

GENERAL TERMS AND CONDITIONS OF CARRIAGE

1. DEFINITIONS AND INTERPRETATION

1.1 In these terms and conditions:

“Applicable Safety Regulations” means *Protection of the Environment Operations Act 1997* (NSW), *Environment Protection Act 1970* (Vic), *Environmental Protection Act 1994* (Qld), *Environmental Protection Act 1986* (WA), *Environment Protection Act 1993* (SA), *Occupational Health and Safety Act 2000* (NSW), *Explosives Act 2003* (NSW), *Occupational Health, Safety and Welfare Act 1986* (SA), *Occupational Health and Safety Act 2004* (Vic), *Occupational Safety and Health Act 1984* (WA), *Radiation Control Act 1990* (NSW), *Dangerous Goods Act 1985* (Vic), *Radiation Act 2005* (Vic), *Radiation Protection and Control Act 1982* (SA), *Explosives Act 1936* (SA), *Dangerous Substances Act 1979* (SA), *Work Health and Safety Act 2011* (Qld), *Radiation Safety Act 1999* (Qld), *Dangerous Goods Safety Act 2004* (WA), *Radiation Safety Act 1975* (WA), *Australian Code for the Transport of Dangerous Goods, Rail Safety (Adoption of National Law) Act 2012* (NSW), *Rail Safety National Law Application Act 2013* (Vic), *Transport (Rail Safety) Act 2010* (Qld), *Rail Safety Act 2010* (WA) and *Rail Safety National Law (South Australia) Act 2012* (SA), as amended, consolidated, re-enacted or replaced from time to time, any other (or replacement) legislation or other laws which may be enacted or established or come into effect, before, on or after the date of the Contract, relating to the transportation of goods including by road or rail, and all guidelines, codes, regulations and policies produced under any of those Acts, codes or other laws.

“Applicable Transport Regulations” means all laws, statutes, regulations, codes, standards, ordinances and by-laws applicable to the Goods, their possession, custody, transport and handling, and the Carriage, which depending on the jurisdictions in which the Goods will be located from time to time and where the Carriage will be performed may include the Applicable Safety Regulations.

“Aurizon” means Aurizon Operations Limited (ACN 124 649 967) of Level 17, 175 Eagle Street, Brisbane, Queensland, and includes its Related Bodies Corporate, and all their respective successors and assigns.

“Aurizon Vehicles” means locomotives, rolling stock, containers or any road vehicles (including trailers and transportable tanks) used by Aurizon to

transport Goods and includes any equipment or machinery used to load and unload Goods (or in any way associated with that loading or unloading).

“Carriage” means the services undertaken by Aurizon under the Contract and depending on the Contract may include the receipt, storage, handling, packing, transportation, distribution, loading and unloading of Goods or container hire.

“Charges” means the amount in Australian dollars payable by the Sender to Aurizon for the Carriage under the Contract, including all costs and charges incurred by Aurizon in performing the Carriage (including any levies) and all costs and charges set out in any invoice delivered by Aurizon to the Sender.

“Consequential Loss” means any special, indirect or consequential loss, economic loss in respect of any claim in tort, loss of profits, loss of production, loss of revenue, loss of use, loss of contract, loss of goodwill, loss of opportunity, loss of reputation, wasted overheads or damage to credit rating whatsoever, and loss arising out of any claim by a third party.

“Contract” means a contract between Aurizon and the Sender in connection with the handling, distribution, storage and carriage of materials and the hiring of containers (as the case may be), and where applicable constituted by:

- (a) any Consignment Note that Aurizon has sent to the Sender; or
- (b) any authorised electronic booking system arrangement, rail haulage agreement, road haulage agreement, or other services agreement with the Sender in respect of Carriage,

(or both) and which incorporates (including by reference) these terms and conditions and to which these terms and conditions apply.

“Consignment Note” means (as applicable) a document entitled “Consignment Note” (or similar) sent by Aurizon to the Sender, or an electronic consignment note sent to Aurizon by the Sender in the form authorised by Aurizon for electronic transmission.

“Dangerous Goods” has the meanings given to that expression in the *Australian Code for the Transport of Dangerous Goods* and the dangerous goods legislation in each jurisdiction in which Carriage is provided and includes without limitation Goods which are or may become harmful to people, property or the environment, or are poisonous,

corrosive, volatile, explosive, flammable or radioactive.

“**Goods**” means the materials or items described in the Contract, including any contents of wagons, containers, packages, trailers, transportable tanks, pallets and other storage or transportation units.

“**Interest Rate**” means the 90-day bank bill swap rate last published by the Commonwealth Bank of Australia on the date when the relevant interest is calculated.

“**Receiver**” means the party described in the Contract as the party taking delivery of or collecting the Goods.

“**Related Body Corporate**” has the meaning given to that expression in the *Corporations Act 2001* (Cth).

“**Sender**” means the party for whose benefit Aurizon performs the Carriage and any agent of that party, as described in the Contract.

- 1.2 Where a party comprises two or more persons an agreement or obligation to be performed or observed by that party binds those persons jointly and each of them severally, and a reference to that person shall be deemed to include a reference to any one or more of those persons.
- 1.3 Words (including defined terms) importing the singular include the plural and vice versa, and 'includes' means includes without limitation.
- 1.4 Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- 1.5 If the Contract consists of:
- (a) only a Consignment Note which incorporates these terms and conditions, then the Consignment Note and these terms and conditions constitute the entire understanding of the parties about the Carriage and there are no other understandings, agreements, warranties or representations (express or implied) which are intended to form part of the Contract;
 - (b) any Aurizon authorised electronic booking arrangement or service agreement in respect of Carriage which incorporates these terms and conditions other than the type described in Clause 1.5(c) of these terms and conditions, then if there is any conflict between a provision of these terms and conditions

and another provision of the Contract, the provision of these terms and conditions will prevail to the extent of conflict; or

- (c) a rail haulage agreement or road haulage agreement with Aurizon in relation to Carriage which incorporates these terms and conditions, then if there is any conflict between a provision of these terms and conditions and another provision of the Contract, the other provision of the Contract will prevail to the extent of the conflict.

2. COMMON CARRIER

Aurizon is not a common carrier and accepts no liability as a common carrier.

3. ACCEPTANCE

- 3.1 Aurizon may in its absolute discretion, and without any liability, refuse to provide Carriage in respect of any Goods, in which case Aurizon will not be required to provide any reasons for the refusal.
- 3.2 The Sender must pack, label and secure the Goods to comply with all Applicable Transport Regulations, so that they will not shift during Carriage and so as to withstand the ordinary risks of Carriage having regard to the nature of the Goods.
- 3.3 Aurizon reserves the right to:
- (a) confirm the weight, gross mass, measurements or dimensions of any Goods before or after accepting them for Carriage, or during Carriage;
 - (b) at any time amend or vary the details in the Contract if Aurizon determines in its absolute discretion that there is an inaccuracy in the details, including the weight, gross mass, measurements or dimensions of the Goods as determined by Aurizon under Clause 3.3(a) of these terms and conditions; and
 - (c) recalculate the Charges accordingly,
- and those amendments then form part of the Contract.
- 3.4 If Aurizon accepts Goods for Carriage, relying on the warranties given under Clause 4 of these terms and conditions, Aurizon will perform the Carriage in consideration for the Sender paying the Charges.
- 3.5 Subject to Clause 1.5 of these terms and conditions, these terms and conditions of the Contract (and no other terms) will apply to all Carriage. Any request

by the Sender for Carriage on or after the date the Sender receives these terms and conditions constitutes the Sender's acceptance of and agreement to the Contract.

4. WARRANTIES

- 4.1 The Sender warrants that:
- (a) the Contract accurately and completely describes the Goods;
 - (b) except where expressly stated otherwise in the Contract, the Goods do not contain any Dangerous Goods;
 - (c) the Goods are fit for Carriage and none of them are prescribed by any Applicable Transport Regulations to be goods too dangerous to transport;
 - (d) it has all licences, approvals and other authorisations necessary for it to possess, store, control, handle or transport the Goods;
 - (e) where the Goods are within a container, the container carries a current compliance plate as required under Australian Standard 3711, all doors and securing apparatus are properly closed or locked and the gross mass as stated on the Contract (being the total weight of the container, the Goods and all packaging) is accurately stated and is in accordance with Australian Standard 3711;
 - (f) it has authority from all persons with an interest in the Goods to enter into the Contract and to deliver the Goods to Aurizon for Carriage;
 - (g) each party referred to in Clause 4.1(f) of these terms and conditions has declared and agreed that these terms and conditions apply to, are binding on and can be enforced by Aurizon against that party; and
 - (h) at its own risk it has complied with and will continue to comply with all Applicable Transport Regulations, including those which apply to the Sender's role and actions in relation to the Carriage.
- 4.2 Each warranty in Clause 4.1 of these terms and conditions is given upon the Sender entering into the Contract, and each warranty will remain accurate, valid and subsisting throughout the duration of the Contract.

5. CARRIAGE, STORAGE AND DELIVERY OF GOODS

- 5.1 Aurizon gives no warranty as to the time or date of the departure or arrival of Aurizon Vehicles or the Goods.
- 5.2 Carriage commences when the Goods are accepted by Aurizon for transport and is completed when the Goods are delivered as described in Clause 5.4 of these terms and conditions.
- 5.3 The route taken by any Aurizon Vehicles, the manner of Carriage and the selection or use of any plant or storage facility is at the sole discretion of Aurizon.
- 5.4 Subject to Clause 5.5 of these terms and conditions, the Goods are delivered by Aurizon to the Receiver when Aurizon carries the Goods to the Receiver's address described in the Contract and (if specified in the Contract) Aurizon lifts the Goods from the Aurizon Vehicle.
- 5.5 Aurizon's requirements for use of the Aurizon Vehicles may limit Aurizon's ability to retain loads of Goods at the Receiver's delivery address pending collection by the Receiver. Once Goods are carried to the Receiver's delivery address, if Aurizon requires the use of the Aurizon Vehicles used in carrying those Goods, including before the Receiver attends that location to receive the Goods, Aurizon may unload the Goods (at its own cost), at which time Aurizon will be deemed to have delivered the Goods in accordance with the Contract.
- 5.6 If Aurizon reasonably believes that:
- (a) any vehicle or other means of transport that the Sender or Receiver proposes to use to receive or collect the Goods does not comply with any Applicable Transport Regulation (including those regulating the transport of containers); or
 - (b) the Sender or Receiver otherwise does not have all licences, approvals and other authorisations necessary for it to possess, store, control, handle or transport the Goods,
- Aurizon may in its absolute discretion retain possession of the Goods at the Sender's expense, even if delivery of the Goods has otherwise been effected in accordance with the Contract.
- 5.7 If Aurizon exercises its rights under Clause 5.6 of these terms and conditions, it will hold the Goods on behalf of the Sender as bailee and may require the Sender to pay reasonable storage charges in

relation to any retained Goods.

- 5.8 If the Contract provides that Aurizon will supply power to a refrigerated container then Aurizon's obligation is limited to using reasonable endeavours to connect the refrigerated container to a suitable power supply. For the avoidance of doubt, Aurizon does not guarantee the provision of an uninterrupted power supply, and will not monitor any refrigerated container or ensure that any refrigerated container is operating. Without limiting any other Clause of these terms and conditions, the Sender accepts all risk and liability in respect of power failures.

6. CUSTOMER LOADING AND SECURING OBLIGATIONS

- 6.1 Where the Sender undertakes any loading or unloading of Goods onto or from Aurizon Vehicles, the Sender must ensure that the Goods are loaded and unloaded strictly in accordance with the Applicable Transport Regulations and industry best practice (whichever standard or obligation is higher), and so that they will not shift during the Carriage.
- 6.2 The Sender must not tender Goods for Carriage which are loaded or unloaded by it, or on its behalf, other than in strict compliance with the requirements in Clause 6.1 of these terms and conditions, as determined by Aurizon acting reasonably.
- 6.3 If, in Aurizon's reasonable opinion, the Goods are not loaded or unloaded strictly in accordance with Clause 6.1 of these terms and conditions, at any time Aurizon may in its absolute discretion reject the Goods for Carriage or, if Carriage has commenced discontinue the Carriage, in which case Aurizon may unload any or all of the Goods at a location which it notifies to the Sender.

7. DELAY IN LOADING OR UNLOADING

If a delay occurs in the loading or unloading of Goods, and the delay was not a result of Aurizon's acts or omissions, then Aurizon may in its absolute discretion demand immediate payment from the Sender of any loss suffered or costs incurred by Aurizon as a result of the delay.

8. UNCOLLECTED GOODS

Except where Clause 9.3 of these terms and conditions applies, if:

- (a) Goods to be collected by the Receiver are not collected for any reason;

(b) Aurizon cannot deliver Goods and the Sender does not accept return delivery of the Goods; or

(c) Goods held under lien are not released because of non-payment of the relevant moneys by the Sender,

Aurizon may in its absolute discretion:

(d) unload the Goods and store them (out in the open or under cover) at the sole risk and cost of the Sender;

(e) in respect of perishable Goods, immediately or subsequently sell or dispose of the perishable Goods on terms Aurizon considers appropriate and apply any monies received from the sale or disposition towards the Charges (including any storage costs and Aurizon's cost of the sale or disposal) and any other monies owed to Aurizon by the Sender; or

(f) in respect of non-perishable Goods, one month after sending a notice to the Sender's address described in the Contract advising of Aurizon's intention to sell or dispose of the Goods, sell or dispose of the non-perishable Goods on terms Aurizon considers appropriate and apply any monies received from the sale or disposition towards the Charges (including any storage costs and Aurizon's cost of the sale or disposal) and any other monies owed to Aurizon by the Sender.

9. DANGEROUS, RADIOACTIVE AND OTHER REGULATED GOODS

9.1 When the Sender tenders Goods to Aurizon for Carriage those Goods must be accompanied by:

(a) if required by any Applicable Transport Regulations, a completed declaration detailing the nature and contents of such Goods;

(b) without limiting Clause 9.1 (a) a complete and accurate gross weight declaration; and

(c) all information, documentation (including material safety data sheets) and declarations:

(i) accurately and completely describing the risks associated with the Goods and their

- Carriage;
- (ii) which the Applicable Transport Regulations require the Sender to have in order to possess, store, control, handle or transport the Goods;
 - (iii) which the Applicable Transport Regulations require the Sender to provide to Aurizon in relation to the Carriage (including Aurizon's custody, storage and handling of the Goods); and
 - (iv) which Aurizon requires in order for it to be able to comply with the Applicable Transport Regulations in relation to the Carriage (including Aurizon's custody, storage and handling of the Goods) and delivery of the Goods to the Receiver.
- 9.2 At the Sender's cost Aurizon may in its absolute discretion, without compensation or notice to the Sender, and without prejudice to Aurizon's other rights under the Contract (including its right to be paid the Charges), destroy, dispose of, abandon or render harmless Goods containing Dangerous Goods where they:
- (a) are delivered to Aurizon without Aurizon's consent;
 - (b) in Aurizon's opinion, are insufficiently labelled or the label does not sufficiently identify the nature and character of the Dangerous Goods; or
 - (c) in Aurizon's opinion, are likely to become dangerous, inflammable or damaging, or to cause injury to any persons or damage to other goods, property or the environment.
- 9.3 If the Sender fails to collect Dangerous Goods within 12 hours of delivery by Aurizon, Aurizon may in its absolute discretion notify the appropriate authorities and comply with all directions consequent upon that notification, at the Sender's cost.
- 9.4 The Sender must pay Aurizon immediately on demand all costs incurred in complying with any direction by a responsible authority to wash down or otherwise deal with any Aurizon Vehicle or any wagon, container, package, trailer, transportable tank, pallet or other storage or transportation unit containing any Dangerous Goods, or any Dangerous Good itself, in order to comply with any

Applicable Transport Regulations, or to store any Dangerous Goods to enable them to be inspected.

10. RIGHT TO INSPECT

- 10.1 If any identifying document or mark is defaced or missing from the Goods, the Goods are otherwise not labelled sufficiently, Aurizon is of the reasonable opinion that the Goods are unsafe, dangerous or inappropriately packaged or contained, or Aurizon is otherwise of the reasonable opinion that it is necessary for it to do so in order to comply with any applicable laws, statutes, regulations, codes, standards, ordinances and by-laws (including the Applicable Transport Regulations), Aurizon may in its absolute discretion open any document, wrapping or container in which the Goods are placed or located to determine the nature, condition, ownership or destination of the Goods, without compensation to the Sender and without prejudice to Aurizon's other rights under the Contract, including the right to be paid the Charges.

11. CHARGES AND PAYMENT

- 11.1 All Charges are exclusive of GST.
- 11.2 Charges are deemed fully earned on Aurizon's acceptance of the Goods for Carriage.
- 11.3 Subject to Clause 11.6 of these terms and conditions or as otherwise agreed, the Sender must pay the Charges no later than 7 days after the date of Aurizon's invoice.
- 11.4 If the Sender does not pay any part of the Charges in accordance with Clause 11.3 of these terms and conditions, the Sender must pay interest on the unpaid part of the Charges at the Interest Rate from the date the Charges became payable until the date payment of the Charges is received in full by Aurizon.
- 11.5 Interest accrues daily on the daily balance of the unpaid Charges plus any interest accrued but not paid.
- 11.6 Where the Contract nominates a party other than the Sender to pay the Charges, the Sender must procure that other party to pay the Charges in accordance with Clause 11.3 of these terms and conditions, and if the Charges are not so paid then the Sender must on demand pay to Aurizon the Charges and any interest payable under clauses 11.4 and 11.5 of these terms and conditions.

12. PALLET TRANSFER

12.1 In this Clause 12 of these terms and conditions:

“**Account**” means an account held with a Pallet provider in connection with the supply, loan or use of Pallets.

“**Pallet**” means a portable platform used for storing or moving goods which can be lifted by a forklift, pallet jack or other lifting device.

“**Pallet Transfer**” means an increase in the number of Pallets on Aurizon’s Account for any reason in connection with delivery, distribution, unloading, sale or destruction of Goods under the Contract, as determined by Aurizon.

12.2 If a Pallet Transfer occurs then the Sender must:

- (a) immediately upon demand provide Aurizon with a number of Pallets that is equal to the number of Pallets which were the subject of the Pallet Transfer. Pallets provided by the Sender must be equivalent and of the same brand to the Pallets which were the subject of the Pallet Transfer, in good condition and fit for purpose; or
- (b) do all things necessary to accept a transfer of a number of Pallets that is equal to the number of Pallets which were the subject of the Pallet Transfer from Aurizon’s Accounts to the Sender’s Accounts, within three months of the Pallet Transfer,

failing which Aurizon may in its absolute discretion demand immediate payment from the Sender of any loss suffered or costs incurred by Aurizon as a result of the Pallet Transfer.

13. IMPACT OF CARBON SCHEMES

13.1 In this Clause 13 of these terms and conditions:

“**Carbon Scheme**” means any scheme, arrangement or requirement established by law which has, as one of its purposes, the reduction, limitation or management of greenhouse gas emissions or concentrations, including through direct regulation, a carbon tax, levy or charge, changes to fuel tax credit and rebate schemes, or a market based mechanism such as an emissions trading scheme, and includes the Clean Energy Legislation.

“**Carbon Units**” means any unit, certificate, licence, offset, permit or emissions allowance (however described) which is eligible to be used under any

Carbon Scheme.

“**Clean Energy Legislation**” means the *Clean Energy Act 2011* (Cth) and its associated Acts and regulations, including the *Clean Energy (Fuel Tax Legislation Amendment) Act 2011* (Cth).

“**Voluntary Compliance**” includes any action by Aurizon or a Related Body Corporate of Aurizon (“**Accountable Party**”) in relation to a Carbon Scheme, which involves the exercise of some discretion or election by the Accountable Party.

13.2 If and whenever during the term of the Contract Aurizon incurs any increase in its cost of providing the Carriage or otherwise complying with its obligations under the Contract as a direct or indirect result of the introduction of, operation of, variation to, or Aurizon’s compliance (whether Voluntary Compliance or mandatory compliance) with, a Carbon Scheme (including where any such increase results from costs associated with the introduction of, operation of, or variation to, a Carbon Scheme being passed through to Aurizon by another person), those costs will be passed through to, and must be paid by, the Sender (in addition to any other Charges) except to the extent this may be prohibited by law. For the purposes of this Clause 13.2 of these terms and conditions:

- (a) such costs may include:
 - (i) the cost of acquiring Carbon Units or paying any pecuniary amount, penalty, fine, charge or fee in respect of a failure to transfer, surrender or acquire such Carbon Units;
 - (ii) the loss of, or reduction in, fuel tax credits or rebates; and
 - (iii) costs and expenses incurred by Aurizon in order to offset, abate or reduce greenhouse gas emissions;
- (b) the costs that are to be passed through to, and paid by, the Sender will be the costs attributable to the provision of the Carriage and Aurizon’s compliance with its obligations under the Contract as calculated and attributed by Aurizon, acting reasonably; and
- (c) to the extent that a Related Body Corporate of Aurizon (as opposed to Aurizon) incurs a cost as a direct or indirect result of the introduction of, operation of, variation to, or that Related Body Corporate’s compliance (whether

Voluntary Compliance or mandatory compliance) with a Carbon Scheme and that cost is attributable to, or arises as a result of, Aurizon providing the Carriage or otherwise complying with its obligations under the Contract, that cost is deemed to be a cost of Aurizon under this Clause 13.2 of these terms and conditions.

14. OTHER CHANGE EVENTS

14.1 In this Clause 14 of these terms and conditions:

“Access Provider” means the provider of access to any infrastructure required for the provision of the Carriage.

“Authority” means the Crown, a minister of the Crown, a federal, state or local government or government department, a corporation or authority constituted for a public purpose, a holder of an office for a public purpose, a local authority, a court or a tribunal.

“Authorisation” includes:

- (a) any consent, registration, filing, agreement, notice of non-objection, notarisation, certificate, licence, approval, permit, authority, exemption or other accreditation from, by or with an Authority; and
- (b) in relation to any thing which an Authority may prohibit or restrict within a specific period, the expiry of that period without intervention or action or notice of intended intervention or action.

“Change Event” means an event referred to in Clause 14.2 of these terms and conditions.

“Change in Law” means the making of, change in, or a change by an Authority in the interpretation or application of any law or Authorisation after the date of the Contract.

“Financial Adjustment” means an increase to the Charges (including a variation to the basis on which they are determined) to reflect the Net Financial Effect.

“Impost” means any impost, royalty (whether based on value, profit or otherwise), tax, duty, excise, levy, fee, rate, deduction, withholding, rebate or charge, or any lease, licence or approval fee imposed by an Authority authorised by law to do so, which impacts on the cost of providing the Carriage but does not include any income tax (as defined in the *Income Tax Assessment Act 1936*

(Cth) or the *Income Tax Assessment Act 1997* (Cth)), fringe benefits tax or capital gains tax.

“Net Financial Effect” means the net financial effect on Aurizon of a Change Event being the net increase to the cost (whether capital or operating, fixed or variable) to Aurizon of performing its obligations under the Contract.

14.2 Aurizon may make a Financial Adjustment if, after the date of the Contract:

- (a) any Impost is introduced or any existing Impost is increased (including as a result of a change in the basis for calculating the Impost);
- (b) a Change in Law directly or indirectly increases the cost to Aurizon of performing its obligations under the Contract; or
- (c) a right, direction or discretion exercised by the Access Provider under its access agreement with Aurizon, that is not due to a default by Aurizon, increases the cost to Aurizon of performing its obligations under the Contract or its access agreement.

14.3 Aurizon must notify the Sender of the occurrence of an event referred to in Clause 14.2 of these terms and conditions as soon as practicable after becoming aware of its occurrence, along with details of the Financial Adjustment.

14.4 Any Financial Adjustment (including a variation to the basis on which the Charges are determined) has effect retrospectively on and from the date the relevant Change Event takes effect.

14.5 This Clause 14 of these terms and conditions has no application in relation to the introduction of, operation of, variation to, or Aurizon’s compliance with, a Carbon Scheme, to which Clause 12 of these terms and conditions applies.

15. LIEN

15.1 In this Clause 15 of these terms and conditions:

“Collateral” means the property described in Clause 15.9 of these terms and conditions.

“PPSA” means the *Personal Property Securities Act 2009* (Cth).

Words and expressions which are not defined in this Clause 15 of these terms and conditions but which have a defined meaning in the PPSA have the same meaning as in the PPSA.

15.2 The Sender acknowledges that Aurizon has a

	security interest in the Collateral.		whether at law or in equity or arising out of the provisions of statute, arising from or in connection with the Carriage, any loss of or damage to, or caused by, the Goods, any delay in delivery or the non-delivery of the Goods, any act or omission by Aurizon, or any breach by Aurizon of the Contract.
15.3	The Sender acknowledges that Aurizon's rights and interest in proceeds derived from the Collateral constitute a security interest in such proceeds.		
15.4	Aurizon may register any security interest on the register in any manner it chooses (including by registering one or more financing statements in relation to its interest in the Collateral, with such expiry dates as Aurizon determines in its absolute discretion). The Sender must provide Aurizon with any information it requires for the purposes of giving effect to such registration.	16.3	If in connection with the Carriage the Sender or its employees, servants, agents or subcontractors enter sites controlled or owned by Aurizon or third parties, such entry will be at the Sender's sole risk and liability, and the Sender must do all things reasonably required to minimise any disruption to Aurizon or the third parties (as the case may be) caused by such entry on those sites.
15.5	For the purposes of section 157(3) of the PPSA, the Sender irrevocably and unconditionally waives its right to receive any notice from Aurizon in connection with the registration of a financing statement or a financing change statement in respect of the Collateral.	16.4	The Sender will be liable for and must pay any duty, tax, impost or outlay of any nature whatsoever in connection with the Goods and the provision of the Carriage and indemnifies Aurizon in respect of those duties, taxes, imposts and outlays. The Sender must pay any such duty, tax, impost or outlay as soon as it becomes due or immediately on demand by Aurizon, whichever occurs first.
15.6	If chapter 4 of the PPSA would otherwise apply to the enforcement of any security interests then the provisions of chapter 4 are excluded, to the extent possible.		
15.7	The Sender must take any steps Aurizon reasonably requires to perfect or otherwise ensure the enforceability and priority of any security interest.	17. LIMITATION OF LIABILITY	
15.8	Neither the Sender or Aurizon will disclose information of the kind described in PPSA section 275(1), unless section 275(7) of the PPSA applies.	17.1	In this Clause 17 of these terms and conditions, " Access Provider " means Aurizon Network Pty Ltd ACN 132 181 116.
15.9	Aurizon has a lien on the Goods, any other goods of the Sender in possession of Aurizon, and on any documents relating to the Goods, for any Charges or other money owed by the Sender to Aurizon.	17.2	To the extent permitted by law, if a condition or guarantee is implied into this Contract under Schedule 2, Part 3.2 of the <i>Competition and Consumer Act 2010</i> (Cth) or by any other law, Aurizon's liability is limited to the lesser of: <ul style="list-style-type: none"> (a) Aurizon undertaking the Carriage again; and (b) the cost of having the Carriage supplied again.
15.10	Nothing in the Contract shall be deemed to restrict any rights conferred on Aurizon by any laws in any jurisdiction relating to warehousemen's liens, which rights are deemed to apply to the Contract in addition to the provisions of this Clause 15.	17.3	Any claim by the Sender under Clause 17.2 of these terms and conditions is not enforceable against Aurizon (and the Sender agrees not to hold Aurizon liable under Clause 17.2 of these terms and conditions at law or in equity or arising out of the provisions of statute) unless full details of the claim are lodged with Aurizon within five days of the date of delivery of the Goods (if the Goods are damaged) or of the anticipated date of delivery of the Goods (if the Goods are lost or otherwise not delivered).
16. LIABILITY		17.4	Notwithstanding any other Clause of these terms and conditions, to the extent permitted by law Aurizon will not be liable for any Consequential Loss.
16.1	Except to the extent which may be expressly stated in the Contract, the Goods are and remain at the sole risk of the Sender.	17.5	Without limiting any other Clause of these terms
16.2	Subject to Clause 16.1 of these terms and conditions, to the extent permitted by law, each of the Sender and the Receiver releases and discharges Aurizon and its employees, servants, agents or subcontractors from, and must not seek to hold any of them responsible for, all actions, suits, causes of actions, liabilities, losses, damages, expenses, costs, claims and demands whatsoever,		

and conditions, release or exclusion, the Sender, for the benefit of the Access Provider, releases and holds harmless the Access Provider and will not make any claim (including by action, proceeding, demand or claim for damage, loss, cost, liability or expense) against the Access Provider in respect of any Consequential Loss.

18. RESPONSIBILITY

To the extent permitted by law, regardless of any act, omission or negligence by Aurizon or its employees, servants, agents or subcontractors, each of the Sender and the Receiver must pay to Aurizon and its employees, servants, agents and subcontractors on demand, all of their loss (including Consequential Loss) arising from or in connection with the Carriage, any breach of the Sender's obligations under this document, or any breach of a warranty given by the Sender.

19. PROPORTIONATE LIABILITY

To the maximum extent permitted by law from time to time:

- 19.1 the operation of Part 1F of the *Civil Liability Act 2002* (WA), Chapter 2, Part 2 *Civil Liability Act 2003* (Qld), Part 4 of the *Civil Liability Act 2002* (NSW), Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability (Proportionate Liability)) Amendment Act 2005* (SA) and Part IV AA of the *Wrongs Act 1958* (Vic) (as amended, consolidated, re-enacted or replaced from time to time) ("**Proportionate Liability Provisions**") are excluded in relation to all and any rights, obligations and liabilities of either party under this Contract whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise;
- 19.2 the rights, obligations and liabilities of Aurizon and the Sender (including those relating to proportionate liability) are as specified in this Contract and not otherwise whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise; and
- 19.3 if any of the Proportionate Liability Provisions apply to any claim between Aurizon and the Sender whether in contract, tort or otherwise, the Sender will indemnify Aurizon against:
- (a) any liability to or claim by any other person; and
 - (b) any cost, loss, expense or damage incurred by Aurizon,

for which the Sender would be liable but for the operation of the Proportionate Liability Provisions.

19A. LOSS / DAMAGE PROTECTION

- 19A.1 Subject to this clause 19A, where the Sender selects Loss / Damage Protection in the Contract and pays the fee specified for Carriage with Loss / Damage Protection, if the Goods are lost or damaged during Carriage Aurizon will pay the Sender an amount equal to the lesser of:
- (a) the value of the Goods;
 - (b) the cost of repairing the Goods;
 - (c) the cost of replacing the Goods; and
 - (d) \$1,000.
- 19A.2 Aurizon will not pay an amount less than \$50.
- 19A.3 Aurizon will not pay for loss of or damage to Goods unless the Carriage is in a container loaded by Aurizon.
- 19A.4 If the Sender claims a payment, the Sender must give Aurizon such evidence as Aurizon reasonably requires in respect of the value of the Goods.

20. INSURANCE

- 20.1 The Goods will not be insured by Aurizon, unless expressly agreed in the Contract.
- 20.2 Subject to clause 20.4, the Sender must ensure the Goods are insured (including transit insurance, and insurance for third party property damage, injury or death) with a reputable insurer for an amount that a reasonable owner in respect of the Goods would consider prudent (but not less than \$20,000,000 in respect of liability for third party property damage, injury or death), or such higher amount as Aurizon may reasonably require from time to time given the nature of the Goods.
- 20.3 The Sender must ensure that all policies of insurance it is required under this Contract to effect or have in place:
- (a) cover the Sender for potential liability to Aurizon assumed by reason of the exclusion of the Proportionate Liability Provisions under Clause 19 of these terms and conditions; and
 - (b) do not exclude any potential liability the Sender may have to Aurizon.
- 20.4 Where the Sender selects Loss/ Damage Protection on the Contract:
- (a) if the value of the Goods is \$1,000 or less the Sender is not required to take out transit insurance in respect of loss of or damage to the Goods, but if the Sender

does take out such insurance the amount payable by Aurizon under clause 19A is reduced by the amount recovered by the Sender under the policy of insurance;

- (b) if the value of the Goods is more than \$1,000 the Sender is not required to take out transit insurance in respect of loss of or damage to the Goods for any amount less than \$1,000, but if the Sender does take out such insurance and an amount is payable under the policy of insurance for loss or damage of less than \$1,000, the amount payable by Aurizon under clause 19A is reduced by the amount recovered by the Sender under the policy of insurance in respect of the first \$1,000.

21. SUBCONTRACTING

- 21.1 Aurizon may in its absolute discretion subcontract any part or the whole of any Carriage to any party.
- 21.2 Without prejudice to any rights of Aurizon under the Contract, any subcontractor or agent engaged by Aurizon is entitled to the benefit of the Contract, including all rights and exclusions and limitations of liability.

22. VARIATION AND WAIVER

- 22.1 Subject to Clauses 3.3(b), 14.2 and 22.2 of these terms and conditions, no provision of the Contract may be varied except in writing and signed by Aurizon and the Sender.
- 22.2 If any code, standard or legislative instrument described in the Contract (including these terms and condition) is amended, replaced, revoked or repealed then, by giving notice to the Sender, Aurizon may vary or replace the code, standard or legislative instrument with such code, standard or legislative instrument as Aurizon, in its reasonable opinion, determines is an appropriate substitution or addition.
- 22.3 Default or delay in the exercise of any rights under the Contract does not constitute a waiver of that right or any other right, and a single or partial exercise of any right does not preclude any other or further exercise of that right.

23. SEVERANCE

If a provision of the Contract is or becomes unenforceable, that provision is severed and all other provisions remain effective as if the offending provision had not been part of the Contract.

24. NOTICE

Any notice, demand or other communication to be given by the Sender to Aurizon in relation to the Contract must be given in writing in English, by being personally delivered or posted by ordinary pre-paid post to Aurizon's address as stated in the Contract. If posted, the notice, demand or other communication is deemed to be given five Business Days after posting (where "**Business Day**" means any day which is not a Saturday, Sunday or bank or public holiday in the place of receipt). If the notice, demand or other communication is given after 5.00 pm in the place of receipt, or on a day which is not a Business Day, it is taken as having been given at 9.00 am on the next Business Day.

25. CONDITIONS WHICH SURVIVE

All the rights, indemnities and limitations of liability in the Contract (including these terms and conditions) continue to have full effect in all circumstances regardless of any breach or termination of contract.

26. ASSIGNMENT

Each of the Sender and Receiver must not assign or deal with any right under the Contract without the prior consent of Aurizon, and any purported dealing in breach of this Clause of these terms and conditions is of no effect.

27. GOVERNING LAW

The laws of Queensland govern this Contract and the parties submit to the jurisdiction of the courts located in the city of Brisbane, Queensland.

28. COSTS AND STAMP DUTY

All legal costs incurred by the Sender in relation to the Contract and any stamp duty payable on it are payable by the Sender.

29. GST

- 29.1 Unless expressly stated otherwise in the Contract, an amount payable by a party under the Contract in respect of a *taxable supply* by another party does not include *GST*. A party is not obliged to pay an amount for *GST* in respect of a *taxable supply* to it, until given a valid tax invoice for the *taxable supply*. A party required to pay any *GST* amount must pay that amount at the same time that the consideration for the *taxable supply* is to be provided under the Contract.

- 29.2 If an *adjustment event* occurs, the supplier of the *taxable supply* must issue an *adjustment note* and a payment must be made as between the parties to reflect the adjusted amount of the *GST* on the *taxable supply*.
- 29.3 Italicised expressions used in this Clause 29 of these terms and conditions and Clause 11.1 of these terms and conditions have the meaning given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).