



## Carrier Transicold Australia Terms and Conditions of Sale

### I. Definitions and Interpretation

I.1 In these terms and conditions, unless the context otherwise requires:

- (a) "Carrier" means the Carrier entity specified in the Sales Invoice;
- (b) "Customer" means the person named in the Sales Invoice;
- (c) "Contract" means the contract constituted by the written quotation issued by Carrier, the Customer's acceptance of the written quotation whether by way of its issuance of an order
- (d) "Express Warranty" means the written manufacturer's warranty provided to the Customer by Carrier at the time of sale;
- (e) "Insolvency Event" includes the winding up, dissolution or cessation of business, the appointment of an administrator or an official manager, an assignment for the benefit of creditors, scheme or arrangement with creditors, insolvency or bankruptcy of the Customer or any similar circumstances which reasonably indicate that the Customer is or will become unable to pay its debts as and when they fall due;
- (f) "Order" or "Purchase Order" means any order for, or any statement of intent to purchase, any goods or services placed by the Customer with Carrier, such order or statement of intent being subject to these terms and conditions;
- (g) "Sales Invoice" means the sales invoice issued by Carrier to the Customer, such sales invoice being subject to these terms and conditions; and
- (h) The expression "person" includes an individual, a body politic, a corporation, an association (incorporated or unincorporated), a statutory authority or any other authority or person identified as the Customer.

1.2 These terms and conditions:

- (a) replace all prior terms and conditions issued by Carrier to the Customer, and supersede any prior agreements, representations, or understandings with respect to the subject matter of these terms and conditions; and
- (b) to the extent of any inconsistency, take precedence over any terms set out in the Customer's Purchase Order.

1.3 Any special conditions specified on the Sales Invoice shall, to the extent they are inconsistent with these terms and conditions, take precedence over these terms and conditions.

1.4 If the Customer purports to impose upon Carrier or incorporate into these terms and conditions any additional or varied terms by any means whatsoever (including without limitation any terms contained in the Customer's Purchase Order), Carrier will not be bound by such terms and such terms will be null and void and of no force or effect unless agreed to in writing by Carrier.

### 2. Orders

Once an Order has been accepted by Carrier, it may be cancelled by the Customer [at any time before the agreed delivery date(s) for such Order], provided that the Customer shall be liable to pay Carrier a cancellation charge in the sum equal to 5(five)% of the agreed selling price in respect of that Purchase Order.

The supply of goods or services is subject to availability. Carrier reserves the right to suspend or discontinue the supply of goods or services to the Customer for any reason without penalty. If Carrier is unable to supply all of the Customer's Order, these terms and conditions continue to apply to any part of the Order supplied.

### 3. Pricing

3.1 A quotation is not to be construed as an obligation to sell but merely an invitation to treat and no contractual relationship will arise between Carrier and the Customer until Carrier has accepted in writing the Customer's Purchase Order.

3.2 Where a written quotation has been given by Carrier and Carrier has accepted the Customer's Purchase Order in relation to the written quotation, the selling price is the price specified in the quotation. In any other case, the price for goods supplied will be Carrier's current list price at the date of shipping and the charge for services supplied will be at Carrier's prevailing rates at the time of supply. Prices are subject to change without notice and are not binding on Carrier.

3.3 In cases where Carrier intends to progress bill the Customer for the supply of goods or services, Carrier will do so on a percentage (%) of completion of works basis and specify the billing schedule in its written quotation. A separate Sales Invoice will be raised for each progress payment in accordance with the billing schedule.

3.4 All prices are expressed net of any applicable goods and services tax or value added tax, freight charges, and customs duty that shall be added to the amount to be paid by the Customer unless otherwise specified.

### 4. Payment

4.1 The Customer must make immediate payment upon receipt of the Sales Invoice. If the Customer has an approved credit account with Carrier, payment by the Customer for the goods and/or services supplied must be made within 30 calendar days from the date of the Sales Invoice unless otherwise agreed in writing. Time is of the essence in respect of the Customer's obligation to make payment for goods and/or services supplied by Carrier to the Customer.

4.2 If any part of a Sales Invoice is in dispute, the balance will remain payable and must be paid when due. The Customer has no right to set-off any claim against Carrier from moneys owing to Carrier.

### 5. Delivery

5.1 If requested by the Customer, and agreed by Carrier, Carrier will deliver the goods to an address specified by the Customer. In such cases:

- (a) the Customer will pay all charges associated with the delivery of the goods unless otherwise agreed in writing;
- (b) the Customer, or a representative of the Customer, must be present at the agreed place and time for delivery, and must sign the delivery docket as acknowledgement that the goods and quantities described on the delivery docket have been delivered and comply with the Customer's Purchase Order;
- (c) if the Customer, or a representative of the Customer, is not present at the agreed place and time for delivery, Carrier may unload the goods at the agreed place for delivery, in which case, Carrier is no longer responsible or liable in any way whatsoever for the goods;
- (d) Carrier's responsibility for delivery ceases at the delivery dock of the delivery address. The Customer is responsible for:
  - (i) providing safe and adequate access to and from the delivery dock;
  - (ii) the loading and/or unloading of goods; and
  - (iii) all loss, damage and/or injury of any nature to any person or any property arising directly or indirectly from or in connection with (i) and (ii) above.

5.2 Carrier reserves the right to deliver in instalments and all such instalments, where separately invoiced<sup>1</sup> must be paid for without regard to the delivery of subsequent instalments. A part delivery of an Order will not invalidate the balance of the Order.

5.3 While Carrier will use all reasonable endeavours to meet agreed delivery dates, Carrier shall not be liable to the Customer for any direct loss, indirect loss, special loss, consequential loss or any damage whatsoever should Carrier be delayed or prevented from delivering goods, supplying services, or otherwise performing any of its contractual obligations (whether under these terms and conditions or otherwise) due to any cause or circumstance beyond Carrier's reasonable control. Time is not of the essence in relation to delivery.

5.4 Subject to clause 5.3, delivery dates must not be varied once they have been agreed without Carrier's prior written consent. In the event that Carrier agrees to postpone delivery, the goods in question will be stored at the Customer's risk and Carrier reserves the right to impose a weekly storage charge. Where delivery is postponed for more than 3 months, Carrier may increase any fixed contract prices to reflect Carrier's then current list price.

5.5 Carrier may at its discretion sell any goods still in its possession 3 months after the mutually agreed deferred delivery date and seek damages for any loss suffered or incurred by Carrier as a direct or indirect result of the deferment of the delivery date.

## 6. Title and Risk

6.1 Subject to clause 5.4 above, risk of loss of or damage to the relevant goods passes to the Customer:

(a) where Carrier is responsible for delivering the goods to the address specified by the Customer, upon delivery to the Customer in accordance with clause 5 of these terms and conditions; or

(b) if the Customer nominates its own vessel or vehicle to deliver the goods to the Customer, upon the goods being loaded onto the Customer's nominated vessel or vehicle.

For the avoidance of doubt, upon the passing of risk pursuant to this clause 6.1, Carrier shall under no circumstances be responsible for the goods or liable for insuring the goods.

6.2 Legal and equitable ownership in the goods shall not pass to the Customer until all moneys (for any goods and/or services provided to the Customer by Carrier) due to Carrier have been paid to Carrier.

6.3 The Customer undertakes to store the goods on its premises separately from its own goods or those of any other person in a manner which makes the goods readily identifiable as Carrier's goods until delivery of the goods to a third party.

6.4 Until legal and equitable ownership in the goods passes to the Customer, the Customer holds the goods in a fiduciary capacity. Where the goods are resold by the Customer to a third party, the Customer must keep an amount from the proceeds of sale which is equal to the moneys owed to Carrier in a separate identifiable account as the beneficial property of Carrier and must immediately pay such amount to Carrier when due or upon request by Carrier.

6.5 The Customer's right to possession of the relevant goods ceases if a Default Event (including without limitation an Insolvency Event) arises in respect of the Customer.

6.6 Carrier may, at any time, for the purposes of examination or recovery of the goods, enter any premises in which the goods are stored or thought to be stored and reclaim possession of the goods without liability for trespass, negligence or payment of any compensation to the Customer or any receiver, manager or administrator appointed over all or any part of the Customer's assets.

6.7 This clause 6 applies notwithstanding any arrangement under which Carrier provides credit to the Customer and to the extent that there is any inconsistency between this clause 6 and such credit arrangement, this clause 6 prevails.

6.8 The Customer consents to Carrier creating a purchase money security interest to protect its retention of title to the goods in the Personal Property Security Register or any register which is established pursuant to the Personal Property Securities Act 2009 (Cth) as amended or replaced from time to time.

6.9 This clause 6 does not give rise to any charge or security over the assets of the Customer but rather the retention of title to Carrier's goods until payment of all moneys due to Carrier.

## 7. Installation

Carrier's Sales Invoice is made on a supply only basis unless otherwise agreed in writing. Installation and commissioning (if any) is at the expense of the Customer unless otherwise specified in writing by Carrier.

## 8. Dimensions, Performance Data and Other Descriptive Details

8.1 Photographs, drawings, illustrations, weights, dimensions, colours and any other particulars accompanying, associated with or given in a quotation, the descriptive literature or a catalogue may be subject to alteration without notice.

8.2 Carrier reserves the right to make changes in the construction, appearance and/or design of goods and notwithstanding any such change, the Customer shall accept in performance of any Order Carrier's then current corresponding standard model.

## **9. Claims and Returns**

Subject to clause 10 and any Express Warranty, and to the extent permitted by law:

9.1 All complaints, requests for return of goods, claims, or notification of lost, incomplete, damaged, defective or non-compliant goods must be submitted by the Customer to Carrier in writing within 7 days of the date of delivery of the goods. Where no such notice is given to Carrier, the Customer shall be deemed to have accepted the goods and shall not refuse to pay for the goods on the basis that they were lost, incomplete, damaged, defective or do not comply with the Customer's Purchase Order.

9.2 Carrier will not accept the return of goods unless the following conditions are satisfied:

- (a) Carrier's written approval has first been obtained (which will include the issue of an authorisation number);
- (b) the goods are returned to Carrier in accordance with this clause 9.2 within 7 days of the issue of the authorisation number under clause 9.2(a);
- (c) a copy of the relevant invoice is enclosed with the returned goods;
- (d) the goods returned are of merchantable quality (as determined solely by Carrier in its absolute discretion) with the original packaging and without damage or marks to the original packaging;
- (e) the Customer pays shipping costs for the return of the goods to a warehouse or other premises nominated by Carrier; and
- (f) the Customer pays to Carrier a handling charge equal to 15% of the price paid for the goods,  
The Customer will be responsible for all loss and damage incurred during return shipment.

9.3 The Customer shall not deduct the amount of any anticipated credit from any payment due to Carrier.

## **10. Warranty**

10.1 Certain legislation may imply warranties, terms, conditions and/or guarantees that cannot be excluded, restricted or modified. If such legislation applies, to the extent to which Carrier is entitled to do so, its liability is limited at its option to:

- (a) In the case of goods:
  - (i) replacement of the goods or the supply of equivalent goods;
  - (ii) payment of the cost of replacing the goods or of acquiring equivalent goods, by credit to the Customer's account, in cash or by cheque at Carrier's discretion; or
  - (iii) repayment of any part of the purchase price of the goods which has been paid by the Customer, by credit to the Customer's account, in cash or by cheque at Carrier's discretion.
- (b) In the case of services, by supplying the services again.

10.2 All goods supplied by Carrier are subject to the Express Warranty. To the extent permitted by law and subject to clause 10.1, the Express Warranty is in substitution for all other terms, conditions, warranties, guarantee and representations express or implied by legislation or otherwise.

10.3 The Customer expressly acknowledges and agrees that it has not relied upon, and Carrier is not liable for, any advice given by Carrier, its employees or agents in relation to the suitability for any purpose of goods, materials and/or services supplied by Carrier.

## **11. Liability and Indemnity**

11.1 Subject to clause 10 and except to the extent the law provides that liability cannot be excluded, Carrier shall not under any circumstances be liable for (and the Customer releases Carrier from) any injury, loss (including without limitation indirect loss, special loss, consequential loss, loss of profit, loss of revenue, loss of income, loss of business opportunity, loss of anticipated savings or pure economic loss), damage, cost, expense or liability (whether in contract, tort or otherwise) of any nature whatsoever which may be suffered or incurred by the Customer arising directly or indirectly out of or in connection with the supply of goods and/or services by Carrier or the failure by Carrier to comply with these terms and conditions, even if due to the negligence of Carrier or any of its officers, employees, contractors or agents.

To the fullest extent permitted by law, the Customer indemnifies Carrier and its officers, employees, contractors and agents from and against any loss, damage, cost, expense (including reasonable legal fees and expenses), liability, claim, demand, action, suit or proceeding of any nature suffered or incurred by Carrier or its officers, employees, contractors and agents arising directly or indirectly out of the Customer's performance or non-performance of these terms and conditions or any act, omission, negligence or default of the Customer or the Customer's officers, employees, contractors and agents.

11.2 Without limiting clause 11.1, Carrier shall under no circumstances be liable for any loss or damage caused to any property of the Customer or any other person whilst such property is on Carrier premises and the owner of any such property is solely responsible for insuring the property against all loss and damage howsoever caused.

11.3 Subject to clause 11, Carrier is not liable for any indirect or consequential injury, damage or loss whether arising in tort, contract or otherwise (even if due to the negligence of Carrier or any of its employees, contractors or agents) and whether arising out of or in connection with the supply of Goods and Services (including loss of anticipated savings or lost profit, loss of revenue, recalls, harm to business or business reputation, loss of contract, loss of goodwill or increased cost of workings ("Indirect or Consequential Loss or Damage").

## **12. Termination, Repossession of Goods & Recovery of Debt**

If the Customer does not make any payment by the due date, exceeds its credit limit at any time, commits any other material breach of these terms and conditions or an Insolvency Event in respect of the Customer arises or is reasonably suspected by Carrier ("Default Event"), Carrier may (without limiting any other right or claim it may have against the Customer) do any or all of the following:

- (a) charge the Customer interest calculated on a daily basis on any portion of the Customer's account that is overdue at the reference rate for business loans available to commercial customers from the financial institution that Carrier banks with plus 5% calculated from the date the payment was due until the date payment is made (both dates inclusive);

- (b) vary or withdraw any approved credit limit and/or terms of trade;
- (c) cancel or suspend any unfilled Orders or cease providing the services;
- (d) terminate any contracts between Carrier and the Customer and demand immediate payment of any moneys due and outstanding under those contracts;
- (e) cancel any rebate, discount or allowance due or payable by Carrier as at the date of the Default Event;
- (f) enter (at any time) any premises in which Carrier's goods are stored or thought to be stored, to enable Carrier to reclaim possession of the goods without liability for the tort of trespass, negligence or payment of any compensation to the Customer or any receiver, manager or administrator appointed over all or any part of its assets;
- (g) lodge a non-lapsing caveat or other similar instrument over any land or personal property of the Customer and the Customer hereby charges in favour of Carrier all beneficial interest (freehold and leasehold) in land and personal property held now or in the future by the Customer with the payment of any moneys owed to Carrier. Furthermore, the Customer hereby irrevocably appoints all and any of Carrier's company secretary and credit manager or a solicitor engaged by Carrier as its lawful attorney for the purposes of doing all such acts and things and executing all such documents necessary to enable Carrier to register a non-lapsing caveat or other similar instrument over any such freehold or leasehold property, and for such purposes a declaration of default duly executed for and on behalf of Carrier by such persons shall be deemed sufficient evidence of such default; or
- (h) institute any recovery process as Carrier in its absolute discretion decides at the Customer's cost and expense.

### 13. Force Majeure

Carrier shall not be in breach of the Contract or be liable to the Customer if Carrier fails to perform or delays the performance of an obligation as a result of an event beyond its reasonable control, including, but not limited to, strikes, industrial disputes, fire, flood, act of God, war, insurrection, vandalism, sabotage, invasion, riot, national emergency, piracy, hijack, acts of terrorism, embargoes or restraints, pandemic, epidemic, extreme weather or traffic conditions, temporary closure of roads, legislation, regulation, order or other act of any government or governmental agency.

### 14. Personal Information

14.1 The Customer acknowledges, confirms and agrees:

(a) In connection with Carrier's delivery of the Goods and/or Services, the Customer will need to provide certain personal information of its employees and Carrier will process such information for the following purposes:

- (i) to perform Carrier's obligations under the contract constituted by these terms and conditions;
- (ii) to consolidate, review, assess and evaluate Carrier's products and Services;
- (iii) to respond to a legitimate legal request from law enforcement authorities or other government regulators;
- (iv) to support the sale or transfer of all or part of Carrier's business or assets (including, through bankruptcy or insolvency);
- (v) to investigate suspected or actual illegal activity; and/or
- (vi) to comply with Carrier's obligations under applicable laws and regulations.

(b) The Customer shall have obtained the consents of such of its employees, and employees of its affiliates, agents and other partners whose personal information it has provided to Carrier in connection with the purposes listed in clause 14.1(a), and the terms on which Carrier will process such personal information as set out under this clause 14 ("Personal Information").

(c) Carrier, and its parent company, Carrier Global, are global companies with locations in many different countries. Accordingly, Carrier may transfer the Personal Information from one legal entity to another or from one country to another within the Carrier Global group of companies in order to accomplish the purposes listed above. These countries include, at a minimum, the United States, the member states of the European Union, Canada, and other countries, including some in Asia. Carrier will transfer the Personal Information consistent with applicable legal requirements and only to the extent necessary for the purposes set out above.

(d) Carrier may share the Personal Information it has obtained with:

- (i) its affiliates, with a view to reviewing, assessing and evaluating its product and service offerings; and
- (ii) service providers Carrier Global has retained to perform Services on its behalf, subject always to Carrier Global having contractually restricted such service providers on processing the Personal Information on a basis consistent with the terms set out under this clause 14.

(e) Protecting Personal Data. Carrier processes personal data as described in our privacy notices at [www.carrier.com.au](http://www.carrier.com.au). The parties will comply with applicable data privacy laws governing personal data processed in connection with this Agreement, including the Australian Privacy Act 1988 (Cth), and take all reasonable commercial and legal steps to protect personal data. If Customer provides Carrier with personal data, Customer will ensure that it has the legal right to do so, including notifying the individuals whose personal data it provides to Carrier.

14.2 In this clause 14, personal information means information or an opinion relating to an identified or identifiable natural person.

### 15. Confidential Information

All non-public, confidential or proprietary information of Carrier, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by the Carrier to the Customer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or

otherwise identified as "Confidential" in connection with this contract is confidential, solely for the use of performing this contract and may not be disclosed or copied unless authorized in advance by Carrier in writing. Upon Carrier's request, the Customer shall promptly return all documents and other materials received from Carrier. Carrier shall be entitled to injunctive relief for any violation of this section. This section does not apply to information that is: (a) in the public domain; (b) known to the Customer at the time of disclosure; or (c) rightfully obtained by Customer on a non-confidential basis from a third party.

## 16. Compliance

16.1 Carrier is committed as a matter of company policy to strict compliance with the applicable laws and regulations of the countries in which Carrier conducts business, including, but not limited to, United States of America's export control and trade sanction laws and regulations and the Customer understands and agrees that:

- (a) All sales and distribution of Carrier's products may constitute an export, reexport, or retransfer, and such transactions must be in accordance with applicable export and trade control and sanctions laws and regulations ("Export Control Laws") of all applicable countries;
- (b) The Customer represents that they are aware of and agree to comply fully with the applicable Export Control Laws at the time of the export, re-export, transfer, disclosure or provision of products (including software, technology or services). The Customer understands and agrees that Carrier's products may not be sold, transferred, exported or re-exported to Cuba, Iran, North Korea, the Crimea region of the Ukraine, Sudan or Syria. For Carrier's products that originate in the U.S. or incorporate or include U.S.-origin content, components, accessories or software, these items are subject to the U.S. Export Administration Regulations ("EAR") administered by the U.S. Department of Commerce, and various economic sanctions regulations and guidelines of the U.S. Department of the Treasury, Office of Foreign Assets Control ("OFAC"). For Carrier products that originate in the EU or incorporate EU-origin content, these items are subject to EU Council Directives, Regulations and laws and regulations implemented by EU Member States as applicable, as well as EU sanctions and Restrictive Measures.
- (c) The Customer warrants and represents that, the Customer is aware of U.S. and other applicable list-based and program-based sanctions programs, and will refrain from selling or transferring Carrier products or services to any party identified on such list or sanctions program.
- (d) Where the Customer purchases Carrier products or services with the intent to resell or transfer those items to a specific known customer or end-user, the Customer shall either:
  - (i) Provide the identity of all known parties to Carrier, so that Carrier may screen all parties to ensure compliance with U.S. and other applicable laws; or
  - (ii) Conduct sufficient screening to ensure that the transaction does not involve: (aa) any "Specially Designated National (SDN)" as determined by OFAC, or (bb) any person or entity identified as a denied party pursuant to any embargo, sanction, debarment or denied party designation maintained by the U.S. government, the EU, or any other country or government whose laws apply to the transaction, to the extent that designation prohibits the transaction.
- (e) The Customer shall notify Carrier immediately, in writing, if any of the Customer customers, dealers, resellers or sub-tier distributors who have been designated as an SDN, debarred, sanctioned or designated as a denied party and have provided products, performed production activities, or performed services under these terms and conditions.
- (f) The Customer agrees to provide information and support to Carrier as necessary for Carrier to comply with Export Control Laws. The Customer shall notify Carrier promptly if the Customer is: (i) suspended, debarred, or proposed for suspension or debarment from doing business with the applicable Government where Carrier is located and/or the Territory, or (ii) the Customer is listed or is proposed to be listed by the U.S. Government in any "denial orders," as a "blocked person," as a "specially designated national," or as a "specially designated terrorist" for U.S. export administration purposes (collectively, "Debarment"). The Customer shall indemnify and hold Carrier harmless against any loss or damage suffered by Carrier as a result of the Customer's Debarment.
- (g) Carrier shall not be deemed to be in breach or default of these terms and conditions because of Carrier's compliance with Export Control Laws to which it is correctly, or to which it may become, subject to. In no event shall Carrier be liable for any special, incidental, exemplary, or consequential damages, including but not limited to, lost profits, fines, or penalties imposed on the Customer by governmental authorities, arising in connection with Carrier's performance under these terms and conditions, including but not limited to delays, fees, or limitations imposed in connection with Export Control Laws.
- (h) Carrier will not provide warranty, repair, replacement, or guarantee services for Products exported or re-exported to Cuba, Iran, North Korea, the Crimea region of the Ukraine, Sudan, or Syria. Furthermore, Carrier will not provide warranty, repair, replacement, or guarantee services for actions that would otherwise violate Export Control Laws. If Customer extends to its customers any warranty that is broader in scope than the limited warranty provided by Carrier, the Customer shall be solely responsible for any and all costs, expenses, liabilities, obligations, and damages resulting from the extension of such warranty.
- (i) Carrier or its Affiliates shall not be required to honour any orders which Carrier or its Affiliates reasonably determine were likely to have resulted from improper activity by the Customer.

16.2 Without limiting any other provision of these terms and conditions, the Customer, its owners, directors, employees, contractors or agents must:

- (a) comply at all times with applicable laws, including laws prohibiting collusion, conflicts of interest, corruption and unfair competition;
- (b) refrain from offering, promising, attempting to provide or providing (directly or indirectly) any Carrier employee, any employee of its Related Body Corporates, or any government official any ownership or financial interest in the Customer; and
- (c) comply with any anti-bribery or anti-corruption law of any jurisdiction including the Criminal Code Act 1995 (Cth), the United States of America's Foreign Corrupt Practices Act, the United Kingdom's Bribery Act and that of any country which is or will become a signatory to the OECD Convention on Combating Bribery of Foreign Public Officials and in particular, the Customer must not pay, offer or promise to pay, or authorise the payment of, any monies or anything of value, directly or indirectly, to any government official or employee, any official or employee of a state-run or state-owned or controlled enterprise or entity, any official or employee of a public international organisation, any candidate for political or public office, any official or employee of any political party, or any family member or relative of such persons or any political party for the purpose of influencing any act or decision of any such official, employee, candidate, political

party, enterprise or entity, public organisation, or government to obtain or retain business, or direct business to any person or entity, or for any other improper advantage or purpose.

#### **17. Alteration to Terms and Conditions**

17.1 No amendment or variation of any of these terms and conditions shall be effective unless and until specifically agreed to in writing by Carrier.

17.2 Carrier may amend or vary these terms and conditions at any time by written notice to the Customer's place of business or by posting an amended copy on Carrier's website [www.carrier.com.au](http://www.carrier.com.au) and the Customer will be bound by any such amendments or variations.

#### **18. Governing Law**

These terms and conditions, and any agreement incorporating these terms and conditions, shall be governed by the laws of the State of Victoria, Australia. The parties irrevocably submit to the jurisdiction of the courts of Victoria (and courts of appeal therefrom) in respect of any claims, proceedings and matters arising out of or in respect of these terms and conditions.

#### **19. General**

19.1 All clerical errors are subject to corrections and shall not bind Carrier.

19.2 The invalidity or unenforceability of any provision of these terms and conditions shall not affect the validity or enforceability of the remaining provisions.

19.3 Carrier's failure to enforce, at any time or any period of time, any term of these terms and conditions shall not constitute waiver of such term and shall in no way affect its right to enforce it.

19.4 Headings are included for ease of reference and do not form part of or affect the interpretation of these terms and conditions.

19.5 These terms and conditions bind Carrier, the Customer and their respective successors and assigns.

19.6 The relationship between the parties is that of independent contractors. Nothing contained in this contract shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.