

In these terms and conditions:

“Company”	means <u>PROMPT DISTRIBUTION PTY LTD (ACN 085 626 982)</u>
“Consignment”	Means goods accepted from the consignor together with any containers, packaging or pallets supplied by or on behalf of the consignor and used in the transportation and/or storage of those goods.
“Customer”	Means the party with whom the Company agrees to provide services.
“Security Interest”	Has the meaning given in the <i>Personal Property Securities Act 2010 (C’th)</i> as amended from time to time.
“Services”	means and includes the operations undertaken by the Company as set out, without limitation, in any quotation, scope of works or other form of writing and as amended in writing between the parties from time to time, whether in connection with any consignment or otherwise and including but not limited to: (ii) The collection, receipt, packaging, packing, transportation, dispatch, delivery and/or storage of any goods; (iii) Any work or labour howsoever described that is performed by the Company for and at the request of the Customer; (iv) Any hire of equipment by the Company to the Customer.
“Sub-contractor”	Means any party who pursuant to a contract or arrangement with any other party (whether or not the Company) performs or agrees to perform services or any part thereof.

1. Terms are binding

The parties agree that these terms and conditions are:

- 1.1. The terms and conditions which apply to all transactions between the Customer and the Company.
- 1.2. Binding on the Customer where a service agreement is in effect between the Customer and the Company, to the extent that these terms and conditions create obligations, rights or liabilities which are not the subject of the Service Agreement.

2. Right to Refuse Transport and Services

The Company is not a common carrier. Services performed by the Company are subject to these terms and conditions and the Company reserves the right to accept or refuse the transportation and/or storage of any goods for any party and the transportation and/or storage of any goods shall be at the Company’s sole discretion.

3. Ownership of Consignments

- 3.1. The Customer warrants that it is or has the authority of the owner of any consignment.
- 3.2. The Customer undertakes to indemnify the Company in respect of any liability (including from negligence or breach of contract or wilful act or default of the Company or others) in connection with delivery of a consignment to any party (other than the Customer) who claims to have ownership of or any interest in the consignment.

4. Subcontractors

- 4.1. The Company and any subcontractors shall be entitled to subcontract on any terms the services or any part thereof.
- 4.2. No claim shall be made, whether by the Customer or any party claiming through the Customer, against any subcontractor, servant or agent of the Company who performs the services or any part thereof, alleging any liability for negligence or breach of contract in connection with the services.

5. Employees

Every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Company or to which the Company is entitled hereunder shall also be available and shall extend to protect every servant or agent of the Company or of a subcontractor.

6. Claims by Third Parties

The Customer undertakes to indemnify the Company against any claim made against it by any party in connection with any liability to that party for any loss or damage to any consignment or arising as a consequence of the provision by the Company of any services.

7. Insurance

7.1. If and only if the Company has agreed to insure any goods then the liability of the Company is limited to the amount, as specified, if any, it is liable to pay under such insurance. The insurance is for physical loss of or damage to any goods up to the limit of such insurance and does not include insurance for loss suffered by the Customer as a result of the loss of the goods, whether direct or indirect or consequential

7.2. Subject only to sub-clause (i) hereof any consignment or goods which are the subject of the Services, is and are at the risk of the Customer. The Company shall not be responsible in tort or contract or bailment or otherwise for any, and the consequences of any, delay in collection of the consignment or loss of or damage to or deterioration of the consignment or misdelivery or failure to deliver or delay in delivery of the consignment for any reason whatsoever including without limiting the foregoing the negligence or breach of contract or wilful act or default of the Company or others.

8. Method of Transport and Services

Where the Customer expressly or impliedly instructs the Company to use, or it is agreed that the Company shall use a particular method of handling or storing any consignment or a particular method of performing any of the services the Company shall give priority to that method but in any event the method adopted by the Company shall remain at the sole discretion of the Company and the Customer hereby authorises the Company to adopt any method or methods other than the method instructed or agreed.

9. Deviation from Route

The Customer hereby authorises any deviation from the usual route of carriage or place of storage of any consignment which may in the absolute discretion of the company be deemed desirable or necessary.

10. Delivery of Consignments

10.1. The Company is authorised to deliver any consignment at the address nominated to the Company by the Customer.

10.2. If the address for delivery should be unattended or if delivery cannot otherwise be effected to any party at that address, the Company may at its option deposit the consignment at that address (which shall be deemed to be delivery in accordance with the Customer's instructions) or store the consignment. If the consignment is stored by the Company the Customer shall pay the Company for all costs and expenses of such storage. In the event that the consignment is stored by the Company, the Company shall be at liberty to redeliver it to the Customer from the place of storage at the Customer's expense.

10.3. Where any consignment is accepted for forwarding by rail to an address in a town or to a place where the Company has no receiving depot the consignment shall be deemed delivered according to this contract if it is delivered to the nearest railhead.

11. Delay and Loading

In relation to consignments a charge may be made to the Customer in respect of any delay in excess of thirty (30) minutes in loading or unloading incurred other than from the default of the Company. Such permissible delay period shall commence upon the Company reporting for loading or unloading. Labour to load or unload the consignment shall be the responsibility of and at the expense of the Customer.

12. Charges for Transport and Services

12.1. The pricing for the Services is set out in the documentation describing the Services, including without limitation in a scope of work, quotation or email confirmation of order. The pricing for the same Services may vary between each order from the Customer, and no pricing contained in a scope of work, quotation or email confirmation of order shall create binding pricing for any other order for the Customer.

12.2. The Customer shall be and remain responsible to the Company for all its proper charges incurred for any reason. The Company's charges shall in the case of consignments be deemed fully earned as soon as the consignment is loaded and dispatched from the Customer's premises or accepted for storage and in any other case as soon as the services have been provided.

13. Lien and Disposal of goods to Recover Charges

The Company shall have a lien on any consignment and any documents relating thereto and on any other consignment of the Customer in the possession of the Company or any documents relating thereto for all sums payable by the Customer to the Company and for that purpose shall have the right to sell any such consignment by public auction or private treaty without notice to the Customer. The Company's right to dispose of goods pursuant to this clause, shall be in addition to any common law or statutory right arising from a lien to cover storage, preservation or transportation. The Company's right to dispose of goods pursuant to this clause, shall take priority over and not be affected by any Security Interest of any third party in the goods.

14. Dangerous Goods

14.1. The Customer shall not tender for carriage or storage any volatile or explosive goods, or goods which are or may become dangerous, inflammable or offensive (including radioactive materials) or which are or may become liable to damage any property whatsoever without presenting a full description disclosing the nature of such goods and in any event shall be liable for all loss and damage caused thereby.

15. If in the sole opinion of the Company any consignment becomes or is liable to become of a dangerous, inflammable, explosive, volatile, offensive or damaging nature the same may at any time be retained, destroyed, disposed of, abandoned or rendered harmless by the Company without compensation to the Customer and without prejudice to the Company's right to any charges hereunder and at the cost of the Customer.

16. Storage and Packaging

16.1. The Customer warrants that it has complied with all relevant laws regulating the consignment and that the consignment is packed in a manner adequate to withstand the ordinary risks of storage and/or carriage having regard to its nature and hereby indemnifies the Company for any liability whatsoever and for all costs and expenses incurred as a result of or arising out of the Customer's failure to comply with each of these warranties.

16.2. It is agreed that the Customer shall be responsible for the conformity of any containers, packaging or pallets with any requirements of the consignee and for any expense incurred by the Company arising from any failure to so conform.

17. Payment Terms

17.1. Invoices of the Company are due and payable 30 days from date of invoice.

17.2. Interest on balances outstanding beyond 30 days may be charged at the rate of 1.2% per month.

18. No Variation of Terms and Conditions

No servant or agent of the Company or any other party has any power to waive or vary any of these terms and conditions unless such waiver or variation is in writing and signed by an executive officer of the Company.

19. Claims to be Made Within 7 Days

If the Company is liable for damage to or loss of any consignment or any part thereof no claim in respect of such loss or damage may be made unless notice of the claim is lodged in writing to the office of the Company in the State of Victoria within seven (7) days after either delivery was effected or would in the ordinary course of business have been effected.

20. No Claim After 6 Months

Notwithstanding any other provision, the Company shall in any event be discharged from all liability whatsoever in connection with any consignment unless suit is brought within six (6) months after delivery was effected or would in the ordinary course of business have been effected.

21. No Responsibility for C.O.D.

Goods are accepted by the Company subject to the condition that the Company accepts no responsibility for the collection of cash on delivery or any other payments on behalf of the Customer or any other party. When goods are tendered by any person with instructions for the Company to collect any such payments the Company shall not be bound by such instructions notwithstanding that the Company may accept those goods for carriage, forwarding or storage as tendered or perform other services in relation to those goods.

22. Paramount Terms

Notwithstanding anything herein contained this contract is subject to the Trade Practices Act (Cth) 1974 (as amended) to the extent that such Act implies a warranty into this contract and prevents the exclusion, restriction or modification of any such warranty.

23. Governing Law

This agreement shall be governed by the laws of the State of Victoria.