



TERMS AND CONDITIONS OF CONTRACT AND TRADE

- 1 (1a) Payment Terms: Strictly nett payment terms as stated on your invoice by Direct Deposit, Cheque or cash. Unless other payment terms are negotiated at the time of instigating the transaction.
(1b) Title of Goods: Title of goods does not pass until payment is received in full.
- 2 Should there be any default in our payment terms, all monies owing by Applicant to Prospect Refrigerated Transport shall become immediately due and payable and a Credit Bureau Default may be lodged without further notice.
- 3 Prospect Refrigerated Transport reserves the right to charge interest at ruling (New South Wales) court rates calculated daily from the date of invoice on all overdue accounts exceeding 60 days after the date of invoice. Where GST is payable on any invoice, 2% per month is payable on the GST portion unpaid after the due date for payment. For the purpose of calculating the penalty interest for non- payment of GST the due date for payment shall be deemed to be 7 days from the date of invoice.
- 4 Prospect Refrigerated Transport reserves the right to recover from the Applicant all expenses, costs and/or disbursements incurred in recovering any outstanding monies including all search fees debt collection fees, solicitors fees and all legal costs.
- 5 Service: Shall mean and include the whole of the operations and services undertaken by Prospect Refrigerated Transport in respect of goods including but not limited to the carriage, transport and/or the storage of the goods "Subcontractor" shall include any person who pursuant to a contract or arrangement with any other person (whether or not Prospect Refrigerated Transport) performs the carriage or part thereof.
- 6 Applicant will notify Prospect Refrigerated Transport of all material changes in name and/or financial status, which may result in the need to complete an additional application for Commercial Credit.
- 7 (7a) Should this application be successful a fixed credit limit will be determined by Prospect Refrigerated Transport in the event that the account exceeds this limit, Prospect Refrigerated Transport reserves the right to withhold the supply of services and/or goods without notice.
(7b) Prospect Refrigerated Transport reserves the right to withhold the supply of services and/or goods at any time without notice to Applicant.
- 8 If Applicant is a Trustee, the Directors warrant that they have the authority and power to enter into this agreement and personally guarantee the performance of all of the trusts obligations under this agreement.
- 9 Applicant agrees to be bound by the Terms and Conditions of Contract and Trading of Sale for: Delivery, Claims on delivery, Returned Goods, Delivery Containers, Transport Charges, Pricing, Warranty and Written Contracts, when and where as stated on the current price list, invoices and/or notices sent to all customers of Prospect Refrigerated Transport.
- 10 Applicant acknowledges that Prospect Refrigerated Transport is entitled to presume that any person forwarding instructions from the applicants office purporting to have the authority to bind the Applicant to a contract for the supply and delivery of goods and/or services from Prospect Refrigerated Transport has the authority they claim notwithstanding the names and signatures of authorised personnel listed in the Application for Credit Account.
- 11 These Terms and Conditions of Contract and Trade are additional to and together with any other Terms communicated in respect of the Provision of services and/or the sales of goods, where they are in conflict,

the latest published Terms and Conditions shall prevail, as shall be the case where Special Terms and Conditions are negotiated at the time of quotation and are acknowledged by both Prospect Refrigerated Transport and the Applicant in writing that the said Special Terms and Conditions shall prevail.

12 Prices and other charges and discounts offered are subject to alteration without notice, should an Instruction for services be received by Prospect Refrigerated Transport requesting supply on non-current pricing terms, Prospect Refrigerated Transport has the right to amend the prices, charges and discounts to reflect prevailing pricing terms.

13 Any dispute or action in relation to these Terms and Conditions of Trading shall be subject to the absolute jurisdiction of the laws of the State of New South Wales

14 These Terms and Conditions of Trading shall be binding upon Applicant its successors, executors, administrators and permitted assigns and shall inure to the benefit of Prospect Refrigerated Transport, its successors and assigns.

15 Where applicable, GST is payable on all services and/or goods supplied by Prospect Refrigerated Transport. Where any deposit or prepayment is required to secure delivery or specific performance by Prospect Refrigerated Transport, GST is payable on the full invoice cost and payable immediately in addition to the deposit or prepayment. Where GST is payable on any invoice and is not paid under credit terms the penalty clauses as mentioned in clause 3 above shall apply.

16 Should there be any changes to current government taxation, levies and charges that the Applicant is liable to pay to Prospect Refrigerated Transport. Then the Applicant agrees to pay to Prospect Refrigerated Transport such new or increased charges imposed by the Commonwealth Government of Australia and/or State or Territory Governments within Australia.

17 Prospect Refrigerated Transport is not a common carrier and shall accept no liability as such. All goods carried, transported and/or stored and all services by Prospect Refrigerated Transport subject only to these terms and conditions, Prospect Refrigerated Transport reserves the right to refuse the carriage, transport and/or storage of goods for any person, corporation or company and the carriage, transport and/or storage of any class of goods at its sole discretion.

18 Without prejudice to the generality of clause 10, the Applicant undertakes to indemnify Prospect Refrigerated Transport and/or any of its agents in respect of any liability whatsoever in respect of the goods to any person (other than the Applicant) who claims to have, who has or who may hereafter have any interest in the goods or part thereof.

19 (19a) Prospect Refrigerated Transport and any subcontractor shall be entitled to subcontract on any terms the whole or any part of the services.

(19b) The Applicant undertakes that no claim or allegation shall be made, whether by the Applicant or any other person who is or may hereinafter be interested in the goods, against any person (other than Prospect Refrigerated Transport) by whom (whether as subcontractor, principal, employer, servant, agent or otherwise) the services or any part thereof are provided which imposes or attempts to impose upon such person any liability whatsoever in connection with the goods whether or not arising out of negligence on the part of such person and if such claim or allegation should never the less be made to indemnify Prospect Refrigerated Transport and the person against whom such claim or allegation is made against the consequences thereof. Without prejudice to the foregoing and for the purpose of this clause Prospect Refrigerated Transport is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and each of them shall to this extent be or be deemed to be parties to this contract

20 Every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defence and immunity of whatsoever nature applicable to Prospect Refrigerated Transport to which Prospect Refrigerated Transport is entitled hereunder shall also be available and shall extend to

protect: (a) all subcontractors: (b) every servant or agent of Prospect Refrigerated Transport or of a subcontractor: (c) every other person (other than Prospect Refrigerated Transport) by whom the services or any part thereof are provided: and (d) all persons who are or may be vicariously liable for the acts or omissions of any person falling within(a), (b) or (c) hereof and for the purpose of this clause Prospect Refrigerated Transport is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and each of them and all such persons and each of them shall to this extent be or be deemed to be parties to this contract.

21 (21a) If and only if Prospect Refrigerated Transport has agreed to insure the goods the Prospect Refrigerated Transport is liable to the Applicant, in relation to the provision of services, for physical loss of or damage to the goods up to the limit of such insurance.

(21b) In the event subject only to sub-clause (6a) and to clauses 37 and 38 hereof the goods are at the risk of the Applicant and not Prospect Refrigerated Transport, Prospect Refrigerated Transport shall not be responsible in tort or contract or otherwise for any loss of or damage to or deterioration of the goods or misdelivery or failure to deliver or delay in delivery of goods including chilled, frozen, refrigerated or perishable goods either in transit or in storage for any reason whatsoever including without limiting the foregoing the negligence or breach of contract or wilful act of default of Prospect Refrigerated Transport or others and this clause shall apply to all such loss of or damage of or deterioration of goods or misdelivery or failure to deliver or delay in delivery of goods as aforesaid whether or not the same occurs in the course of performance by or on behalf of Prospect Refrigerated Transport contract or in events which are in the contemplation of Prospect Refrigerated Transport and/or the Applicant or in events which are foreseeable by them or in events which could constitute a fundamental breach of the contract or a breach of a fundamental term thereof.

22 If the Applicant expressly or impliedly instructs Prospect Refrigerated Transport to use or it is expressly or impliedly agreed that Prospect Refrigerated Transport shall use a particular method of handling or storing the goods or a particular method of carriage, whether by road, rail, sea or air Prospect Refrigerated Transport shall give priority to that method but in any event the method or methods of handling, storing and/or carriage adopted by Prospect Refrigerated Transport shall remain at the sole discretion of Prospect Refrigerated Transport and the Applicant hereby authorises Prospect Refrigerated Transport to adopt any method or methods other than the method instructed or agreed.

23 The Applicant hereby authorises any deviation from the usual route of carriage or place of storage of goods, which may in the absolute discretion of Prospect Refrigerated Transport be deemed desirable or necessary in the circumstances.

24 (24a) Prospect Refrigerated Transport is authorised to deliver the goods at the address nominated to Prospect Refrigerated Transport by the Applicant for that purpose and without prejudice to the foregoing it is expressly agreed that Prospect Refrigerated Transport shall be conclusively presumed to have delivered the goods in accordance with this contract if at the address he obtains from any person a receipt or signed delivery docket for the goods.

(24b) If the nominated place of delivery should be unattended or if delivery cannot otherwise be effected by Prospect Refrigerated Transport, Prospect Refrigerated Transport may at its option deposit the goods at a place (which shall be conclusively presumed to be due delivery hereunder) or store the goods and if the goods are stored by Prospect Refrigerated Transport the Applicant shall pay or indemnify Prospect Refrigerated Transport for all costs and expenses incurred in or about such storage. In the event that the goods are stored by Prospect Refrigerated Transport, Prospect Refrigerated Transport shall be at liberty to redeliver them to the Applicant from the place of storage at the Applicants expense.

- 25 Where goods are accepted for forwarding by rail to an address in a town or to the place where Prospect Refrigerated Transport has no receiving depot the goods shall be deemed duly delivered according to this contract if they are delivered to the nearest railhead.
- 26 The Applicant shall be and remain responsible to Prospect Refrigerated Transport for all its proper charges incurred for any reason. A charge maybe made by Prospect Refrigerated Transport in respect of any delay in excess of thirty minutes in loading or unloading occurring other than from the default of Prospect Refrigerated Transport. Such permissible delay period shall commence upon Prospect Refrigerated Transport reporting for loading or unloading. Labour to load or unload goods shall be the responsibility and expense of the applicant or the consignee.
- 27 Prospect Refrigerated Transport charges shall be deemed fully earned as soon as the goods are loaded and dispatched from the Applicants premises or accepted for storage and shall be payable and not refundable in any event.
- 28 Prospect Refrigerated Transport shall have a lien on the goods and any documents relating thereto and on any other goods of the Applicant in the possession of Prospect Refrigerated Transport or any documents relating thereto for all sums payable by the Applicant to Prospect Refrigerated Transport and for that purpose Prospect Refrigerated Transport shall have the right to sell such goods by public auction or private treaty without notice to the Applicant.
- 29 (29a) The Applicant shall not tender for carriage or storage any volatile spirits or explosive goods or goods which are or may become dangerous, inflammable or offensive (including radio-active materials) or which are or may become liable to damage any property whatsoever without presenting a full description disclosing the nature of such goods and in any event shall be liable for all loss and damage caused thereby and if in the opinion of the Prospect Refrigerated Transport the goods are or are liable to become of a dangerous , inflammable, explosive, volatile, offensive or damaging nature the same may at any time be destroyed, disposed of, abandoned or rendered harmless by Prospect Refrigerated Transport without compensation to the Applicant and without prejudice to Prospect Refrigerated Transport's right to any charges hereunder.
- (29b) The Applicant warrants that it has complied with all laws and regulations relating to the nature, packaging, labelling, storage or carriage of the goods and that the goods are packed in a manner adequate to withstand the ordinary risk of storage and/or carriage having regard to their nature and hereby indemnifies Prospect Refrigerated Transport for any liability whatsoever as a result of or arising out of the Applicants failure to comply with each of these warranties.
- 30 It is agreed that the Applicant shall be responsible for conformity of any containers, packaging or pallets with any requirements of the Applicant and for any expense incurred by Prospect Refrigerated Transport arising from any failure to so conform.
- 31 It is agreed that no servant or agent of Prospect Refrigerated Transport nor any other person has any power to waive or vary any of the terms hereof unless such waiver or variation is in writing and signed by an executive officer of Prospect Refrigerated Transport.
- 32 If Prospect Refrigerated Transport is liable for damage to or loss of the goods or any part thereof, no claim in respect of such loss or damage may be made unless notice of the claim is lodged in writing at an office of Prospect Refrigerated Transport in the State in which delivery was ought to have been effected within seven (7) days after delivery was effected or would in the ordinary course of business have been effected.
- 33 Notwithstanding any other provision hereof other than clauses 37 and 39 hereof Prospect Refrigerated Transport shall in the event be discharged from all liability whatsoever in respect of the goods unless suit is brought within six (6) months from their delivery or from the date on which in ordinary course of business delivery would have been effected.

- 34 All goods received by Prospect Refrigerated Transport for carriage, forwarding or storage are accepted subject to the condition that Prospect Refrigerated Transport shall accept no responsibility for the collection of cash on delivery or any other payments on behalf of the Applicant or any other person. When the goods are tendered by any person with instructions for Prospect Refrigerated Transport to collect any such payments Prospect Refrigerated Transport shall not be bound by such instructions notwithstanding that Prospect Refrigerated Transport may accept the goods as tendered and perform other services of carriage, forwarding or storage in relation to those goods.
- 35 All the rights, immunities and limitations of liability in the above terms shall continue to have full force and affect in all circumstances and notwithstanding any breach of this contract or any of these terms and conditions hereof by Prospect Refrigerated Transport or any other person entitled to the benefit of such provisions.
- 36 It is hereby agreed that if any provision or part of any provision of this contract is unenforceable such it shall not affect any other part of such provision hereof.
- 37 In respect to contracts made in Queensland and in any other case where any carriage or any part thereof is subject to the Carriage of Goods by Land (Carriers Liability) Act, 1967 of that State these terms and conditions shall continue in force and effect except to the extent that they are or any part thereof is void by operation of that Act.
- 38 The Applicant acknowledges that it is aware of and understands any applicable legislation relating to the disposal of uncollected goods and confirms that its place of abode for the purpose is that set out on the documentation evidencing the hereto terms and conditions of contract and trade.
- 39 Notwithstanding anything herein contained Prospect Refrigerated Transport shall continue to be subject to any implied warranty provide by the Trade Practices Act 1974 (as amended) if and to the extent that the said Act is applicable to this contract and prevents the exclusion, restriction or modification of such warranty.
- 40 (40a) The Applicant and each Guarantor hereby acknowledges that their statutory rights to privacy have been drawn to their attention. They acknowledge and hereby consent to Prospect Refrigerated Transport's participation in any or all of the following practices in their assessment, acceptance, marketing, management and collection of monies payable or goods recoverable under transactions contemplated between the Applicant and Prospect Refrigerated Transport.
- (40b) Prospect Refrigerated Transport may seek from or (subject to limitations imposed by legislation) may disclose to credit reporting agencies or other credit providers information in respect of the Commercial or, subject to the provisions of the relevant legislation; Consumer Credit activity or background of the Applicant or any of the Guarantors or any information concerning the conduct of the Applicant and any of the Guarantors in discharging their obligations to Prospect Refrigerated Transport.
- (40c) Prospect Refrigerated Transport may seek financial information in respect of the Applicant from the Applicant's Accountants and may use information provided herein or seek information from credit reporting agencies or other credit providers for the purposes of collecting overdue payments or for recovering equipment.
- (40d) Prospect Refrigerated Transport may, in association with other parties or otherwise, use information in respect of the Applicant or any of the Guarantors for the purposes of marketing or promotional activity and may employ an agent to make some or all of the enquires outlined herein on behalf of Prospect Refrigerated Transport and the Applicant and Guarantors acknowledge that this authorisation extends to include those agents of Prospect Refrigerated Transport other than agents employed for the purpose of enforcement of collection of overdue monies.