

**GOLDEN MESSENGER PTY. LTD.**
**PART 1 /3 - CREDIT APPLICATION**

<b>Registered entity name*</b>		
<b>A.B.N. *</b>		
<b>Trading name*</b>		
<b>Company registered address*</b>		
<b>Company trading address* (if different from registered address)</b>		
<b>Type of industry*</b>	<b>Year(s) established*</b>	<b>Credit required</b>
<b>Director(s)*</b>	<b>Contact number*</b>	<b>Email address*</b>
<b>ACCOUNT PAYABLE INFORMATION</b>		
<b>Billing address*</b>	<i>Same as above</i> <input type="checkbox"/>	
<b>Contact person*</b>	<b>Contact number*</b>	<b>Email address*</b>
<b>Invoicing email address</b>		
<i>If invoices are required to be sent to a separate email address.</i>		
<b>DESPATCH INFORMATION</b>		
<b>Despatch address*</b>	<i>Same as above</i> <input type="checkbox"/>	
<b>Contact person*</b>	<b>Contact number*</b>	<b>Email address*</b>
<b>Special instructions</b>		
<b>TRADE REFERENCES</b>		
<b>Company name*</b>	<b>Contact number*</b>	<b>Email address*</b>

**TRADING TERMS**

Default trading terms **14 days** from invoice date  
 Nominate different trading terms: \_\_\_\_\_ *(subject to manager's approval)*

**OTHER INFORMATION (FOR INTERNAL GM OFFICE USE ONLY)**

Rate*	Fuel Levy * Default
<input type="checkbox"/> I confirm that a copy of the quotation is attached to this credit application.	
<input type="checkbox"/> I confirm that a copy of our Terms & Conditions of Trade is attached to this credit application.	
<input type="checkbox"/> I confirm that client's special instructions e.g. Purchase Orders, Site Requirements, Site Contacts etc are attached	

**PART 2/3 - CREDIT AGREEMENT**

TO: THE SUPPLIER, Golden Messenger Pty Ltd (ABN 88 634 689 080) trading as Golden Logistics Australia

If the Application for Credit is approved in favour of the Applicant whose name appears above, the Applicant agrees to the due and punctual payment and performance by the Applicant of all its obligations and other liabilities in respect of all the contracts and agreements entered into with the Supplier and in addition agrees, undertakes and acknowledges as follows:

- (a) To pay for all services purchased from the Supplier in accordance with the Terms and Conditions of Trade of the Supplier, a copy of which is attached to this application. Should the Applicant fail to pay for any services in accordance with the provisions of this clause, then;
  - (i) interest shall accrue on all invoices outstanding at the rate prescribed by the Penalty Interest Rates Act (Vic) 1983 plus 4 per cent for the period from the due date until the date of payment in full; *and*
  - (ii) the whole amount then owing by the Applicant to the Supplier in respect of the services (including any amounts which would not otherwise be payable until a later date) shall become immediately due and payable at the option of the Supplier.
- (b) Except as otherwise provided for in this Credit Agreement, all sales related to a provision of services to the Applicant are subject to the Terms and Conditions of Trade of the Supplier as determined by the Supplier from time to time, provided that any change in the terms shall apply only to transactions taking place after any such change.
- (c) To accurately complete all forms and applications required to facilitate direct debit or other payments by the Applicant to the Supplier in respect of any payments requested of the Supplier.
- (d) All information provided to the Supplier in respect of account or credit card details to facilitate payments due to the Supplier at the request of the Applicant will be relied on by the Supplier and you warrant and represent that they are and will be true and correct at all times.
- (e) The Applicant will ensure that any account or credit card debited will always contain sufficient funds to enable full payment to be made to the Supplier when required, and that any fees or charges imposed on the Supplier for any payment dishonour or default will be reimbursed to the Supplier by the Applicant immediately upon request.
- (f) For the purposes of this Credit Agreement, a certificate or letter signed by an authorised officer of the Supplier confirming the amount the Applicant owes will be considered clear and reliable evidence of that debt. It will be binding on the Applicant, unless there is an obvious error in the certificate, or the law does not allow this provision to apply. In that case, the certificate will still serve as initial proof of what it states.
- (g) The Supplier may at any time and in its sole discretion, refuse to extend any credit to the Applicant.
- (h) In the event that the Applicant;

- (i) shall become bankrupt; or
- (ii) being a company, an application shall be made to wind up the Applicant, or a receiver, a receiver and manager or an official manager shall be appointed in respect of the Applicant; or
- (iii) shall make an arrangement or composition with the creditors of the Applicant, or attempt to make such an arrangement or composition; or
- (iv) shall be unable to pay the debts of the Applicant as they fall due; or
- (v) shall cease business;
- (vi) is in default of its payment obligations to the Supplier pursuant to the Terms and Conditions of Trade of the Supplier or as otherwise previously stipulated in writing by the Supplier; or
- (vii) shall have execution levied against any of the assets of the Applicant,

then all monies then owing to the Supplier (including any amounts which would not otherwise be payable until a later date or dates including any interest payable) shall become immediately due and payable without any deduction or set off and the Supplier will be at liberty to take any action it considers necessary to enforce any Security Interest or other rights it has in respect of any such amounts owing, subject to law.

- (i) The Applicant acknowledges and agrees that this Credit Application and Credit Agreement are subject to the Supplier's Terms and Conditions of Trade, and as such the terms of this Agreement are subject to and form part of the Security Agreement between the Applicant and the Supplier, as set out in the Terms and Conditions of Trade.
- (j) If the Supplier chooses not to use, or delays using, any of its rights under this Credit Agreement or at law, it does not mean those rights are waived or abandoned. If the Supplier waives a right once, it doesn't prevent them from using that or other rights again in the future. Any waiver or permission from the Supplier is only valid if it is in writing and signed by the Supplier or one of its authorised managers or officers, and it only applies to what is clearly stated in that written document.
- (k) To indemnify the Supplier against all losses and expenses it may sustain arising from any dealings with the Applicant and enforcing and/or attempting to enforce its rights against the Applicant including, but not limited to, legal costs incurred by the Supplier, on a full indemnity basis.

### **PART 3/3 – DEED OF GUARANTEE & INDEMNITY AND CHARGE**

TO: THE SUPPLIER, Golden Messenger Pty Ltd (ABN 88 634 689 080) trading as Golden Logistics Australia

I/WE ("Guarantor(s)") jointly and severally guarantee to the Supplier payment of all monies and performance of all obligations by the Applicant arising from any dealing with you whatsoever, including pursuant to your Terms and Conditions of Trade and Credit Agreement.

I/WE jointly and severally indemnify you against all losses and expenses you sustain as a result of any dealing you have with the Applicant including, but not limited to, any enforcement of payment of your invoices and any enforcement or legal costs incurred by you arising from any breach of your Terms and Conditions of Trade or Credit Agreement, including any payment default of the Applicant, on a full indemnity basis.

I/WE jointly and severally agree:

- (a) To pay to you any amount certified by you as payable by the Applicant before we become entitled to dispute whether that amount is payable.
- (b) This Guarantee shall remain effective notwithstanding any conduct or event which, but for this clause may have the effect of releasing the Applicant, until all amounts owing to you are paid in full.
- (c) This Guarantee is signed by each guarantor in their respective personal capacity and as Trustee of each and every trust of which a Guarantor is a Trustee.

I/WE jointly and severally charge in your favour all of our estate and interest in any real property in which I/we now have any interest (or in which we later acquire any interest) as security for payment of all monies, including all interest, professional fees and charges, pursuant to the Credit Agreement and Terms and Conditions of Trade owed to you by the Applicant, or any of us, and all legal costs incurred by you on a full indemnity basis pursuant to and in the enforcement or attempted enforcement of your Terms and Conditions of Trade, the terms of the Credit Agreement and this Guarantee, Indemnity and Charge, including the costs of registration and withdrawal of a Caveat over any real property or the preparation and execution of mortgage or other security documents, deeds or undertakings, or as may be required.

**CONSIDERATION:** This guarantee and indemnity is granted in consideration of the credit provided by the Supplier to the Applicant, and in consideration of the Supplier refraining from taking any legal action for thirty (30) days from the date of this Deed against the Applicant in respect of any services provided to the Applicant up to or from the date of this Guarantee.

**JURISDICTION:** I/we agree that this Deed of Guarantee, Indemnity and Charge and any claim and/or dispute between the Supplier, any Guarantor and /or the Applicant at all shall be governed by the laws of Victoria, Australia and will be subject to the jurisdiction of the appropriate Courts and tribunals of Victoria, and their respective courts of appeal.

**DEFINITIONS:**

- (a) "You" and "your" shall be a reference to each of the companies listed below as the Supplier jointly and severally.
- (b) "I", "we" and "us" shall be a reference to each of the Guarantors and the Applicant jointly and severally.

THE APPLICANT agrees to, and agrees it will be bound by, the terms of this Credit Agreement by signing below. The Applicant acknowledges having read and understood all such terms and conditions and having had the opportunity to seek advice in relation to these terms before signing.

**IMPORTANT**

We are not common carriers. This Credit Application is subject to:

- (a) our approval of your Credit Application; and
- (b) our review of your credit history and trade references; and
- (c) our Terms and Conditions, which have been provided to you with this Credit Application, and which can be found [here](#).

By signing and submitting this Credit Application and subsequently requesting our services, the Applicant acknowledges and agrees that it has been provided with our Terms and Conditions of Trade, the Credit Agreement and the Deed of Guarantee & Indemnity and Charge, that its authorised representatives signing this form have had the opportunity to review and seek advice in relation to all documents and that the Applicant agrees to be bound by their terms.

**UNDERSIGNED ACKNOWLEDGE**

By signing this form as the authorised representative of the Applicant, I acknowledge that I have read, understood, and agree to the Terms and Conditions of Trade and the terms of the Credit Application (Part1/3) Credit Agreement (Part 2/3) and Deed of Guarantee & Indemnity and Charge (Part 3/3) as specified. I understand that these each contain binding legal obligations and that a breach of these may result in late fees, interest charges, personal liability of guarantors and/or costs and other implications of legal action to recover any outstanding amounts being imposed on the Applicant and the Guarantors.

I request that you allow the Applicant credit for services sold and/or provided to the Applicant, regardless of when or whether the services have been delivered, and in consideration of your so doing and in order to induce you, in your discretion to grant such credit facilities to the Applicant, the undersigned represents and warrants that they are authorised to sign this Application on behalf of the Applicant, and that the particulars set out in this Application are true and correct in every particular and that the Applicant agrees to be bound by the terms and conditions contained in this Credit Application, Credit Agreement and Deed of Guarantee & Indemnity and Charge.

**Signed and Executed as a Deed Poll by (Registered entity name).**

..... PTY. LTD.

..... ABN: .....

**in accordance with s127 of the Corporations Act 2001 (Cth)**

<b>Signature of Director</b>		<b>Signature of Director</b>	
<b>Name</b>		<b>Name</b>	
<b>Position</b>		<b>Position</b>	
<b>Date</b>		<b>Date</b>	

**Witnessed by:**

<b>Signature</b>		<b>Signature</b>	
<b>Name</b>		<b>Name</b>	
<b>Position</b>		<b>Position</b>	
<b>Date</b>		<b>Date</b>	

# **GOLDEN MESSENGER PTY LTD**

## **TERMS & CONDITIONS OF TRADE**

### **DEFINITIONS**

In these Terms:

**"ACL"** means the Australian Consumer Law;

**"Agreement"** means any agreement entered into or request for the provision of services by GM to the Customer, including but not limited to any Orders submitted or any credit application, and accompanying credit agreement and deed of guarantee and indemnity and charge, made by the Customer to GM or these Terms;

**"Anticipated Delivery Date"** anticipated date for delivery and completion of the services specified in a Quotation;

**"Customer"** means a person, firm or corporation, including any shipper, jointly and severally if there is more than one, acquiring services from GM as a sender or carrier of goods at the request of its authorised representative;

**"GM"** means Golden Messenger Pty Ltd (ABN 88 634 689 080) trading as Golden Logistics Australia, or such other corporate entities as may from time-to-time trade under the name of Golden Messenger, its successors and assigns;

**"GST"** means the Goods and Services tax as defined in A New Tax System (Goods and Services Tax) Act 1999 as amended;

**"INCO Terms 2010"** means the International Commercial Terms published by the International Chamber of Commerce that are widely used in International commercial transactions or procurement processes;

**"Intellectual Property"** means all copyright, trademarks, designs, specifications, drawings, confidential information (whether registrable or not) owned or licensed by GM in respect of the Services;

**"Order"** means the acceptance by the Customer of a quotation or invoice provided by GM to the Customer concerning the proposed supply of services, whether by written, verbal, electronic or other means.

**"PPSA"** means the Personal Property Securities Act 2009;

**"Price List"** means any price list issued by GM from time to time in relation to the price payable for the services;

**"Quotation"** means any written quotation or estimate provided by GM to the Customer concerning the proposed supply of goods or services;

**"services"** means the services provided by GM to the Customer including but not limited to carriage and transportation of goods as described in a Quotation or invoice issued to a Customer;

**"Site"** means the site where the goods are to be collected from, delivered or transported to by GM at the request of the Customer.

**"Terms"** means these Terms and Conditions.

### **1. BASIS OF AGREEMENT AND ORDERS**

1.1 Unless otherwise agreed by GM in writing, these Terms apply exclusively to every Agreement between GM and the Customer and prevail to the extent of any inconsistency to the exclusion of all other terms and conditions, and cannot be varied, altered or replaced by any other terms, including the Customer's terms and conditions of purchase (if any), unless expressly agreed by the parties in writing, executed by their respective authorised representatives.

1.2 Any Quotation provided by GM to the Customer concerning the proposed supply of services is:

- (a) valid for seven (7) days;
- (b) an invitation only to the Customer to place an Order based upon that Quotation; and
- (c) subject to the Customer accepting and signing this Agreement and accepting these Terms.

1.3 The Terms may include additional terms in GM's Quotation which will be subject these Terms; however the specific terms of the Quotation will prevail over these Terms to the extent of any inconsistency only.

1.4 The Agreement is accepted by the Customer upon the earlier of:

- (a) GM receiving a copy of the Terms signed by the Customer's authorised representative; or
- (b) GM opening a line of credit and/or trading account for the Customer after providing these Terms to the Customer; or
- (c) GM providing the Customer with the services requested by the Customer after the Customer receives these Terms.

1.5 GM in its absolute discretion may refuse to accept any Order or request for services.

1.6 It is the Customer's responsibility to provide GM with accurate and current information and any specific requirements in relation to the services requested of GM.

1.7 GM may vary these Terms by written notice to the Customer at any time. Any variations will apply to orders placed by the Customer fourteen (14) days after the date of notice.

1.8 By retaining the services of GM, the Customer appoints GM as its agent.

1.9 The signing of these Terms and any application for credit or other agreement, request or instruction provided to GM by a person holding themselves out as an authorised representative shall be binding on the Customer, and relied on by GM, without any obligation on GM to make enquiries of the Customer.

### **PRICING**

2.1 All prices are quoted in Australian Dollars unless otherwise stated.

2.2 Unless otherwise agreed in writing, prices specified whether by Quotation, verbally or in a Price List, for the supply of the services excludes taxes, duties or imposts, including import levies and duties, on or in relation to the goods and services, including, without limitation GST.

2.3 The cost of shipment, freight, transport, delivery, insurance, and other charges arising in relation to the provision of services from the point of dispatch of goods from GM's storage facility/factory to the Site, and applicable INCO terms charges, are payable by the Customer subject to the terms of any Quotation.

2.4 The Customer must pay to GM any amounts specified in clauses 2.2 and 2.3 in addition to payment of the price of the services.

2.5 For the avoidance of doubt, the Customer is solely responsible for any packaging, insurance or counting of any goods in respect of which the services are provided by GM.

2.6 GM reserves the right to

- (a) increase its prices annually consistent with any increase to the national minimum wage, effective on 1 July each year; and
- (b) increase any other rates upon prior reasonable written notice.

### **PRICING VARIATIONS**

If the Customer requests any variation to the Order placed, GM may, in its discretion:

- (a) increase the price to account for the variation, or
- (b) provide a revised Quotation for the services.

3.2 Where:

- (a) the Customer requests or requires different services to those initially specified; or
- (b) the Customer fails to give GM adequate instructions or unreasonably delays in the provision of instructions;

then GM may vary its price to take account of any such changes, by notifying the Customer before providing the services.

4. **PAYMENT**

4.1 Payment for the goods and services must be made by the Customer to GM as provided in the Quotation or statements issued by GM to the Customer.

4.2 Where rates are based on the Customer's projected trade volume quantities, and those projections are not met, GM reserves the right to amend service rates upon reasonable prior written notice.

4.3 Time for payment is of the essence. Payment must be made to GM without any deduction, withholding or set-off by the Customer or any other person.

4.4 Payment must be made by electronic transfer to an Australian bank account nominated by GM. Payment will not be deemed to be made until cleared funds are received by GM. Alternatively, GM offer a credit card payment option.

4.5 Any claims or disputes regarding invoiced amounts must be notified to GM in writing within fourteen (14) days of receipt of GM's tax invoice, regardless of a Customer's payment terms.

5. **PAYMENT DEFAULT**

5.1 If the Customer defaults in payment by the due date of any amount payable to GM, then all money which is payable or would become payable by the Customer to GM at a later date on any account, will become immediately due and payable without further notice to the Customer, and GM may (without prejudice to any other remedy available to it):

- (a) charge the Customer interest on any sum due at a rate equivalent to prevailing interest rate prescribed by the Penalty Interest Rate Act (Vic) 1983 for the period from the due date until the date of payment in full;
- (b) charge the Customer for, and the Customer must indemnify GM from, all costs and expenses (including without limitation all legal costs on a solicitor own client basis and expenses) incurred by GM resulting from the default in taking action to enforce compliance with these Terms, to enforce, protect or maintain its Security Interests in or to enforce its rights and take any action to recover any sum due;
- (c) cease or suspend for such period as GM thinks fit the supply of any further services to the Customer;
- (d) by written notice to the Customer, terminate any contract with the Customer to the extent that it is not performed by GM; without liability or any effect on GM's accrued rights under these Terms or the Agreement.

5.2 Clauses 5.1(c) and (d) may also be relied upon, at GM's option:

- (a) where the Customer is an individual and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
- (b) where the Customer is a corporation and enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator or similar functionary appointed.

6. **PERSONAL PROPERTIES SECURITIES ACT**

6.1 The Customer acknowledges and agrees that this Agreement is the accepted and adopted security agreement between the parties. Unless otherwise stated, a term contained in this Agreement that is defined in the PPSA (but not otherwise defined in this Agreement) has the meaning given to it in the PPSA.

6.2 The Customer acknowledges and agrees that this Agreement creates and that GM has a Security Interest for the purposes of the PPSA in all monies owing to GM under all invoices for services rendered or to be rendered in the future by GM to the Customer.

6.3 The Customer acknowledges and agrees that this Security Interest is registrable in the Personal Property Securities Register and this Security Interest secures all moneys owing by the Customer to GM under all invoices, these Terms, the Agreement or otherwise.

6.4 The Customer acknowledges and agrees the Security Interest is a continuing and subsisting interest in all monies owing under all GM invoices with priority over any registered or unregistered general (or other) Security Interest and any unsecured creditor.

6.5 The Customer will do everything reasonably required of it by GM to enable GM to register its Security Interest with the priority GM requires and to maintain those registrations including:

- (a) signing any documents and/or providing any information which GM may reasonably require to register a financing statement or a financing change statement in relation to a Security Interest; or
- (b) correcting a defect in a statement referred to in clause 6.5(a).

6.6 The Security Interests arising under this clause 6 will be perfected by GM prior to or when GM provides the services, and the parties confirm they have not agreed that any Security Interest arising under this clause 6 attaches at any later time.

6.7 GM does not need to give the Customer any notice under the PPSA (including notice of the financing statement or verification statement) unless the notice is required by the PPSA and that requirement cannot be excluded.

6.8 If Chapter 4 of the PPSA would otherwise apply to the enforcement of the Security Interests created under this Agreement, the Buyer agrees that sections 95, 96, 120, 121(4), 123, 125, 128, 129, 130, 132(3)(d), 132(4), 134(1), 135, 142 and 143 of the PPSA will not apply to the enforcement of the Security Interest(s).

6.9 The Customer must notify GM immediately in writing if the Customer changes its name and address for service, contact details or if there are any changes to data required to register a financing statement under the PPSA in respect of this Agreement.

7. **NO COMMON CARRIER**

7.1 GM is not a common carrier and will accept no liability as such. GM reserves the right to refuse the carriage or transport of any type or class of goods or articles for any person, including any incorporated entity in its absolute discretion.

8. **SUB-CONTRACTING**

8.1 The Customer authorises GM (in its discretion) to arrange for the transport or carriage of goods with appropriately experienced and insured sub-contractors. Any such arrangement is confirmed and accepted by the Customer on the delivery of the goods to the sub-contractor, to whom these Terms will apply.

9. **SERVICE METHOD**

9.1 If the Customer asks GM to handle, store, or transport the goods in a particular manner, GM will have regard to meeting that request if practicable to do so, however GM reserves the right to use any method of providing its services, including the method and route of transport and handling of goods.

10. **AUTHORITY, RISK AND INSURANCE**

10.1 The Customer and its officers jointly and severally warrant that they have title and ownership of the goods in respect of which they have requested GM to perform the services, and that any person representing that they have authority to place orders and transact with GM on behalf of the Customer are duly authorised to do so.

10.2 Unless otherwise agreed in writing or set out in the terms contained in the Quotation, the Customer assumes and retains all risk in respect of the goods and all insurance responsibility for theft, damage, loss or otherwise in respect of the goods at all times.

10.3 The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties arising out of the possession of the Customer's goods by GM.

10.4 The Customer must always ensure that the goods are sufficiently insured against any loss, damage, deterioration claim, action or damage whilst they are in transit.

10.5 Unless there is a written agreement stating otherwise, GM is not responsible for and the Customer indemnifies GM against any loss, damage, delay, or incorrect delivery of the goods while in transit or storage, unless it was directly caused by GM's proven negligence or intentional wrongdoing.

10.6 To the maximum extent permitted by law, GM will not be liable for in respect of any loss, claim, action, liability or damage arising out of any of the matters referred to in this clause 10.

11. **CUSTOMER'S OBLIGATIONS**

11.1 The Customer is responsible for ensuring the accuracy of any specifications and requirements in respect of the provision of the services and for giving GM any necessary information relating to the services within a reasonable time.

11.2 The Customer must ensure that the Site is available to and safely accessible by GM and its servants, contractors or agents by the delivery date specified in the Quotation to enable delivery of the goods.

11.3 The Customer must ensure all goods are appropriately packaged and labelled to meet all applicable legal and regulatory requirements at its sole cost.

12. **DELIVERY**

12.1 GM will arrange for the delivery of the goods pursuant to Customer instructions, having regard to safe transit times, at the Customer's cost.

12.2 Delivery of the goods will be deemed to have occurred at upon delivery of the goods to the Site once signed for or left in a safe place, pursuant to a Customer authority to leave safe direction.

12.3 Any period or date for delivery of goods or provision of services stated by GM is intended as an estimate only and is not a contractual commitment. GM will use its reasonable endeavours to meet any estimated dates for delivery of the goods or completion of the services.

12.4 Where delivery is not able to be completed due to unforeseen or circumstances beyond the control of GM, GM will contact the Customer so that alternative delivery arrangements can be agreed.

12.5 The Customer indemnifies GM against any costs, losses, expenses, claims or actions arising out of any delays in delivery.

13. **LIABILITY**

13.1 Except as specifically set out in these Terms, any term, condition, warranty or consumer guarantee in respect of the services, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded to the maximum extent permitted by law.

13.2 To the maximum extent permitted by law, the absolute limit of GM's liability howsoever arising under or in connection with these Terms and the provision of the services is limited to, at the election of GM:

- (a) the cost of providing the services again;
- (b) refunding charges paid by the Customer for the services; or
- (c) payment of compensation to the Customer in an amount no more than the greater of AUD\$10,000 per loss event.

13.3 If the value of the goods being delivered or transported exceed AUD\$10,000, GM may agree to an alternative liability cap in writing with the Customer, at an additional fee payable by the Customer.

13.4 Notwithstanding any other provision of these Terms to the contrary, so far as the law permits, neither party shall be liable to the other party under this Agreement in contract, under any indemnity, tort (including negligence), by statute or otherwise for indirect loss or damage, including but not limited to loss of profits, revenues, use, production, contracts, opportunity, reputation, savings, any business interruption losses, losses arising from corruption or destruction of data, losses arising from increased costs of working or for any other indirect, special or consequential loss or damage whatsoever;

13.5 GM will not be liable any loss or damage suffered by the Customer or any third party where GM has failed to deliver goods or provide services or fails meet any delivery deadline or cancels or suspends the supply of services; however

13.6 Nothing in these Terms is to be interpreted as excluding, restricting or modifying the application of any State or Federal legislation applicable to the supply of services which cannot be so excluded, restricted or modified.

14. **HAZARDOUS GOODS**

14.1 The Customer warrants that any goods to be transported by GM at its request are not hazardous, explosive, toxic or flammable and indemnifies GM against any loss, cost, expense, damages or liability arising from its carriage of any such goods for the Customer.

14.2 GM will not carry any dangerous or hazardous goods that require placarding for transport or special storage.

14.3 GM may, in its sole discretion, carry dangerous goods that do not require placarding for transport or special storage, provided:

- (a) The Customer supplies a full set of the required safety documentation (SDS or SPS) to the GM driver, before any dangerous goods are transported; and
- (b) SDS documents must be delivered before any dangerous goods requiring air freight are moved.

14.4 The Customer must disclose to GM if the goods include any dangerous, sensitive or hazardous items where transport vehicles must display special signage, placards or licences to carry when placing any request for services.

14.5 Where any goods of the Customer are dangerous or hazardous:

- (a) The Customer agrees to indemnify GM against costs, damages, or losses that GM may incur arising from or relating to damage caused to other goods in transit or property; and
- (b) If GM has reasonable grounds to believe the goods, whether on their own or combined with other goods, could pose a risk to health and safety, GM has the right to take necessary action. This may include removing, destroying, disposing of, or making the goods safe, without compensating the Customer.

(c) The Customer indemnifies GM against all incurred expenses and costs, whether incurred by GM or its subcontractors arising from any action taken under this clause 14.4.

**15. CLAIMS FOR DAMAGED GOODS**

15.1 Goods damaged in transit must be reported to GM within 48 hours of delivery.

15.2 All claims in relation to damaged goods must be made to GM in writing by the Customer within fourteen (14) days of delivery by sending an email to GM Accounts Department at [accounts@goldenlogistics.com.au](mailto:accounts@goldenlogistics.com.au) setting out the details of the delivery, goods and the claim and accompanied by evidence of alleged damage.

15.3 Unless a claim is made pursuant to clause 15.2, the goods will be deemed to have been delivered in acceptable condition and all fees and charges of GM will be due and payable pursuant to the relevant tax invoice in respect of the services rendered.

15.4 All fees are payable in full, without deduction or set-off notwithstanding the making of any claim or complaint by the Customer. Upon resolution of any claim or complaint, any relevant credits or deductions will only be applicable if confirmed by GM in writing.

**16. VARIATION AND CANCELLATION OF SERVICES**

16.1 If, through circumstances beyond GM's control, GM is unable to provide the services, then GM may, by written notice to the Customer and without any liability to the Customer:

- (a) make changes to the services supplied, provided that the end performance of the services is not materially prejudiced; or
- (b) cancel any Order (even if it has already been accepted).

16.2 No purported cancellation or suspension of an Order by the Customer is binding on GM after that Order has been accepted, unless otherwise agreed in writing by GM.

16.3 The Customer shall be liable for any costs incurred or arising out of any variation made by the Customer to an Order that has been accepted by GM.

16.4 If GM is unable to provide the requested services for any reason, it may suggest another supplier to the Customer. GM is not responsible for any difference in cost between its services and those of the alternative supplier.

16.5 Where a Customer enters into these Terms in relation to a standing and recurring order for GM services on an on-going basis, the Customer must give GM at least six (6) months' prior written notice of the termination of GM services, unless otherwise agreed by GM and the Customer in writing.

**17. WARRANTY**

17.1 GM offers a limited warranty for its services against defects, subject to the limitations and exclusions set out in this warranty which is given subject to and in addition to other rights and remedies the Customer has under any law in relation to the services to which this warranty relates, including but not limited to the rights provided by the ACL. This warranty does not limit or restrict the Customer's rights.

17.2 Where the ACL applies, the goods and services come with guarantees that cannot be excluded under the ACL. The Customer is entitled to replacement or a refund for a major failure and for compensation for any other foreseeable loss or damage. The Customer is also entitled to have the service provided again if a failure does not amount to a major failure.

17.3 To the maximum extent permitted by law GM makes no representations or warranties of any kind whatsoever express or implied in respect of the services.

17.4 All Warranty claims must be made within the Warranty Period.

17.5 If the provision of services is defective, GM will, in its sole discretion, either:

- (a) re-supply the services or part of the services; or
- (b) refund the price of the services to the Customer.

17.6 If a fault covered by the Warranty occurs, the Customer must notify GM in writing of the fault, including details of the nature of the warranty claim and the purchase order number. GM will contact the Customer and, where possible, assess the claim over the telephone and otherwise investigate the Claim to determine whether the Warranty applies.

17.7 Where a valid warranty claim is made by the Customer in accordance with these Terms and it is accepted by GM the cost of replaced services and all labour associated with same will be borne by GM.

17.8 Where GM incurs costs in investigating a warranty claim that is ultimately deemed by GM not to be valid, the Customer shall be liable to reimburse GM for all such reasonable costs incurred by GM.

17.9 This warranty is in addition to any statutory warranties available to the Customer that cannot be excluded.

**18. FORCE MAJEURE**

18.1 GM shall have no liability whatsoever under these Terms to the extent that such fulfilment is prevented by circumstances beyond its reasonable control, including but not limited to:

- (a) industrial disputes, strikes, lockouts;
- (b) accident or breakdown;
- (c) import or export restrictions and embargoes;
- (d) act of God, explosion, flood, tempest or fire;
- (e) act of terrorism, act of war, sabotage, insurrection, civil disobedience or requisition;
- (f) difficulties in obtaining raw materials, labour, fuel, parts or machinery
- (g) closure of travel routes or imposition of restrictions by government or regulatory decree, order or direction affecting the provision of services.

18.2 If an event of force majeure occurs, GM may terminate the Agreement by written notice to the Customer without any liability for any costs, damages, loss or claims suffered by the Customer arising out of such termination.

**19. MISCELLANEOUS**

19.1 The laws of Victoria from time to time governs these Terms, and any dispute arising from these Terms or the transactions governed by them will be determined in the relevant courts and tribunals of the State of Victoria, and relevant courts of appeal.

19.2 Failure by GM to enforce any of these Terms shall not be construed as a waiver of any of GM's rights.

19.3 If any of the Terms are unenforceable it must be read down so as to be enforceable or, if it cannot be so read down, the term must be severed from these Terms without affecting the enforceability of the remaining terms.

**20. CREDIT REPORTING**

20.1 The Customer consents to GM obtaining credit information about the Customer and providing a credit report in relation to the Customer or exchanging credit information about the Customer to third parties for the purposes of providing the services to the Customer in accordance with these Terms.

**21. PRIVACY AND FINANCIAL INFORMATION**

21.1 The Customer acknowledges and consents to the use by GM and its employees, officers and agents of its personal and financial information for the purposes of:

- (a) the supply of services to the Customer;

<p>(b) assessing and approving any credit application of the Customer;</p> <p>(c) obtaining reports in relation to any application for credit or the Customer's credit history; or</p> <p>(d) general marketing purposes and otherwise in accordance with the GM's privacy policy from time to time, which is available upon request.</p>	<p>21.4 The Customer's details, including its orders will be added to GM's database and will be used by GM:</p> <ul style="list-style-type: none"> <li>(a) to identify the Customer;</li> <li>(b) to assist in providing services to the Customer, including but not limited to the processing of any application for or granting of credit and the management and administration of those services;</li> <li>(c) to provide the Customer with information about the goods in undertaking risk assessment management and in gathering data and disclosing data to third parties such as <ul style="list-style-type: none"> <li>(i) Insurance brokers and insurers;</li> <li>(ii) Credit reporting agencies; and</li> <li>(iii) Financial institutions; and</li> </ul> </li> <li>(d) for the purposes of providing promotional or marketing information to the Customer in relation to the goods and services provided by GM.</li> </ul>
<p>21.2 Other than in the circumstances allowed under the relevant privacy laws or its privacy policy, GM will not disclose the Customer's personal information to other parties. The Customer may contact GM Accounts Department at any time to access or change any personal information provided to GM by calling (03) 9287 7099.</p>	
<p>21.3 The Customer will provide all necessary instructions and/or authorisations required by GM's accountants, debtor insurers and bankers to enable GM to make investigations from time to time into the Customer's trading, asset and financial position for the purpose of providing credit terms.</p>	

The Customer hereby acknowledges and agrees that it has read and understood these Terms and that it understands that any order for services, application for credit or trading account placed by it will be subject to these Terms, as updated from time to time.

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