



## General Terms and Conditions

These LINX General Terms and Conditions (**General Terms**) set out the terms on which Services will be provided by LINX to the Customer. These General Terms are attached to and form part of, a services quotation, Formal Instrument of Agreement or other document which specifies the types of Services to be provided.

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### 1. Definitions and Interpretation

#### 1.1 Definitions

In these General Terms:

**Abandoned Goods** means Goods, subject to all applicable laws, Goods which have not been accepted for delivery by the person identified as being the person to take delivery and which have remained in the possession of LINX for 90 days after the date of arrival at a port in the case of Goods which have been or are to be transported by sea or the date on which the Goods were due to be removed from a storage facility, as the case may be.

**Associate** means a party's Related Bodies Corporate, employees, officers, servants, agents and subcontractors and,

- (a) in the case of LINX, also includes each rail access authority and their employees, agents and subcontractors;
- (b) in the case of the Customer includes any person who has an interest in the Goods and their employees, officers, servants, agents and subcontractors.

**Bank Guarantee** means an unconditional undertaking (duly stamped) on terms, for an amount, and given by a financial institution, approved by LINX.

**Bill of Lading** means a document which evidences a contract of carriage by sea of the Goods.

**Business Day** means a day which is not a Saturday, Sunday or Public Holiday in the State.

**Carbon Cost** means any royalty, tax, excise, levy, fee, payment, rate, duty, charge, liability, cost or expense incurred, whether directly or indirectly in respect of the provision of Services arising out of, incidental to or resulting from the implementation of the Carbon Scheme.

**Carbon Scheme** means any law or regulation or any requirement or condition of a licence, permit, governmental consent or approval with respect to the production, or emission of, or, to reduce, limit, cease, prevent, offset, remove or sequester, greenhouse gas emissions, including without limitation any statutory emissions trading scheme for the management of greenhouse gas emissions or concentrations.

**Chain of Responsibility Laws** means any law or regulation relating to chain of responsibility obligations, including laws and regulations relating to driver fatigue, mass, dimension, load restraint and dangerous goods.

**Claim** means a demand, claim, action or proceeding made or brought by or against a person, however arising and whether present, unascertained, immediate, future or contingent.

**Consequential Loss** means any loss which:

- (c) is loss of profits, loss of revenue, loss of access to markets, loss of goodwill or credit, loss of reputation or future reputation, loss of production,

loss of business, loss of opportunity, adverse publicity, damage to credit rating, loss of use, increased overhead cost, production or other down time, remote or abnormal loss or loss of anticipated savings or any financial or economic loss (whether direct or indirect); or

- (d) results from some special circumstance or supervening event.

**Contaminant** means a noxious or hazardous substance which, having regard to the quantity and location of the substance and other substances in conjunction with which it is stored or used is capable of causing or presenting risk of material harm to human health or any other aspect of the environment.

**Dangerous Goods** means dangerous goods as defined in the Australian Dangerous Goods Code and, to the extent not otherwise stated in the Australian Dangerous Goods Code, means any Goods which are dangerous, volatile, explosive, inflammable or offensive or which may become so, or which may be come harmful to any person, property or the environment.

**Dangerous Goods Protocols** means the protocols for managing Dangerous Goods developed by LINX from time to time.

**Force Majeure Event** means an act of God, war, embargo, flood, industrial dispute or any other event (including a breakdown or failure of equipment or plant) which is beyond the reasonable control of a party.

**Goods** means any goods accepted from or on behalf of the Customer, any other goods LINX picks up with those goods including packaging packets or containers and any rolling stock accepted from or on behalf of the Customer.

**Government Agency** means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

**GST Law** has the meaning given to that expression in the A New Tax System (Goods and Services Tax) Act 1999 and words and expressions which are not defined in these General Terms, but which have a defined meaning in GST Law have the same meaning as in the GST Law.

**Insolvency Event** means, in respect of a party, where that party is wound up, dissolved, has a liquidator or provisional liquidator appointed, enters into a scheme of arrangement or similar arrangements with or for the benefit of its creditors, is unable to pay its debts as they fall due, is granted protection from creditors or has an administrator or similar officer appointed or an order, application, resolution or notification is made in respect of any of the foregoing and not revoked within 7 days.

**Interest** means the aggregate of the relevant Reserve Bank of Australia Cash Rate Target plus 5%.

**Liability** means any Claim, loss, liability, cost or expense of any kind and however arising (whether in contract, negligence, another tort, the general law, under statute or otherwise), including damages, penalties, fines and interest and including those which are prospective or contingent and those the amount of which for the time being is not ascertained or ascertainable.

**LINX** means the entity that supplies services to the Customer, being any one or more of LINX Rail Pty Ltd (ACN 623 522 430) or LINX Rail Intermodal Pty Ltd

(ACN 623 522 403) or any Related Body Corporate of any of them or otherwise any entity in which LINX Cargo Care Pty Ltd (ACN 004 337 615) has an equity interest (direct or indirect) of 50% or more.

**Payment Terms** means 14 days from the date of the relevant LINX invoice.

**Rates** mean the fees, Rates, Rates and/or tariffs payable by the Customer to LINX for the provision of Services as set out in services quotation or schedule of Rates (whichever is applicable) or as otherwise agreed.

**Related Body Corporate** has the meaning given in section 50 of the Corporations Act 2001 (Cth).

**Rolling Stock** includes locomotives, rail wagons and vans.

**Services** means all services supplied by LINX in transporting Goods or in any other capacity to the Customer, including as forwarding agent, shipping agent, forwarder, storer, packer, loader, operator, driver, carrier or bailee or otherwise.

**State** means the state in which the Services are supplied by LINX.

**Temperature Controlled Goods** means goods which require temperature control.

**Temperature Controlled Goods Protocols** means the protocols for managing Temperature Controlled Goods developed by LINX from time to time.

**Term** means the period of time LINX carries out the Services as described in the services quote or formal instrument of agreement, unless terminated earlier in accordance with these General Terms.

**Vehicle** means any road vehicle used by LINX or a subcontractor in supplying the Services and includes trailers whether loaded or unloaded.

## 1.2 Interpretation

In these General Terms, unless the context indicates a contrary intention:

- (a) headings are for convenience only and do not affect interpretation;
- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (e) a reference to a document (including these General Terms) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;

(h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of these General Terms, and a reference to these General Terms includes all schedules, exhibits, attachments and annexures to it; and

(i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and "includes" in any form is not a word of limitation.

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## 2. Credit

- (a) LINX earns its Rates when it accepts delivery of the Goods or collects the Goods from an address nominated by the Customer or the Customer's agent.
- (b) If the Customer does not have a credit account with LINX, the Customer must pay the Rates relating to the Services at the time of booking the Service.
- (c) If the Customer has a credit account with LINX, Rates accrue upon the booking of a Service to that account and will be invoiced to the Customer within seven (7) days of the arrival of the Goods at the point of destination.
- (d) In addition to its Services, LINX may charge for:
  - i. any additional expenses LINX incurs as a result of any incorrect declaration by the Customer of the weight, volume, description or packaging of the Goods or LINX having to re-pack or re-load any Goods to comply with any laws;
  - ii. any expense or loss incurred by LINX as a result of the Customer cancelling any Services;
  - iii. any demurrage or detention Rates (at LINX's standard Rates) as a result of the Customer's act or omission which prevents LINX from using any Rolling Stock, Vehicle or any other item of equipment;
  - iv. any storage or other Rates or expenses LINX incurs in relation to the Goods; and
  - v. subject to clause 3(b), any expenses incurred in connection with the recovery of overdue amounts.
- (e) LINX is entitled to keep all commissions, allowances and remuneration paid to it.
- (f) The Rates in a service quotation or schedule of Rates are exclusive of GST. If GST applies to the supply of the Services, the Customer must pay an additional amount for GST without deduction or set off. LINX will provide a valid tax invoice for this purpose.
- (g) LINX may in its absolute discretion make a credit facility available to the Customer on the following condition:
  - (h) The Customer must pay by the due date;
  - (i) The Customer must provide written notice to LINX of any changes in its business structure or creditworthiness; and
  - (j) If LINX withdraws or reduces a credit facility, any Rates incurred by the Customer (beyond any continuing credit arrangement) are a debt due to LINX and immediately payable by the Customer.

- (k) If the Customer breaches this Contract, LINX may in its absolute discretion immediately withdraw or reduce any credit facility.

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### 3. Invoices and Payment

- (a) LINX will invoice the Customer for the Services provided each month. The Customer must pay into the account notified by LINX to the Customer the amount invoiced in full within the Payment Terms without discount, deduction, counterclaim or set-off.
- (b) If the Customer has not paid an amount due under these General Terms on or by the due date, the Customer must pay Interest on the amount unpaid. The Interest payable accrues from day to day from and including the due date for payment up to the actual date of payment and may be capitalised by LINX at monthly intervals.
- (c) If LINX (acting reasonably) requires the Customer to provide a Bank Guarantee or other security with respect to the payment of the Rates, the Customer must ensure that such security is provided as and when required by LINX.
- (d) Notwithstanding anything else in this clause 3, any invoice rendered by LINX will become immediately due and payable as soon as an Insolvency Event occurs in respect of the Customer or the Customer fails to comply with any of its obligations under these General Terms following a demand issued by LINX.
- (e) LINX will be entitled to exercise a right of lien and return over the Goods and/or containers to secure payment of the Rates for which a demand for payment has been made by LINX and/or to secure compliance with and discharge of all obligations and liabilities of the Customer under these General Terms.
- (f) In exercising its right of lien and retention, LINX will be entitled to seize and store or otherwise detail the containers and/or Goods until the monies owing are fully paid or any breach of these General Terms on the part of the Customer has been rectified. All of LINX's costs associated with any seizure, storage or detention may be recovered from the Customer as a debt due.
- (g) All payments are to be in Australian dollars, deposited as follows, quoting the reference number specified in the service quotation or the relevant invoice number:

Account Name: LINX Deposit Account  
ANZ Banking Corporation  
King & George Streets  
SYDNEY NSW 2000  
Account No: 8378 64177  
BSB No: 014 052

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### 4. Obligation

#### 4.1 LINX

- (a) LINX will and will ensure its Associates:
- i. comply with all applicable laws in providing the Services, including chain of responsibility legislation;

- ii. provide properly maintained equipment and properly trained labour sufficient to perform the Services in accordance with these General Terms;
- iii. ensure the Services are carried out in a safe and workmanlike manner, with due and proper diligence, skill and expedition;
- iv. where the Services are to be carried out in relation to Dangerous Goods or Temperature Controlled Goods, comply with the Dangerous Goods Protocol or the Temperature Controlled Goods Protocol, as applicable.

- (b) LINX is not a common carrier and accepts no liability as such and may agree or refuse to provide the services to the Customer in its absolute discretion.
- (c) LINX is not, and will not be deemed to be, a consignor as defined by the Road Transport Reform (Dangerous Goods) Regulations 1997 (Cth), and accepts no liability as such. The Customer authorises LINX to name the Customer or another person as the consignor in any documentation where applicable.
- (d) LINX has no obligation to inspect the Goods and no inspection will increase LINX's liability under these General Terms.
- (e) LINX is not responsible for and has no liability in respect of any inaccuracy in the description of the Goods.
- (f) LINX is entitled to deliver the Goods to the bearer of the relevant Bill of Lading or delivery order and LINX has no liability for mis-delivery due to fraud or misrepresentation or a wrongful act of a third party.
- (g) LINX may, in its absolute discretion refuse to provide the Services or provide the Services in a manner other than that previously agreed with the Customer, where LINX considers that it is reasonable and necessary to do so (including by reason of an order, direction or recommendation of a Government Agency).
- (h) If in LINX's reasonable opinion the Site is regarded by LINX as being unsafe, the Goods are or are liable to become Dangerous Goods, the Goods do not comply with all applicable laws or the Goods are unsuitable to be handled using the equipment and operating procedures normally employed by LINX in providing the Services, LINX may:
- i. refuse to provide the Services in respect of those Goods; or
- ii. take whatever measures it considers to be reasonably necessary at the Customer's risk and expense in order to cause the Goods, the vehicle or train by which the Goods will be transported or the driver of such vehicle or train to comply with all applicable laws or be suitable for handling by LINX.

- (i) LINX (or a third party appointed by LINX) may conduct an audit or review of the Customer's compliance with its obligations under these General Terms, including any applicable road laws and the Customer agrees to comply with any reasonable requests made by LINX as a result of any such audit or review.

- (j) LINX or its Associates may subcontract the Services in whole or in part without notice to the Customer and all benefits, defences, exceptions, immunities and limitations of liability under these General Terms and at law which apply to LINX will apply in respect of a claim against LINX's or its Associates subcontractor, however, where LINX or its Associates subcontracts the Services in whole or in part, LINX or its Associates remains primarily liable for the provision of the Services in accordance with these General Terms.
- (k) LINX may cancel the supply of any Services at any time, for any reason and without any liability to any person whatsoever for any liability incurred, or any loss, damage or delay suffered as a result.

#### 4.2 Customer

- (a) The Customer must:
  - i. obtain all necessary approvals or consents for LINX to supply the Services, including access to any private sidings and private roads;
  - ii. take proper care of all Rolling Stock, Vehicles and other equipment belonging to LINX or any Dangerous Goods.
  - iii. ensure Associates comply with all reasonable directions given by LINX or its Associates; and
  - iv. notify LINX in writing in advance of any special exemption, examination, authority or permit required in relation to the Goods and the way they are packed and loaded.
- (b) The Customer or its Associate is responsible for packing, loading or unloading the Goods, the Customer must ensure:
  - i. all Goods are:
    - A. safely packed, loaded and unloaded; and
    - B. restrained safely and securely at all times to prevent load shift and/or any part of the load being out of gauge;
  - ii. that the mass of the Goods:
    - A. does not exceed the maximum gross mass for the container or Rolling Stock they are packed into and/or loaded onto; and
    - B. is evenly and safely distributed and properly restrained within the container and/or on the Rolling Stock;
  - iii. that all Goods are packed and loaded in accordance with all laws and any requirements (including limitations) of the relevant rail access or road authority.
- (c) LINX reserves the right to check weigh any container.
- (d) Containers delivered to the terminal and which vary from the booked container mass, may affect train and/or wagon profiles. Operationally, it may be necessary to arrange an alternative service for those containers that are at variance with the booked container mass.
- (e) If LINX or any of the Associates reasonably consider that the Goods may cause injury or damage, then they may at the Customer's cost:

- i. re-pack or reload the container and/or Rolling stock, or require the Customer to do so;
  - ii. Refuse to carry the Goods or delay carriage of the goods; and/or
  - iii. remove the Goods from a LINX rail service or require the Customer to remove the Goods.
- (d) The Customer warrants that it is the authorised agent of the person owning (or having an interest in) the Goods and it has read, understood and enters into these General Terms as authorised agent of that person, and will procure that its Associates, will:
- i. be responsible for packing the Goods;
  - ii. ensure the Goods are packaged to withstand handling, transport and storage;
  - iii. comply with:
    - A. all applicable laws (including chain of responsibility legislation) and provide LINX with all necessary assistance, information and documentation to enable LINX to comply with such laws, including ensuring that the weight of any container (including the weight of the Goods) which is specified in the container weight document is accurate; and
    - B. any policies or procedures of LINX relating to safety and security in the provision of Services (as notified from time to time);
  - iv. allow LINX to obtain immediate access to any Commercial Document (as that term is defined in the Customs Act 1901 (Cth)) where LINX is required to produce the Commercial Document at the request of a Government Agency
  - v. ensure that the Goods comply with all applicable laws and are accurately described in the relevant delivery order and/or consignment note and all relevant instructions in relation to their handling, care and control will be given to LINX;
  - vi. ensure that any Dangerous Goods or Temperature Controlled Goods will only be tendered in compliance with the Dangerous Goods Protocol and/or the Temperature Controlled Goods Protocol, as applicable;
  - vii. ensure that no spills of a contaminant occur in any location in which the Services are being carried out;
  - viii. to the extent that it is required to load or unload a vehicle or train

under these General Terms, all relevant equipment complies with all relevant safety standards and any persons involved in the loading will have the requisite skill, competence, knowledge and experience and will be appropriately licensed, accredited and certified; and

- ix. at LINX's request, use its best endeavours to promptly implement paperless trading to enable LINX to use electronic import delivery orders.

- (f) The Customer agrees that:
  - i. LINX's and its Associates have the benefit of these General Terms as if they were parties to it; and
  - ii. LINX holds that benefit on trust for them and can, if requested by them, enforce it on their behalf.

#### **4.3 Container Conditions & Loading Specifications**

- (a) LINX will carry containers up to 3.0 metres (9'10") in height on all corridors, 3.22 metres (10'6") for top lift containers.
- (b) All containers must be top lift containers for handling within LINX terminals.
- (c) All containers must conform to ISO/Australian Standard NZS 3711 and to the Rail Loading Outline Requirements (gauge profile) of the corridor. All containers by must fitted with an 'R' series container compliance plate or have a Customer Service Centre approval.
- (d) All non-standard loads are to be confirmed with LINX before loading.
- (e) The Customer must obtain from LINX prior approval for loading that exceed a width of 2.5 metres. Loads which exceed this width will attract additional Rates.
- (f) Power generation equipment that occupies part of an adjacent slow will be charged the relevant TEU slot price. Only generators with standard top lift facilities and securing points will be accepted. A separate consignment note is required for each standalone power unit.

#### **4.4 Container Door Security**

- (a) Any containers travelling via Rolling Stock that have a door or an attached structure that when opened will protrude out into the rail corridor or over a passenger platform and become out of gauge, regardless of its placement on a train or wagon, must be secured and locked with one of the following:
  - i. padlock (AS4145 minimum rating S7);
  - ii. security seal that can only be removed with bolt cutters;
  - iii. wire seals with 2mm minimum wire diameter and provide a tight looped join so that tools such as pliers or screwdrivers cannot be used to break the seal.

#### **4.5 Title and Risk**

- (a) The Customer acknowledges and agrees that:
  - iv. the Customer alone owns the Goods, or if the Customer does not own the Goods the Customer acts as the owner's agent, and they agree to the handling, transport and storage of the Goods and the supply of the Services on the terms of this Contract;
  - v. if applicable, the Customer has complied with all laws in connection with any Rolling Stock, Vehicle or equipment supplied by the Customer, including holding necessary accreditation as a railway operator in each jurisdiction through which the equipment is likely to travel;
  - vi. all equipment, Rolling Stock, Vehicles, containers, private sidings and private roads supplied or made available by the Customer are properly maintained and fit for the purpose for which they are used; and
  - vii. the Customer has not asked LINX to handle, transport or store the Goods in any way that could be unlawful.

#### **4.6 Reconsignments**

For freight re-consignments, containers booked to one destination and subsequently re-booked on arrival to another will incur a re-consignment fee as set out in the quote or schedule of rates, in addition to the Rates from the origin to the final destination.

#### **4.7 Dangerous Goods**

- (a) Dangerous Goods surcharges will apply if there are additional specific insurances required from the network owner or any additional Rates incurred.
- (b) LINX Terminals are not licensed Dangerous Goods storage depots. For this reason, LINX will not hold Dangerous Goods other than for the period of time necessary to receive containers for out-railing and to facilitate delivery of containers from in-railed services.
- (c) As failure to remove Dangerous Goods containers may result in LINX contravening Dangerous Goods storage and handling legislation, LINX will have no option but to advise the appropriate authority. Costs associated with complying with any directives issued by the authorities and any Rates or penalties imposed by them must be borne by the customer, as well as those costs detailed below.
- (d) Dangerous Goods containers which are not collected on the day they are first made available at their destination will incur a surcharge, plus all associated storage, in accordance with these Terms and Conditions. Any failure by the Customer to reimburse LINX on demand for any costs, Rates, penalties incurred as a result of Customers failure to remove Dangerous Goods within the time frames set out in these Terms and Conditions, will result in those costs, Rates, penalties becoming a debt due and payable by the Customer.

- (e) New business in Dangerous Goods in categories of higher risk (e.g. Classes 2.1, 2.3, 4.1, 5.2 and 8) must be notified before the acceptance by LINX to allow a hazard identification plan to be conducted prior to acceptance.
- (f) Class 1 Dangerous Goods will not be accepted with the exception of Class 1.4
- (g) Dangerous Goods of Classes 6.2 and 7 will not be accepted except by prior written agreement and at a negotiated price.
- (h) All costs incurred by LINX as a result of a Dangerous Goods incident will be charged to customers including a charge of \$5,000 per hour for terminal downtime.
- (i) LINX requires an up-to-date 24 hour / 7 day contact number for both bulk and packaged Dangerous Goods in order to discuss the 'Dangerous Goods Emergency Response Guide' requirements and any Material Safety Data Sheet (**MSDS**) detail, to coordinate appropriate response in the event of an incident occurring. After each Dangerous Goods incident the Customer must nominate a representative to participate in LINX's investigation of the incident, to report on the cause of the incident and audit the adequacy of the response.
- (j) Prior to LINX accepting any consignments of security sensitive substances the following conditions must be complied with:
- (k) Both the sending and receiving Customer must have a licence for the transport, sale or supply of security sensitive substances. A copy of each licence must be provided to LINX.
- (l) Drivers collecting or delivering security sensitive substances must have a licence or equivalent that permits them to transport the products. The licence must be sighted by LINX for each delivery and collection.
- (m) Conforming bolt or cable seals must be used to seal all doors and hatches on both loaded and empty containers.
- (n) Security sensitive substances may only be transported in solid containers or tanks. Transport of security sensitive substances in curtain sided containers or transiflats will not be accepted.
- (o) Containers and door seals must be in sound condition, no evidence of leakage from containers or tanks. Containers and tanks not meeting these requirements will not be accepted for carriage.
- (p) Security sensitive substances must be delivered to the terminal on the day of transit and collected on the day of arrival. Additional security may need to be arranged if containers are not collected on the day of arrival. Additional security will be at the Customer's expense.

#### 4.8 Storage of Goods

- (a) The Customer must procure that delivery is taken of the Goods. If the Customer does not comply with this clause 4.8 **Error! Reference source not found.**, LINX will be entitled to charge for the storage of the Goods and may remove the Goods to a storage facility or treat the Goods as Abandoned Goods at the Customer's risk and expense.

- (b) The Customer must not in any circumstances abandon any Goods and LINX will be entitled, on 28 days notice, to dispose of Abandoned Goods at the Customer's risk and expense (including any costs of storage of the Abandoned Goods prior to disposal) in any manner it deems reasonable and the Customer will not be entitled to any compensation in respect of those Abandoned Goods or their disposal.

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## 5. Liability

### 5.1 General

- (a) To the extent permitted by law and except as expressly set out in these General Terms, LINX makes no and expressly excludes all warranties and representation with respect to the Services.
- (b) Where the Customer has the benefit of a warranty or condition regarding the Services provided under this Agreement which cannot by law be excluded, LINX's liability for breach of any such warranty or condition is limited to, at LINX's sole option, the re-supply of the Services.
- (c) The Customer acknowledges and agrees that:
  - i. the Services are supplied at the Customer's or its Associates risk;
  - ii. it bears all risk of loss or damage to or arising in connection with the Goods or containers; and
  - iii. its responsibilities under the laws relating to the Goods and the way they are loaded and packed and will at all times comply with all such laws.
- (d) LINX and the Associates are not liable for any delay, loss, or damage arising from the supply of or failure to supply Services (including any loss of, deterioration in, mis-delivery of, or failure to deliver, Goods), for any reason whatsoever including breach of contract, negligence, breach of duty as bailee, or LINX's wilful act or default.
- (e) The Customer acknowledges and agrees that LINX and the Associates have the benefit of the exclusions and limitations of liability contained in clause 6.2 even if any loss or damage arises for any reason whatsoever including breach of contract, negligence, breach of duty as bailee, or LINX's wilful act or default.
- (f) Notwithstanding any other provision of these General Terms, LINX limits any liability to the Customer from any cause whatsoever (at LINX's absolute discretion) to:
  - i. refunding the amount paid for the Services;
  - ii. resupplying the Services; or
  - iii. paying the cost of having the Services resupplied.

### 5.2 Notification of Claim

- (a) LINX will not be Liable for any Claim by the Customer unless notice of the Claim is given to

LINX within thirty (30) days of the relevant incident giving rise to the Claim.

- (b) LINX will be discharged from all Liability for a Claim unless proceedings are commenced within one year of the date that notice of that Claim is given to LINX.

### 5.3 Exclusion of Consequential Loss

Notwithstanding any other provision of these General Terms, LINX and/or its Associates shall not be liable to the Customer for any Consequential Loss arising out of or in relation to the performance of the Services.

### 5.4 Indemnities

- (a) The Customer indemnifies LINX against any claim, action or proceeding arising out of or in connection with this Contract, the supply of the Services or the handling, transport or storage of the Goods from any person other than the Customer (including the sender where the Customer is not also the sender);
- (b) The Customer will not sue any Associate for anything arising out of or in connection with this Contract, the Services or the handling, transport or storage of the Goods; and
- (c) The Customer will fully indemnify LINX for any loss, cost, expense, penalty, liability or damage incurred or likely incurred (including legal fees on a solicitor own client basis) as a result of the Customer's negligence, wilful misconduct, fraud or breach of this Contract.
- (d) The indemnities in this clause will operate irrespective of whether any loss or damage arises from a wilful, deliberate or unauthorised act or omission by LINX or by any of its Associates.
- (e) Each indemnity in these General Terms is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of these General Terms.
- (f) Each indemnity, limitation, condition and liberty in these General Terms and every right, exclusion from or limitation of liability, defence and immunity of whatever nature applicable to LINX or to which LINX is entitled under these General Terms will be available to LINX and to its Associates. Where LINX is deemed to be acting as agent or trustee on behalf of and for the benefit of its Associates, those Associates are, to this extent, deemed to be party to these General Terms and may enforce the terms of this clause against the Customer.
- (g) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by these General Terms.
- (h) A party must pay on demand any amount it must pay under an indemnity in these General Terms.

### 5.5 Insurance

- (a) Each party must at all times during the Term have in place with an insurer that has a credit rating of at least 'A' issued by Standard and Poor's:
  - i. third party property insurance and public risk liability insurance to a minimum value of \$50,000,000 in respect of any single event;

- ii. such other insurances as are required by law; and

- (b) The Customer must at all times during the Term have in place any insurance it requires relating to the Goods and/or the Services.
- (c) The Customer must notify LINX of any cancellation of a policy that it is required to take out and maintain under clause 5.5(a).
- (d) The Customer must provide to LINX on request a copy of a certificate of currency of insurance and any endorsement required in respect of a policy that the Customer is required to take out and maintain under clause 6.5 (a).

### 5.6 Change of Law

- (a) If a change in law or regulation (including the imposition of an additional regulatory requirement) (**Change in Law**) occurs during the Term then:
  - i. to the extent that the Change in Law directly results in an increase in the cost to LINX of providing the Services, LINX may increase its Rates relating to the Services to reflect the Change in Law by giving notice to the Customer;
  - ii. and to the extent that the Change in Law results in LINX being required to undertake certain tasks, cease to undertake certain tasks or otherwise change the manner in which it carries out the Services, LINX is entitled to amend these General Terms in a reasonable manner to reflect the Change in Law by giving notice to the Customer.

then LINX may increase its Rates relating to the Services to reflect the Carbon Costs (or increases in Carbon Costs) incurred by LINX.

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## 6. Dispute Resolution

### 6.1 Dispute Resolution

- (a) If a dispute arises out of or in relation to these General Terms, either party may give notice of the dispute to the other, which notice must request that a 'Dispute Review Meeting' be called.
- (b) Each party's Representative must attend a Dispute Review Meeting called under clause 6.1(a) and must negotiate in good faith to promptly settle the dispute.
- (c) If the parties' Representatives are unable to resolve a dispute, the dispute may be referred by either party for mediation to the Australian Commercial Disputes Centre. Each party must bear its own costs in relation to the mediation and the costs of the mediator will be borne equally by the parties.
- (d) If the Dispute has not been resolved through mediation under clause 6.1(c) within 20 Business Days of the date of the referral, or such longer period agreed in writing by the parties, either party may commence proceedings in a court of competent jurisdiction.

## 6.2 Interlocutory Relief

Nothing in this clause 6 prevents a party from seeking urgent interlocutory, declaratory or injunctive relief from a court of competent jurisdiction where, in that party's reasonable opinion, such action is necessary to protect that party's rights.

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## 7. Termination

- (a) Subject to clause 7(b) if either party (**Defaulting Party**) commits a material breach of these General Terms, the other party (**Non-Defaulting Party**) may give notice to the Defaulting Party of that breach and requiring the Defaulting Party remedy that breach within 30 days of the date of the notice and if the Defaulting Party fails to rectify the breach within 30 days of the date of the service of the notice, the Non-Defaulting Party may by notice terminate these General Terms with immediate effect.
- (b) If the Customer defaults in the payment of any money under these General Terms, LINX may give notice to the Customer to rectify the default within 14 days of the date of the notice and if the Customer fails to rectify the breach within 14 days of the date of the notice, LINX may (in its absolute discretion) suspend the Services until such time as that amount is paid or terminate these General Terms with immediate effect, and nothing in this clause 6(b) prevents LINX from exercising its rights under clause 2.
- (c) In addition to any other right of termination, LINX may terminate these General Terms by giving not less than 30 days' notice in writing to the Customer where for whatever reason, LINX is unable to continue to provide the Services at the Site.
- (d) Either party may terminate these General Terms with immediate effect if the other party is affected by an Insolvency Event.
- (e) Termination of these General Terms does not affect any rights which a party has against the other in respect of any breach of these General Terms occurring prior to termination.

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## 8. Notices

- (a) Each communication (including each notice, consent, approval, request and demand) under or in connection with these General Terms must be in writing and addressed as set out in the Reference Schedule (as amended by notice from time to time) and must be delivered by either fax or email; and
- (b) Each communication is taken to be received by the addressee:
  - i. (in the case of hand) at the time in the place to which it is delivered;
  - ii. (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and
  - iii. (in the case of email) at the time that is 24 hours after the email was sent, unless the party sending the email knows or

reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address,

but if the communication is taken to be received on a day that is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next Business Day.

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## 9. Force Majeure

- (a) Subject to clause 9(c), LINX will be released from its obligations under these General Terms to the extent and for the duration that performance of these General Terms is delayed, hindered or prevented by a Force Majeure Event.
- (b) If a Force Majeure Event occurs or is likely to occur, LINX must give prompt notice of the Force Majeure Event and detail what action is being taken to overcome its effects in writing by email or facsimile.
- (c) LINX must use its reasonable endeavours to promptly overcome any Force Majeure Event and restore its ability to perform. However,
  - i. nothing will oblige LINX to settle any strike or other industrial dispute on terms contrary to LINX's wishes; and
  - ii. nothing will oblige LINX to contest the validity or enforceability of any law, regulation or legally enforceable order by way of legal proceedings.
- (a) The Customer will provide reasonable assistance to LINX if a Force Majeure Event occurs.
- (b) Subject to clause 9(c), LINX will resume its obligations under these General Terms as soon as it is no longer affected by a Force Majeure Event.
- (c) In the event that a Force Majeure Event exceeds the period of 3 Months, LINX may provide notice to the Customer terminating these General Terms with immediate effect.

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## 10. Confidentiality

- (a) Subject to clause 11(b), each party must keep the terms of these General Terms confidential and must not disclose or permit or cause any person to disclose the terms of these General Terms without the other party's consent.
- (b) Either party may disclose the terms of these General Terms without the other party's consent:
  - i. where required by law (including the rules of a stock exchange);
  - ii. to its Related Bodies Corporate;
  - iii. to:
    - A. its legal and financial advisors and the legal and financial advisors of its Related Bodies Corporate;
    - B. its financiers and the financiers and financial advisers of its Related Bodies Corporate; or

- C. a bona fide potential purchaser of or investor in that party or its Related Bodies Corporate or its assets or the assets of any of its Related Bodies Corporate (and their representatives, legal and financial advisors and financiers),

provided those people are under a similar obligation of confidence where reasonably required in order to perform these General Terms.

This clause 10 survives termination or expiry of these General Terms.

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## **11. General**

### **11.1 Assignment**

The Customer cannot assign novate or otherwise transfer any of its rights or the benefit of such rights under these General Terms without the prior consent of LINX.

### **11.2 Amendments**

LINX may amend these terms at any time by notice in writing to the Customer. Such amendment takes effect on receipt of the amended terms by the Customer.

### **11.3 Further Acts and Documents**

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to these General Terms.

### **11.4 Entire Agreement**

To the extent permitted by law, in relation to its subject matter, these General Terms embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties and supersedes any prior written or other agreement of the parties.

### **11.5 Severance**

If at any time a provision of these General Terms is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction that will not affect or impair the legality, validity or enforceability of any other provision of these General Terms.

### **11.6 Waiver**

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under these General Terms by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under these General Terms.
- (b) A waiver or consent given by a party under these General Terms is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of these General Terms operates as a waiver of another breach of

that term or of a breach of any other term of these General Terms.

### **11.7 Costs**

- (d) Subject to clause 11.7(b), each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing these General Terms.
- (e) The Customer must pay any stamp duty payable in relation to the execution or performance of these General Terms.

### **11.8 GST**

- (a) Unless otherwise expressly stated, all consideration to be provided under these General Terms is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause.
- (b) If GST is payable by a supplier or by the representative member for a GST group of which the supplier is a member, on any supply made under or in connection with these General Terms, the recipient of that supply will pay to the supplier an amount equal to the GST payable on the supply.
- (c) The recipient will pay the amount referred to in clause 11(b) in addition to and at the same time that the consideration for the supply is to be provided under these General Terms.
- (d) The supplier must provide a tax invoice to the recipient no later than 5 days after the day on which any consideration is to be first provided for that supply.
- (e) If the GST payable in relation to a supply made under or in connection with these General Terms varies from the additional amount paid by the recipient under clause 11(b), then the supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the recipient. Any payment, credit or refund under this clause 11(e) is deemed to be a payment, credit or refund of the additional amount payable under clause 11(b).
- (f) Where a party is required under or in connection with these General Terms to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:
- (g) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled; and
- (h) If the payment or reimbursement is subject to GST, an amount equal to that GST.

### **11.9 Exchange of counterparts by email**

- (a) This Agreement may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same agreement.

- (b) This Agreement is binding on the parties on the exchange of executed counterparts. A copy of an original executed counterpart sent by email or facsimile:
- i. must be treated as an original counterpart;
  - ii. is sufficient evidence of the execution of the original; and
  - iii. may be produced in evidence for all purposes in place of the original.

