

## Warehouse Storage Terms of Service for Lux Global Logistics Pty Ltd ACN 163 246 562

These terms of service together with the Quote and Purchase Order form a contract between **LUX GLOBAL LOGISTICS PTY LTD ACN 163 246 562** of 1/48-50 Lara Way, Campbellfield, VIC, 3061 ("**LUX**", "**we**", "**us**", "**our**") and you (being the party named in the Quote) for provision of the Warehouse and Storage Services by **LUX** to you.

**IT IS AGREED** as follows:

### 1. DEFINITIONS

- 1.1 In these Terms, unless the context otherwise requires:
- (a) "**Intellectual Property**" includes but is not limited to trade marks, patents, copyrights, processes, know-how, registered designs and concepts;
  - (b) "**Premises**" means any storage warehouse site operated by **LUX**;
  - (c) "**Purchase Order**" means any order form or application for Warehouse and Storage Services submitted by you and agreed and acknowledged by **LUX**;
  - (d) "**Quote**" means any Quote for Warehouse and Storage Services provided by **LUX** to you in relation to Warehouse and Storage Services.
  - (e) "**Warehouse and Storage Services**" means any warehouse storage services provided by **LUX** to you.
  - (f) "**You**", where appropriate, includes your agents, employees, contractors and staff.

### 2. WAREHOUSE AND STORAGE SERVICES

- 2.1 You appoint **LUX** to provide the Warehouse and Storage Services in accordance with the Quote and subject to these terms of service.
- 2.2 You acknowledge and agree that nothing in these Terms limits **LUX** from providing other Warehouse and Storage Services, including similar services to or on behalf of any other party.

### 3. FEES AND PAYMENT

- 3.1 In consideration of the provision of the Warehouse and Storage Services, you shall pay the fees as set out in the Quote to **LUX** by [weekly/fortnightly/monthly] instalments by direct debit.
- 3.2 You must pay all fees for Warehouse and Storage Services to **LUX** without set off.

### 4. GOODS AND SERVICES TAX

- 4.1 Words or expressions used in this clause which are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the same meaning in this clause.
- 4.2 Any consideration to be paid or provided for a supply made under or in connection with these Terms, unless specifically described in these Terms as "GST inclusive", does not include an amount on account of GST.

### 5. DEFAULT AND TERMINATION

- 5.1 Interest on overdue amounts shall accrue daily from the date when payment becomes due until the date of payment at a rate 2% higher than the rate set out by the *Penalty Interest Rates Act 1983 (Vic)* and such interest shall compound monthly.
- 5.2 If you default in payment of any amounts, you indemnify **LUX** from and against all costs and disbursements incurred in pursuing the debt including legal and collection agency costs.
- 5.3 Without prejudice to any other remedy that **LUX** may have, **LUX** may suspend or terminate the Warehouse and Storage Services to you so long as you remain in default of payment of any invoice.
- 5.4 If **LUX** suspends or terminates all or any part of the Warehouse and Storage Services pursuant to clause 4.3 or for any other reason:
- (a) all amounts owing by you to **LUX** shall, whether or not due for payment, become immediately payable;
  - (b) you must within three (3) Business Days (or such other reasonably time frame as advised by **LUX** in writing) of **LUX** providing you with notice to do so, remove all your items from the Premises; and
  - (c) **LUX** will not be liable to you for any loss or damage you suffer because **LUX** has exercised its rights under that clause.
- 5.5 In the event that you fail to remove all items from the Premises in accordance with clause 5.4(b), any items remaining in the Premises shall be considered abandoned by you and **LUX** may, in its discretion, sell or dispose of such items and you indemnify **LUX** for any reasonable costs incurred in doing so.

### 6. WARRANTIES

- 6.1 You warrant to **LUX** that:
- (a) prior to placing any items in the Premises and at all times whilst **LUX** is providing the Warehouse and Storage Services to you hold the following insurances:
    - (i) public liability insurance in the amount of \$20,000,000 per occurrence;
    - (ii) Workcover insurance; and
    - (iii) Any other insurance **LUX** reasonably requires from time to time;
  - (b) Keep any storage area on the Premises rented by you:
    - (i) clean, tidy and free from rubbish; and
    - (ii) free from hazardous, dangerous or illegal substances and materials (unless specific consent is provided by **LUX** to store such materials and substances on the Premises, which consent may be given subject to further fees and charges);
  - (c) will only use the Premises for general storage and warehousing;
  - (d) will comply with (and ensure that your employees, contractors, agents and staff comply with) all relevant laws with respect to the Warehouse and Storage Services and your use of the Premises;
  - (e) comply with and ensure that your employees, contractors, agents and staff comply with, any reasonable direction of **LUX** when present at the Premises;
  - (f) will comply with and ensure that your agents, employees, staff and contractors comply with any policy and all reasonable directions of **LUX** with respect to occupational health and safety when on the Premises;
  - (g) not bring on to the Premises any object which, due to its nature, weight, size or operations might reasonably be expected to cause damage to the Premises; and
  - (h) you will advise **LUX** as soon as reasonably practicable in the event you notice or are made aware of any fire or safety hazard on the Premises.
- 6.2 You hereby indemnify and shall keep indemnified **LUX** from and against all costs, claims and liabilities incurred by **LUX**, whether directly or indirectly, as a result of a breach by you of any warranty set out in clause 6.1 of these terms.

**7. LIMIT OF LIABILITY**

- 7.1 The parties acknowledge that, under applicable State and Commonwealth law, certain conditions and warranties may be implied in these terms of service and there are rights and remedies conferred on your in relation to the provision of the Warehouse and Storage Services which cannot be excluded, restricted or modified by agreement (“**Non-excludable Rights**”).
- 7.2 *LUX* disclaims all conditions and warranties expressed or implied, and all rights and remedies conferred on your, by statute, the common law, equity, trade, custom or usage or otherwise and all those conditions and warranties and all those rights and remedies are excluded other than any Non-excludable Rights. To the extent permitted by law, the liability of *LUX* for a breach of a Non-excludable Right is limited, at *LUX*'s option, to the supplying of the Warehouse and Storage Services again, refund of the cost of the Warehouse and Storage Services.
- 7.3 The maximum liability of *LUX* for any and all breaches of these terms of service by *LUX* will be capped at the amount of the amounts previously paid by you to *LUX* for the relevant Warehouse and Storage Services.
- 7.4 To the maximum extent permitted by law, *LUX* excludes its liability (including, but not limited to, liability in tort, contract and for breach of statute) to your or any other person for any injury, loss or damage consequential or otherwise (whether contractual, tortious, statutory or otherwise) for any special, incidental, indirect or consequential damages sustained or incurred in connection with the provision of the Warehouse and Storage Services whether as a result of any breach, default, negligence or otherwise by *LUX* suffered or incurred by your or any other person in relation to the Warehouse and Storage Services.

**8. RELEASES AND INDEMNITIES**

- 8.1 The parties acknowledge that *LUX* makes no guarantees or warranties of any kind, whether expressed or implied of the quality of materials, goods or services of any third party and you forever release and indemnify *LUX* against all costs, expenses, actions or claims directly or indirectly incurred or suffered by you as a result of any failure fault, defect, flaw or error or any breach of warranty or guarantee or failure to uphold a warranty or guarantee by a third party supplier or service provider.

**9. MISCELLANEOUS**

- 9.1 Nothing in these terms is intended or will be construed as constituting a relationship of agent and principal, employer and employee, joint venture or partnership alliance between the parties.
- 9.2 No provision of the Agreement shall be deemed to be waived except by express written consent executed by the party which is claimed to have waived the relevant provision.
- 9.3 These terms may not be assigned by a party without the prior written consent of the other party.
- 9.4 If a provision or part of a provision of the Agreement is held invalid, unenforceable or illegal for any reason, then such provision or part, as the case may be, shall be deemed to be severed from the Agreement and the Agreement shall otherwise remain in full force.
- 9.5 The law of the State of Victoria, Australia governs these Terms and the parties submit to the non-exclusive jurisdiction of the courts of the State of Victoria and of the Commonwealth of Australia.

. . . . .