

SALE & SHIPPING TERMS

1 General

- (a) These terms (**terms**) apply to the sale and shipping of Products by Ausfine Foods International Pty Ltd (**Ausfine**) to the **Buyer** named on the **Sales Contract** agreed between the parties. These terms together with the Sales Contract and any terms incorporated under it form a binding contract between the parties, with effect from the time the Sales Contract is exchanged and agreed.
- (b) These terms only apply to the shipping of Products if Ausfine is contractually required to ship pursuant to the Sales Contract or Incoterms incorporated into the Sales Contract.
- (c) These terms prevail over any inconsistent terms in any document of the Buyer or a third party, such as a printed consignment note, request for quotation, bill of lading, purchase order or terms of sale, including even where one of Ausfine's representatives signs such a document.
- (d) These terms are intended to apply in conjunction with the Incoterms, but if there is any conflict between the provisions of Incoterms and these terms, these terms prevail.
- (e) In these terms, unless the context otherwise requires:
 - (i) Headings - the headings of the various sections and clauses of these terms are for convenience of reference only and do not modify, define, expand or limit any of the terms or provisions of these terms.
 - (ii) Plurals, Genders, Persons - the singular includes the plural and vice versa. Words importing one gender include every gender. A reference to a person includes a corporation and vice versa.
- (f) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (g) A reference to conduct includes an omission, statement and undertaking, whether or not in writing.
- (h) A reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally.

2 Delivery and packaging Instructions

- (a) The Buyer will issue to Ausfine instructions for delivery of the Products at the agreed delivery point in the Sales Contract not less than 28 days prior to the agreed date of delivery of the Products as set out in the relevant purchase order. These instructions will include the address for the delivery of the Products, and the person nominated to accept delivery of the Products at that address.
- (b) If the Buyer fails to issue instructions in accordance with clause 2(a), Ausfine will be entitled to invoice the Products as of the last delivery day resulting

from the purchase as set out in the relevant purchase order and demand payment as if the same had been supplied on said day, provided that Ausfine keeps said goods available for the Buyer at the latter's reasonable expense and risk. Alternatively, Ausfine is entitled to cancel the contract under clause 10 and recover its costs, including (but not limited to) fees from the carrier, additional documentation fees from issuing authorities, additional handling and/or storage costs associated with the Products.

- (c) It is the responsibility of the Buyer to ensure, and to bear the costs of ensuring, that:
 - (i) the Products comply with applicable laws and regulations at the places of delivery and distribution, in relation to the nature, condition, packaging, certification, weighing, administrative documents and approvals, Product documents and materials, labelling, palletisation, handling, transportation, storage stamping and like requirements; and
 - (ii) the Products are packed in a manner having regard to their nature which is adequate to withstand the ordinary risk of handling, storage or carriage, that the Products are accurately described in writing, and the packaging or containers used are in fit and proper condition.
- (d) The Buyer must provide clear and complete instructions to Ausfine as to the requirements in clause 2(c) (if any) including temperature control for the Products, prior to confirmation of the Sales Contract, or promptly on confirmation. If at any time the Buyer's requirements lead to additional work or costs for Ausfine not accounted for in the agreed Sales Contract, the requirements are subject to agreement by Ausfine and Ausfine may charge for the work, including (but not limited to) reefer temperature amendment fees from the carrier, charges from transport companies, additional handling and/or labour costs and additional documentation fees from carriers or authorities.
- (e) Ausfine will use reasonable endeavours to meet the Buyer's requirements in clauses 2(a), 2(c) and/or 2(d) as agreed by Ausfine, but will not be liable for any failure to meet the Buyer's requirements in clauses 2(a), 2(c) and/or 2(d) in tort (including negligence), contract, bailment, contravention of any statute or breach of duty or otherwise whatsoever, and howsoever caused unless caused by Ausfine's gross negligence, fraud, criminal conduct or wilful misconduct. The Buyer must check compliance of Ausfine with its requirements in clause 2(a), 2(c) and/or 2(d) and may advise Ausfine of any shortfalls. Where Ausfine has failed to meet agreed requirements in clause 2(a), 2(c) and/or 2(d), the Buyer's sole remedy is to require Ausfine to re-perform the work at no additional charge. Otherwise, Ausfine may charge for work done.
- (f) They Buyer warrants that:

- (i) any VGM or delivery and packaging instructions provided to Ausfine by the Buyer are accurate and comply with Marine Order 42, and Maritime Rules Part 24B (when applicable), have been calculated in accordance with an approved method and that it is supplied in time to be used in vessel planning;
 - (ii) it has complied with all laws and regulations of any government authorities relating to the nature, condition, packaging, handling, storage, weight and carriage of the Products including all laws prescribed by the RSA, and the Heavy Vehicle National Law;
 - (iii) it will provide all such assistance, information and documentation that may be necessary to enable Ausfine to comply with any applicable law and regulations for the Products, their transport, delivery and storage;
 - (iv) it will provide all unloading equipment, cranes and forklifts if required, and will provide engineering support and lashing points and tie down lugs where needed;
 - (v) it will ensure that there is suitable, clear and unencumbered access and access points at delivery locations; and
 - (vi) it will not to request transportation of any Products which require temperature control without previously giving written notice of their nature and the particular temperature range to be maintained and, in the case of a temperature controlled container stuffed by or on behalf of the Buyer.
- (g) If the requirements of clause 2(f) are not complied with by the Buyer, Ausfine will not be liable for any loss of or damage to the Products caused by such non-compliance unless such loss or damage to the Products is caused by Ausfine's, wilful misconduct or gross negligence, fraud or criminal conduct.
- (h) Unless agreed in writing, Ausfine is not obliged to make any declaration for the purposes of any statute, convention or contract as to the nature or value of any Products or as to any special interest in delivery, or to make any declaration as to specific stowage requirements of any Products.
- (i) The Buyer agrees to defend, indemnify and hold harmless, Ausfine for any liability of Ausfine, losses, expenses, fines, charges or costs including legal costs sustained or incurred as a result of the breach of this clause 2 by it, or Ausfine acting in accordance with the Buyer's instructions except to the extent that the loss or damage was directly caused by, or in connection with, a grossly negligent, unlawful, or wilful act or omission by Ausfine or its employees, agents and subcontractors.
- (j) Ausfine will be entitled (without incurring any additional liability), but will be under no obligation, to depart from the Buyer's instructions in any respect if Ausfine considers there is good reason to

do so in the Buyer's interest, or if it is contrary to the requirements of any governmental authority.

- (k) Ausfine may at any time comply with the orders or recommendations given by any governmental authority. The responsibility and liability of Ausfine in respect of the Products will cease on the delivery or other disposition of the Products in accordance with such orders or recommendations.

3 Sampling and Analysis

The Buyer may, prior to delivery, have an attested sampler take samples in triplicate in the customary manner. The Buyer and Ausfine may stipulate that said sampling be monitored. If the Buyer and Ausfine fail to reach agreement on designating an attested sampler, the Buyer will undertake to have the samples taken by one of the following controlling authorities: Qlip; SGS: Société Générale de Surveillance; Bureau Veritas; Intertek.

4 Risk and Title to Product

- (a) The risk in Products will pass to the Buyer in accordance with the relevant provision of Incoterms or where Incoterms do not for any reason apply, immediately upon delivery of the Products by Ausfine to the Buyer at the destination for delivery shown in the Sales Contract and nominated by the Buyer in accordance with clause 2(a).
- (b) Title in the Product will not pass to the Buyer until Ausfine has received payment in full without deduction or set off of all charges and/or invoices issued under these terms applying to the Product. Until then, the Buyer agrees that:
 - (i) the Buyer holds the Product as bailee only;
 - (ii) the Buyer must store the Product supplied in such a way that it is clear that it is Ausfine's property;
 - (iii) the Buyer irrevocably authorises Ausfine and its representatives to enter any premises where the Product is kept and recover the Product and, if necessary, to use the Buyer's name and to act on the Buyer's behalf to do so;
 - (iv) if the Buyer sells the Product, the sale is by the Buyer as agent for and on behalf of Ausfine, and the proceeds of sale are held for the benefit of Ausfine and must first be applied to paying Ausfine the charges and/or invoices issued for the Product; and
 - (v) this clause 4 applies in full regardless of any transformation, processing or treatment of the Products.
- (c) The Buyer acknowledges that these terms create a continuing security interest in the Products and all proceeds of sale of the Products, from the time of delivery until the time that title passes to the Buyer under this clause. The security is for all amounts owing or due to Ausfine by the Buyer, and is effective under *the Personal Property Securities Act 2009* (Cth) (**PPSA**) for Products located in Australia, and under applicable laws and regulations in other jurisdictions. To the extent permitted by law, the Buyer and Ausfine agree

pursuant to section 115 of the PPSA to contract out of sections 96 and 120 of the PPSA and that the Buyer irrevocably waives any right it has to receive notices under sections 95, 118, 121(4), 124(4), 125, 130, 132(3)(d), 132(4), and 135 of the PPSA, redeem the Products under section 142 of the PPSA, reinstate these terms under section 143 of the PPSA and receive a verification statement under section 157 of the PPSA.

- (d) The Buyer consents to Ausfine registering its security interest under the PPSA and other applicable laws and regulations, and the Buyer agrees to provide all assistance required by Ausfine to facilitate this.
- (e) Whether or not Ausfine registers its security in the Products, the Buyer must not offer or create any security interest in the Products to the benefit of itself or a third party, and must take all steps necessary to separately manage and hold the Products and identify them as property of Ausfine until title passes.

5 Shipment

- (a) Ausfine will use its best commercially reasonable efforts to comply with the shipment period and other arrangements for delivery set out in the Sales Contract or otherwise provided by Ausfine, but such arrangements are estimates only and no guarantee is given. The Buyer must accept and pay for Products in full without deduction or set off even in the event of a delay or any other variation to the arrangements for delivery.
- (b) The Products will at all times be at the risk of the Buyer and Ausfine will not be liable in tort (including negligence), contract, bailment, contravention of any statute or breach of statutory duty or otherwise for any loss of or damage to or failure to deliver or delay in delivery or misdelivery of the Products or documentation whatsoever, and howsoever caused, unless caused by the Ausfine's gross negligence, fraud, criminal conduct or wilful misconduct.
- (c) Ausfine is not liable for any loss suffered by the Buyer in connection with the Products and/or their shipment and/or their delivery that is a consequential or indirect loss, including:
 - (i) losses that are purely financial or economic losses;
 - (ii) loss of opportunity;
 - (iii) losses in connection with contracts, agreements or understandings the Buyer has with third parties;
 - (iv) loss of market; and
 - (v) any other losses whatsoever that do not arise directly from physical damage to or loss of the Products and are consequential in nature,except to the extent that the consequential or indirect loss described above is caused by the Ausfine's gross negligence, fraud, criminal conduct or wilful misconduct.
- (d) The exclusion of liability in clauses 5(b) and 5(c) extends to include not only loss of, or damage to, the Products themselves, but loss, damage or injury to any person, property or thing damaged arising from Ausfine providing the Products or any delivery or shipment services under these terms, and to any indirect or consequential loss arising from such loss, damage or injury or from failure to deliver, delay in delivery or misdelivery of the Products or documentation.
- (e) Ausfine does not exclude or limit the application of any laws, including Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (**Australian Consumer Law**), where to do so would contravene those laws or cause any part of these terms to be void.
- (f) Ausfine excludes from these terms, all conditions, warranties, terms and consumer guarantees implied by laws, general law or custom except any conditions, warranties, terms and consumer guarantees the exclusion of which would contravene any laws or cause this clause to be void ('**Non-Excludable Condition**').
- (g) Ausfine may deliver the Products in instalments. Each instalment is a separate sale in respect of the quality and other properties of the Products delivered as well as payment, and these terms and the charges apply. A failure of Ausfine to deliver any instalment is not a breach of these terms and will not entitle the Buyer to cancel the whole or any remaining part of the Sales Contract.
- (h) The Buyer authorises any deviation from the usual manner in which the delivery of the Products are provided which may in the absolute discretion of Ausfine or its sub-contractors be deemed reasonable or necessary in the circumstances.
- (i) If the Buyer expressly or impliedly instructs Ausfine to use or it is expressly or impliedly agreed that Ausfine will use a particular method of providing delivery of the Products, Ausfine will give priority to that method but its adoption remains at the sole discretion of Ausfine and the Buyer authorises Ausfine to provide the delivery of the Product by another method.
- (j) Unless otherwise agreed in writing, Ausfine will be entitled to enter into contracts on behalf of itself or the Buyer and without notice to the Buyer:
 - (i) for the carriage of Products by any route, means or person;
 - (ii) the carriage of Products of any description, whether containerised or not, on or under the deck of any vessel;
 - (iii) for the storage, packing, transshipment, loading, unloading or handling of Products by any person at any place whether on shore or afloat and for any length of time;
 - (iv) for the carriage or storage of Products in containers or with other goods of whatever nature; or

- (v) for the performance of its own obligations, and to do such acts as Ausfine reasonably considers may be necessary or incidental to the performance of Ausfine's obligations.
- (k) If at any time Ausfine reasonably considers that the carriage of the Products should not be undertaken or continued or only continued after effecting any necessary incidental matters or incurring additional expense or risk, Ausfine will be entitled to:
 - (i) abandon the carriage of such Products or to effect such additional incidental matters and incur such additional expense, as may be reasonably necessary in order to enable the carriage to be effected or further effected; and
 - (ii) be reimbursed by the Buyer for the cost of all such reasonable additional incidental matters and all such additional expense incurred.

6 Delivery and Demurrage

- (a) The Buyer is responsible for accepting delivery and collection of the Product at the destination shown in the Sales Contract, the point of delivery it has provided to Ausfine, or another destination agreed with Ausfine.
- (b) Ausfine is authorised to deliver the Products at any address nominated by the Buyer.
- (c) Ausfine will not be bound to deliver the Products except to the receiver nominated by the Buyer or to such other persons as may be authorised in writing by the Buyer to receive the Products.
- (d) If Ausfine is unable to deliver the Products for any reason (including failure on the part of the Buyer or its nominated representative to take delivery within a reasonable time), Ausfine will be entitled to store the Products in such manner as it may in its discretion determine, and will be entitled to invoice the Buyer for the reasonable charges in respect of such handling and/or storage and subsequent delivery of Products.
- (e) The Buyer agrees to indemnify Ausfine for any container demurrage, and container detention in respect of containers that carry the Products except to the extent that the container demurrage or container detention is directly caused by, or in connection with, a grossly negligent, unlawful, or wilful act or omission by the Ausfine or its employees, agents and subcontractors.
- (f) The Buyer will indemnify Ausfine against any claim, liability or expense, including detention or demurrage charges, which arise as a result of:
 - (i) a failure to return a container;
 - (ii) a delay in the return of the container beyond the free time provided by the relevant carrier,
 - (iii) any damage to the container;
 - (iv) the container being returned in a dirty or contaminated condition; and/or
 - (v) delay in loading or unloading of the Buyer's Products, or any waiting time, detention or demurrage for any truck or any other conveyance whatsoever,except to the extent directly caused by, or in connection with, a grossly negligent, unlawful, or wilful act or omission by the Ausfine or its employees, agents and subcontractors

7 Payment of Purchase Price

- (a) The Buyer must pay to Ausfine the charges set out in the Sales Contract immediately when due, or otherwise agreed or applicable under these terms, in accordance with Ausfine's terms of payment without set off, counterclaim, deferment on account, or deduction of any kind whatsoever.
- (b) The charges for the Product are as set out in the Sales Contract except to the extent varied under this clause 7.
- (c) Ausfine must notify the Buyer of any proposed variation and increase to the price of a Product, including as a result of a change in the market price of a Product, freight and other third party costs, or currency fluctuations at any time before date of delivery (**Price Notice**) in accordance with clause 14.
- (d) If the Buyer does not provide a dispute notice as required by clause 7(e)(i) below within 10 Business Days of receipt of the Price Notice, the Buyer will be deemed to have accepted the price increase for the Products.
- (e) If the Buyer disagrees with a proposed price increase in relation to a Product as notified by Ausfine in the Price Notice:
 - (i) the Buyer must notify Ausfine in writing of the reason for its dispute to the price increase within 5 Business Days of receipt of the Price Notice (**Dispute Notice**);
 - (ii) the parties must use their best endeavours to agree on a fair and reasonable price increase for the Product as soon as possible;
 - (iii) if the Buyer and Ausfine are unable to resolve any disagreement between them regarding the price increase within 10 Business Days of the Buyer delivering a Dispute Notice to Ausfine, the dispute must be referred to the managing directors or chief executive officers (or their nominees) of the parties. The parties must ensure that their respective managing directors or chief executive officers (or their nominees):
 - (A) have authority to negotiate and, if appropriate, enter into a binding agreement on behalf of the relevant party;
 - (B) meet promptly (and in any event within 10 Business Days) after the matter is referred to them; and
 - (C) use their reasonable endeavours and act in good faith in an attempt to resolve the matter;

- (iv) if the managing directors or chief executive officers (or their nominees) have been unable to resolve the dispute within the period stated in clause 7(e)(iii)(B), then the parties must invoke the dispute resolution process in clause 13; and
- (v) the Buyer must pay the increased price from the date it takes effect and comply with its other obligations under these terms until the dispute is resolved.
- (f) The Buyer agrees that the price change will not release the Buyer from its obligation to pay the entire amount of the charges for the Product.
- (g) If there is a change to either party's credit rating, insurance coverage, trading terms or terms of finance, Ausfine may adjust the payment terms set out in the Sales Contract by providing the Buyer with at least 30 days notice in writing.

8 Notice of Defect of Products

Subject at all times to the Buyer's rights under all applicable laws and regulations (including its rights under the Australian Consumer Law):

- (a) all claims for faulty, incomplete, incorrect or defective Products must be submitted in writing (**Defect Claim**) by the Buyer to Ausfine no later than twenty one Business Days after the date the Product is delivered;
- (b) upon receiving a Defect Claim, Ausfine will assess it and, if the Defect Claim is established, use its best endeavours to ensure that the defect is rectified to the Buyer's reasonable satisfaction, without additional cost to the Buyer. The Buyer agrees to provide information, co-operate and assist Ausfine in doing so, at no cost to Ausfine;
- (c) if the Buyer does not provide a Defect Claim within twenty one Business Days of delivery, the Buyer will be deemed to have accepted the Product; and
- (d) to the extent that some Products are not delivered at all, or that a defect cannot be rectified, the amounts payable by the Buyer are reduced in proportion to the non-delivery or reduced value attributable to the defect.

9 Cargo Insurance

- (a) If pursuant to the Sales Contract cargo insurance is provided by Ausfine, it will terminate on the expiry of 15 days from the date of arrival of the Products at the end destination for which the cargo insurance is taken out. If an extension to this insurance is required, Ausfine must be notified in writing prior to the 15th day.
- (b) If the Sales Contract does not provide for cargo insurance to be provided by Ausfine, the Buyer is responsible for insuring the Products at its own cost.

10 Rights of Ausfine to Terminate

Ausfine may immediately by written notice terminate the sale of Products to the Buyer, and/or these terms,

without prejudice to either party's rights existing immediately prior to termination:

- (a) if the Buyer fails to pay, when due, any amount payable to Ausfine;
- (b) if the Buyer fails to observe or comply with anything required to be done by the Buyer under these terms; or
- (c) if the Buyer becomes affected by one or more Insolvency Events,

provided that if the termination is for breach, and the breach is capable of being rectified, Ausfine has provided the Buyer with a breach notice in writing requiring rectification within a reasonable period of at least 10 days, and the breach remains unrectified after that period.

11 Rights of Buyer to Terminate

The Buyer may immediately by written notice terminate its purchase of Products, and/or these terms, without prejudice to either party's rights existing immediately prior to termination:

- (a) if Ausfine has not delivered any Products at all, by the date 6 months after the estimated date for delivery in the Sales Contract;
- (b) if Ausfine fails to observe or comply with anything required to be done by Ausfine under these terms or
- (c) if Ausfine becomes affected by one or more Insolvency Events,

provided that if the termination is for breach, and the breach is capable of being rectified, the Buyer has provided Ausfine with a breach notice in writing requiring rectification within a reasonable period of at least 10 days, and the breach remains unrectified after that period.

12 Damages and Indemnity

- (a) Each of Ausfine and the Buyer acknowledges that it must pay to the other party (as applicable) on demand the full cost of any damages arising from or in connection with breach by it of these terms, and indemnifies the other party (as applicable) in full against all loss, damage, claim or expense so arising except to the extent that the loss and damage was directly caused by or in connection with a grossly negligent, unlawful or willful act or omission by the other party (as applicable) or its employees, agents or subcontractors.
- (b) Without limiting any other rights of Ausfine, any monies owing under these terms which are not paid when due will bear interest at the rate of 7% per annum (or another rate notified by Ausfine from time to time), calculated daily and compounded monthly on and from the date such monies first become due to Ausfine.
- (c) Pursuant to the indemnity in clause 12(a), each of the Buyer and Ausfine will also be liable for all of the other party's (as applicable) reasonable costs arising in connection with a breach by it, including legal expenses and the cost incurred in the

collection of monies overdue (on a full indemnity basis).

- (d) Each of Ausfine and the Buyer indemnifies the other party (as applicable) against any third party claims made against the other party (as applicable), except to the extent that Ausfine or the Buyer (as applicable) demonstrates that a claim is the direct result of a breach of these terms by the other party (as applicable), or was directly caused by or in connection with a grossly negligent, unlawful or willful act or omission by the other party (as applicable) or its employees, agents or subcontractors.

13 Final and Binding Arbitration

- (a) A dispute that has not been resolved by the parties within 10 Business Days after one party notifies in writing the other party of a dispute must be decided by way of arbitration under the *Commercial Arbitration Act 2011* (Vic).
- (b) This clause does not prejudice the rights of a party at any time to seek urgent interlocutory or injunctive, declaratory or other interlocutory relief (including for specific performance) against the other parties in order to protect or preserve its rights under these terms.

14 Notice and Service of Process

- (a) Any notice, consent, instruction or other communication to be given by either the Buyer or Ausfine in connection with these terms will be effective only if given in English and in writing, signed and delivered either:
- (i) personally;
 - (ii) by mail; or
 - (iii) by e-mail,
- to the recipient's place of business.
- (b) Any notice will be taken to have been received, if:
- (i) served personally, the same day;
 - (ii) mailed, 3 Business Days after it is posted;
 - (iii) emailed, at the time of successful receipt by the recipient (which may be evidenced by the transmission of an automatic electronic read receipt).

15 Limitation of Ausfine's liability

- (a) Notwithstanding any other provision in these terms and subject always to clauses 2(e), and/or clauses 5(b) to 5(f) (inclusive), if any liability whatsoever, howsoever arising is found to attach to Ausfine, the liability of Ausfine will not exceed the lesser of the following in respect of all claims:
- (i) the value of the Products;
 - (ii) the equivalent of AUD\$2.00 per gross kilogram of the Products lost or damaged in the currency of the loss or damage, (the exchange rate to apply being the rate as at the date of the delivery of the Products) lost, damaged,

misdirected, misdelivered or in respect of which a claim arises; or

(iii) \$AUD2,000 per incident.

- (b) For the purposes of clause 15(a), the value of the Products will be calculated by reference to the invoice value of the Products under the Sales Contract plus freight and insurance if paid. If there is no invoice value for the Products, the value of the Products for the purposes of clause 15(a) will be calculated by reference to the value of such Products at the place and time when they were delivered to the Buyer or owner or should have been so delivered. The value of the Products will be fixed according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.
- (c) Notwithstanding any other provision in these terms, but subject always to clauses clauses 2(e), and/or clauses 5(b) to 5(f) (inclusive), if any liability whatsoever, howsoever arising, is found to attach to Ausfine for breach of a Non-Excludable Condition, or guarantee, Ausfine's liability will be limited (and subject at all times to the Buyer's rights under all applicable laws and regulations (including its rights under the Australian Consumer Law)) to the lesser of:
- (i) in the case of services supplied under these terms:
 - (A) the supplying of the services again; or
 - (B) the payment of the cost of supplying the services again; or
 - (C) the amount of AUD\$2,000.00.
 - (ii) in the case of supply of Products under these terms:
 - (A) the replacement of the Products or the supply of equivalent Products;
 - (B) the repair of the Products;
 - (C) the payment of the cost of replacing the Products or of acquiring equivalent Products;
 - (D) the payment of the cost of having the Products repaired; or
 - (E) the amount of AUD\$2,000.00.
- (d) All the rights, immunities and limitations of liability in these terms will continue to have full force and effect notwithstanding any breach of these terms by Ausfine and the terms are severable to the extent that they are invalid or unenforceable.
- (e) The Buyer acknowledges that it has relied solely upon its own inspection and skill and judgement in purchasing the Products.
- (f) The Buyer warrants that no claim or allegations will be made against Ausfine by any person (other than the Buyer or the Buyer's disclosed principal) who is or may subsequently be interested in the Products.

- (g) The limitations in this clause 15 will not apply to the extent that the loss or damage was directly caused by or in connection with a grossly negligent, unlawful or willful act or omission by Ausfine or its employees, agents or subcontractors.

16 Covenants

- (a) Ausfine does not permit its products to be used directly or indirectly to supply or benefit any person, country or territory that are subject to economic sanctions programs by Australia, Canada, the United States of America, the United Kingdom or the EU.
- (b) The Buyer represents that it will not directly or indirectly cause products purchased from Ausfine to be used to supply, fund or facilitate any activities or business or be diverted for the use, sale or benefit of any person or country/territory that, at the time of use, is subject to economic sanctions programs by Canada, the United States of America, the United Kingdom or the EU.

17 Right of set-off

Each of Ausfine and the Buyer is authorized to the fullest extent permitted by law, to set-off and apply any amount owed to it from the other party (as applicable) under any agreement or arrangement, against any amount which it owes to the other party (as applicable).

18 Force Majeure

- (a) If Ausfine is affected, or likely to be affected, by a Force Majeure Event:
- (i) Ausfine must immediately give the Buyer prompt written notice of that fact including full particulars of the Force Majeure Event and an estimate of its likely duration; and
 - (ii) the obligations of Ausfine under these terms are suspended to the extent to which they are affected by the relevant Force Majeure Event as long as the Force Majeure Event continues.
- (b) Ausfine must use its best endeavours to remove, overcome or minimise the effects of the Force Majeure Event as quickly as possible. However, this does not require Ausfine to settle any industrial dispute in any way it does not want to.
- (c) If a Force Majeure Event continues for a period of 30 days or more, then either party may terminate these terms by giving 10 days notice.
- (d) For the purposes of this clause 18, Force Majeure Event means any cause(s) beyond the reasonable control of the party affected including but not limited to acts of God, civil disorder, embargoes, quarantine, war, labour disputes, material shortages, damage to plants, equipment or facilities necessary to produce the Product, interruptions to, restrictions or shortages of carriage or transportation, or acts or omissions of public authorities including local, state or federal governments (including changes in laws, statutes or regulations).

19 Taxes

- (a) Except for income taxes imposed directly on Ausfine in its place of establishment, the Buyer will pay and indemnify Ausfine in respect of any and all taxes, imposts, tariffs, port charges, export and import charges, levies, duties, withholding taxes, goods and services or value added taxes, stamp duty and other taxes and charges applying to the sale and shipment of the Products (**Taxes**).
- (b) If Taxes are assessed against Ausfine, Ausfine may include in its invoice and the Buyer must pay to Ausfine an amount that ensures that Ausfine receives the same amount, after such Taxes, as it would have received had such Taxes not been assessed.
- (c) If Taxes are assessed against the Buyer, on request the Buyer will provide Ausfine with a certificate evidencing the Buyer's discharge of such Taxes.
- (d) The Sales Contract may vary the terms of this clause.
- (e) Words and expressions used in these terms which have a defined meaning in the *A New Tax System (Goods and Services Tax) Act* (Cth) (**GST Act**), have the same meaning in this clause as in the GST Act. Unless expressly stated otherwise, all consideration to be provided under these terms and the Sales Contract is expressed as exclusive of GST. If GST is payable by a supplier on any supply made under this contract, the recipient will, upon receiving a tax invoice from the supplier, pay to the supplier an amount equal to the GST payable on the supply without deduction or set off.

20 Assignment

Ausfine and the Buyer must not assign their benefits or novate their obligations under these terms without the prior written consent of Ausfine or the Buyer (whichever is applicable in the circumstances).

21 Variation

Any variation, cancellation or waiver of these terms must be in writing and signed by an authorised representative of each of Ausfine and the Buyer.

22 Subcontracting

- (a) The Buyer authorises Ausfine (if it should think fit to do so) to subcontract on any terms the whole or any part of the the services it provides to the Buyer. Such authorisation extends to any subcontractor and sub-subcontractor.
- (b) Every servant, subcontractor, sub-subcontractor or agent of Ausfine will have the benefit of all provisions herein as if such provisions were expressly for their benefit. In entering into this contract, Ausfine, does so not only on its behalf, but as agent and trustee for such servants, subcontractors, sub-subcontractor and agents and each of them will to this extent be or be deemed to be parties to the contract.

23 Governing Law

These terms will be governed by and will be construed in accordance with the laws in force in Victoria, Australia.

24 Definitions

Business Day means a day (not being a Saturday, Sunday or public holiday) on which Australian banks (as defined in section 9 of the *Corporations Act 2001* (Cth)) are open for general banking business in the capital city of Victoria, Australia.

Heavy Vehicle National Law means the Heavy Vehicle *National Law Act 2012* (Qld) as enacted in the Queensland Parliament and adopted by the States and Territories, including any Regulations made under that Act and any other legislation enacted by the Commonwealth, a State or a Territory for the purpose of giving effect to the Heavy Vehicle National Law or the Council of Australian Governments' Intergovernmental Agreement on Heavy Vehicle Regulatory Reform dated 25 February 2010.

Insolvency Event means being in liquidation or provisional liquidation or under administration, having a controller or analogous person appointed to it or any of its property, being unable to pay its debts or otherwise insolvent, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason.

Incoterms means the international commercial terms for the interpretation of trade terms of the International Chamber of Commerce as in force at the date of the Sales Contract.

Products means the products, goods and services described on the Sales Contract between the parties, and any other products sold by Ausfine to the Buyer.

RSA means those State and Commonwealth Government Authorities in Australia responsible for road safety regulation of heavy vehicles and Chain of Responsibility legislation and the Heavy Vehicle National Law and the laws governing the carriage of goods by road.

VGM means verified gross mass as set out in Chapter VI, Part A, regulation 2 of SOLAS and given effect in Australian Law by Marine Order 42 (Cargo, stowage and securing) 2014 (order 2014/11).