the receiver delay days plus 7 days (i.e. for GHPL 33 + 7 = 40 delay days). The table below lists known receiver delay days:

Receiver	Receiver Delay Days (From the receipt of goods day)	Net Delay Days (From the pickup day)
Staples, Aldi	28 Days	35 days
Woolworth's, Big W, Masters DC's, Harris Scarfe, Costco	30 Days	37 days
GHPL (Coles, Kmart, Target, Officeworks, etc.)	33 Days	40 days
Metcash, CCC, IGA, ALM, Bidvest, McAlpine, Mitre 10	45 Days	52 days

- 24.3.4. Documentation Requirements - For all transfers, the sender is to provide a correctly completed pallet transfer docket to Border Express for each load. For multiple destination loads, separate transfer dockets must be provided to match the delay day profile of each group of receivers. At least one Consignment Number must be used as the pallet transfer docket reference number. Transfers may be rejected if the pallet transfer docket is not correctly completed.
- 24.3.5. Transfer Accounts - Border Express Pallet Accounts are in the table below. Sending customers are to transfer pallets to their sending state/territory or branch in the case of Albury:

State/Territory	Loscam Account	Chep Account
ACT	213729	1610307600
NSW (exc Albury)	217641	1610200545
QLD	416728	1610307112
SA/NT	514685	1610500254
VIC (inc Albury)	368257	1610306728
WA	615900	1610600460

- 24.3.6. Un-recoverable Pallets - Where receiver's pallets are considered un-recoverable (e.g. mine sites, wharfs, events, etc.), the sender is to package the freight on plain pallets and recover the cost of packaging and handing through their receiver. Border Express can provide senders with a list of plain pallet providers in each state.
- 24.3.7. No Exchange on Pickup/Branch Drop - Border Express will not exchange pallets on pickup/branch drop.
- 24.4. Pallets on delivery/branch collect
- 24.4.1. Transfer to Receiver - Border Express will transfer pallets to the receiver. No Delay Days can be applied by the receiver to a Border Express pallet account.
- 24.4.2. Border Express may also one for one exchange with the receiver. If one for one pallets are not available for exchange then Border Express will transfer the pallets to the receivers pallet account. In the event that transfer to a receiver is unsuccessful, Border Express reserves the right to transfer the pallets back to the sender or apply a charge (see 23.6 below).
- 24.5. Claims
Border Express will accept pallet claims within 3 months of pickup date without penalty. Claims up to 12 months from pickup date may be accepted but the effective date of transfer will be the date of written claim enquiry to Border Express.
- 24.6. Charge for Hire Pallets not recovered
A charge of \$50 per pallet (includes GST, administration fee and compensation for hire costs incurred) will be levied on the customer where Border Express cannot balance the Hire Pallets used in providing services for that customer (for example, through an inability to retrieve pallets or complete a pallet transfer).
- 24.7. Variations
No variations are to be made to these pallet terms or additional agreements to be made unless agreed upon in writing by the Border Express National Pallet Manager.

STORAGE AND HANDLING OF GOODS

25. Right to store Goods

Border Express may, at its discretion, 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.

26. Removal of stored goods

Without waiver of its other rights, 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 the period under such notice.

27. Pick Bays

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

28. 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.

29. Pallets

- 29.1. Storage will be charged for each week or part thereof for each standard pallet. This will be calculated on opening balance plus receipts.
- 29.2. 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. Any pallet not able to conform to a standard pallet will be charged as multiple standard pallet units.

30. Charges

- 30.1. All labour, provision of lifting equipment and transport of lifting equipment to and from the site, for counting of stock in a specific stock take will be Charges.
- 30.2. 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.

31. 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.

GENERAL CONDITIONS APPLICABLE TO THIS AGREEMENT

32. Force majeure

- 32.1. 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.
- 32.2. 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.

33. 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.

34. Dispute resolution

34.1. 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.

34.2. Mediation

- 34.2.1. If the parties have not resolved the Dispute as above either party may require, by written notice, the Dispute to be referred to mediation.
- 34.2.2. 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).
- 34.2.3. 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.
- 34.2.4. 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.
- 34.2.5. 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.
- 34.2.6. 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.

34.3. Arbitration

Any Dispute arising out of or relating to this contract, or the breach, termination or invalidity thereof, if not able to be earlier resolved, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force. The appointing authority shall be the Australian Centre for International Commercial Arbitration. The number of arbitrators shall be one. The place of arbitration shall be Melbourne, Australia. The language to be used in the arbitral proceedings shall be English.

35. Termination of Agreement

- 35.1. This Agreement will continue until terminated, using appropriate notice, by Border Express or the Customer.
- 35.2. A minimum of one month's notice must be given unless a shorter period is mutually agreed.

36. Collateral including PPSA

- 36.1. For the purposes of section 20(1) and (2) of the PPSA, and to ensure maximum benefit and protection for Border Express under the PPSA, the Customer hereby grants to Border Express, as security for its indebtedness and obligations, a charge over all of the Customer's present and after-acquired property and their proceeds ("AllPAAP").
- 36.2. The Customer also hereby grants a charge over any interest in real property of the Customer (both present and future, and in the case of individuals, any such interest held by one or more of them) as further security for their obligations under this agreement, and they consent to a caveat being lodged against the title to any real property or any interest in real property owned by the Customer (or in the case of individuals, any such interest held by one or more of them) including where they are, or become, a trustee of a trust (whether or not such trust is disclosed herein), then in such capacity hereby charges all real and personal property of such trust (including all present and after acquired real property) with the obligations contained herein and declare that such charge is given in consideration of the terms herein, and Border Express agreeing to continue to provide the Services to the Customer and at the request of and for the benefit of such trust.
- 36.3. The Customer (and if more than one then each individually) agrees to do anything that Border Express reasonably requires to ensure that Border Express has at all times continuously perfected security interests granted under this Agreement.
- 36.4. Border Express may allocate amounts received in any manner it determines, but in default will apply the amounts first to payment of any unsecured amount owing to Border Express, next as to any reasonable enforcement expenses and then as to any secured balance owing to Border Express.
- 36.5. The Customer agrees to reimburse Border Express for all costs and/or expenses incurred or payable by Border Express in relation to registering, maintaining or releasing any financing statement or financing change statement under this Agreement.
- 36.6. The Customer will not (except after first providing written notice to Border Express) allow to be, or be liable to become, perfected or attached in favour of any Person, a security interest or transitional security interest in any of the monies from time to time payable to Border Express (if any) or otherwise, and whether to a provider of new value (such as invoice discounting or debt factoring by the Customer of its own debtors' invoices) or otherwise.
- 36.7. The Customer will not (as against any person who is a "related entity" of the Customer for the purposes of the Corporations Act 2001) without the prior written consent of Border Express, before or until all money payable to Border Express in connection with the Agreement is paid in full:
- Exercise a right of contribution or indemnity;
 - Claim the benefit of (for example, by subrogation), or seek priority ahead of, the transfer of or the benefit of a security interest that Border Express holds in connection with this Agreement;
 - Try to reduce its liability to Border Express through set off or counterclaim; or
 - Prove in competition with Border Express if the Customer is unable to pay its debts when due.
 - Seek to perfect or attach in favour of the Customer or another (either jointly or severally) a security interest in any of the Customer's present or after acquired property which would rank in priority to the entitlements of Border Express.
- 36.8. The Customer waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interests under this Agreement.
- 36.9. The Customer agrees that it and Border Express contract out of and nothing in the provisions of Sections 95 & 96 (accession); 117 & 118 (land); 121(4) (liquid assets); 130, 132(3)(d) & 132(4) (disposal); and 142 & 143 (redeem and reinstate) of the PPSA will apply to this Agreement.
- 36.10. The Customer and Border Express acknowledge that the Customer is the grantor and Border Express is the holder of a Purchase Money Security Interest (PMSI) in relation to the Goods and their proceeds (whether or not such goods are inventory) by virtue of this Agreement and/ or the PPSA.
- 36.11. The Customer hereby consents and appoints Border Express to be an interested person and its authorized representative for the purposes of section 275(9) PPSA.
- 36.12. In addition to, and without limitation to its other rights and remedies under the PPSA or otherwise, if the Charges or other obligations of the Customer are not paid or performed when due, or the Goods are not collected when so required or designated, Border Express may, without notice::
- 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;
 - open and sell all or any of the Goods as Border Express thinks fit and apply the proceeds to discharge the obligations of the Customer and costs of sale without being liable to any Person for any loss or damage caused; and/or
 - 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.

37. Guarantee

If the Customer is a company (including a corporate trustee of a trust) or partnership, then it will procure its directors or partners to sign a Deed of Guarantee and Indemnity with Border Express in terms set out at Schedule 2 or otherwise satisfactory to Border Express to secure the obligations owed by the Customer from time to time.

38. 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.

39. Notice

39.1. 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.

39.2. 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.

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

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

40. Business Purpose Declaration

The Customer hereby acknowledges, for the purposes of section 13 *National Consumer Credit Code* (“Code”), having made this declaration before entering into the Agreement, and that the credit (if any) which is to be provided under the Agreement (if entered into) is to be applied for not either wholly or predominantly for a personal, household or domestic purpose.

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

In consideration of Border Express agreeing to supply, and further supply, the Services to the following Company/ Partnership/ Trust/ Sole Trader:

("the Customer") Services on credit -

I/We _____ of _____
(name of Guarantor)

& _____ of _____
(name of Guarantor)

& _____ of _____
(name of Guarantor)

& _____ of _____
(name of Guarantor)

(hereinafter referred to as "the Guarantor" or "the Guarantors" as the case may be)

1. Do hereby jointly and severally guarantee the due and punctual payment of all obligations (including payment of monies) which may now or in the future be or become due and payable to Border Express by the Customer on any account whatsoever.
2. DECLARE that this Guarantee shall be a continuing guarantee and shall remain in full force and effect and the Guarantor/s shall remain liable hereunder notwithstanding the granting by Border Express of time, credit or any other indulgence or concession to the Customer or the Guarantor/s or the waiver by Border Express of any breach by the Customer of its obligations to Border Express or the liquidation of the Customer or the bankruptcy or death of the Guarantor/s or all of them (as the case may be) or the liability of the Customer ceasing or becoming extinguished for any reason other than payment in full, or due to any variation in the Customer's Agreement with Border Express or any changes in the Customer's corporate structure.
3. DECLARE that I/We will make due and punctual payment to Border Express upon demand being made by notice or letter given to the Guarantor/s and such demand or notice or letter shall be deemed to be duly made or given if the same shall be in writing and left at or sent by pre-paid post to the address of the Guarantor (and if more than one Guarantor, the address of each of them) as set out above.
4. DECLARE that the Guarantor/s shall pay all costs, fees, charges and expenses including (but not limited to) legal costs on a solicitor and own client basis incurred by Border Express of and incidental to this Guarantee or any matter arising out of or incidental to this Guarantee or the performance of or failure to perform by the Guarantor/s of the covenants contained herein.
5. DECLARE that if any of the obligations hereby guaranteed shall not be enforceable against the Customer purported to be primarily liable then this Guarantee shall be construed as an Indemnity and the Guarantor/s hereby indemnify and agree to keep indemnified Border Express in respect of any failure by the Customer to make payment or perform or observe any covenant, obligation, term or condition of this Guarantee.
6. DECLARE that the proper law of this Guarantee shall be the laws of the State of New South Wales and that any proceedings to be taken by Border Express may be taken in the Courts of the State of New South Wales.
7. The Guarantor/s agree (where they are not holders of an ABN) to grant a charge, and (where they are a holder of an ABN) do hereby grant a charge, to Border Express over all and any of their present and after acquired property ("APAAP") under the *Personal Property Securities Act 2009 (Cth)* as security for their indebtedness and obligations under this Guarantee. For the purposes of section 20(1) and (2) of the PPSA, and to ensure maximum benefit and protection for Border Express under the PPSA, the Guarantor/s confirm and agree that the Guarantor intend to and will grant to Border Express, as security for its indebtedness and obligations, a charge over all of the Guarantor's present and after-acquired property.
8. The Guarantors also hereby grant and acknowledge that such covenant to repay contained in this Guarantee is also, a charge over any interest in real property of the Guarantors (both present and future) and they consent to a caveat being lodged against the title to any real property or any interest in real property owned by the Guarantors, including that where the Guarantor/s is/ are or becomes a trustee of a trust (whether or not such trust is disclosed herein), the Guarantors in such capacity hereby charge all real and property of such trust (including all present and after acquired real property) with the obligations contained herein and declare that such charge is given in consideration of the terms herein, and Border Express agreeing to sell or continue to provide the Services to the Customer and at the request of and for the benefit of such trust .
9. AGREE to be further bound by the terms of the Agreement set out above (as amended from time to time) and make the declarations and give the consents and authorities contained therein as if they were the Customer and the terms were repeated fully within this Guarantee and the Guarantors were the Customer named therein.
10. AGREE that the Guarantors' liability shall not be affected or discharged by any failure by Border Express to properly attach, perfect or continuously perfect any security interest against any collateral of the Customer and/ or any one or more of the Guarantors (if more than one) or any other person.
11. DECLARE that I/WE understand the nature and effect of the within Guarantee & Indemnity and I/We declare that I/We have had the opportunity of obtaining independent legal advice prior to signing this Guarantee & Indemnity.
12. We:
 - a. Sign (as applicable) both in our personal capacity, as a duly authorised partner of the Customer and/ or as Trustee of every trust of which we are trustee; and

- b. Agree 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.

13. **Severall 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.

14. **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.

15. **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.

16. **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.

THE PARTIES:

A. **BORDER EXPRESS: Border Express Pty Ltd ACN 000 533 880 and its related entity (as that term is defined by the Corporations Act 2001) and any successors 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)

DATED:

SIGNED 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
.....