

BROOKS HIRE

SERVICE PTY LTD ABN: 20 008 975 988

Master Cartage Contract

BH-IMS-F121

Head Office Perth - 30 Coulson Way Canning Vale WA 6155
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Terms and Conditions of Cartage Contract

Date

2020

Table

Carrier	Brooks Hire Service Pty Ltd		
ABN	20 008 975 988		
ACN	008 975 988		
Address	30 Coulson Way Canning Vale WA 6155		
Email address	reception@brookshire.com.au		
Telephone	(08) 9455 1212	Fax	(08) 9455 4045
Customer Name (if individual please include date of birth)			
ACN (if a company)			
Trust Name (if applicable)			
Trust ABN (if applicable)			
Address			
Postal Address			
Email address			
Contact Name			
Telephone		Fax	

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these terms and conditions unless the contrary intention appears:

Carriage means all the operations and services undertaken by the Carrier in respect of the Goods.

Carrier means Brooks Hire Service Pty Ltd ABN 20 008 975 988 and includes its successors, administrators and assigns and where not inconsistent with the context, includes its servants, agents and subcontractors.

Consignee means the person to whom the Goods are to be delivered in accordance with the Customer's instructions.

Consignor means the person from whom the Goods are to be collected in accordance with the Customer's instructions.

Customer means the entity identified on the front page of these terms and conditions as the Customer and includes its successors, administrators and assigns.

Dangerous Goods means goods classified as dangerous goods in the Australian Code for the Transport of Dangerous Goods by Road and Rail, or by any other Code or legislation which governs the transportation of goods by the Carrier and includes goods which are or may become noxious, dangerous, hazardous, inflammable, explosive or damaging (including waste, contaminated or radioactive material) or capable of causing death, injury or damage to any person or property whatsoever.

Force Majeure means any act, occurrence or omission as a direct or indirect result of which a party is prevented from or delayed in performing any of its obligations under the agreement and which could not have been prevented, overcome or remedied by the exercise of a standard of care and diligence consistent with that of a prudent person under the circumstances including:

- (a) an act of a public enemy, a war (declared or undeclared) explosion, insurrection, public riot, civil commotion, military action and an act of sabotage;
- (b) a strike, blockade, lockout or industrial action, dispute or disturbance of any kind;
- (c) an act or restraint of any government or governmental authority, including foreign governments and authorities; and
- (d) an act of God, or a storm, tempest, lightning, fire, flood, earthquake or other natural calamity.

Goods means cargo accepted from the Consignor together with any container, packaging or pallet supplied by or on behalf of the Consignor to be moved from one place to another by way of the Carrier's Services.

GST means any tax imposed on a supply by or through the *A New Tax System (Goods and Services Tax) Act 1999*.

Price means the costs of the Services as agreed by the Carrier and the Customer, and as amended or varied in accordance with these terms and conditions.

Services means all services supplied by the Carrier to the Customer (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, or otherwise handling the Goods or anything else done in relation thereto).

Subcontractor means:

- (a) any person or entity with whom the Carrier may arrange for the carriage or storage of any Goods the subject of this agreement; and
- (b) any person who is now or hereafter a servant, agent, employee or subcontractor of any of the persons referred to in paragraph (a) of this definition.

1.2 Interpretation

In these terms and conditions unless the context otherwise requires:

- (a) headings are for convenience only and do not affect their interpretation;
- (b) an obligation or liability assumed by, or a right conferred on, 2 or more Parties binds or benefits all of them jointly and each of them severally;
- (c) the expression **person** includes an individual, the estate of an individual, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to any party includes that party's executors, administrators, successors and permitted assigns, including any person taking by way of novation;
- (e) a reference to any document (including these terms and conditions) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;
- (g) words importing the singular include the plural (and vice versa) and words indicating a gender include every other gender;
- (h) reference to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules, exhibits and annexures to or of these terms and conditions and a reference to these terms and conditions includes any schedule, exhibit or annexure to these terms and conditions;
- (i) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
- (j) a reference to **\$** or **dollar** is to Australian currency.

2 CARRIAGE OF GOODS

2.1 Common Carrier

The Carrier is not a "Common Carrier" and will accept no liability as such. All articles are carried or transported and all storage and other services are performed by the Carrier subject only to these conditions and the Carrier reserves the right to refuse the carriage or transport of articles for any person, corporation or body, and the carriage or transport of any class of articles at its discretion.

2.2 Customer Authority

The Customer authorises the Carrier (in its discretion at any time without notice to the Customer) to:

- (a) license or sub-contract all or any part of its rights and obligations, including using the services of others where necessary to ensure safety of other road users and property, and compliance with lawful authority requirements and Police or private escorts, road closures and transport control, and using specialist equipment such as special cooling ;
- (b) deviate from the usual, customary, intended or advertised route (whether or not the nearest, most direct or customary) or manner of carriage of Goods that may be deemed reasonable or necessary in the circumstances, including stay at any place whatsoever once or more often in any order backwards or forwards or store the Goods at any such place for any period whatsoever; and
- (c) comply with any order direction or recommendation on loading, unloading, departure, routes, place or call, stoppages, destination, arrival, discharge, delivery or otherwise whatsoever given by any lawful authority.

2.3 Customer Acknowledgement

The Customer acknowledges and agrees:

- (a) the Carrier contracts with the Customer both on its own behalf and on the behalf of the Carrier's servants, agents and subcontractors, and the Customer undertakes that the Customer will not make any claims against such servant, agent or subcontractor which may impose upon any of them any liability whatsoever in connection with the Goods or the provision of the Services, whether or not arising out of negligence or a wilful act or omission by any of them;
- (b) in respect of any clause herein which excludes, or in any way limits, the liability of the Carrier in respect of the Services, the Carrier, in addition to acting for itself, is acting as an agent of, and trustee for, each of its employees and also any other person or company with whom the Carrier arranges for the carriage of the Goods (and the employees of such person or company) so that these parties are parties to this agreement in so far as to the exclusions or indemnities that are contained herein are concerned and, in so far as may be necessary to give effect to this clause, the Carrier will hold the benefit of these terms and conditions for its employees and any such person or company and their employees; and
- (c) the Customer shall indemnify the Carrier against:
 - (i) the consequences of such claim or allegation thereof; and
 - (ii) all claims or demands whatsoever by whomsoever made in respect of any loss, damage, or injury howsoever caused whether or not by negligence or wilful act or omission of the Carrier, its servants, agents or subcontractors.

3 CHARGES

3.1 Price and Payment

At the Carrier's discretion the Price shall be either:

- (a) as indicated on invoices provided by the Carrier to the Customer in respect of Services provided; or
- (b) the Carrier's quoted price (subject to clauses 3.2 and 3.3) which shall be binding upon the Carrier provided that the Customer shall either accept in writing the Carrier's quotation within 30 days or by the use of the Service.

3.2 Changes to Price

The Carrier reserves the right to change the Price:

- (a) if a variation to the Carrier's quotation is required or requested (including as to the nature of the Service to be provided or the Goods, or the nature and location of the collection and delivery addresses, facilities available for packing, loading or unloading, delivery times or date or otherwise);
- (b) to reflect any increases to the Carrier in the cost of providing the Services which are beyond the reasonable control of the Carrier (including without limitation increases in the cost of fuel, labour or materials, foreign exchange fluctuations, or increases in taxes or customs duties or insurance premiums or warehousing costs);
- (c) for any delay over one hour in either loading or unloading from when the Carrier arrives on site and any overnight or extended storage occurring other than from the Carrier's default; and
- (d) where the Price is calculated by weight, measurement or value, the Carrier 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.

3.3 Payment

The Price is payable by the Customer on the date determined by the Carrier, which may be:

- (a) the date which is 7 days following the date of invoice given to the Customer by the Carrier;
- (b) the date specified on any invoice or other form as being the date for payment; or
- (c) 30 days following the end of the month in which a statement is posted to the Customer's address or address for notices.

3.4 Method of payment

Payment may be by cash, cheque, electronic on line banking or any other method as agreed by the Customer and the Carrier. Receipt from the Customer 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 the Carrier's rights in respect of the Services and the Goods shall continue.

3.5 GST

GST and other levies, taxes and duties that may be applicable shall be added to the Price except when they are expressly excluded from the Price.

3.6 When Charges Earned

The Carrier's charges shall be considered earned in the case of Goods for carriage as soon as the Goods are loaded and despatched from the sender's premises.

3.7 Receipt for Goods

Should the Customer require the Carrier to collect the Goods on the Customer's behalf from a third party, any receipt the Carrier may give that third party when effecting collection is no more than a record of the collection and cannot be construed as confirmation of the quality or condition of the Goods.

4 CUSTOMER-PACKED CONTAINERS

4.1 Carrier may open Packaging

The Carrier may open at the Customer's risk and expense any document or any packaging or container in which the Goods are placed or carried to inspect the Goods to determine their nature or condition or to determine their ownership or destination where any consignment note or identifying mark is lost, damaged, destroyed, defaced or otherwise.

4.2 Responsibility for Packaging

Subject to any written special instructions to the contrary:

- (a) the Customer and the consignor is solely responsible for the safe and proper packaging of the Goods (including the manner in which the Goods have been packed, the suitability of the Goods for carriage or manner or packaging and the condition of the packaging) and for any loss suffered or incurred by any person (including the Customer) through any such failure; and
- (b) the Carrier is not obliged to pack the Goods or to provide any plant, power or labour required for loading or unloading of the Goods.

4.3 Loading and Unloading Goods

Goods requiring special appliances for loading and/or unloading are accepted for carriage only on condition that such appliances are made available by the Customer at the collection and delivery address. If the Carrier is, without prior arrangement, called upon to load and unload such Goods, the Carrier shall not be liable to the Customer for any loss whatever, howsoever caused, arising out of such loading and unloading and the Customer shall indemnify the Carrier against all claims and demands whatsoever which could not have been made if such assistance had not been given.

5 DANGEROUS GOODS

5.1 Indemnity

Unless otherwise agreed in advance in writing with the Carrier the Customer or their authorised agent shall not tender for carriage any Dangerous Goods, nor anything which may encourage vermin or pests.

The Customer shall be liable for and hereby indemnifies the Carrier for all loss and damage and all additional charges and expenses incurred or sustained by the Carrier arising out of the carriage of the Goods, any false, misleading or inaccurate information or description of such Dangerous Goods, or any default or failure of the Customer to declare the Goods and Dangerous Goods and provide full particulars thereof.

5.2 Full Disclosure of Dangerous Goods

Where Dangerous Goods or anything likely to encourage vermin or pests are accepted for carriage the Customer and the Consignor warrants that the carriage thereof is not prohibited and they have fully disclosed in writing to the Carrier before the Carrier has taken possession of the Goods the full particulars and description of the Goods, the nature and value of the Goods, all requirements of lawful authorities for such carriage and all other relevant information.

5.3 Removal of Dangerous Goods

The Carrier may, at its discretion, at the Customer's expense and without compensation thereto or to any other person with an interest in the Goods and without prejudice to its charges or any other rights hereunder:

- (a) remove, sell, destroy or otherwise dispose of any undeclared Dangerous Goods in its possession without being responsible or accountable for the value thereof to the Customer or any other person with an interest thereto; and
- (b) dispose of or destroy or abandon or render harmless any Goods which the Carrier believes have deteriorated or become objectionable, unwholesome, infested with vermin or pests, or a source of danger or contamination, or any declared Dangerous Goods which are or are liable to become of a dangerous, inflammable, explosive, volatile, offensive or damaging nature.

6 CUSTOMER'S RESPONSIBILITY

6.1 Warranties

The Customer expressly warrants to the Carrier that:

- (a) the Customer is either the owner or the authorised agent of the owner of any Goods or property that is the subject matter of this agreement, and by entering into this agreement the Customer accepts these terms and conditions for the Consignee as well as for all other persons on whose behalf the Customer is acting;
- (b) the person handing over the Goods to the Carrier is authorised to sign and accept these terms and conditions;
- (c) it is the Customer's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery;
- (d) any packaging, labelling and marking by the Customer accurately describes the Goods as to content, weight and method of handling and otherwise complies with applicable dangerous goods codes, any other applicable laws and with any relevant Australian or international standards; and
- (e) the Goods will be suitably organised and will be fit for carriage.

6.2 Indemnity

The Customer shall indemnify the Carrier against any loss (including any fine, levy, charge or other monetary imposition to which the Carrier may become liable incidental to the carriage) damage, death or injury, including loss or damage to the Carrier's containers or equipment arising out of:

- (a) the Customer's unreasonable detention of any vehicle container or other equipment of the Carrier; and
- (b) any breach of the Customer's warranties under clause 6.1, including the failure to comply with clause 6.1(d).

7 INSURANCE

7.1 Goods at Customer's Risk

The Carrier will not, without the Customer's written instruction, insure the Goods, and:

- (a) the Goods are carried and stored at the Customer's sole risk and not at the risk of the Carrier;
- (b) subject to sub-clause (c):
 - (i) the Carrier is under no obligation to arrange insurance of the Goods and it remains the Customer's responsibility to ensure that the Goods are insured adequately or at all; and
 - (ii) under no circumstances will the Carrier be under any liability with respect to the arranging of any such insurance and no claim will be made against the Carrier for failure to arrange or ensure that the Goods are insured adequately or at all;
- (c) any such insurance is at the Customer's own expense. Where the Customer's instruction does not specify the class of insurance to be effected, the Carrier may in its discretion effect that class of insurance which it considers appropriate. Such insurance shall exclude all claims resultant from:
 - (i) wear, tear, moths, vermin, damp, mildew or loss of market;
 - (ii) loss, damage or expensed proximately caused by delay;
 - (iii) strikes, riots, civil commotions or malicious damage of the insured Goods;
 - (iv) gradual deterioration, rust or oxidation unless due to or consequent upon fire, collision, overturning or other accident;
 - (v) any exclusion common to that class of insurance; and
 - (vi) any other exclusion advised by the Customer to the Carrier, detailed in special instructions.

8 DELIVERY OF GOODS

8.1 Delivery Address

The Carrier is authorised to deliver the Goods at the address given to the Carrier by the Customer for that purpose and it is expressly agreed that the Carrier shall be taken to have delivered the Goods in accordance with these terms and conditions even if at that address the Carrier is unable to obtain from any person a receipt or a signed delivery docket for the Goods.

8.2 Separate Instalments

The Carrier 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.

8.3 Delivery to Third party

Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery for the purposes of this agreement.

8.4 Customer's Sole Risk

If the Customer requests the Carrier to leave the Goods outside the Carrier's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.

9 LOSS OR DAMAGE

9.1 Exclusion of Carrier's Liability

Subject to any statutory provisions imposing liability in respect of the loss of or damage to the Goods, the Carrier shall not be under any liability for:

- (a) any delay or any loss or damage to the Goods occasioned during carriage arising from any Force Majeure or any confiscation, requisition, destruction of or damage by order of any authority, or seizure under legal process;
- (b) compliance with the directions of any person or lawful authority entitled to give them;
- (c) deterioration, contamination (including any contamination of any grain or other cargo compromising the Goods), evaporation, breakdown or malfunction of any refrigeration or cooling equipment, wrongful delivery, misdelivery, delay in delivery or non-delivery of the Goods whenever or howsoever occurring (and whether the Goods are or have been in the possession of the Carrier or not)
- (d) 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
- (e) any act or omission whether wilful, reckless, negligent or otherwise of the Carrier, or its servants or agents or subcontractors;
- (f) any latent defect or inherent vice or natural deterioration or wastage of the Goods or packaging;
- (g) any act, omission or neglect of the Customer, including insufficient or improper packaging, labelling or addressing, or failure to take delivery, or any handling, loading, storage or unloading of the Goods.

10 LIEN

10.1 Carrier's Lien

The Carrier shall have a lien on any Goods owned by the Customer and in the possession or control of the Carrier (and any documents relating to those Goods) for all sums payable by the Customer to the Carrier, and the Carrier shall have the right to sell such Goods or cargo by public auction or private treaty after giving seven (7) days' notice to the Customer.

The Carrier shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods, from the proceeds of sale and shall render any surplus to the entitled person. Any such sale shall not prejudice or affect the Carrier's right to recover from the Customer any charges due or payable in respect of the carriage or such detention and sale.

11 PALLET

11.1 Instructions to Carrier

Any instruction to the Carrier to exchange or transfer consigned pallets to the Carrier's pallets hire account is accepted only on the basis that the sender will indemnify the Carrier against any loss or non-recovery. Evidence shown on the face of the consignment note or booking documentation shall be deemed conclusive proof of the instructions and/or non-recovery. A charge may be made by the Carrier for the cost of hiring, recovery and replacement (if applicable) for all pallets hired by the Carrier, unless exchange pallets are available at the time of delivery.

12 CLAIMS

12.1 Claims by Customer

Any claim against the Carrier must be lodged by the Customer with the Carrier for consideration and determination by the Carrier on the same day of delivery, or for non-delivery within forty-eight (48) hours of the anticipated date of delivery or the removal or destruction of the Goods.

12.2 Evidence of Performance

The failure to notify a claim within the time limits under clause 12.1, or the installation of the Goods, is evidence of satisfactory performance by the Carrier of its obligations hereunder.

13 CANCELLATION

13.1 Cancellation by Carrier

The Carrier may cancel any contract to which these terms and conditions apply or cancel the provision of the Services at any time before the Services are commenced (or the Goods have been delivered) by giving written notice to the Customer. On giving such notice the Carrier shall repay to the Customer any sums paid in respect of the Price. The Carrier shall not be liable for any loss or damage whatever arising from such cancellation.

13.2 Cancellation by Customer

In the event that the Customer cancels the provision of the Services, then the Customer shall be liable for any loss incurred by the Carrier (including, but not limited to, any loss of profits) up to the time of cancellation.

14 DEFAULT AND CONSEQUENCES OF DEFAULT

14.1 Interest

The Carrier may charge interest on all amounts not paid by the Customer by the due date at the rate of 1% per annum plus the Bankwest's commercial overdraft interest rate on accommodation in excess of \$100,000 from and including the due date to the actual receipt of payment. If that rate is not readily ascertainable the Carrier may apply what the Carrier reasonably considers to be an equivalent rate. The rate applies whether or not the Carrier notifies it to the Customer.

14.2 Recovery Costs

If the Customer owes the Carrier any money the Customer shall indemnify the Carrier from and against all costs and disbursements incurred by the Carrier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Carrier's contract default fees, and bank dishonour fees).

14.3 Suspension

Without prejudice to any other remedies the Carrier may have, if at any time the Customer is in breach of any obligation (including those relating to payment) the Carrier may suspend or terminate the provision of Services to the Customer and any of its other obligations under the terms and conditions. The Carrier will not be liable to the Customer for any loss or damage the Customer suffers because the Carrier exercised its rights under this clause.

14.4 Carrier's Remedies

Without prejudice to the Carrier's other remedies at law the Carrier shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Carrier shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to the Carrier becomes overdue, or in the Carrier's opinion the Customer will be unable to meet its payments as they fall due; or
- (b) the Customer 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
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

15 PPSA

15.1 Definitions

In this clause 15 the terms "financing statement", "financing change statement", "security agreement", and "security interest" have the meaning given to them by the PPSA.

15.2 Security Agreement

The Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and create a security interest in all:

- (a) Goods that have previously been carried and any Goods that will be carried in the future by the Carrier to the Customer; and
- (b) collateral (account), being a monetary obligation of the Customer to the Carrier for Services that have previously been provided, and will be provided in the future by the Carrier to the Customer; and
- (c) Goods that have previously been provided, and will be provided in the future by the Carrier to the Customer.

15.3 Undertakings

The Customer undertakes to:

- (a) promptly sign any further documents and provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Carrier 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 15.3(a)(i) or 15.3(a)(ii);
- (b) indemnify, and upon demand reimburse, the Carrier 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 the Carrier; and
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or any collateral in favour of a third party without the prior written consent of the Carrier.

15.4 Security Agreement

The Carrier and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

15.5 Waiver right to Receive Notices

The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

15.6 Waiver

The Customer waives their rights as a grantor and a debtor under sections 142 and 143 of the PPSA.

15.7 Waiver right to Receive Verification Statement

Unless otherwise agreed to in writing by the Carrier, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.

15.8 Ratification by Customer

The Customer must unconditionally ratify any actions taken by the Carrier under clauses 15.3 to 15.5.

15.9 Contracting out of PPSA

Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

16 MISCELLANEOUS

- 16.1 These terms and conditions replace and supersede all other terms and conditions of carriage, previously in force between the Carrier and the Customer and no variation of these conditions will bind either party unless confirmed by the Carrier in writing.
- 16.2 The Carrier may from time to time give notice to the Customer amending any provision in these terms and conditions. However, unless the Customer agrees otherwise, the variation will not take effect in respect of any carriage that has commenced before the notice is given to the Customer.
- 16.3 Any notice or invoice which by these terms and conditions may be served or rendered by the Carrier may be served or rendered by leaving it at or posting it to the address of the Customer or sending it by email as stated in the terms and conditions or last notified in writing by the Carrier to the Customer and will be deemed to have been served or rendered at the time of an email is sent or at the time of leaving or, if posted, on the business day following the day of postage and any notice may be signed by a manager, director or solicitor of the Carrier on behalf of the Carrier.
- 16.4 The person signing this agreement for and on behalf of the Customer agrees with the Carrier that he or she has the authority of the Customer to make this agreement on the Customer's behalf and is empowered by the Customer to bind the Customer to this agreement and hereby indemnifies the Carrier against all losses and costs incurred by the Carrier arising out of the person signing this agreement failing to have such power and authority.
- 16.5 If these terms and conditions or any part of them become void or unenforceable for any reason then that part will be severed from the terms and conditions to the intent that all parts that do not become void or unenforceable will remain in full force and effect and be unaffected by any severance of other parts.
- 16.6 The rights and obligations of the Customer and the Carrier will continue and not be affected by termination of this agreement. Termination of this agreement will be without prejudice to any action already given to the Carrier or the Customer in respect of any breach of this agreement by the other party.
- 16.7 The parties acknowledge that these terms and conditions contain the entire agreement concluded between the parties notwithstanding any prior or subsequent negotiations or discussions or representations. Any such conditions, warranties or representations are hereby expressly excluded.
- 16.8 Time is to be of the essence of all obligations of the Customer in this agreement.
- 16.9 Failure by the Carrier to insist upon strict performance of any terms contained herein, or to exercise in whole or in part any right that it may have under these terms and conditions at law, shall not be a waiver of any rights that the Carrier may have and shall not be deemed a waiver of any rights that the Carrier may have and shall not be deemed a waiver of any subsequent breach of any term of these terms and conditions.
- 16.10 A statement in writing made up from the books of the Carrier and signed by any director, secretary or credit manager of the Carrier of the amount owing by the Customer as at the date mentioned in that statement will be prima facie evidence that the amount is due and owing without it being necessary to produce any books or vouchers to verify the same.
- 16.10 Any credit accommodation granted may be withdrawn at any time for any reason without notice.
- 16.12 The Customer agrees that in the event of any litigation arising in connection with these terms and conditions that the action be commenced out of a Court of competent jurisdiction in Western Australia.

Enquiries –

Jessica Grigoroff

Phone: 08 9455 1212

Email: jgrigoroff@brookshire.com.au

Executed as an Agreement:

SIGN SECTION (A) OR (B) OR (C)

(A) INDIVIDUAL / SOLE TRADER / PARTNERSHIP

Signature:

Witness Signature:

Name:

Witness Name:

Dated: / /

Witness Address:

(B) COMPANY

In accordance with section 127 of the Corporations Act by its authorised officers:

Signature of Director

Signature of Director/Secretary

Name

Name

Dated: / /

(C) TRUSTEE (CORPORATION)

In accordance with section 127 of the Corporations Act by its authorised officers:

_____ PTY LTD

As trustee for the:

_____ Trust

Signature of Director

Signature of Director/Secretary

Name

Name

Dated: / /