

**AUSTCO POLAR COLD STORAGE PTY LTD****TERMS AND CONDITIONS****1. GENERAL**

- (a) Austco Polar Cold Storage Pty Ltd ABN 49 623 917 519 of 5-7 Leslie Road, Laverton North, Victoria 3026 ("**Austco**") operates a cold storage facility and provides blast freezing, logistics and storage services.
- (b) These terms and conditions will apply to all Services provided by Austco and govern the relationship between Austco and the Customer in respect of every Request (as defined hereunder) unless otherwise agreed between the parties.
- (c) If the Customer makes a Request and/or delivers Goods to Austco after these terms and conditions are provided to the Customer, such conduct shall constitute acceptance of these terms and conditions, even where the Customer may not have signed the Customer Application Form.

**2. DEFINITIONS**

- (a) "**Contract**" means these terms and conditions, which govern the relationship between the Customer and Austco.
- (b) "**Business Day**" means any day other than a Saturday, Sunday or public holiday in Melbourne, Victoria;
- (c) "**Business Hours**" means any time between the hours of 6.00am and 2.00pm on a Business Day;
- (d) "**Commencement Date**" means the date specified as the Commencement Date in the Customer Application Form as accepted by Austco;
- (e) "**Consequential Loss**" means any loss of profit, loss of revenue, loss of bargain, loss of contract with a third party, loss of anticipated profit, loss of anticipated savings, loss of opportunity, loss of goodwill, loss of reputation or loss of production but, for the avoidance of doubt, it excludes any amounts that are expressly stated as being payable under this Contract;
- (f) "**Customer**" means the person engaging Austco to provide the Services in accordance with this Contract;
- (g) "**Customer Application Form**" means the form provided by Austco to the Customer from time to time;
- (h) "**Delivery Date**" means the date that the Customer delivers, or will deliver, the Goods to Austco;
- (i) "**Expiry Date**" means the date specified to be the Expiry Date on the Customer Application Form

and where no such date is specified, the end of the period as specified in clause 26(k);

- (j) "**Force Majeure Event**" means any event beyond the reasonable control of a party that occurs without the fault or negligence of that party and which could not have been reasonably prevented or overcome by that party, including fire, storm, flood, earthquake, explosion, accident, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, act (including laws, regulations, disapprovals or failure to approve) of any government or governmental agency whether national, municipal or otherwise;
- (k) "**Goods**" means goods delivered to the Site by or on behalf of the Customer for the purpose of Austco providing Services;
- (l) "**GST**" means a tax, together with any related additional tax and interest, imposed by or under a GST Law;
- (m) "**GST Law**" means the same as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended;
- (n) "**Holding-over Rates**" means additional charges incurred by the Customer for any Goods retained in storage or on the Site for any period of time longer than what is originally agreed between the parties, such charges payable by the Customer to Austco as more fully described in Schedule 2;
- (o) "**Invoice**" means a tax invoice under the GST Law;
- (p) "**Pick-up Date**" means the date for collection of Goods from the Site by the Customer as set out in a Request;
- (q) "**PPSA**" means the *Personal Property Securities Act 2009* (Cth);
- (r) "**Privacy Act**" means the *Privacy Act 1988* (Cth);
- (s) "**Rates and Charges**" means the costs to be paid by the Customer for the Services calculated in accordance with clause 21 as more fully described in Schedule 2;
- (t) "**Request**" means a request by the Customer for the provision of Services, submitted by the Customer in accordance with clause 4;
- (u) "**Site**" means Austco's cold storage site, presently located at 5 - 7 Leslie Road, Laverton North, Victoria 3026;
- (v) "**Services**" means the services provided by Austco to the Customer as more fully described in Schedule 1;
- (w) "**Taxable Supply**" has the meaning given to "Supply" by GST Law;
- (x) "**Term**" means the term of this Contract which commences on the Commencement Date and ends on the Expiry Date.

**3. TERM AND RENEWAL**

- (a) This Contract will commence on the Commencement Date and will continue to operate until the Expiry Date, unless terminated earlier in accordance with these terms and conditions.
- (b) The Customer will be entitled to extend the Term, provided that:
  - i. the Customer provides written notice to Austco of such intention not less than thirty (30) days prior to the end of the Term; and
  - ii. Austco, within its absolute discretion, agrees prior to the Expiry Date to extend the Term on such terms that Austco deems acceptable.

**4. REQUESTS FOR SERVICES**

- (a) The Customer must make all Requests for Services to Austco in writing via email to [apcs-ops@austcopolar.com.au](mailto:apcs-ops@austcopolar.com.au).
- (b) Each Request must be made by the Customer to Austco prior to the Delivery Date or Pick-up Date (as applicable) by giving notice to Austco at least two (2) Business Days prior to the Delivery Date or Pick-up Date unless otherwise mutually agreed between the parties.
- (c) Each Request in connection with the delivery of Goods to the Site or the collection of Goods from the Site must specify:
  - i. *in relation to the delivery of Goods* – the quantity and nature of Goods to be delivered to the Site and the Delivery Date; and
  - ii. *in relation to the collection of Goods* – the quantity and nature of Goods to be collected from the Site and the Pick-up Date.
- (d) The Customer agrees that all information provided to Austco is sufficiently accurate and complete to enable Austco to decide whether to accept the Request.

**5. ACCEPTANCE OF REQUEST**

A Request is not deemed to be accepted by Austco until Austco has provided written confirmation of its acceptance of the Request to the Customer.

**6. CANCELLATION OR VARIATION OF A REQUEST**

- (a) Before a Request is formally accepted by Austco, the Customer may cancel or vary all or any part of a Request prior to the Delivery Date or Pick-up Date (as applicable) by giving notice to Austco at least two (2) Business Days prior to the Delivery Date or Pick-up Date.
- (b) The Customer acknowledges and agrees that all or any part of a Request is subject to written amendment or variation at Austco's discretion at any time prior to Austco's acceptance of the Customer's written Request.

**7. AUTHORISED PERSON**

- (a) Austco may, in its sole discretion, deliver the Goods in accordance with the written or oral instructions of:
  - i. the Customer;
  - ii. any agent or authorised person of the Customer;
  - iii. any person purporting to be the owner of the Goods; or
  - iv. any person purporting to be the agent or authorised person of the Customer, and

any delivery shall be deemed to be a delivery to the Customer and Austco shall not be liable for any loss to the Customer occasioned thereby.

- (b) Upon receiving a request for delivery or for release of the Goods, Austco may treat the person making such a request as an agent or duly authorised person of the Customer and as a person authorised to accept delivery of the Goods.
- (c) Austco will not be required to enquire or verify that a person is a duly authorised person of the Customer.

**8. AUSTCO OBLIGATIONS**

Austco must provide the Services in accordance with the specifications for the Services as set out in Schedule 1 and with due care, skill and professionalism.

**9. CUSTOMER ACKNOWLEDGEMENTS:**

- (a) All Goods delivered to the Site are received by Austco "quality, contents and condition unknown";
- (b) Except for checking the temperature of Goods upon delivery to the Site, Austco is not responsible for checking the quality and condition of the Goods upon delivery to the Site;
- (c) the Customer is solely responsible for the risk of storing the Goods at the Site;
- (d) if any Services are performed outside of the Business Hours, the Customer will be required to pay the Rates and Charges for Overtime weekdays, Saturdays, Sundays and Public Holidays, as stipulated in Schedule 2;
- (e) subject to the Services provided to the Customer, the Goods will be stored in bulk or in assorted lots in the freezer or chiller at Austco's discretion (acting reasonably);
- (f) Austco's responsibilities as at the point of collection of the Goods cease to exist at Austco's door and any changes arising thereafter due to any cause whatsoever are the sole responsibility of the Customer.

**10. CUSTOMER OBLIGATIONS**

To the fullest extent permitted by law, the Customer must:

- (a) subject to clause 17(b), use their best endeavours to tally and record the quantity of Goods upon their delivery to the Site and upon their collection from the Site;
- (b) ensure the Goods are delivered to the Site in accordance with any of Austco's specifications and directions provided to the Customer, including but not limited to, ensuring the Goods are delivered to the Site at the correct temperature and packaged appropriately;
- (c) determine the sufficiency and suitability of the Goods and perform all testing to ensure the Goods are free from defects and in good order when delivered to the Site;
- (d) inspect the Goods as expeditiously as possible once the Goods are collected from the Site to check whether the Goods have been received in good order and if not, promptly (and in any event, within seven (7) Business Days from collection of any non-exported Goods and six (6) weeks from collection of any exported Goods notify Austco in writing specifying details of any damages or defects to the Goods;
- (e) accept that Austco makes no representation and provides no warranty as to the quality and testing of Goods upon their delivery to, and release from, the Site;
- (f) provide all information and documentation reasonably requested by Austco and ensure the same are accurate and complete in all material respects;
- (g) conduct all activities at the Site in a manner so as to minimise as far as practicable risk of bodily harm to persons or risk of damage to any property or to the environment;
- (h) ensure that the Customer's employees, contractors and agents are covered by adequate insurance, and follow safe working practices (including under the *Work Health and Safety Act 2011* (Cth)) at the Site at all times;
- (i) take out and maintain any appropriate insurance over the Goods and provide a copy of the certificate of currency of insurance upon Austco's request to satisfy Austco that it holds adequate insurance.

**11. COMPLIANCE OBLIGATIONS**

Both the Customer and Austco must comply with all codes, standards, requirements, laws, and regulations governing the delivery and storage of Goods and the provision of the Services.

**12. CUSTOMER WARRANTIES**

- (a) The Customer warrants to Austco that:

- i. the Customer is the rightful owner of the Goods stored, and has full right, power and authority to store same with Austco;
  - ii. the Goods delivered to the Site will comply with Austco's specifications and directions at all times;
  - iii. subject to any pre-existing damage identified by the Customer as set out in clause 14, the Goods delivered to the Site by or on behalf of the Customer are free from defects and are not damaged;
  - iv. the Goods provided by the Customer to Austco are not of a hazardous or contaminating nature, or of such a nature that would cause damage to other stored goods, or endanger the health and welfare of Austco's employees, associates or the public generally; and
  - v. upon delivery at the Site and for the duration of their storage with Austco, the Goods are and will remain free of any deleterious or objectionable matter of odour (such odour to be determined solely by Austco, acting reasonably) and that the Goods will not prejudicially affect any other goods on the Site.
- (b) The Customer warrants to Austco that it obtained or had a reasonable opportunity to obtain independent legal and financial advice about this Contract.

**13. SECURITY**

- (a) As security for the due and punctual payment of any money payable to Austco under this Contract, the Customer agrees to grant Austco a security interest over all of its right, title and interest in and to the Goods.
- (b) Austco and the Customer agree that for the purposes of the PPSA, each Request and all invoices issued by Austco constitute a 'security Contract' and creates a 'security interest' in all Goods. and that the security interest secures the payment of all money and the performance of all obligations owing by the Customer to Austco in respect of the security Contract.
- (c) The Customer undertakes to:
  - i. provide reasonable assistance to Austco (including to sign any further document or provide any further information) that Austco may reasonably require to register an interests on the Personal Property Securities Register (**PPSR**) or any other document required by the PPSA;
  - ii. to reimburse Austco on demand for all expenses incurred by registering and maintaining a financial statement on the

- PPSR established by the PPSA, or releasing any goods charged thereby;
- iii. not to register a financing charge statement in respect of a security interest without Austco's prior written consent; and
- iv. not to register, or permit to be registered, a financing statement or a financing charge statement in relation to the Goods in favour of a third party without Austco's prior written consent; and
- v. to the fullest extent permitted by law, fully indemnify Austco against any and all loss or damage suffered or incurred by Austco resulting from a breach of this clause 13, such indemnity to be limited to the aggregate value of the Services paid or payable by the Customer over the previous 12 months.

#### 14. RECORDS

- (a) Both parties must keep the following records in relation to the delivery and collection of Goods in accordance with this Contract:
  - i. In relation to the delivery of Goods to the Site, proof of delivery (**POD**) of Goods including details of:
    - (1) the quantity of Goods received at the Site;
    - (2) the Delivery Date;
    - (3) any damages to the Goods at the time of receipt of the Goods; and
    - (4) the names and signatures of the person who delivers and receives the Goods;
  - ii. in relation to the collection of Goods from the Site, proof of collection (**POC**) of Goods including details of:
    - (1) the quantity of Goods collected from the Site;
    - (2) the Pick-up Date;
    - (3) any damage to the Goods at the time of collection of the Goods; and
    - (4) the name and signature of the person who collects the Goods.
- (b) Each party agrees to maintain its POD and POC records for a period of one (1) year from the relevant Delivery Date or Pick-up Date.

#### 15. DELIVERY AND PICK-UP OF GOODS

- (a) Austco must provide the Customer with a receipt upon delivery of the Goods to the Site and upon collection of the Goods from the Site.
- (b) Upon Austco providing written notice to the Customer, the Customer accepts that Austco may, at its sole discretion (acting reasonably):
  - i. require the Customer's written instructions to release the Goods;

- ii. require the presentation and surrender of any receipt given to the Customer at the time of the delivery to the Site; or
- iii. require the presentation and surrender of any relevant warrant,

as a condition precedent to collection by the Customer of delivery by Austco of any Goods.

- (c) Austco may refuse to release the Goods in whole or in part until all monies owing by the Customer to Austco have been paid in full.
- (d) To the fullest extent permitted by law, the Customer accepts sole responsibility for the Goods and will not hold Austco liable whether in contract, tort or otherwise for any changes that may arise thereafter removal of the Goods from the Site including but not limited to changes in quality, freshness or temperature, due to any cause whatsoever, which are the sole responsibility of the Customer.
- (e) If any Goods are stored at the Site for a period exceeding three (3) months, the Customer agrees that Austco may in its absolute discretion charge Holding-over Rates to the Customer as set out in Schedule 2, unless otherwise agreed between the parties.
- (f) Upon pick-up of the Goods from the Site, the Customer shall be deemed to have received all Goods in good order and condition and in any order pursuant to which delivery purports to be made, unless the Customer gives Austco notice in writing to the contrary specifying details of any conditions unsatisfactory to the Customer within seven (7) Business Days from collection of any non-exported Goods and six (6) weeks from collection of any exported Goods.

#### 16. REMOVAL OF GOODS

- (a) Austco may, at any time with prior written notice to the Customer and at the Customer's expense, remove, sell, destroy or otherwise deal with all or any Goods:
  - i. which in Austco's opinion, acting reasonably, are or may become deteriorated, objectionable, unwholesome or a source of danger or contamination;
  - ii. which the Customer has been requested to remove by Austco (acting reasonably) within a specified time and which the Customer has failed to remove within that time;
  - iii. stored at the Site for a period exceeding three (3) months (or such extended period as Austco agrees) and the Customer fails and/or refuses to pay the Holding-over Rates; and/or
  - iv. over which Austco has a general lien and in respect of which Austco has requested that

the Customer pay all charges on Goods covered by that lien within a specified time and the Customer has failed to pay all such charges within that time.

- (b) Austco may with prior written notice to the Customer remove and dispose of any Goods stored at its Site where the Customer is in breach of an essential term of this Contract (or is in breach of a non-essential term which is not capable of remedy or is in breach of a non-essential term which is capable of remedy but is not remedied within 14 days of written demand) and the Customer agrees that it shall be responsible for the costs of such removal and disposal.
- (c) In the case of any sale of the Goods by Austco, Austco may obtain any price for same, whether below, equal to or exceeding market value of the Goods from time to time. Any proceeds of the sale of the Goods after deduction of expenses, charges and any other monies payable by the Customer shall be accounted for by Austco and may be released to the Customer in Austco's sole discretion, Austco acting reasonably.

#### 17. QUANTITY OF GOODS

- (a) Austco will tally and record the quantity of Goods upon their arrival at the Site.
- (b) Where the Goods are tallied by Austco without an agent or authorised representative acting or purporting to act on behalf of the Customer present, Austco's tally shall be deemed final.
- (c) At the Customer's written request, Austco must, within seven (7) days of receiving such written request from the Customer, provide up-to-date information on the quantities of all the Goods and other property of the Customer in the custody, care or control of Austco.
- (d) The Customer must notify Austco in writing if there are any discrepancies in relation to the quantities of the Goods held by Austco (**Discrepancy Notice**). Within seven (7) days of receipt of a Discrepancy Notice from the Customer, the parties must act in good faith to resolve the discrepancies the subject of the Discrepancy Notice. If any Goods are missing due to Austco's fault, the amounts owing by the Customer at the next invoice date are to be adjusted accordingly.
- (e) If the parties are unable to resolve the discrepancies, the matter will constitute a dispute and must be resolved pursuant to clause 39.

#### 18. STOCKTAKE

- (a) The Customer agrees that Austco is entitled to carry out at least one (1) annual physical

stocktake of the Customer's Goods at the expense of the Customer.

- (b) The stocktake will occur outside Business Hours on a date to be mutually agreed between Austco and the Customer and within thirty (30) days of the anniversary of the Commencement Date.
- (c) The Customer acknowledges that due to the stocktake occurring outside Business Hours, the Customer will be charged in accordance with clause 9(d).
- (d) If the Customer fails, refuses and/or neglects to co-operate with Austco in respect of the stocktake, the Customer shall not be entitled to make a claim in respect of any discrepancy relating to the Goods and hereby indemnifies Austco for any costs or losses incurred as a result of the Customer failing, refusing or neglecting to co-operate.

#### 19. CONDITIONS OF STORAGE

- (a) The Customer is responsible for clearly, distinctively and indelibly branding all Goods prior to delivery of the Goods to the Site. Austco may refuse to accept Goods that Austco deems not to be sufficiently labelled.
- (b) The Customer agrees that the manner in which Goods are stored at the Site is in the sole discretion of Austco (acting reasonably) and may include storing the Goods in bulk, in assorted lots, in any number of freezers or chillers and alongside other customers' goods.
- (c) Austco is not responsible for the quality, contents and condition of any Goods supplied to it for, amongst other things, the purposes of carrying out the Services at the Site.
- (d) Austco may, in its sole discretion, refuse to accept Goods for storage for any reason.
- (e) Austco must provide the Customer with a receipt upon the Customer's delivery of the Goods to the Site for storage. Such receipt shall not constitute a title to the Goods nor shall it constitute an assignment of the Customer's rights.
- (f) The Customer may store the Goods in its own name or nominate another person or entity to store the Goods, subject to obtaining Austco's prior written consent to the nomination.
- (g) The Customer acknowledges that the Goods stored may be:
  - i. co-owned by two or more person(s) or entity(ies);
  - ii. beneficially owned by other person(s) or entity(ies); or
  - iii. mortgaged by or to other person(s) or entity(ies);

and, in any such cases, Austco may act on the instructions of any person or entity set out in this

clause 19 regardless of whose name(s) the Goods are stored in, and any such instructions shall be deemed authorised by any other co-owner, beneficiary or mortgagee.

- (h) All co-owners, beneficiaries, mortgagees or other parties under this clause 19 shall be jointly and severally liable under this Contract.
- (i) Where the context reasonably permits, "Customer" shall include any person being the beneficial owner or mortgagee of the Goods. Austco may at its discretion act upon instructions received from the person in whose name the Goods are stored or from the beneficial owner or from the mortgagee.
- (j) In the case of partnership of joint ownership, each co-owner shall be deemed to have authority to bind all co-owners. Liability of those responsible (including the beneficial owner and mortgagee) shall be joint and several.

## 20. RIGHT OF ENTRY

- (a) At Austco's sole discretion, Austco may permit representatives of the Customer to enter the Site during Business Hours with one (1) Business Days' notice for the purposes of:
  - i. inspecting the Site and the Goods to confirm that Austco is complying with its obligations under this Contract; and
  - ii. undertaking stocktakes on the Customer's product.
- (b) The Customer agrees that its staff or agents who enter the Site will comply with Austco's policies and procedures.

## 21. RATES AND CHARGES

- (a) The Rates and Charges for the Services are set out in Schedule 2 and are GST exclusive, but inclusive of all other applicable taxes, duties, and levies applicable as at the Commencement Date, unless stated otherwise.
- (b) If there is an increase in any applicable taxes, duties and levies, Austco will be entitled to adjust the Rates and Charges accordingly on 45 days' notice to the Customer.
- (c) Any estimate given by Austco to the Customer for the Services prior to Austco providing written confirmation in response a Request shall not be binding and is subject to change by Austco. Unless stated otherwise, any estimate, quotation or price for Services given by Austco to the Customer excludes GST.
- (d) Austco may require a deposit from the Customer before commencing the Services which, in Austco's sole discretion, may be non-refundable.
- (e) The Customer shall be liable to Austco for the cost of the Services up to and including the delivery of the Goods from the site to the

Customer, or as otherwise provided in Schedule 2.

## 22. RIGHT TO INCREASE PRICING

- (a) Austco, acting reasonably, may at its discretion (and in any event annually) increase the fees at any time by providing the Customer with notice of its intention to do so at least 45 days prior to the application of the increase.
- (b) If the Customer is not agreeable to a fee increase, it may terminate this Contract by giving written notice within 30 days of its receipt of the fee increase.
- (c) If the Customer does not exercise its termination right in accordance with sub-clause (b) above, the continued use of the Services will constitute binding acceptance of the variation.

## 23. GST

- (a) In addition to paying the Rates and Charges for the Services, the Customer must pay to Austco an amount equal to any GST payable on any Taxable Supply by Austco to the Customer under or in connection with this Contract.
- (b) Austco must issue an Invoice (or an Adjustment Note) to the Customer for any Rates and Charges for the Services.

## 24. PAYMENT

- (a) Austco will issue an Invoice to the Customer weekly for the Services provided by Austco to the Customer in the previous week. Each Invoice will include any relevant activity and details thereof and disclose the amount of GST payable.
- (b) The Customer agrees to make payment of any Invoice within fourteen (14) days from the date of the Invoice.
- (c) Payment for Services shall be deemed made by the Customer upon receipt by Austco of cleared funds in Austco's nominated account.
- (d) All charges by Austco shall be payable from time to time upon demand and before removal of Goods from the Site by the Customer. Austco may, in its sole discretion, withhold delivery or release of the Goods to the Customer until payment of any or all charges is made, or other arrangements to Austco's reasonable satisfaction are made.
- (e) Invoices for Services and other charges payable by the Customer from time to time, whether in respect of the Goods or in respect of other goods or otherwise, shall stand charged upon the Goods and also upon such other goods that are stored in the name of the Customer or belonging to it from time to time.
- (f) If any payment is overdue for more than six (6) months, Austco shall have a general lien upon all such goods including the right to sell same until

all charges owing by the Customer to Austco are satisfied.

## 25. OUTSTANDING PAYMENTS

- (a) Any amounts not paid when due will be subject to interest equal to the rate that is 5% per annum above the cash rate last published by the Reserve Bank of Australia and will be calculated on daily basis, compounding monthly.
- (b) If the Customer defaults in payment of any Invoice when due, the Customer shall indemnify Austco from and against all of the costs and disbursements (including legal costs) incurred by Austco, and in addition, all of Austco's nominees' costs of collection, inclusive of debt collection, agency fees and commissions.
- (c) The Customer agrees that Austco will not be liable to the Customer for any loss or damage the Customer suffers because Austco exercised its rights under this clause 25.
- (d) On termination of this Contract, the Customer must immediately pay all amounts owing to Austco pursuant to this Contract and promptly remove all Goods from the Site. If the Customer does not remove all Goods from the Site by the date of termination, Austco will be entitled to claim payment for storage and the Services, without prejudice to any of its rights under this Contract.

## 26. TERMINATION

In the event that:

- (a) either party breaches an essential term of this Contract or a non-essential term that is not capable of remedy or a non-essential term that is capable of remedy but which is not so remedied within fourteen (14) days of written demand;
- (b) any money payable by the Customer to Austco becomes overdue for more than thirty (30) days;
- (c) the Customer allows any Invoice to remain in arrears for a period of over thirty (30) days;
- (d) in Austco's reasonable opinion, the Customer will be unable to pay its debts as they fall due;
- (e) either party 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
- (f) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of either party or any asset of that party,

then, to the fullest extent permitted by law and in addition to and without prejudice to each party's other remedies at law and under this Contract:

- (g) the non-defaulting party shall be entitled to terminate all or any part of this Contract

including any Service that remains unperformed where Austco is the non-defaulting party;

- (h) all amounts owing to Austco shall, whether or not yet due for payment, immediately become due and payable in addition to the interest payable;
- (i) outstanding monies shall be recoverable immediately from the Customer as a liquidated debt together with any interest and costs accrued; and
- (j) Austco may obtain a personal credit report to collect overdue payment on commercial or consumer credit under the Privacy Act.
- (k) where this Contract operates on a month-to-month basis, either party may terminate this Contract with 30 days' prior written notice.
- (l) Clauses 13, 14, 15, 16, 19, 21, 22, 24 and 27 are "essential terms" for the purposes of this Contract.

## 27. LIMITATION OF LIABILITY AND INDEMNITY

- (a) The Customer indemnifies Austco against any and all loss or damage suffered or incurred by Austco and arising in relation to any Goods retained on the Site beyond the Term. For the avoidance of doubt, this includes any direct or indirect loss or damage (including loss of income and profit) suffered by Austco from its own suppliers as a result of any breach and/or cancellation by the Customer. The parties agree that the aforementioned indemnity is to be limited to the value of Services paid or payable by the Customer.
- (b) Subject to sub-clause (c) below, Austco's liability to the Customer for any reason related to Austco's performance under this Contract shall be limited to the amount paid or payable by the Customer to Austco for Services as specified therein.
- (c) To the fullest extent permitted by law, Austco shall not be liable for and the Customer releases Austco from liability whether arising at common law, under statute, in equity or under contract, for:
  - i. any loss, injury or damage to the Goods stored whether by way of destruction, fire, theft, store flood, tempest or water;
  - ii. any loss, injury, or damage suffered by the Customer or a third party, as a result of the non-delivery or delayed delivery of the Goods stored; or
  - iii. any loss, injury or damage suffered by the Customer or any third party resulting from, or contributed by chilling, freezing or storage of the Goods, contact with or proximity to other goods, variations in or wrong temperatures, sweating, evaporation, leakage, breakage, shrinkage, deterioration, fermentation,

- wasting, decay, putrefaction, contamination, vermin, strikes, lockouts, shortage of labour, defects in or breakdown of plant or premises; or resulting from, or contributed to by, any circumstances beyond the reasonable control of Austco;
- ii. any loss, injury or damage caused or contributed to by Austco failing to use labour, machinery or plant, the use of which in Austco's absolute discretion it considers might precipitate, cause, or aggravate a strike or entail risk to the Goods or business of Austco, or to any one or more of its Customers including whether caused by the negligence or alleged negligence of, or any act or omission of Austco, its servants or agents.
- (d) Austco accepts no liability for Services provided based on measurements and specifications supplied by the Customer or any other third party, and the Customer shall be responsible for any additional costs associated with subsequent alteration of the Services.
- (e) To the full extent permitted by law, the Customer will indemnify Austco and keep Austco indemnified from and against any liability and any loss or damage Austco may sustain, as a result of any breach of any essential term (or non-essential term not capable of remedy or non-essential term capable of remedy but not remedied within 14 days' written demand), act or omission, arising directly or indirectly from or in connection with any such breach of this Contract by the Customer or the Customer's agents or representatives.
- (f) To the fullest extent permitted by law and notwithstanding the remedies available to the parties as set out in the Contract:
- i. all implied terms, conditions and warranties including those relating to fitness for purpose and merchantable or otherwise acceptable quality are excluded;
  - ii. neither party is liable to the other for Consequential Loss or any special or indirect loss or damage of any kind;
  - iii. each party must use their reasonable endeavours to mitigate any loss or damage they suffer or incur;
  - iv. subject to all of the foregoing and any other limitations and exceptions in this Contract, Austco's maximum liability is limited to the value of the Services giving rise to the claim.
- (g) For clarity, the foregoing is not intended to limit and / or exclude any rights and remedies that either party may have under this Contract and in respect of claiming Consequential loss under

the Australian Consumer Law (where applicable).

## 28. NOTICES

- (a) Any notice pursuant to this Contract shall be given by the notifying party to the recipient party at an address nominated by the recipient party.
- (b) Notices may be given by:
- i. post, with such notice being deemed received by the recipient four (4) business days after posting; and
  - ii. email, with such notice being deemed received by the recipient when the sender's email account shows the notice as being sent and no error, undeliverable or similar message is displayed on the sender's account; and
- (c) The Customer shall promptly notify Austco in writing of any change of address.
- (d) Notices to the Customer may be given to the person(s) or entity(ies) in whose name the Goods are being stored, and such notices shall be deemed given to the Customer.

## 29. CONFIDENTIALITY

- (a) Unless authorised in writing, neither party will disclose the terms and conditions of this Contract nor the fees, tariffs, charges, costs and expenses subject of this Contract ("**Confidential Information**") other than to its employees, agents or professional advisors who necessarily need to know the for the performance of their duties and professional obligations to the parties but who shall undertake to the parties not to disclose the Confidential Information unless authorized in writing by the parties except for the terms and conditions and the Confidential Information that are:
- i. required or disclosed by law or an order of a Court of competent jurisdiction;
  - ii. disclosed to any person participating with Austco in the course of its business and with respect to the storage of the Goods the subject of this Contract;
  - iii. in the public domain and disclosed in trade or public publications, reports, analysis or studies;
  - iv. disclosed prior to the date of this Contract.

## 30. LIABILITY OF PARTIES

- If a party consists of more than one person – then:
- (a) an obligation of those parties is a joint obligation of all of them and a several obligation of each of them;
- (b) a right given to those parties is a right given jointly and severally to each of them, and if exercised by one of them, is deemed to be exercised jointly, and
- (c) a representation, warranty or undertaking made by those parties is made by each of



them.

**31. FORCE MAJEURE** – If a Force Majeure Event occurs:

- (a) the obligations of a party under these Terms will be suspended to the extent that it is wholly or partially precluded from complying with its obligations under these Terms as a result of the Force Majeure Event; and
- (b) a party affected by a Force Majeure Event must notify the other party as soon as practicable of the event and the extent to which that party is unable to comply with its obligations.

**32. PRIVACY AND SECURITY**

The Customer must ensure that all “personal information” as defined by the Privacy Act relating to the provision of Goods and Services or that is provided by or on behalf of Austco is safeguarded and collected, stored, accessed, used and disclosed strictly in accordance with that legislation or as permitted with Austco’s prior written consent. For clarity, the Customer must ensure that it complies with the Privacy Act in every respect. If the Customer knows or suspects that any personal information has been collected, stored, accessed, used or disclosed contrary to any of the foregoing or that any other security breach has occurred in respect of the personal information then it must report the same to Austco in writing within twenty-four (24) hours and comply with any reasonable requests by Austco for information about the same, including as to any investigation or resolution.

**33. VARIATION**

- (a) These Terms may only be varied, amended or supplemented in writing, signed by the parties. Such variation shall apply to every subsequent Request unless otherwise agreed by the parties.
- (b) Austco reserves the right to vary its terms and conditions with its customers from time to time and agrees to promptly notify customers of its latest terms and conditions.

**34. NO WAIVER**

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

**35. ASSIGNMENT**

- (a) Austco may assign, licence or sub-contract all or any of its rights and obligations under this Contract without the Customer’s consent.
- (b) The Customer shall not assign or transfer any of its rights or obligations under this Contract without Austco’s prior written consent. For the purpose of this Contract, a change in ownership or change in control will be deemed to constitute an assignment of the

Customer’s rights and obligations under this Contract.

**36. INCONSISTENCY**

In the event of any discrepancy, ambiguity, conflict or inconsistency between this Contract, any Request or any other document relating to the parties, the terms of this Contract shall prevail to the extent of an inconsistency.

**37. INTERPRETATION**

- (a) Any schedules mentioned in these terms and conditions will be provided by Austco directly to the Customer prior to Austco providing written confirmation in response a Request.
- (b) An expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate

**38. ENTIRE CONTRACT**

This Contract is the entire Contract of the parties on the subject matter. The only enforceable obligations and liabilities of the parties in relation to the subject matter are those that arise out of the provisions contained in this Contract. All representations, communications and prior Contracts in relation to the subject matter (whether verbal, written or otherwise) are merged in and superseded by this Contract.

**39. DISPUTE RESOLUTION**

- (a) The parties shall attempt to resolve all claims, disputes or controversies arising under, out of or in connection with this Contract by conducting good faith negotiations amongst themselves.
- (b) If Austco and the Customer are unable to resolve any dispute, then before either party takes legal proceedings in respect of the dispute (other than proceedings for urgent injunctive relief) representatives of both parties must report the nature of the dispute to their respective senior management and allow a further twenty-one (21) days for further negotiation before legal proceedings are commenced.
- (c) If either party is required to retain a solicitor to enforce any provision of this Contract, whether or not a legal proceeding is commenced, the substantially prevailing party shall be entitled to reasonable legal fees.

**40. SEVERANCE**

Any term that is unenforceable will be severed unless the term is unenforceable because it is declared to be an unfair contract term, in which case it shall, at Austco’s election, be deemed to be amended to the minimum extent required to prevent it from being an unfair contract term. Such term will not affect the operation or interpretation of any other term and condition contained in this Contract.

**41. GOVERNING LAW AND JURISDICTION**

This Contract shall be interpreted, construed and construed in accordance with and shall be governed by the laws in the State of Victoria, and the parties

irrevocably submit to and accept the exclusive

jurisdiction of the courts of the State of Victoria.

**SCHEDULE 1 - SERVICES**

<b>1. Blast Freezing</b>	<ul style="list-style-type: none"> <li>• Fresh products are received by Austco put into stillages to increase airflow to ensure the core of the product is frozen.</li> <li>• The usual freezing time is 48 hours.</li> </ul>
<b>2. China Aged Blast Freezing</b>	<ul style="list-style-type: none"> <li>• Products are received onto the Site chilled on pallets and stored in a chiller for 14 days from the production date.</li> <li>• We do have cases where the product maybe partly aged at the establishment prior to delivery in this case we store the pallet in the chiller for the remainder of the 14 days from production date.</li> <li>• For clarification, if we received product with a production date 08/03/2024 it would be required to be removed from the chiller on the 22/03/2024 whether it was delivered on 09/03/2024 or 15/03/2024.</li> </ul>
<b>3. Quarantine Cold Storage Treatment</b>	<ul style="list-style-type: none"> <li>• Products usually requiring this service are Cashew nuts and products derived from wood and will be sent with a AQIS Direction.</li> <li>• Products are received onto the Site, kept on the pallet as- is and put into -18 freezer storage for 7 days with the temperature being monitored daily</li> <li>• Charges applicable for this service are Blast Freezing charges per carton – see Schedule 2</li> <li>• Once the product has been stored at –18 for 7 Days and reached temp of -18c the Quarantine Cold Storage Treatment Record form is completed sent to the department and a new AQIS direction is issued clearing the products.</li> <li>• Goods will then be picked up by the customer.</li> <li>• This service is usually short term.</li> </ul>
<b>4. Freezer Storage (standard)</b>	<ul style="list-style-type: none"> <li>• Products are received into Austco stored in a freezer and loaded out when requested.</li> <li>• Usual charges would be as Inwards, Outwards and Storage per pallet.</li> <li>• This service is charged at a higher rate then Take or Pay</li> </ul>
<b>5. Freezer Storage (Take or Pay)</b>	<ul style="list-style-type: none"> <li>• Products are received onto the Site, stored in a freezer and loaded out when requested.</li> <li>• An agreed amount of storage is paid for weekly whether we have product in the allocated spaces or not.</li> <li>• Rates for this service would be at a lower rate than Standard Storage.</li> </ul>
<b>6. Chilled Storage (Standard)</b>	<ul style="list-style-type: none"> <li>• Products are received onto the Site, stored in a chiller and loaded out when requested.</li> <li>• Usual charges would be as Inwards, Outwards and Storage per pallet.</li> <li>• This service is charged at a higher rate than Take or Pay</li> </ul>
<b>7. Chilled Storage (Take or Pay)</b>	<ul style="list-style-type: none"> <li>• Products are received into Austco stored in a chiller and loaded out when requested.</li> <li>• An agreed amount of storage is paid for weekly whether we have product in the allocated spaces or not.</li> <li>• Rates for this service would be at a lower rate than Standard Storage.</li> </ul>
<b>8. Export Container Loading</b>	<ul style="list-style-type: none"> <li>• Products either frozen or chilled in storage will be hand loaded into containers and exported in accordance with the Customer's and relevant jurisdiction's requirements.</li> </ul>
<b>9. Import Container Unloading</b>	<ul style="list-style-type: none"> <li>• Imported products coming into Australia will be unloaded and stored in either chiller or freezer storage, dependent on product requirements.</li> <li>• Containers which are under AQIS direction will require an AQIS inspection which will be performed on site by an AQIS inspector.</li> <li>• Once the clearance direction has been received for products under direction, this is then loaded out as per customer requirements</li> </ul>