

The MCC Group Service Terms

1 Engagement

1.1 General

- a References to MCC in these Service Terms are references to the specific MCC group entity (as defined in paragraph 14.1), that is delivering Services to the Customer.
- b Where the Customer is receiving Services from more than one MCC group entity, the Customer acknowledges that it is entering into a separate legally binding agreement with each entity.
- c These Service Terms together with MCC's Service Quotation form the legally binding agreement between MCC and the Customer.
- d The Customer will be bound by the terms of this Agreement where it has:
 - i provided instructions to MCC (whether verbally or in writing) to commence delivering the Services specified in the Service Quotation; or
 - ii paid any deposit to MCC as requested in a Service Quotation.
- e If a person is entering into this Agreement as an authorised agent for or in any capacity on behalf of another party, that person:
 - i warrants that it has the authority to enter into this Agreement on behalf of the other party; and
 - ii to the extent the relevant person does not have the authority to enter into this Agreement, that person agrees to be individually bound as if it were the Customer named in the Agreement.

1.2 Priority

- a If there is any inconsistency between the particulars specified in the Service Quotation and these Service Terms, then the Service Quotation will take priority with respect to resolving that conflict.
- b No terms and conditions of the Customer (if any) attached to, enclosed with or referred to in any order form, correspondence or other document shall be incorporated into, amend the terms of, alter or otherwise govern in any manner, this Agreement.
- c This Agreement constitutes the whole agreement between the parties and supersedes all previous agreements and communications relating to the performance and delivery of the Services.

1.3 Term

This Agreement commences on the Commencement Date and will continue for the Term, unless terminated in accordance with clause 8.

2 Services

2.1 General

- a In performing the Services, MCC shall:
 - i comply with all applicable laws, regulations and industry standards; and
 - ii perform the Services with due care, skill and diligence.
- b The Customer will throughout the Term:
 - i cooperate with MCC;
 - ii provide the information and documentation that MCC requires

- in order to properly deliver the Services;
 - iii provide access to its systems, facilities, premises and personnel, as reasonably required by MCC and at no cost, to enable MCC, its staff, personnel and agents to deliver the Services; and
 - iv ensure that the Customer's staff, personnel and agents cooperate with and assist MCC.
- c The Customer must throughout the Term:
 - i obtain and maintain all necessary licences, permits and consents required in order to enable MCC to deliver the Services;
 - ii procure all necessary access for MCC to all goods, premises, vessels, installations and transport required by MCC to deliver the Services;
 - iii ensure that all appropriate safety measures are taken to provide safe and secure working conditions for MCC, its personnel and agents;
 - iv inform MCC of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises, or at any premises it is requested MCC attend for the purposes of delivering the Services.
- d The Customer must at all times during the Term comply with all applicable laws and regulations of any relevant Government Authority, including without limitation Marine Orders, Chain of Responsibility Laws and Transport of Dangerous Goods Legislation. The Customer will provide MCC with all information and documentation required by MCC in order to enable MCC to also comply with such laws.

2.2 Delivery

- a MCC will use its best efforts to provide the Services in accordance with any dates specified in the Service Quotation, or otherwise agreed between the parties in writing.
- b Notwithstanding clause 2.2a the Customer acknowledges that any agreed date of delivery (whether in a Service Quotation or otherwise) is an estimate only and time shall not be of the essence in terms of performance.

2.3 Reports

- a Where MCC is delivering a report to the Customer as part of the Services the Customer must ensure that all information, material, documents and samples provided by the Customer to MCC (**Customer Information**) for preparation of the relevant Report, are accurate and complete in all respects.
- b To the extent that Customer Information is not accurate and complete, this will affect the information and conclusions provided in any related Report. MCC accepts no liability, and the Customer releases and holds MCC harmless, for any Loss suffered by the Customer due to information in a Report being incomplete or inaccurate, due to any error or omission in the Customer Information.
- c The Customer acknowledges that any Report provided by MCC is only reflective of MCC's conclusions and findings as at the date of delivery of the Report. Unless otherwise specified in the Service Quotation, MCC will not update, review or revise a Report once it has been finalised and delivered to the Customer.
- d Where a Report has been prepared based on sampling or spot-checking undertaken by MCC, the conclusions and information contained in the Report are limited to the relevant samples or spot checks. They do not apply more broadly to the nature, quality, characteristics or compliance of any other aspects of the

premises, systems, bulk, cargo, material or lot, which was not inspected.

2.4 Stevedoring Services

- a Where the services to be provided by MCC include stevedoring services the Customer must, within the time frame specified in the Service Quotation or notified to the Customer by MCC, provide to MCC:
 - i details of all goods to be handled by MCC (which may take the form of a cargo manifest) including weight, quantity, dimensions, container identification numbers, cargo content and any other relevant information requested by MCC or which the Customer should reasonably be aware should be notified to MCC;
 - ii without limiting clause 2.5, notification of whether any goods to be handled by MCC consist of Dangerous Goods;
 - iii notification of whether any goods to be handled by MCC consist of Temperature Controlled Goods; and
 - iv details of any specific handling, transport or storage requirements in respect of the relevant goods.
- b The Customer acknowledges that MCC relies on the details of the goods supplied to it by the Customer and has no obligation to inspect any goods. To the extent that MCC does undertake an inspection of goods, the Customer acknowledges and agrees that no such inspection will extend or increase any liability or obligation of MCC under the terms of this Agreement.
- c The Customer must provide MCC with copies of all approvals, permits, consents and licenses required by any Government Authority or other regulatory body (including any port authority) that MCC may be required to produce in relation to its delivery of the Services.

- d The Customer must ensure that any vessel to be accessed by MCC in delivery of the Services and all equipment on those vessels that will be utilised by MCC in delivery of its services are in good working order, fit and proper condition and are otherwise safe for MCC and its personnel and agents to access and operate.
- e The Customer acknowledges and agrees that MCC shall not be liable for loss of or damage to equipment and other items placed at its disposal by or on behalf of the Customer for the purposes of MCC delivering the Services, however such loss or damage occurs.
- f The Customer must ensure that all goods are removed from any port premises in the time stipulated by MCC, which will be reasonable in the context of any relevant port regulations or policies.
- g The Customer acknowledges that to the extent there is any change in any regulation, law or prescribed procedure that MCC is required to comply with, then to the extent that there are any additional costs or expenses incurred by MCC, such costs and expenses will be charged to the Customer as a variation to the Service Fees specified in the Service Quotation.

2.5 Notification of Dangerous Goods

The Customer must:

- a prior to the commencement of any Services, provide written notice to MCC identifying whether any cargo or goods are or contain Dangerous Goods (as defined in the International Maritime Dangerous Goods Code and/or Australian Dangerous Goods Code);
- b where cargo or goods are or contain Dangerous Goods, provide:
 - i all relevant documentation, including but not limited to material safety data sheets and dangerous goods declarations;

- ii provide accurate and complete information regarding the nature, characteristics, and classification of the Dangerous Goods;
 - iii provide written instructions for the safe handling, storage, and transport of the Dangerous Goods; and
 - iv ensure all Dangerous Goods are properly packed, marked and labelled in accordance with applicable laws and regulations.
- c The Customer acknowledges and agrees that:
 - i MCC may refuse to provide Services in relation to any cargo or goods if the Customer fails to comply with this clause;
 - ii any failure to provide notice or accurate information under this clause constitutes a material breach of this Agreement;
 - iii the Customer will indemnify and hold harmless MCC against all Loss arising from or in connection with the Customer's failure to comply with this clause; and
 - iv MCC may dispose of or destroy any Dangerous Goods at the Customer's expense if, in the Company's reasonable opinion, they pose an immediate risk to persons, property, or the environment.
- d MCC is not a consignor in the context of the Transport of Dangerous Goods Legislation and cannot accept any liability in this regard. The Customer agrees that to the extent necessary MCC may designate the Customer as a consignor in any relevant documentation relating to the Dangerous Goods.

2.6 Refusal to Perform Services

- a Where at MCC's reasonable discretion it considers that:

- i the vessel or the premises at which its personnel are required to attend are unsafe;
- ii any goods or cargo are dangerous or do not comply with relevant laws;
- iii equipment required to be utilised by MCC and its personnel in the delivery of the Services is unsafe; or
- iv the Customer has not complied with applicable laws, including Marine Orders,

then MCC may refuse to deliver the Services and may take all such action that it deems reasonably necessary in order to remove any safety risks, or comply with any applicable law or Marine Order.

- b In circumstances where MCC has exercised any of its rights pursuant to clause 2.6a, the Customer:

- i acknowledges and agrees that MCC will not be responsible for any Loss or damage that is suffered or incurred by the Customer (or any party affiliated with the Customer); and
- ii indemnifies MCC in respect of all Loss associated with or arising from any Claim brought by a third-party that is affiliated howsoever with the Customer, relating to the exercise by MCC of its rights pursuant to clause 2.6a

3 Subcontracting

- a MCC may appoint suitably qualified subcontractors to perform certain aspects of the Services at its discretion.
- b MCC acknowledges that notwithstanding the appointment of a subcontractor, it remains responsible for the performance of all Services under this Agreement.

4 Fees and payment

4.1 Service Fee

- a In consideration of MCC performing the Services during the Term, the Customer must pay MCC the Service Fee.
- b MCC reserves the right to require a deposit to be paid in respect of the anticipated Service Fees prior to commencing delivery of Services.
- c MCC will issue the Customer with a duly rendered tax invoice in respect of the Service Fee at the times and on payment terms as agreed between the parties in the Service Quotation.
- d Where no such agreement has been reached between the parties:
 - i MCC will issue tax invoices either:
 - A at the conclusion of delivery of the relevant Services; or
 - B monthly in arrears for services delivered in the relevant period; and
 - ii the payment terms for all tax invoices will be fourteen (14) days from the date of invoice.
- e The Customer must pay to MCC the Service Fee in the manner agreed between the parties, or as otherwise specified on the relevant tax invoice.

4.2 Expenses

- a The Customer will promptly reimburse MCC upon request in respect of all agreed expenses that it incurs in delivering the Services.
- b Where requested by the Customer, MCC will provide reasonable supporting documentation in respect of the claimed expense.

4.3 Disputed Fee

- a If the Customer disputes the whole or any portion of the amount claimed in a tax invoice, prior to taking any other action (other than seeking urgent relief

as contemplated in clause 11.4), the Customer must first:

- i pay the portion of the tax invoice which is not in dispute; and
 - ii provide notice to MCC within seven (7) days of receipt of the tax invoice of its reasons for disputing the amount claimed in the invoice (**Invoice Notice**).
- b The Customer must ensure that an Invoice Notice contains sufficient detail to enable MCC to properly consider the nature of the dispute and respond appropriately.
 - c Upon receipt of an Invoice Notice, MCC must within seven (7) days provide the Customer with a response (**Invoice Notice Response**) including:
 - i documentation (where relevant) supporting the amount claimed in the disputed invoice;
 - ii an explanation and justification of the amounts claimed in the disputed invoice; and
 - iii a response to the reasons for dispute provided in the Invoice Notice.
 - d If the dispute cannot be resolved within seven (7) days of the issuing of the Invoice Notice Response, either party may refer the matter to dispute resolution in accordance with clause 11.

4.4 Overdue Payments

- a Where the Customer has not made payment of an amount rightfully due and owing under this Agreement, without prejudice to any other rights or remedies, MCC may at its discretion:
 - i suspend providing some or all of the Services; and
 - ii charge interest on the overdue amount at 10% per annum from the date the payment was due and owing, until such time as payment is made in full.
- b The Customer acknowledges that MCC will not be responsible for any Loss

suffered or incurred by the Customer as a consequence of MCC exercising its rights pursuant to 4.4ai.

- c The Customer further acknowledges that MCC may in its discretion, and in addition to any other amounts due and owing to it under this Agreement, seek to recover from the Customer:
 - i its reasonable costs and expenses (including legal fees on a full indemnity basis) incurred in collecting the overdue amount; and
 - ii any collection agency fees, court costs, and other reasonable expenses incurred by MCC in attempting to recover the debt.
- d The Customer acknowledges that section 27 (1) of the *Debt Collectors (Field Agents and Collection Agents) Act 2014* (Qld) does not apply to this Agreement.

5 Intellectual Property Rights

- a Nothing in this Agreement has the effect of transferring ownership of any Intellectual Property Rights in any MCC Materials from MCC to the Customer.
- b To the extent that any deliverables provided as part of the Services (such as reports) incorporate or are comprised of Intellectual Property Rights owned or used under licence by MCC, the Customer is granted a royalty free, worldwide, licence to use (but not commercialise) the Intellectual Property Rights strictly in connection with the use of the deliverables in the business of the Customer.

6 Privacy

6.1 Customer Privacy Obligations

- a If the Customer provides any material to MCC that includes Personal Information, the Customer represents and warrants that it has the requisite licence and authority to provide MCC with such Personal Information.

- b The Customer acknowledges that MCC may deal with all Personal Information provided by the Customer in whatever manner required, strictly for the purposes of complying with any obligations imposed by the *Privacy Act 1988* (Cth).
- c To the extent MCC suffers Loss as a result of any Claim by a third party regarding the use of Personal Information relating to that party, the Customer hereby indemnifies MCC in full in respect of all such Loss.

6.2 MCC Privacy Obligations

MCC warrants to the Customer that it will:

- a comply with the requirements of the *Privacy Act 1988* (Cth) with respect to its collection, use and storage of all Personal Information; and
- b comply with all reasonable and lawful directions of the Customer with respect to its use, collection and storage of any Personal Information provided by the Customer.

7 Confidentiality

7.1 Obligations

Each party agrees to:

- a keep all Confidential Information strictly confidential;
- b use Confidential Information solely for the purposes in respect of which it was provided under this Agreement;
- c not disclose Confidential Information to any third party without the other party's prior written consent;
- d take all reasonable precautions to prevent unauthorised access, use, or disclosure of Confidential Information; and
- e immediately notify the other party of any actual or suspected unauthorised use or disclosure.

7.2 Exceptions

The obligations of confidentiality set out in this clause 7 do not apply to information that:

- a is or becomes publicly available through no fault of the receiving party;
- b is independently developed by the receiving party without the use of Confidential Information disclosed by the disclosing party;
- c is received from a third party without breach of any confidentiality obligation; or
- d is required to be disclosed by law, government order or regulatory body provided the disclosing party gives prompt notice to the other party to allow that party to seek a protective order.

7.3 Return of Information

- a Upon termination of this Agreement or at the relevant party's request, each party shall promptly return or destroy all Confidential Information of the other party and provide written confirmation that this has been done.
- b Clause 7.3a does not apply to any records or documentation in respect of which the party in possession is under a legal or regulatory obligation to retain, for record keeping purposes. However, any such records and documentation must be retained in a manner that preserves their confidentiality at all times.

8 Termination

8.1 Termination at Will

Either party may terminate this Agreement upon the provision of thirty (30) days' written notice to the other party.

8.2 Termination for Breach

Either party (**Non-Breaching Party**) may terminate this Agreement with immediate effect by giving written notice to the other party (**Breaching Party**) if:

- a the Breaching Party is in breach of any term of this Agreement and fails to remedy that breach within fourteen (14) days of being notified in writing to do so; or
- b the Breaching Party is in breach of a material term of this Agreement and (if such breach is remediable) fails to remedy that breach within seven (7) days after being notified in writing to do so; or
- c the breaching Party commits a breach of any material term of this Agreement and that material breach is, by its nature, incapable of being remedied.

8.3 Consequences of Termination

- a Upon termination of this Agreement for any reason:
 - i MCC will, on and from the date the termination becomes effective, cease providing all Services under this Agreement; and
 - ii the Customer must pay MCC for all Services properly performed up to the date of termination and must reimburse MCC in respect of all expenses incurred as permitted under this Agreement.
- b Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination.
- c To the extent that MCC is in possession of any samples provided by the Customer, or obtained in the process of delivering the Services, MCC may at its sole discretion elect to retain, destroy or return the samples to the Customer. If MCC elects to return samples to the Customer, the Customer will make itself available to receive the relevant samples upon receipt of reasonable notice from MCC, during ordinary business hours.

9 Limitation Of Liability and Warranty

9.1 General

- a To the maximum extent permitted by law, MCC's total liability arising out of or in connection with the Services, including in respect of any right of indemnity provided pursuant to clause 10b, regardless of the cause of action (whether in contract, tort, breach of statutory duty or otherwise), will not exceed the total amount paid by the Customer to MCC pursuant to this Agreement.
- b Neither party will be liable to the other for any indirect, incidental, special, consequential or punitive damages, including without limitation, loss of profits, data, business opportunities, reputation or goodwill, even if advised of the possibility of such damages.
- c MCC will not be liable for Loss arising from or relating to:
 - i the Customer's failure to provide accurate, complete, or timely information;
 - ii the performance or non-performance of any third-party engaged in connection with the Services;
 - iii actions taken or decisions made by the Customer based on recommendations provided by MCC; or
 - iv faults or defects in any services or goods provided by third parties in connection with this Agreement.
- d The liability of a party for a claim brought pursuant to this Agreement will be reduced proportionately to the extent to which the party making the Claim contributed to the Loss suffered.
- e Nothing in this Agreement excludes or limits either party's liability for:
 - i death or personal injury caused by negligence;

- ii fraud or fraudulent misrepresentation; or
- iii any other liability that cannot be excluded or limited by Australian law.

9.2 Consumer Guarantees

Notwithstanding any other provision of this Agreement, if a statutory guarantee under the *Australian Consumer Law (ACL)* as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) applies to any services supplied under this Agreement and cannot be excluded, MCC's liability for a failure to comply with such a guarantee is limited to one or more of the following, at MCC's option:

- a the supplying of the Services again; or
- b the payment of the cost of having the Services supplied again.

10 Indemnity

- a The Customer indemnifies MCC in full in respect of all Loss suffered or incurred, in connection with:
 - i any breach of this Agreement by the Customer;
 - ii any negligent act or omission of the Customer; and
 - iii any failure, inaccuracy or deficiency in the Services that is caused by any inaccuracy, error or omission in the information and documentation provided by the Customer to MCC for the purposes of MCC delivering the Services.
- b MCC indemnifies the Customer in full in respect of all Loss suffered or incurred by the Customer resulting from the grossly negligent or wilfully reckless acts or omissions of MCC.

11 Dispute Resolution

11.1 Good Faith Negotiation

In the event of any dispute arising out of or in connection with this Agreement, before any court, determination or arbitration proceedings the

parties shall first meet and negotiate in good faith to attempt to resolve the dispute amicably.

11.2 Mediation

- a If the parties are unable to resolve the dispute through good faith negotiations within fourteen (14) days of the dispute arising, either party may refer the dispute to mediation. The mediation shall be conducted by a mediator appointed by the Resolution Institute in accordance with its mediation rules.
- b The parties shall share equally the costs of the mediator and the Resolution Institute.
- c Each party shall bear its own legal costs associated with the mediation.

11.3 Confidentiality

All negotiations and mediation proceedings shall be confidential and without prejudice to the rights of the parties in any future proceedings.

11.4 Urgent Relief

Nothing in this clause prevents a party from seeking urgent interlocutory and injunctive relief from a court of competent jurisdiction, where such relief is necessary to protect the party's rights or interests.

12 Standard Provisions

12.1 Assignment

- a Neither party may assign, transfer, novate or otherwise deal with its rights under this Agreement or any interest created by this Agreement, except with the prior written consent of the other party, such consent not being unreasonably withheld.
- b Neither party will unreasonably withhold its consent to a request made pursuant to clause 12.1a.

12.2 Force Majeure Event

Neither party is liable for any breach of its obligations under this Agreement to the extent that the breach resulted from any event that is outside the reasonable control of the affected party and could not have been prevented by that

party taking reasonable steps or overcome by the exercise of reasonable diligence and at a reasonable cost (including lack of supply, industrial action, fire, riot, war, pandemic, epidemic, embargo, civil commotion or act of God) provided that the affected party:

- a promptly notifies the other party of the event (with appropriate details); and
- b takes all reasonable steps to work around or reduce the effects of the event.

12.3 Representations and warranties

- a Each party warrants and represents to the other that as at the date of this Agreement:
 - i it has full power and capacity to enter into and perform its obligations under this Agreement;
 - ii all necessary action has been taken to authorise its execution, delivery and performance of this Agreement in accordance with its terms; and
 - iii this Agreement constitutes legal, valid and binding obligations and is enforceable in accordance with its terms.
- b The Customer acknowledges:
 - i MCC makes no representation or warranty that the Services, or any reporting undertaken as part of the Services, will achieve a particular result, conclusion or outcome requested or anticipated by the Customer; and
 - ii it is solely responsible for undertaking its own due diligence and exercising its own independent business judgment with regard to the information, conclusions and recommendations provided by MCC in delivering the Services.

12.4 GST

- a Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in

accordance with this Agreement are exclusive of GST.

- b If GST is imposed on any supply made under or in accordance with this Agreement, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this Agreement, subject to the provision of a tax invoice.
- c If this Agreement requires a party to pay for, reimburse or contribute to any expense, loss or outgoing **(Reimbursable Expense)** suffered or incurred by another party, the amount required to be paid, reimbursed or contributed by the first party will be the amount of the Reimbursable Expense net of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense plus any GST payable by the other party.

13 General

13.1 Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements, understandings, and representations, whether oral or written.

13.2 Warranty Disclaimer

- a Each of the parties acknowledges that in entering into this Agreement it does not do so in reliance on any representation, warranty or other provision that is not expressly provided in this Agreement.
- b Any conditions, warranties or other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law.

13.3 Amendment

No amendment or modification of this Agreement shall be effective unless it is in writing and signed by both parties.

13.4 Waiver

No failure or delay by either party in exercising any right under this Agreement shall operate as a waiver of such right. No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom such waiver is sought to be enforced.

13.5 Severability

If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

13.6 Notices

All notices required or permitted under this Agreement shall be in writing and shall be deemed effective upon personal delivery, upon confirmation of receipt if transmitted by email, or three days after mailing by certified or registered mail, postage prepaid, to the addresses set forth in this Agreement.

13.7 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Jurisdiction, without giving effect to any choice of law or conflict of law provisions.

13.8 Survival

The provisions of this Agreement that, by their nature and content, must survive the completion, rescission, termination or expiration of this Agreement to achieve the fundamental purposes of this Agreement shall so survive and continue to bind the parties.

13.9 Attorney

Each person who enters into this Agreement on behalf of a party under a power of attorney declares that they are not aware of any fact or circumstance that might affect their authority to do so under that power of attorney.

13.10 Consent

Unless this document expressly states otherwise, a party may in its absolute discretion, give conditionally or unconditionally or withhold, any consent under this document. To be effective any consent under this document must be in writing.

14 Definitions and Interpretation

14.1 Definitions

In this document the following definitions apply unless the context requires otherwise:

Agreement means The MCC Group Service Terms and the Service Quotation.

Agreement Date means the date on which the Customer agrees to be bound by the Agreement in the manner specified in clause 1.1d.

Chain of Responsibility Laws means any laws, regulations, or requirements that make each party in the transport supply chain responsible for ensuring the safety of transport activities and compliance with road transport laws, including but not limited to the Heavy Vehicle National Law and associated regulations, which impose duties relating to mass, dimension, loading, speed, fatigue management, vehicle standards and maintenance.

Claim includes a demand, claim, action, dispute or proceeding made or brought by or against the relevant party, however arising and whether present, unascertained, immediate, future or contingent.

Commencement Date means the date as specified in the Service Quotation.

Confidential Information means any information of a confidential or proprietary nature, in any form or medium, that:

- a is disclosed by or on behalf of one party (**Disclosing Party**) to the other party (**Receiving Party**) in connection with this Agreement;
- b is marked or identified as confidential at the time of disclosure or promptly thereafter; or
- c would reasonably be considered confidential or proprietary given the nature of the information or the circumstances of disclosure,

but does not include information that:

- d is or becomes publicly available through no fault of the Receiving Party;
- e was known to the Receiving Party prior to disclosure, without any obligation of confidentiality;

- f is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information;
- g is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or
- h is required to be disclosed by law or governmental order, provided that the Receiving Party gives prompt written notice of such requirement to the Disclosing Party and cooperates in obtaining a protective order or other appropriate remedy.

Customer means the party(ies) identified as the customer(s) in the Service Quotation that will be receiving the benefit of the Services.

Dangerous Goods means dangerous goods as defined in the *International Maritime Dangerous Goods (IMDG) Code* or the *Australian Dangerous Goods Code* (7th Edition) and any Goods which are or which may become dangerous, volatile, explosive, flammable or offensive or which are or may become harmful to any person, property or the environment.

Government Agency means any government body or authority, whether federal, state, or local, that exercises regulatory, administrative, or enforcement functions under any applicable law.

Intellectual Property Rights means all intellectual property rights of whatever nature including all rights conferred under statute, common law or equity, including all copyright, patent rights, trademark rights (including any goodwill associated with those trademark rights), design rights and trade secrets.

Jurisdiction means Queensland, Australia.

Loss means any loss, damage, cost, expense, liability, or claim and includes, without limitation:

- a legal costs and expenses (including reasonable solicitor's fees) on a full indemnity basis;
- b damages, penalties, fines and interest;
- c losses arising from claims by third parties; and
- d any taxes, levies, or duties payable in respect of any of the above.

For the avoidance of doubt, Loss includes both actual and contingent losses and losses that are reasonably foreseeable or within the contemplation of the parties at the time of entering into this Agreement.

Marine Orders mean the orders published and updated by the Australian Maritime Safety Authority.

MCC means:

MCC Marine Pty Ltd ACN 114 323 554 ATF MCC Marine Unit Trust ABN 81 807 741 768; Maritime Surveys & Claims Pty Ltd ACN 125 068 644 ATF Maritime Surveys & Claim Unit Trust ABN 63 225 276 627; MCC Biosecurity Pty Ltd ACN 653 242 650; and Marine Cargo Care Pty Ltd ACN 056 615 484, together The MCC Group.

MCC Materials means content, frameworks, documents, spreadsheets, databases, reports, works or other analogous materials owned by MCC.

Personal Information means information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not, and whether the information or opinion is recorded in a material form or not.

Service Quotation means the document or documents particularising the details of the engagement between MCC and the Customer (which may take the form of a single document, multiple documents or a correspondence exchange between the parties, including but not limited to, email correspondence) which together with these Service Terms form the Agreement between the parties.

Service Fee means the fee for the Services performed by MCC as set out in the Service Quotation.

Services mean the services to be performed by MCC as set out in the Service Quotation and any services necessarily incidental to them.

Tax means any tax, levy, charge, duty, fee, rate, deduction, compulsory withholding, which is assessed, levied, imposed or collected by any government agency and includes fringe benefits tax, income tax, GST, training guarantee levy, payroll tax, group tax, PAYG or PAYE withholding tax, and any interest, fine, penalty, charge, fee or any other amount imposed on or in respect of any of the above.

Temperature Controlled Goods means goods requiring specific temperature conditions during storage, handling and transport to maintain quality, safety and effectiveness.

Term means:

- a the period for delivery of the Services as described in the Service Quotation; or if no such period is specified,
- b the period from the Agreement Date until all Services described in the Service Quotation have been delivered.

Transport of Dangerous Goods Legislation means:

- a where the Services are performed in Queensland:
 - i the *Transport Operations (Road Use Management) Act 1995*;
 - ii the *Transport Operations (Road Use Management-Dangerous Goods) Regulation 2018*;
 - iii the *Transport Infrastructure Act 1994*; and
 - iv the *Transport Infrastructure (Dangerous Goods by Rail) Regulation 2018*;
- b where the Services are performed in New South Wales:
 - i the *Dangerous Goods (Road and Rail Transport) Act 2008*; and
 - ii the *Dangerous Goods (Road and Rail Transport) Regulation 2014*; and
- c any regulation, order, code of conduct or guideline that is prescribed by a Government Agency or regulatory body relating to the transport of dangerous goods, to the extent applicable to delivery of the Services.

Service Terms mean this document, which together with the Service Quotation form the Agreement between the parties.

15 Interpretation

In interpreting this Agreement, unless the context provides otherwise:

- a Words or expressions used in this document, which are defined in the A

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|---|--|---|---|
| | <i>New Tax System (Goods and Services Tax) Act 1999</i> (Cth), the <i>Personal Property Securities Act 2009</i> (Cth) or the <i>Corporations Act 2001</i> (Cth) have the same meaning in this document. | h | The words 'including', 'such as', 'for example' and similar expressions are not words of limitation and shall be interpreted as if followed by 'without limitation'. |
| b | Headings are for convenience only and do not affect interpretation. | i | If a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day. |
| c | Words importing the singular include the plural and vice versa. | | |
| d | Words importing a gender include every other gender. | j | If the day on or by which anything is to be done is not a business day in the Jurisdiction, that thing must be done on or by the next business day in the Jurisdiction. |
| e | References to a person include an individual, company, corporation, partnership, joint venture, association, trust, or government agency. | k | A reference to '\$' or 'dollars' is a reference to Australian Dollars. |
| f | References to a party to this Agreement include that party's successors and permitted assigns. | l | No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it. |
| g | References to any legislation or legislative provision include any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision. | m | Any schedules, annexures or attachments form part of this Agreement. |