
JSW Transport NT – Terms & Conditions of Cartage

1. Definitions

- 1.1 “**Contract**” means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 “**JSW**” means Jake's Steel & Welding Pty Limited T/A JSW Transport NT, its successors and assigns or any person acting on behalf of and with the authority of Jake's Steel & Welding Pty Limited T/A JSW Transport NT.
- 1.3 “**Sub-Contractor**” means and includes:
- (a) railways or airways operated by the Commonwealth or any state or any other country or by any corporation; or
 - (b) any other person or entity with whom JSW may arrange for the carriage or storage of any Goods the subject of the Contract; or
 - (c) any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in sub-clauses (a) and (b).
- 1.4 “**Client**” means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting JSW to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.5 “**Consignee**” means the person to whom the Goods are to be delivered by way of the Services.
- 1.6 “**Goods**” means any cargo, together with any container, packaging, or pallet(s), to be moved from one place to another by way of the Services.
- 1.7 “**Services**” means all services provided by JSW to the Client to facilitate the movement of Goods from one place to another by JSW as may be requested by the Client from time to time (including, but not limited to, anything done or to be done in relation to the Goods, or the provision of any services ancillary to the Goods such as moving, storing or leaving the Goods at any warehouse, yard, terminal, wharf or other place or area, loading or unloading the Goods from any vehicle, vessel or other conveyance, stowing or packing the Goods, or fumigating, transshipping, or otherwise handling the Goods, or anything else done in relation thereto, including the offering of any advice or recommendations.
- 1.8 “**Confidential Information**” means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, “**Personal Information**” such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.9 “**Cookies**” means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when using JSW's website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.10 “**Price**” means the Price payable for the Services (plus any GST where applicable) as agreed between JSW and the Client in accordance with clause 6 below.
- 1.11 “**GST**” means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).

2. The Commonwealth Competition and Consumer Act 2010 (“CCA”) and Fair Trading Acts (“FTA”)

- 2.1 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the FTA in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.
- 2.2 Where the Client purchases Services as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.
- 2.3 Liability of JSW arising out of any one incident whether or not there has been any declaration of value of the Goods, for breach of warranty implied into these terms and conditions by the CCA or howsoever arising, is limited to any of the following as determined by JSW:
- (a) rectifying the Services; or
 - (b) providing the Services again; or
 - (c) paying for the Services to be provided again.
- 2.4 If JSW is required to rectify, re-provide, or pay the cost of re-providing the Services under clause 2.3 or the CCA, but is unable to do so, then JSW may refund any money the Client has paid for the Services but only to the extent that such refund shall take into account the value of Services which have been provided to the Client which were not defective.

3. Acceptance

- 3.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts, Services provided by JSW.
- 3.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 3.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 3.4 The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with JSW and it has been approved with a credit limit established for the account.
- 3.5 In the event that the supply of Goods request exceeds the Client's credit limit and/or the account exceeds the payment terms, JSW reserves the right to refuse delivery.
- 3.6 These terms and conditions are to be read in conjunction with:

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- (a) JSW's quotation, hire form, consignment note, agreement, airway bills, manifests, or any other forms as provided by JSW to the Client; and
 - (b) where the context so permits, the terms 'Goods' or 'Services' shall include any supply of Equipment, as defined therein; and
 - (c) if there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail.
- 3.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions (Northern Territory) Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 4. Errors and Omissions**
- 4.1 The Client acknowledges and accepts that JSW shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by JSW in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by JSW in respect of the Services.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of JSW; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.
- 5. Change in Control**
- 5.1 The Client shall give JSW not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change in trustees, or business practice). The Client shall be liable for any loss incurred by JSW as a result of the Client's failure to comply with this clause.
- 6. Price and Payment**
- 6.1 At JSW's sole discretion the Price shall be either;
- (a) as indicated on invoices provided by JSW to the Client in respect of Services provided; or
 - (b) JSW's quoted Price (subject to clauses 6.2) which shall be binding upon JSW provided that the Client shall accept in writing JSW's quotation within fourteen (14) days.
- 6.2 JSW reserves the right to vary the Price:
- (a) if a variation to JSW's quotation is requested or required (including, but not limited to, variations to the nature or quantity of the Goods, nature, condition and location of the collection and/or delivery address, limitation to accessing the delivery site, facilities available for packing, loading or unloading, weather conditions or delays beyond the control of JSW (such as road closures or roadworks), delivery times or date or otherwise, etc.); or
 - (b) to reflect any increase in the cost to JSW beyond the reasonable control of JSW (including, without limitation, foreign exchange fluctuations, or increases in taxes, customs duties, insurance premiums, or warehousing costs); or
 - (c) for any delay over thirty (30) minutes in either loading and/or unloading (commencing from when JSW reports for loading or unloading), occurring other than from JSW's default; or
 - (d) where the Price is calculated by weight, measurement or value, and may at any time re-weigh, or re-value or re-measure or require the Goods to be re-weighed, or re-valued or re-measured and charge proportional additional freight accordingly.
- 6.3 At JSW's sole discretion, a non-refundable deposit may be required.
- 6.4 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by JSW, which may be:
- (a) on, or prior to delivery of the Goods;
 - (b) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (c) the date specified on any invoice or other form as being the date for payment as agreed between both parties; or
 - (d) failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Client by JSW.
- 6.5 Payment may be made by cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and JSW.
- 6.6 Receipt by JSW of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then JSW's ownership or rights in respect of the Services shall continue.
- 6.7 JSW may in its discretion allocate any payment received from the Client towards any invoice that JSW determines and may do so at the time of receipt or at any time afterwards. On any default by the Client JSW may re-allocate any payments previously received and allocated. In the absence of any payment allocation by JSW, payment will be deemed to be allocated in such manner as preserves the maximum value of JSW's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.8 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by JSW nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.9 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to JSW an amount equal to any GST JSW must pay for any provision of Services by JSW under this Contract or any other agreement. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 7. JSW is not a Common Carrier**
- 7.1 JSW is not a Common Carrier and will accept no liability as such. All Goods are carried or transported, and all storage and other services are performed, by JSW subject only to these terms and conditions and JSW reserves the right to refuse the carriage or transport of Goods for any person, corporation or body, and the carriage or transport of any class of Goods, at its discretion.
- 8. Client-Packed Containers**
- 8.1 If a container has not been stowed by or on behalf of JSW, JSW shall not be liable for loss of or damage to the Goods caused by:

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- (a) the manner in which the container has been stowed; or
- (b) the unsuitability of the Goods for carriage or storage in containers; or
- (c) the unsuitability or defective condition of the container.

9. Nomination of Sub-Contractor

- 9.1 The Client hereby authorises JSW (if it should think fit to do so) to arrange with a Sub-Contractor for the carriage of any Goods that are the subject of the Contract. Any such arrangement shall be deemed to be ratified by the Client upon delivery of the said Goods to such Sub-Contractor, who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as JSW. In so far as it may be necessary to ensure that such Sub-Contractor shall be so entitled JSW shall be deemed to enter into this Contract for its own benefit and also as agent for the Sub-Contractor.

10. JSW's Servants or Agents

- 10.1 The Client undertakes that no claim or allegation shall be made against any servant or agent of JSW which attempts to impose upon any of them any liability whatsoever in connection with the Goods and, if any such claim or allegation should nevertheless be made, to indemnify JSW and any such servant or agent against all consequences thereof.

11. Method of Transport

- 11.1 If the Client instructs JSW to use a particular method of carriage whether by road, rail, sea or air JSW will give priority to the method designated but if that method cannot conveniently be adopted by JSW the Client shall be deemed to authorise JSW to carry or have the Goods carried by another method or methods.

12. Route Deviation

- 12.1 The Client shall be deemed to authorise any deviation from the usual route or manner of carriage of Goods that may in the absolute discretion of JSW be deemed reasonable or necessary in the circumstances (including, but not limited to, road closures due inclement weather, Force Majeure and/or roadworks) any additional cost incurred by JSW in any unplanned necessary route deviation shall be on-charged to the Client in accordance with clause 6.2(a).

13. Charges Earned

- 13.1 JSW's charges shall be considered earned in the case of Goods for carriage as soon as the Goods are loaded and dispatched from the Client's premises.

14. Demurrage

- 14.1 The Client will be and shall remain responsible to JSW for all its proper charges incurred for any reason. A charge may be made by JSW in respect of any delay in excess of thirty (30) minutes in loading or unloading occurring other than from the default of JSW. Such permissible delay period shall commence upon JSW reporting for loading or unloading. Labour to load or unload the vehicle shall be the responsibility and expense of the Client or Consignee.

15. Dangerous Goods

- 15.1 Dangerous Goods are Goods which are or may become of a dangerous, noxious, explosive, inflammable, radio-active or damaging nature and include Goods likely to harbour or encourage vermin or other pests. Unless agreed in writing, the Client shall not deliver to JSW, or cause JSW to deal with or handle, Dangerous Goods.

- 15.2 If the Client is in breach of clause 15.1:

- (a) the Client, and any person delivering the Goods to JSW, or causing JSW to handle or deal with the Goods, shall be liable for any loss or damage caused to, or by the Goods, or by their nature, and shall indemnify and keep indemnified JSW against all loss, damages, claims and costs (howsoever arising) incurred by JSW in connection therewith; and
- (b) the Goods may be destroyed or otherwise dealt with as determined by JSW in its absolute discretion at the expense of the Client (or by any other person in whose custody they may be at the relevant time also at the expense of the Client), and neither JSW nor any such other person shall incur any liability whatsoever to the Client in relation to any action taken by them concerning the Goods.

- 15.3 Where JSW agrees to accept Dangerous Goods, if during the period of cartage, JSW, its Sub-Contractors (or any other suitably qualified person or authority) reasonably forms the view that those Goods pose any risk to other goods, property, life or health, then the provisions of clause 15.2 shall apply.

16. Consignment Note

- 16.1 It is agreed that the person delivering any Goods to JSW for carriage or forwarding is authorised to sign the consignment note for the Client.

17. Client's Responsibility

- 17.1 The Client expressly warrants, represents, confirms and/or acknowledges that:

- (a) JSW has relied upon the Client in its description of the Goods (including height, measure, standard, strength, quantity, quality, figures, dimensions and values). Accordingly, JSW accepts no liability for any discrepancy that may arise with the description; and
- (b) unless specified otherwise in writing, JSW has relied upon the Client's skill in properly packaging, labelling, marking, securing and preparing the Goods, and that the Client has complied with all applicable laws and regulations (including those applicable to Dangerous Goods) and shall furnish such information and provide such documents as may be necessary to comply with such laws and regulations;
- (c) the Client is either the owner or the authorised agent of the owner of any Goods or property that is the subject matter of this Contract of cartage and/or storage and by entering into this Contract the Client accepts these conditions of Contract for the Consignee as well as for all other persons on whose behalf the Client is acting;

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- (d) the Goods are fit for carriage, having undertaken due and careful enquiry the Goods are not dangerous, illegal, hazardous and do not contain any substance resulting in risks not readily apparent from the Client's description of the Goods;
- (e) it is the Client's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery.

18. Delivery

- 18.1 JSW is authorised to deliver the Goods at the address given to JSW by the Client for that purpose and it is expressly agreed that JSW shall be taken to have delivered the Goods in accordance with this Contract if at that address JSW obtains from any person a receipt or a signed delivery docket for the Goods.
- 18.2 It is the Client's sole responsibility to provide unobstructed access to the nominated address to enable effective delivery, including ensuring that trees are trimmed or cut back along driveways, and/or (for self-load or self-unload) ensuring that foot or vehicular traffic is not impeded and that public safety is considered. If delivery cannot be effected by JSW (whether due to obstructed access to the nominated address or otherwise) then JSW at its sole discretion may:
 - (a) deposit the Goods in the nearest and safest position to the address, and such action will be deemed to constitute valid delivery; or
 - (b) obtain the use of Hiab or other vehicle/equipment, and charge the Client any costs incurred by JSW in so doing; or
 - (c) refuse to effect delivery and instead store the Goods, in which case the Client shall be liable for, and shall reimburse JSW for all costs and expenses incurred in connection with such storage.
- 18.3 JSW and the Client shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable, including ensuring that the nominated address complies with any occupational health and safety laws and any other relevant safety standards or legislation pertaining to the Services.
- 18.4 In the event that JSW stores the Goods under clause 18.2(c) then JSW will re-deliver the Goods to the nominated address at a time mutually agreed between the parties. The Client shall be liable for any costs incurred by JSW in both the initial delivery and the re-delivery.
- 18.5 If the Client requests JSW upon delivery:
 - (a) to make delivery of the Goods to a subsequent address, then JSW may, at their sole discretion, charge the Client the additional costs associated with doing so;
 - (b) to assist in unloading the Goods (either by hand or through the use of any machinery, including forklifts) then JSW shall only do so at their sole discretion, and:
 - (i) JSW may charge the Client the additional costs associated with doing so;
 - (ii) the Client acknowledges that they accept full liability for all property loss or damage, or injury to any person that may result from the actions of JSW in providing such assistance; and
 - (iii) notwithstanding that JSW may refuse such assistance without any liability to the Client whatsoever should they believe that the risk in providing such assistance is unacceptable.
- 18.6 JSW may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this Contract.
- 18.7 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery for the purposes of this Contract.
- 18.8 Any time specified by JSW for the delivery of Goods is an estimate only and JSW will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that JSW is unable to deliver the Goods as agreed solely due to any action or inaction of the Client then JSW shall be entitled to charge the Client any additional costs incurred by JSW as a direct consequence of any resultant delay or rescheduling of the delivery.

19. Loss or Damage

- 19.1 Subject to any statutory provisions imposing liability in respect of the loss of or damage to the Goods (including but not limited to chilled, frozen, refrigerated or perishable Goods):
 - (a) JSW shall not be under any liability for any damage to, loss, deterioration, misdelivery, delay in delivery or non-delivery of the Goods (whether the Goods are or have been in the possession of JSW or not) nor for any instructions, advice, information or service given or provided to any person, whether in respect of the Goods or any other thing or matter, nor for any consequential or indirect loss, loss of market or consequences of delay; and
 - (b) the Client will indemnify JSW against all claims of any kind whatsoever, howsoever caused or arising brought by any person in connection with any matter or thing done, said or omitted by JSW in connection with the Goods.

20. Insurance

- 20.1 The Client acknowledges that:
 - (a) the Goods are carried and stored at the Client's sole risk and not at the risk of JSW; and
 - (b) JSW is under no obligation to arrange insurance of the Goods and it remains the Client's responsibility to ensure that the Goods are insured adequately or at all; and
 - (c) under no circumstances will JSW be under any liability with respect to the arranging of any such insurance and no claim will be made against JSW for failure to arrange or ensure that the Goods are insured adequately or at all.

21. Claims

- 21.1 Notwithstanding clauses 19 and 20 in the event that the Client believes that they have any claim against JSW then they must lodge any notice of claim for consideration and determination by JSW within seven (7) days of the date of delivery, or for non-delivery within seven (7) days of the anticipated date of delivery or the removal or destruction of the Goods.
- 21.2 The failure to notify a claim within the time limits under clause 21.1 is evidence of satisfactory performance by JSW of its obligations.

22. JSW's Lien

- 22.1 In addition to its rights under the Warehouseman's Liens Act 1969, JSW shall have a right to take a particular and general lien on any Goods the property of the Client or a third party owner which are in the possession or control of JSW (and any documents relating to those Goods) for all sums owed at any time by the Client or a third party owner to JSW (whether those sums are due from the Client on those Goods or documents, or on any other Goods or documents), and JSW shall have the right to sell such Goods or cargo by public auction or private treaty after giving fourteen (14) days' notice to the Client. JSW shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods or cargo, from the proceeds of sale and shall render any surplus to the entitled person.
- 22.2 Notwithstanding clause 22.1 nothing shall prejudice JSW's rights to use any of JSW's other rights and remedies contained in this Contract to recover any outstanding charges or fees payable in respect of the Goods that were not recovered out the sale of the Goods in accordance with clause 22.1 and no exception shall be taken upon the grounds that the Price realised is less than the full market value of the Goods.

23. Personal Property Securities Act 2009 ("PPSA")

- 23.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 23.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA, and creates a security interest in:
- (a) all Goods being transported, carried or handled by JSW, over which JSW invokes a lien; and
 - (b) all Services that will be supplied in the future by JSW to the Client; and
 - (c) all the Client's present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to JSW for Services – that have previously been provided and that will be provided in the future by JSW to the Client.
- 23.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which JSW may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 23.3(a)(i) or 23.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, JSW for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any registration made thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of JSW;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of JSW.
- 23.4 JSW and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 23.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 23.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 23.7 Unless otherwise agreed to in writing by JSW, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 23.8 The Client shall unconditionally ratify any actions taken by JSW under clauses 23.3 to 23.5.
- 23.9 Subject to any express provisions to the contrary (including those contained in this clause 23), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

24. Security and Charge

- 24.1 In consideration of JSW agreeing to supply Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 24.2 The Client indemnifies JSW from and against all JSW's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising JSW's rights under this clause.
- 24.3 The Client irrevocably appoints JSW and each director of JSW as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 24 including, but not limited to, signing any document on the Client's behalf.

25. Default and Consequences of Default

- 25.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at JSW's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 25.2 If the Client owes JSW any money the Client shall indemnify JSW from and against all costs and disbursements incurred by JSW in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, JSW's contract default fees, and bank dishonour fees).
- 25.3 Further to any other rights or remedies JSW may have under this Contract, if the Client has made payment to JSW, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by JSW under this clause 25 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 25.4 Without prejudice to JSW's other remedies at law JSW shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to JSW shall, whether or not due for payment, become immediately payable in the event that:

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- (a) any money payable to JSW becomes overdue, or in JSW's opinion the Client will be unable to meet its payments as they fall due; or
- (b) the Client has exceeded any applicable credit limit provided by JSW;
- (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

26. Cancellation

- 26.1 Without prejudice to any other remedies JSW may have, if at any time the Client is in breach of any obligation (including those relating to payment) JSW may suspend or terminate the provision of Services to the Client and any of its other obligations under the terms and conditions. JSW will not be liable to the Client for any loss or damage the Client suffers because JSW exercised its rights under this clause.
- 26.2 JSW may cancel any contract to which these terms and conditions apply, or cancel delivery of Goods at any time before the Goods are delivered, by giving written notice to the Client. On giving such notice JSW shall repay to the Client any sums paid in respect of the Price. JSW shall not be liable for any loss or damage whatever arising from such cancellation.
- 26.3 In the event that the Client cancels the delivery of Goods, or the provision of any Services, then the Client shall be liable for any loss incurred by JSW (including, but not limited to, any loss of profits) up to the time of cancellation, or as a direct result of the cancellation.

27. Privacy Policy

- 27.1 All emails, documents, images or other recorded information held or used by JSW is Personal Information, as defined and referred to in clause 27.3, and therefore considered Confidential Information. JSW acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). JSW acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by JSW that may result in serious harm to the Client, JSW will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 27.2 Notwithstanding clause 27.1, privacy limitations will extend to JSW in respect of Cookies where the Client utilises JSW's website to make enquiries. JSW agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to JSW when JSW sends an email to the Client, so JSW may collect and review that information ("collectively Personal Information")
- If the Client consents to JSW's use of Cookies on JSW's website and later wishes to withdraw that consent, the Client may manage and control JSW's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 27.3 The Client agrees for JSW to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by JSW.
- 27.4 The Client agrees that JSW may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.
- 27.5 The Client consents to JSW being given a consumer credit report to collect overdue payment on commercial credit.
- 27.6 The Client agrees that personal credit information provided may be used and retained by JSW for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 27.7 JSW may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 27.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 27.3 above;
 - (b) name of the credit provider and that JSW is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that

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- the Client no longer has any overdue accounts and JSW has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- (g) information that, in the opinion of JSW, the Client has committed a serious credit infringement;
- (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 27.9 The Client shall have the right to request (by e-mail) from JSW:
- (a) a copy of the Personal Information about the Client retained by JSW and the right to request that JSW correct any incorrect Personal Information; and
- (b) that JSW does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 27.10 JSW will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 27.11 The Client can make a privacy complaint by contacting JSW via e-mail. JSW will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 28. General**
- 28.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 28.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Northern Territory, the territory in which JSW has its principal place of business, and are subject to the jurisdiction of the courts in that territory.
- 28.3 Subject to clause 2, JSW shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by JSW of these terms and conditions (alternatively JSW's liability shall be limited to damages which under no circumstances shall exceed the Price).
- 28.4 JSW may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 28.5 The Client cannot licence or assign without the written approval of JSW.
- 28.6 JSW may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of JSW's Sub-Contractors without the authority of JSW.
- 28.7 The Client agrees that JSW may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for JSW to provide Goods to the Client.
- 28.8 Where JSW is unable, wholly or in part, by reason of any fact, circumstance, matter or thing beyond the reasonable control of JSW, including, but not limited to, any act of God, war, terrorism, strike, civil commotion, lock-out, general or partial stoppage, restraint of labour, industrial action, fire, flood, storm, etc. ("**Force Majeure**") to carry out any obligation under this Contract and JSW gives the Client prompt notice of such Force Majeure with reasonably full particulars thereof and, insofar as is known, the probable extent to which it will be unable to perform or be delayed in performing that obligation and uses all reasonable diligence to negate or remove that Force Majeure as quickly as possible, that obligation is suspended, so far as it is affected by Force Majeure, during the continuance thereof. The requirement that any Force Majeure shall be negated or removed with all reasonable diligence shall not require the settlement of strikes, lockouts or other labour disputes, or claims or demands by any government on terms contrary to the wishes of JSW.
- 28.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.