

1. Definitions

- 1.1 “RDS” shall mean Swanvista Nominees Pty Ltd T/A Road Distribution Services and its successors and assigns or any person acting on behalf of and with the authority of Swanvista Nominees Pty Ltd T/A Road Distribution Services.
- 1.2 “Sub-Contractor” shall mean and include:
- (a) railways or airways operated by the Commonwealth or any state or any other country or by any corporation; or
 - (b) any other person, firm or RDS with whom RDS may arrange for the carriage or storage of any Goods the subject of the contract; or
 - (c) any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in clause 1.2(a) and 1.2(b).
- 1.3 “Customer” shall mean the Customer or any person or persons acting on behalf of and with the authority of the Customer. Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 1.4 “Guarantor” means that person (or persons), or entity who agrees herein to be liable for the debts of the Customer on a principal debtor basis.
- 1.5 “Goods” shall mean cargo together with any container, packaging, or pallet(s) to be moved from one place to another by way of RDS’ Services, or for storage by RDS.
- 1.6 “Services” shall mean all services supplied by RDS to the Customer and are as described on the quotations, invoices, consignment note, airway bills, manifests, sales order or any other forms as provided by RDS to the Customer and includes any advice or recommendations.
- 1.7 “Price” shall mean the cost of the Services as agreed between RDS and the Customer subject to clause 3 of this contract.

2. Acceptance

- 2.1 Any instructions received by RDS from the Customer for the supply of Services shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of RDS.
- 2.3 These terms and conditions are to be read in conjunction with RDS’ quotation, consignment note, agreement, airway bills, manifests, or any other forms as provided by RDS to the Customer. If there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail.
- 2.4 The Customer shall give RDS not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer’s name and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by RDS as a result of the Customer’s failure to comply with this clause.

3. Price And Payment

- 3.1 At RDS’ sole discretion the Price shall be either;
- (a) as indicated on invoices provided by RDS to the Customer in respect of Services supplied; or
 - (b) RDS’ quoted Price (subject to clause 3.2 & 3.3) which shall be binding upon RDS provided that the Customer shall accept in writing RDS’ quotation within thirty (30) days.
- 3.2 RDS may by giving notice to the Customer increase the Price of the Services to reflect any increase in the cost to RDS beyond the reasonable control of RDS (including, without limitation, foreign exchange fluctuations, or increases in taxes or customs duties or insurance premiums or warehousing costs).
- 3.3 The Carrier may charge freight by weight, measurement or value, and may at any time re-weigh, or re-value or re-measure or require the Goods to be re-weighed, or re-valued or re-measured and charge proportional additional freight accordingly.
- 3.4 At RDS’ sole discretion payment for approved Customer’s shall be due on Fourteen (14) days following the date of the invoice issue date.
- 3.5 Time for payment for the Services shall be of the essence and will be stated on the on the invoice, consignment note, airway bills, manifests or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 3.6 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Customer and RDS.
- 3.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 3.8 All invoices must be settled within 48hrs of due date. Failure to do so will result in your invoice being forwarded to Key Factors Pty Ltd. All fees and interest associated with the processing of the invoice to Key Factors Pty Ltd will be at the cost to the invoiced customer as per Key Factors Terms and Conditions.
- 3.9 Charges applied will be 10% of invoice for administration/processing then an ongoing daily balance fee of 0.1% per day until the invoice is paid.

4. RDS Not Common Carrier

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

5. Customer-Packed Containers

- 5.1 If a container has not been stowed by or on behalf of RDS RDS shall not be liable for loss of or damage to the Goods caused by:
- (a) the manner in which the container has been stowed; or
 - (b) the unsuitability of the Goods for carriage or storage in containers; or
 - (c) the unsuitability or defective condition of the container.

6. Nomination Of Sub-Contractor

- 6.1 The Customer hereby authorises RDS (if it should think fit to do so) to arrange with a Sub-Contractor for the carriage of any Goods that are the subject of the contract. Any such arrangement shall be deemed to be ratified by the Customer upon delivery of the said Goods to such Sub-Contractor, who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as RDS. In so far as it may be necessary to ensure that such Sub-Contractor shall be so entitled RDS shall be deemed to enter into this contract for its own benefit and also as agent for the Sub-Contractor.

7. RDS' Servants or Agents

- 7.1 The Customer undertakes that no claim or allegation shall be made against any servant or agent of RDS which attempts to impose upon any of them any liability whatsoever in connection with the Goods and, if any such claim or allegation should nevertheless be made, to indemnify RDS and any such servant or agent against all consequences thereof.

8. Method Of Transport

- 8.1 If the Customer instructs RDS to use a particular method of carriage whether by road, rail, sea or air RDS will give priority to the method designated but if that method cannot conveniently be adopted by RDS the Customer shall be deemed to authorise RDS to carry or have the Goods carried by another method or methods.

9. Route Deviation

- 9.1 The Customer shall be deemed to authorise any deviation from the usual route or manner of carriage of Goods that may in the absolute discretion of RDS be deemed reasonable or necessary in the circumstances.

10. Charges Earned

- 10.1 RDS' charges shall be considered earned in the case of Goods for carriage as soon as the Goods are loaded and despatched from the Customer's premises.

11. Demurrage

- 11.1 The Customer will be and shall remain responsible to RDS for all its proper charges incurred for any reason. A charge may be made by RDS in respect of any delay in excess of thirty (30) minutes in loading or unloading occurring other than from the default of RDS. Such permissible delay period shall commence upon RDS reporting for loading or unloading. Labour to load or unload the vehicle shall be the responsibility and expense of the Customer or Consignee.

12. Dangerous Goods

- 12.1 Unless otherwise agreed in advance in writing with RDS the Customer or his authorised agent shall not tender for carriage or for storage any explosive, inflammable or otherwise Dangerous Goods. The Customer shall be liable for and hereby indemnifies RDS for all loss or damage whatsoever caused by any Dangerous Goods.

13. Consignment Note

- 13.1 It is agreed that the person delivering any Goods to RDS for carriage or forwarding is authorised to sign the consignment note for the Customer.

14. Customer's Responsibility

- 14.1 The Customer expressly warrants to RDS that the Customer is either the owner or the authorised agent of the owner of any Goods or property that is the subject matter of this contract of cartage and/or storage and by entering into this contract the Customer accepts these conditions of contract for the Consignee as well as for all other persons on whose behalf the Customer is acting.

15. Conditions of Storage

- 15.1 RDS will prepare an inventory of Goods received for storage and will ask the Customer to sign that inventory. The Customer will be provided with a copy of the inventory. If the Customer signs the inventory, or does not do so and fails to object to its accuracy within seven (7) days of receiving it from RDS, then the inventory will be conclusive evidence of the Goods received. The inventory will disclose only visible items and not any contents unless the Customer ask for the contents to be listed, in which case RDS will be entitled to make a reasonable additional charge.
- 15.2 RDS is authorised to remove the goods from one warehouse to another without cost to the Customer. RDS will notify the Customer of the removal and advise the address of the warehouse to which the Goods are being removed not less than five (5) days before removal (except in emergency, when such notice will be given as soon as possible).
- 15.3 The Customer is entitled upon giving RDS reasonable notice to inspect the Goods in store but a reasonable charge may be made by RDS for this service.
- 15.4 Subject to payment for the balance of any fixed or minimum period of storage agreed the Customer may require the Goods to be removed from the store at any time on giving RDS not less than five (5) working days notice. If the

Customer gives RDS less than the required notice RDS will still use their best endeavours to meet the Customers requirements, but shall be entitled to make a reasonable additional charge for the short notice.

- 15.5 The Customer agrees to remove the goods from storage within twenty-eight (28) days of a written notice of requirement from RDS to do so. In default, RDS may after fourteen (14) days notice to the Customer SELL ALL OR ANY OF THE GOODS by public auction or, if that is not reasonably practicable by private treaty and apply the net proceeds in satisfaction of any amount owing by the Customer to RDS.

16. Delivery

- 16.1 RDS is authorised to deliver the Goods at the address given to RDS by the Customer for that purpose and it is expressly agreed that RDS shall be taken to have delivered the Goods in accordance with this contract if at that address RDS obtains from any person a receipt or a signed delivery docket for the Goods.
- 16.2 RDS may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract.
- 16.3 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery for the purposes of this agreement.
- 16.4 It is the Customer's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery.
- 16.5 The failure of RDS to deliver shall not entitle either party to treat this contract as repudiated.

17. Loss Or Damage

- 17.1 Subject to any statutory provisions imposing liability in respect of the loss of or damage to the Goods (including but not limited to chilled, frozen, refrigerated or perishable Goods):
- (a) RDS shall not be under any liability for any damage to, loss, deterioration, mis-delivery, delay in delivery or non-delivery of the Goods (whether the Goods are or have been in the possession of RDS or not) nor for any instructions, advice, information or service given or provided to any person, whether in respect of the Goods or any other thing or matter, nor for any consequential or indirect loss, loss of market or consequences of delay; and
- (b) the Customer will indemnify RDS against all claims of any kind whatsoever, howsoever caused or arising brought by any person in connection with any matter or thing done, said or omitted by RDS in connection with the Goods.

18. Insurance

- 18.1 The Customer acknowledges that:
- (a) the Goods are carried and stored at the Customer's sole risk and not at the risk of RDS; and
- (b) RDS is under no obligation to arrange insurance of the Goods and it remains the Customer's responsibility to ensure that the Goods are insured adequately or at all; and
- (c) under no circumstances will RDS be under any liability with respect to the arranging of any such insurance and no claim will be made against RDS for failure to arrange or ensure that the Goods are insured adequately or at all.

19. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts

- 19.1 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
- 19.2 Liability of RDS arising out of any one incident whether or not there has been any declaration of value of the Goods, for breach of warranty implied into these terms and conditions by the Trade Practices Act 1974 or howsoever arising, is limited to any of the following as determined by RDS:
- (a) the supplying of the Services again; or
- (b) the payment of the cost of having the Services supplied again; or
- (c) where the Customer is a consumer as defined in the Trade Practices Act 1974 then the client shall also be entitled to a refund.

20. Default & Consequences Of Default

- 20.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at RDS' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 20.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by RDS.
- 20.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify RDS from and against all costs and disbursements incurred by RDS in pursuing the debt including legal costs on a solicitor and own client basis and RDS' collection agency costs.
- 20.4 Without prejudice to any other remedies RDS may have, if at any time the Customer is in breach of any obligation (including those relating to payment), RDS may suspend or terminate the supply of Services to the Customer and any of its other obligations under the terms and conditions. RDS will not be liable to the Customer for any loss or damage the Customer suffers because RDS exercised its rights under this clause.
- 20.5 If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.
- 20.6 Without prejudice to RDS' other remedies at law RDS shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to RDS shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to RDS becomes overdue, or in RDS' opinion the Customer will be unable to meet its payments as they fall due; or
- (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

21. Unpaid RDS' Rights to Dispose of Goods

- 21.1 RDS shall have a lien on any Goods (and any documents relating to those Goods) in the possession or control of RDS for all sums payable by the Customer to RDS, and RDS shall have the right to sell such Goods or cargo by public auction or private treaty after giving notice to the Customer. RDS shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods or cargo, from the proceeds of sale and shall render any surplus to the entitled person.

22. Security And Charge

- 22.1 Despite anything to the contrary contained herein or any other rights which RDS may have howsoever:
- (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to RDS or RDS' nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that RDS (or RDS' nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
 - (b) should RDS elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify RDS from and against all RDS' costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint RDS or RDS' nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 22.1.

23. Privacy Act 1988

- 23.1 The Customer and/or the Guarantor/s agree for RDS to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by RDS.
- 23.2 The Customer and/or the Guarantor/s agree that RDS may exchange information about the Customer and the Guarantor/s with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the credit worthiness of Customer and/or Guarantor/s.
- 23.3 The Customer consents to RDS being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 23.4 The Customer agrees that personal credit information provided may be used and retained by RDS for the following purposes and for other purposes as shall be agreed between the Customer and RDS or required by law from time to time:
- (a) provision of Services; and/or
 - (b) marketing of Services by RDS, its agents or distributors in relation to the Services; and/or
 - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Services; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and/or
 - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Services.
- 23.5 RDS may give information about the Customer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Customer; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

24. Cancellation

- 24.1 RDS may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice RDS shall repay to the Customer any sums paid in respect of the Price. RDS shall not be liable for any loss or damage whatever arising from such cancellation.
- 24.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by RDS (including, but not limited to, any loss of profits) up to the time of cancellation.

25. General

- 25.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

- 25.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia and are subject to the jurisdiction of the courts of Western Australia.
- 25.3 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by RDS.
- 25.4 RDS reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which RDS notifies the Customer of such change.
- 25.5 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 25.6 The terms and conditions set out herein shall prevail over the terms and conditions set out in any document used by the Customer, the owner or any other person having an interest in the Goods and purporting to have a contractual effect.
- 25.7 In the event of any breach of this contract by the RDS the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 25.8 The failure by RDS to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect RDS' right to subsequently enforce that provision.