



TRADING TERMS & CONDITIONS

By instructing the Company to supply the Services, the Customer **agrees to accept and be bound by** the Company's trading terms and conditions. All and any business undertaken by the Company shall be subject to the Company's trading terms and conditions of contract which are as follows:

Definitions

1. **"Company"** shall mean Tom's Low Loaders & Transport ABN 73 103 207 889, its employees, servants, agents, sub-contractors, subsidiaries and/or associated entities.
"CCA" means the Australian Competition & Consumer Act 2010.
"Customer" includes the shipper (consignor), the receiver (consignee), the owner of the Goods, the bailor of the Goods or the person for whom any of the Services are arranged and/or performed and includes its servants and agents but excludes the Company.
"Dangerous goods" shall mean such of the Goods as shall be, or become, in fact or at law noxious, dangerous, hazardous, explosive, radioactive, inflammable or capable by their nature of causing damage or injury to other goods, persons, plants or animals or to anything including that in which the Goods are carried, handled or stored.
"Goods" shall mean the chattels, articles or things tendered for by the Customer for the Services and shall include the container(s), unit load device(s) or other packaging containing the same and any other pallet(s) delivered with the same to the Company or Subcontractor by the Customer or for or on its behalf.
"Government Authority" means and includes, but is not limited to, police, all Government Departments with responsibility for and over the Services, the Goods and the import, export and transport of goods, the collection of revenue in respect of same including, without limitation, Australian Customs Service (ACS), Australian Quarantine Inspection Service (AQIS) and Australian Taxation Office (ATO).
"Place of Delivery" shall mean the place of delivery as designated by the Customer. **"Place of Receipt"** shall mean the place of receipt as designated by the Customer.
"Services" shall mean the pickup carriage, transport, movement, packing, handling, storage/warehousing, delivery and/or any other service arranged or performed by the Company, pursuant to, or ancillary to, this contract with the Customer.
"Storage" shall mean services undertaken by the Company in receiving, storing and subsequently making the Goods available for collection and any other storage services required in carrying out the Services.
"Sub-contractor" shall mean and include any person, firm or company (other than the Company) that arranges or performs the Services (or a part thereof) on behalf of the Company.
"Valuables" Words importing the singular include the plural and vice versa and words importing any gender include all genders and words importing a person include firm, corporation or other entity where appropriate.

Company Services / Demise

2. (a) The Company undertakes to carry out the Services as requested by the Customer and agreed upon by the Company.
(b) The Company at its discretion may sub-contract on any terms all or any part of its obligations to provide the Services.

Not a Common Carrier/Entire Agreement

3. The Company is not a common carrier and accepts no liability as such. Services are arranged, undertaken and/or performed by the Company subject only to these conditions of contract which constitute the entire agreement between the Company and the Customer. No person has the authority of the Company to waive or vary these conditions and the Company reserves the right to refuse at its sole discretion the arranging, undertaking or performing of any of the Services for any customer whether before, during or after the Service has commenced and further reserves the right to open and/or inspect all Goods at its discretion and at the Customer's expense.

Contracts with Third Parties

4. As agent or principal pursuant to clause 3 herein, the Customer hereby employs and authorises the Company to contract either in its own name with any Sub-contractor and authorises any Sub-contractor to contract the services of any other Sub-contractor, for the performance of any of the Services agreed to be arranged or performed pursuant to, or ancillary to, this contract. Any such contract may be made on any terms of contract whatsoever used by the Sub-contractor with whom the Company or Sub-contractor may contract for such Service(s) including in every case terms which may limit or exclude liability in respect of the Service. In any event, the Company shall be entitled to the full benefits of all privileges, right and immunities available to any Sub-contractor under such contract or compulsorily applicable law in respect of the Services provided. Any Sub-contractor's terms are available from the Company on request.

Prevention of Suit/Circular Indemnity and Himalaya

5. (a) Every servant, agent and Sub-contractor of the Company will have the benefit of all provisions of this contract benefitting the Company, as if such provisions were for their benefit, and in entering into this contract, the Company, to the extent of these provisions, does so not only on its own behalf, but also as agent and trustee for such parties.
(b) The Customer undertakes that no claim or allegation shall be made against the Company's employees, servants, agents, Sub-contractors (including the Sub-contractors' employees and agents) or other person who may be vicariously liable for the acts or omissions of such parties which imposes or attempts to impose upon any such party any liability whatsoever in connection with the Goods whether or not arising out of negligence on the part of such party. If any such claim or allegation should nevertheless be made, the Customer will indemnify the Company against all consequences thereof.
(c) If the premises are unattended at the time of pick up or delivery, the Customer appoints the Company as its agent to collect and deliver the goods (if applicable) on its behalf.

Warranties by the Customer

6. The Customer warrants:
(a) that it is the owner of the Goods or otherwise has the authority of the owner or person having an interest in the Goods or any part thereof to sign any other contractual document for the Services or otherwise accept and consign the goods upon and subject to these conditions.
(b) that the person releasing or delivering the Goods to the Company is authorised to do so.
(c) the adequacy of packing, stowing and suitability of the Goods for the Services contracted and accuracy of all markings and brandings of the Goods, descriptions, values and other particulars furnished to the Company for the carriage, customs, consular and any other purposes and undertakes to indemnify the Company against all loss, damage, expenses and fines arising from any inadequacy, unsuitability, inaccuracy or omission in this respect.
(d) that the performance of any Service provided or arranged by the Company to affect the instructions of the Customer in respect of the Goods shall not be in breach of any law.
(e) that in the event that no person on the Customer's behalf is present to handover the Goods to the Company, the Company is hereby authorised to collect the Goods, and the Customer shall make no claim against the Company for any damages caused to the Goods in effecting that handover.

Exclusion and Limitation of Liability

7. (a) At all times and in all circumstances and for all purposes the Goods will be and remain at the sole risk of the Customer, and the Company will be under no liability whatsoever for any loss, or mis delivery of, or damage to Goods occasioned during the Company's provision of Services and/or Storage arising from any reason whatsoever, including without limiting the foregoing, any negligence or breach of contract or wilful act or default on the part of the Company, its servants and agents, or otherwise.
(b) The defences and exclusions of liability provided for in this Agreement will apply in any action against the Company for loss or damage to the Goods whether the action is founded in contract or in tort or otherwise.
(c) The Company will be entitled to the benefit of the exclusions of liability provided for in this Agreement even if it is proved that the loss or damage resulted from an act or omission of the Company that was done recklessly.

- (d) No conduct by the Company in breach of this Agreement or otherwise, whether lawful or unlawful, will under any circumstances constitute a breach going to the root of this Agreement, or a repudiation so as to have the effect of disentitling the Company from obtaining the benefit of and enforcing all rights, defences, exceptions, immunities and limitation of liability and other like protections of the Company contained in this Agreement, and all such rights, defences, exceptions, immunities, limitations of liability and like protections will continue to have full force and effect in any event.
- (e) Subject to any mandatory applicable statute, the Company shall not be liable for any loss or damage suffered by the Customer or any other person, howsoever caused or arising, whether:
 - (i) arising from an authorised or unauthorised act or contemplated or uncontroverted act under this contract;
 - (ii) caused by the negligence and/or recklessness of the Company's servants, employees, agents, or Sub-contractors;
 - (iii) a breach or fundamental breach of contract;
 - (iv) resulting from, or attributable to, any quotation, statement, representation or information, oral or written, made or given on behalf of the Company or its servants, agents, employees or Contractors as to the classification of, liability for, amount, scale or rate of customs duty, excise duty or other impost or tax applicable to any goods subject of any Service;
 - (v) occasioned by the Company complying with any requirement or directive of any Government Authority in relation to the Goods;
 - (vi) occasioned by examination of the Goods by any Government Authority;
 - (vii) occasioned by treatment of the Goods by any Government Authority (including without limitation, any fumigation or decontamination or other treatment by AQIS).
- (f) In all cases where liability cannot be excluded by this agreement because of mandatory applicable statute, the liability of the Company is limited to the lesser of AUD\$1000.00 or the value of the Goods the subject of the agreement at the time the Goods were received by the Company.
- (g) In all cases where liability cannot be limited or excluded by this agreement because of any mandatory applicable statute, the provisions of the applicable statute shall be deemed incorporated herein and any rights, immunities and/or defences therein shall be available to the Company. For the purpose of determining the extent of the Company's liability for loss of or damage to the Goods, the value of the Goods lost or damaged is agreed to be the current market value of the Goods.
- (h) In all cases where liability cannot be excluded or limited by this agreement for negligence or breach of any condition or warranty in respect of the Services, the liability of the Company to the Customer is limited to any one or more of the following as determined by the Company at its absolute discretion:
 - a. the resupplying of the Services again; or
 - b. the costs of having the Services resupplied.

This sub-clause only applies insofar as the Services to be provided by the Company under this Agreement is a service of a kind not ordinarily acquired for personal, domestic or household use. The Company will continue to be subject to any condition or warranty implied by the Competition and Consumer Act 2010 and the Australian Consumer Law ("ACL"), and if applicable the ACL will prevent the exclusion restriction or modification of any such guarantee.

Without limiting the generality of the foregoing, the Company shall in no circumstances be liable for loss or damage other than to the Goods, including indirect or consequential loss or damage arising from the Services performed in respect of the Goods including loss of market, loss of profit or loss of contracts howsoever caused. The rights, immunities, defences and limits provided for in these conditions shall apply in any action against the Company for loss or damage whether the action be found in contract, bailment, tort or otherwise notwithstanding any breach of the contract or condition hereof by the Company.

Further, without limiting the generality of the foregoing, the Company shall not be liable for any loss or damage suffered by the Customer or any other person as a result of a failure or inability of the Company or Contractor to collect or receive C.O.D. payments from any consignees or their agents whether caused by the negligence of the Company's servants, agents, employees, Contractors or otherwise.

No declaration of value will be made for the purpose of extending liability and the Goods will be forwarded or dealt with at the Customer's or owner's risk unless express written instructions to the contrary are given by the Customer and accepted in writing by the Company and extra charge paid if required by the Company.

Without derogation of or limitation to any of the above, the Customer's right to compensation for any claim for loss or damage will only be maintained provided the following is strictly adhered to:

- (i) Any claim for loss or damage must be lodged in writing to the Company within 7 days of delivery of the Goods or the date the Services are completed, whichever date occurs first;
- (ii) Any claim for loss/non-delivery of Goods must be notified in writing to the Company within 7 days from the date the Goods should have been delivered or the Services should have been completed, whichever date occurs first;
- (iii) Any right to any legal remedy against the Company shall be extinguished unless legal proceedings are brought against the Company in the state of Victoria and not otherwise within 9 months from the date of this contract or the date the Services were completed or Goods delivered, or the date the Services should have been completed or the Goods should have been delivered, whichever date occurs first.

Insurance

8. Given the rights of the Company to exclude or limit liability pursuant to sub-paragraphs 8(a) to (l) of the above provision, the Customer should seek its own insurance cover for any loss or damage that it may incur or that may arise in relation to the provision or non-provision of the Services by the Company. No insurance will be arranged or effected by the Company on the Customer's behalf.

Loading and Unloading on and from Transportation Vehicle/Storage

9. (a) The Customer shall be responsible for the cost of, and arranging for, the loading and unloading of the Goods on and from the relevant transportation vehicle.
- (b) In the event that there is a delay in the loading or unloading of the Goods by reason other than the default of the Company or Sub-contractor, the Customer shall be liable for the Company's expenses incurred by reason of the delay, including demurrage costs as notified by the Company orally or in writing from time to time with a minimum hourly charge of not less than \$240 per hour or as specifically quoted.
- (c) The Customer shall provide adequate and suitable facilities and equipment for loading and unloading the Goods from the relevant transportation vehicle. The Customer also warrants that the Goods will be suitable for carriage in such vehicle.
- (d) The Customer has the right to inspect the transportation vehicle before the loading of the Goods. Absent any inspection and complaint, the transportation vehicle will be deemed to be in adequate and suitable condition for the carriage of the Goods. Thereafter, the Customer shall have no rights against the Company with respect to the condition of the vehicle and the Company will have no liability in respect of any loss or damage caused by the inadequate or unsound condition of the vehicle.
- (e) The Goods may at any time be stored or otherwise held at any place or at any time be removed from any place at which they may be stored or otherwise held to any other place to be stored or otherwise held at the sole discretion of the Company. In every case, whether storage is incidental or the primary Service provided by the Company, it will be provided at the Customer's risk and expense as a primary charge(s) or a charge(s) incidental to or in connection with the carriage of the Goods or any Service hereunder.
- (f) (i) In the event that the Customer is not present to arrange the loading and/or unloading of the Goods, the Customer will provide to the Company equipment suitable for the loading and unloading of the Goods in a safe or reasonably safe manner and in compliance with all applicable standards including road transport and occupational health and safety acts and regulations. Without derogation of or limitation to clause 7 above, the Company will not be liable for loss, damage or delay in respect of the Goods caused by matters beyond its control, including:
 - (ii) The manner in which the Goods have been prepared or packed by anyone on behalf of the Customer for the carriage of the Goods by the Company;
 - (iii) The suitability of the Goods for the carriage by the Company (including the height, width or weight of the Goods);
 - (iv) The defective condition of the Goods.
- (g) This clause applies only insofar as the service to be provided by the Company under this Agreement is a service of a kind not ordinarily acquired for personal, domestic, or household use.
- (h) Should the Customer not be on the job site to load or unload goods, the Company will take all care to load and unload goods but there will be no liability for loss or damage.

Customer's Indemnity

10. (a) The Customer shall indemnify the Company in respect of any claim, loss, damage, payment, fine, expense, duty, tax, impost, outlay, cost or other liability incurred by the Company:
 - (i) howsoever caused or incurred, whether arising directly or indirectly from any Service arranged or performed by the Company and/or

- (ii) as a result of any breach of the terms, conditions or warranties in this contract by the Customer.
- (b) Without limiting the generality of the foregoing, the Customer shall remain responsible to the Company for all charges (C.O.D. or otherwise) paid by the Company to any of its agents, Sub- contractors or any other party or Government Authority
- (c) The Customer shall indemnify the Company in respect of any loss or damage arising from any inherent defect of the Goods.

Quotations

11. Quotations for the Services are made on an immediate acceptance basis and are subject to withdrawal or revision without notice at the Company's discretion. Charges may be referred and prices quoted or displayed on the Company's website for information. These are estimates only. These may change depending on any additional service or charges/fees incurred as will be advised by the Company to the Customer and will be payable by the Customer. Goods will be inspected/reweighed/remeasured to determine the chargeable weight/quantum. If this weight/quantum is more than that amount originally charged to the Customer, the Customer will be recharged based on the correct weight/quantum for which the Customer will be liable.

Routes and Procedures

12. If the Company is instructed by the Customer and agrees to use a particular method or type of Service, the Company shall give due consideration to the method or type designated but shall at all times have the right to choose or vary such method or type of Service or route and procedure adopted in respect of the Service performed. The Customer hereby authorises the Company to substitute alternate carriers or Service providers without notice to the Customer.

Payment of Expenses/Duties & Release of Information/Inspection of Goods

13. The Customer authorises the Company in effecting the Services, but with no obligation on the part of the Company, to:
- (a) pay any duties, taxes, imposts, outlays, costs or other charges in respect of the Goods and/or Services; and
 - (b) release or allow inspection of the Goods or any information and/or documents of the Customer, the Goods, the Services or relating thereto as required by Government Authorities, and the Customer shall indemnify the Company in respect of any disbursement, expense, cost, loss, fine or damage incurred by the Company in doing so and releases the Company from any liability in connection therewith.

Responsibility for Fees/Charges

14. (a) The Customer shall pay the Company for all fees rendered and any charges it incurs for any reason in respect of the Services performed without prejudice to the Company's rights against any other entity. This includes the payment of fees/charges which the Company is advised or agrees will be paid by a third party which then fails to so pay. Such fees/charges shall be deemed to be fully earned as soon as the Goods are loaded and dispatched from the Customer's premises, otherwise delivered by the Customer to the Company or Sub-contractor or on receipt of the Company's invoice whichever occurs first. Fees and charges shall be payable on delivery. All fees and charges are non-refundable.
- (b) The Customer agrees that it shall not defer or withhold payment or deduct any amount from the account of the Company by reason of any claim it alleges against the Company or otherwise maintain any set-off.
- (c) The Company's invoice is payable by the Customer seven (7) days after dispatch of the Company's invoice to the Customer. The Customer shall pay the Company interest at the penalty interest rate fixed by the Attorney-General under section 2 of the Penalty Interest Rate Act 1983 (Vic) on all overdue fees or charges invoiced. Provision of credit by the Company to the Customer may be suspended by the Company at its own discretion if fees and charges invoiced are overdue or otherwise.

Pallets

15. If the Company accepts pallets or other packing devices from the Customer, the Company will do so on the basis that all charges pertaining to the pallets, packing devices or other material will be paid by the Customer. In the event of the Company acknowledging receipt of the pallets, packing devices or material the Company will do so on behalf of the Customer on the basis that the Customer hereby accepts full responsibility for them and any freight charges.

Lien – Security Agreement – Personal Properties Security Act

16. The Company shall have a particular and general lien on the Goods of the Customer and any documents relating thereto for all sums payable by the Customer to the Company. The Customer agrees that these terms and conditions constitute a security agreement for the purpose of the Personal Properties Security Act (2009) ("PPSA") and create a security interest in all Goods and documents relating thereto of the Customer which thereby gives the Company the right to:
- (a) exercise a general lien over all Goods and documents of the Customer in respect of any moneys owed by the Customer to the Company; and
 - (b) sell the Goods or a portion thereof and direct the proceeds of sale to payment to the Company of moneys owed by the Customer to the Company and remit any balance remaining (if such exists) to the Customer;
- provided that the Company will notify the Customer and all other relevant persons of its intention to sell the goods in accordance with the requirements of mandatorily applicable legislation. If no such legislation applies, the Company will exercise its right to sell the goods or a portion thereof after a period of 7 days from the date which the Company notifies the Customer that it is exercising its rights of sale.

Registration/Personal Properties Security Act

17. (a) The Customer agrees to:
- (i) sign any documents or provide further documents or information required by the Company to register a financing statement or financing change statement in respect of a security interest with the Personal Property Securities Register, register any other documents required by the PPSA or correct any such document(s).
 - (ii) indemnify the Company for all expenses incurred in attending to the steps outlined in (i) above and releasing any interests from the Register.
 - (iii) not register a financing change statement in respect of a security interest without prior written consent by the Company.
 - (iv) not register, nor permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Company
- (b) The Company and Customer agree that sections 96, 117 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions. The Customer hereby waives its rights to receive notices or statements under sections 95, 118, 121(4), 123, 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.
- (c) The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- (d) The Customer agrees to ratify unconditionally any actions taken by the Company pursuant to registration related requirements under the PPSA and as referred in clause 17(a) above.

Valuables, Dangerous goods

18. (a) (i) Except as agreed in writing, the Company will not accept Valuables or Dangerous goods for Services arranged or performed by the Company. Should the Customer nevertheless deliver any such goods to the Company or cause the Company or Sub-contractors to handle or deal with any such goods otherwise than as agreed in writing, the Customer (not the Company) shall be liable for any loss, damage or cost thereto or consequent thereon whether direct, indirect or consequential and howsoever caused and the Customer shall indemnify the Company from and against all penalties, taxes, duties, claims, demands, damages, costs and expenses arising in connection therewith.
- (ii) Any such goods may be destroyed in the sole and absolute discretion of the Company or any other person in whose custody they may be at the relevant time. In the event that the goods are destroyed or otherwise dealt with as aforesaid, the Company shall bear no liability, and the Customer shall indemnify the Company from and against all costs and expenses with respect thereto.
- (b) The Customer undertakes that prior to pick up of the goods, the Customer will provide a full description of the goods in writing to the Company, including the inherent danger of the goods. The Customer further undertakes any of the goods referred to in (a) above (including their covering, packaging, containers and other carriage devices) shall be distinctly marked having regard to their nature. The Customer also undertakes and warrants that the Goods are packed in a manner adequate to withstand the ordinary risks of any Service having regard to their nature and in compliance with all laws and regulations which may be applicable with respect to any Service. The Customer shall indemnify the Company against all claims, losses, damages or expenses arising in consequence of any breach of this provision.
- (c) The Customer's compliance with (b) above in no way reduces or limits those rights afforded to the Company under (a) of this clause.

Delivery/Completion

19. (a) The Company is authorised to deliver the Goods to the consignee or its agent at the address nominated to the Company by either the Customer, the consignor, the consignee or their agents and it is expressly agreed that the Company shall be deemed to have delivered the Goods in accordance with this contract if it or relevant Sub-contractor obtains a receipt, signed delivery docket for the Goods or signature from any person at that address or the Company otherwise provides proof of delivery.
- (b) If the nominated place of delivery shall be unattended or if delivery cannot otherwise be affected, the Company in its sole discretion may at its option either deposit the Goods at the nominated place or store the Goods at the risk and expense of the Customer, both of which will be deemed to be delivery of the Goods under this Contract.
- (c) Dates and time specified or requested for completion of carriage or any other Service are estimates only and the Company shall not be liable for failure to complete carriage or any other Service on such date(s) or time(s).

Sale and Disposal of Goods and other rights

20. (a) The Company and its Sub-contractors shall be entitled at the cost and expense of the Customer, subject to any compliance with any applicable law, to sell or dispose of:
- (i) Goods which, in the opinion of the Company or Sub-contractor cannot be delivered by reason of the Goods being insufficiently or incorrectly addressed or by reason of the Goods not being collected or accepted by the Consignee/Customers or for any other reason.
- (b) If the Goods are sold pursuant to Clause (a) above, the Company can use the proceeds of sale to discharge any fees and charges owed by the Customer, including the costs of sale. Any balance of any proceeds remaining following such discharge will be remitted to the Customer.
- (c) If payment is required to be made on delivery of the goods but the Customer fails to do so, then the Company may take the Goods back and store the Goods until payment is made by the Customer, and the Customer shall also be responsible for the costs of delivery back, storage and re-delivery of the Goods

Regulation Compliance

21. The Customer shall exercise all reasonable care and comply with all applicable laws, Government regulations/directions and industry standards including those relating to the packing, carriage, storage, customs clearance, delivery, inspection or other Services in respect of the Goods, and shall provide such information and documents as may be necessary to exercise such care and comply with such laws, regulations and standards. The Company shall not be liable to the Customer or any other party for loss or expense due to the Customer's failure to comply with this provision and the Customer will indemnify the Company for any expense, damage or liability incurred by the Company in so complying.

Law and Jurisdiction

22. Any dispute arising under this Contract shall be governed by the laws of Victoria and shall be determined exclusively by the courts of Victoria.

Representations

23. By accepting these conditions, the Customer agrees that it did not rely on any representation, promise, warranty or condition of the Company or its Sub-contractor not expressly made (in writing) part of this contract.

Severance & Waiver

24. It is hereby agreed that if any provision or part of any provision of this contract is unenforceable, such unenforceability shall not affect the application of any other part of such provision or any other provision hereof. Further, should the Company elect not to exercise any of its rights under this contract, under any other contract/agreement or under law, such election shall not constitute a waiver of any rights relating to any other or subsequent breach by the Customer.

Inconsistency & Priority

25. (a) To the extent of any inconsistency of enforceable terms or a part thereof herein, these terms will prevail over any other terms issued by the Company or Customer.
- (b) The use of the Customer's own form is no derogation to these terms and conditions.

Trade Practices

26. (a) These terms do not affect the Customer's rights pursuant to Schedule 2 of the CCA if the Customer is a "Consumer" or "Small Business" and this agreement with the Customer is a "Consumer Contract" or "Small Business Contract" – all quoted terms as defined under the CCA.
- (b) To the extent that any term or part thereof is rendered inapplicable or void by the CCA or any other legislation, it shall be rendered inapplicable or void only to the extent required to give effect to that legislation but not further.
- (c) If the Customer is a "Consumer" or "Small Business" and this agreement is a "Consumer Contract" or "Small Business Contract" as defined under the CCA, the parties agree that:
- (i) the prevention of claims and indemnity referred in Clause 4 above as against the Company's servants, agents, Sub-contractors and/or vicariously liable persons will not apply;
- (ii) the Company's right to exclude, limit and/or otherwise restrict its liability in Clause 7 above is based on a low-cost rate service where the Customer can and should cover its risk of loss or damage in relation to the Services by acquiring insurance itself. If the Customer wishes the Company to accept greater liability, it can also negotiate in writing with the Company for same at an agreed greater cost rate;
- (iii) the Customer's indemnity referred to under Clause 10(a)(i) above will not apply to the extent that the claim, loss, damage, payment, fine, expense, duty, tax, impost, outlay, cost or other liability incurred by the Company resulted from the negligence, recklessness or wilful act of the Company, its servants or agents.
- (d) Unless written notification to the contrary is given by the Customer to the Company at or prior to entering into this agreement, the Customer expressly warrants and represents that all or any Services to be supplied by the Company and acquired by the Customer pursuant to this agreement are so supplied and acquired for the purposes of a business, trade, profession or occupation carried on or engaged in by the Customer.

Reasonable Care/Force Majeure

27. Where the Company is unable to carry out any obligation under the contract or any loss or damage is caused to the Goods or otherwise due to any circumstance, matter or thing beyond its reasonable control ("force majeure") or its exercise of reasonable care, the Company shall be excused and released from such obligations or liability to the extent of such prevention, restriction or interference so caused.