

Qube Standard Terms and Conditions of Contract

Qube Logistics (Aust) Pty Ltd (ACN 123 003 930)

(Effective 12 December 2023; Available at <https://qube.com.au/commercial-terms-conditions/>)



1. DEFINITIONS

1.1 In these Terms:

Australian Consumer Law or ACL means the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth);

Chapter 5 Body Corporate has the meaning given to that term in the *Corporations Act 2001* (Cth);

Charges means the rates and other charges for Services calculated under any quotation or rates schedule (agreed with the Customer, or applying from time to time due to these Terms) or any other fees and charges agreed between Qube and the Customer from time to time. Quotations and rates schedules may include Third Party Costs, and if they do, the amounts provided are based on the prevailing rates set by the relevant third party at the relevant time, or appropriate estimates (because Qube cannot control the quantum of or variation to the Third Party Costs);

Claim means any action, claim, suit, allegation, demand, loss, liability, damage or cost of whatsoever nature;

Consequential Loss means loss or damage, whether direct or indirect, in the nature of loss of profits, loss of revenue, loss of production, loss of anticipated savings or business, pure economic loss, loss of opportunity and any form of consequential, special, indirect, punitive or exemplary loss or damages, whether or not a party was advised of the possibility of such loss or damage;

Contract has the meaning given to that term in clause 2.1;

Customer means the person named in any Order form or similar document or who requests provision of the Services, any person acting on behalf of, and with the authority (express or implied) of the Customer engaging the Services or any person who delivers Goods to Qube for Services to be carried out;

Dangerous Goods means Goods classified as such by either the IATA Dangerous Goods Regulations or the Australian Dangerous Goods Code or Goods that otherwise might injure or damage people, property or the environment. They include Goods that are or may become poisonous, corrosive, volatile, explosive, flammable, radioactive or of any other dangerous nature;

HVNL means the Heavy Vehicle National Law as from time to time adopted in any State or Territory in which the Services are performed and includes all regulations, orders, proclamations, notices or other requirements under the legislation which adopts that law in the relevant State or Territory;

Goods means the cargo accepted from, or on behalf of, the Customer together with containers, packages, pallets, crates, cases and equipment for use in connection with the storage, handling and carriage of that cargo;

Loss means, in relation to any person, any damage, loss, cost, expense or liability incurred by the person or arising from any Claim, against the person, however arising and whether present or future, fixed or unascertained, actual or contingent;

Master Agreement has the meaning given to that term in clause 2.1.

Order means an order, direction, instruction, or standing appointment or engagement, for the supply of Services;

Owner means the owner of the Goods or any person holding a better proprietary interest in the Goods other than the Customer;

Qube means Qube Logistics (Aust) Pty Limited (ACN 123 003 930) and any Related Body Corporate of Qube involved in the provision of the Services;

Qube Personnel means any officers, employees, agents or subcontractors of Qube;

PPSA means the *Personal Property Securities Act 2009* (Cth) and any terms used in clause 16 that have a defined meaning under the PPSA bear the same meaning in that clause;

Related Body Corporate has the meaning given to that term in the *Corporations Act 2001* (Cth);

Services means all of the services and operations (including cartage, transport and storage) undertaken in respect of the Goods by Qube in any capacity (including as forwarding agent, shipping agent, forwarder, carrier or bailee) for the Customer;

Terms means the terms and conditions set out herein; and

Third Party Costs means any costs, charges, fees, imposts or levies that are payable by Qube in connection with or relating to the performance of the Services to any third party including port or rail terminal operator, warehouse operator, empty container park operator, toll road operator, port or government or regulatory authority, including but not limited to access fees, terminal infrastructure fees, port fees and charges (for example slot booking fees or energy levies), shipping line levies and charges, container handling fees and charges, empty park booking fees and tolls.

2. THE CONTRACT

2.1 Subject to clauses 2.2 and 2.6, these Terms, any Qube-generated quotation or rates schedule (whether agreed with the Customer or applying from time to time due to these Terms) and any associated Order form govern the contract or engagement entered into between Qube and the Customer (**Contract**) and the Services supplied. These Terms are subject only to any services level agreement, rates agreement or other specific agreement (**Master Agreement**) entered into by Qube and the Customer. Unless otherwise specifically agreed in writing by the parties, these Terms will prevail over existing or subsequent terms and conditions set out in any document (including any order form of the Customer), which the Customer directly or indirectly provides to Qube and such other terms and conditions are rejected by Qube.

2.2 If Qube has issued a house bill of lading in respect of the Goods in which Qube is described as the "Carrier," whether or not negotiable (**Bill of Lading**), then in the case of inconsistency between these Terms and the Bill of Lading, any terms and conditions contained or incorporated in the Bill of Lading shall prevail.

2.3 To the maximum extent permitted by law, the Contract (and any Master Agreement or Bill of Lading, if relevant) constitute the entire agreement of the parties about its subject matter.

2.4 Qube is not a common carrier, accepts no liability as such and Services are subject to the Contract. Unless specifically agreed by Qube under the Contract, Qube is not obliged to handle, transport or store Goods for the Customer and may, acting reasonably,

refuse to handle, transport or store Goods for the Customer and without Qube having any liability to the Customer by reason of that refusal.

- 2.5 Unless the parties otherwise agree in any Master Agreement which incorporates these Terms and which restricts Qube's ability to alter or amend these Terms, and subject to clause 2.6, these Terms may be altered or amended at any time by publication on Qube's website, or by providing the Customer with reasonable notice of the altered or amended Terms in another effective way.
- 2.6 The Terms applying to any Order are those in force at the time the Customer placed the Order and any change will apply only in respect of Orders placed after the date of the change. This does not apply where a Master Agreement establishes other principles for Orders made pursuant to that Master Agreement.
- 2.7 The Customer will be deemed to have accepted these Terms (or altered or amended Terms as contemplated by clause 2.5) by placing an Order with Qube for the Services or by providing Goods to Qube.

3. SUBCONTRACTING AND ASSIGNMENT

- 3.1 Qube may need to assign or subcontract its rights and obligations under an agreement entered into with the Customer in order to effectively deliver Services and therefore:
- (a) Qube (and any subcontractor of Qube) may subcontract all or part of the Services to any person including a Related Body Corporate, provided that any subcontracting will not relieve Qube of its obligations under these Terms and Qube remains liable to the Customer for the provision of the Services by a subcontractor to the extent that Qube would have been liable under these Terms had it performed or failed to perform such Services itself; and
 - (b) Qube may assign all or part of its rights or obligations provided that the assignee has the resources to perform the Services in accordance with the Contract and there is no material detriment to the Customer arising from that assignment.
- 3.2 The Customer must not assign its rights or obligations under the Contract without Qube's prior written consent as any such assignment may increase Qube's exposure to credit or other risk. Qube will not unreasonably withhold or delay its consent to assignment by the Customer but may impose reasonable conditions to prevent detriment to Qube arising from the assignment.
- 3.3 The Customer acknowledges and agrees that Qube enters into the Contract (and any Master Agreement or Bill of Lading, if relevant) on its own behalf and for the benefit of Qube Personnel and their respective employees, agents and subcontractors and Qube holds that benefit on trust for such persons and can, if requested, enforce these Terms, the Contract (and any Master Agreement or Bill of Lading, if relevant) on their behalf.

4. ORDERS

- 4.1 The Customer may at any time request a quotation for Qube's performance of the Services (whether verbally, in writing or by electronic means) and must provide Qube with the information required under clause 5.3 and any other information reasonably requested by Qube.
- 4.2 Any quotation by Qube may be withdrawn by Qube at any time prior to acceptance by the Customer and is not to be construed as an obligation on Qube to supply Services in accordance with these Terms or otherwise, until that quotation has been accepted or adopted (which the Customer may do expressly, or by their conduct).
- 4.3 While Qube takes care in preparing quotations, Qube is entitled to vary any quotation to account for any cost increases in providing the Services at any time prior to the quotation being accepted or adopted by the Customer. Where quotations include Third Party Costs, the Customer acknowledges that Qube cannot control the quantum of Third Party Costs, and agrees that the Customer must pay any variation in Third Party Costs (even if the variation occurs after the quotation is accepted or adopted by the Customer). A quotation is deemed to be withdrawn upon the issuance of a varied quotation and only the latest varied quotation is capable of acceptance.
- 4.4 Qube may accept or refuse any Order. Qube may make its acceptance of an Order conditional (e.g. upon a satisfactory credit assessment of the Customer).
- 4.5 Once placed, an Order cannot be cancelled or deferred by the Customer without Qube's prior written agreement and then only on terms that the Customer will fully indemnify Qube against any Loss suffered by it as a result of that cancellation or deferral. Qube will take reasonable steps to mitigate its Loss. The indemnity in this clause 4.5 does not apply in cases where the cancellation or deferral is reasonably attributable to an act or omission of Qube or Qube Personnel.
- 4.6 The Customer must provide Qube with accurate details in each Order. Qube is under no obligation to enquire as to the accuracy of the details in any Order.

5. GOODS AND SERVICES

- 5.1 Unless specifically agreed by Qube under the Contract, the acceptance of the Goods by Qube for storage does not bind Qube to transport or ship the Goods.
- 5.2 Unless storage of the Goods for a certain period of time has been specifically agreed by Qube under this Contract or any Master Agreement, Qube may at any time require the Customer to remove the Goods from their location of storage at the Customer's expense (whether in the case of non-shipment or otherwise) and if the Customer fails to remove the Goods within 7 days of such notice, without limiting any other right of Qube, the Customer shall be liable to pay Qube's reasonable costs of storage from the date of such notice until the date of their removal.
- 5.3 If the Services involve:
- (a) any special handling requirements (including a temperature range) for the safe storage and transport of Goods; and
 - (b) Dangerous Goods including a full and accurate written description of them (including the chemical and physical properties), then the Customer must provide written notice of and instructions for the performance of the Services regarding those requirements or Dangerous Goods, at the time of requesting a quotation for Qube's performance of the Services. If a quotation is not requested or provided then the Customer must provide such notice and instructions before the Goods are provided to Qube. If, later than those times or after the date of the Contract, the Customer provides the information and instruction required under this clause 5.3(a) or 5.3(b), or there is a change in such information or instruction, then the Customer accepts that Qube may:
 - (c) acting reasonably:
 - (i) refuse to provide the Services in respect of the Goods or any part of them; and/or
 - (ii) where the Goods are in Qube's possession, request the Customer to remove the Goods from their location of storage and the Customer must comply promptly (within a reasonable time, which will normally not exceed 48 hours) with such request

at the Customer's expense, and where the Goods are Dangerous Goods and the Customer fails to remove the Goods, Qube may destroy, dispose of or render harmless the Goods. Unless the destruction, disposal or other action in respect of the Goods was required due to any negligent or willful act or omission of Qube or Qube Personnel, any exercise of Qube's rights under this clause 5.3(c)(ii) will be at the cost of the Customer and without prejudice to any of Qube's rights under these Terms; or

- (d) vary the Charges (and any relevant Third Party Costs may vary) in order to perform the Services in respect of any such Goods in accordance with clause 6.3 (including but not limited to compensating Qube for increased risk or a change in the equipment and operating procedures normally employed by Qube to perform the Services).

5.4 If, in the reasonable opinion of Qube, the Goods are Dangerous Goods or do not meet legal requirements or recommendations of relevant government agencies relating to the Goods or Services, or are unsuitable to be handled by Qube using the equipment and operating procedures normally employed by Qube in providing the Services, then Qube may:

- (a) acting reasonably:
 - (i) refuse to provide the Services in respect of the Goods or any part of them; and/or
 - (ii) where the Goods are in Qube's possession, request the Customer to remove the Goods from their location of storage and the Customer must comply promptly (within a reasonable time, which will normally not exceed 48 hours) with such request at the Customer's expense,

provided that Qube will not refuse as set out in clause 5.4(a)(i) nor make the request as set out in clause 5.4(a)(ii) in circumstances where the Goods fully match the description provided by the Customer under clause 5.3(b) (or where the Contract has been varied under clause 5.3(d) in relation to the Goods), and meet all legal and other requirements;

- (b) take whatever measures (including testing or analysis of the Goods) it considers necessary (acting reasonably) at the cost of the Customer to cause the Goods to comply with the requirements of all such laws or to make the Goods suitable to be handled by Qube; and/or
- (c) if required by law, or by the lawful direction of a lawful authority, to protect the health and safety of any person, or to protect against damage to any property or harm to the environment, or if the Customer fails to remove the Goods in accordance with clause 5.4(a)(ii), destroy, dispose of or render harmless the Goods. Unless the destruction, disposal or other action in respect of the Goods was required due to any negligent or willful act or omission of Qube or Qube Personnel, any exercise of Qube's rights under this clause 5.4(c) will be at the cost of the Customer and without prejudice to any of Qube's rights under these Terms,

and the Customer will bear all risk of Loss arising in connection with such Goods, except to the extent any destruction, disposal or other action in respect of the Goods was required due to any negligent or willful act or omission of Qube or Qube Personnel. Qube will endeavour to give reasonable notice if it elects to do anything under this clause 5.4, but the Customer acknowledges and agrees that there may be situations where it is not reasonably practicable to give notice of additional measures being taken (such as adjusting or improving packaging of goods during transport, or taking steps to render Dangerous Goods harmless in an emergency or other incident or where there is a risk of damage to any property, a risk of harm to the environment or a genuine safety risk which endangers or threatens to endanger the health and safety of any person).

5.5 If the Customer instructs Qube to use a particular method of handling, storage or transportation of the Goods, Qube will give consideration to that method, but the Customer gives Qube authority to:

- (a) use any method for handling, transporting or storing the Goods if Qube, in its reasonable discretion, deems it reasonably necessary to deviate from the method instructed; and
- (b) deviate from the usual route or method of transport of the Goods which may in the reasonable discretion of Qube be necessary in the performance of the Services.

5.6 Qube is authorised to deliver the Goods to the address or other location given to Qube by the Customer for delivery and Qube shall be deemed to have delivered the Goods in accordance with these Terms if at that address, Qube obtains from any person a receipt or signed delivery docket for the Goods or can otherwise reasonably substantiate delivery by other means (for example, written confirmation from the recipient or delivery site).

5.7 If the address or other location given to Qube for delivery is unattended or if delivery cannot otherwise be effected by Qube at that address or other location, Qube may at its option:

- (a) deposit the Goods at that address or other location which shall be conclusively deemed to be delivery under these Terms; or
- (b) at the Customer's cost, store the Goods and re-deliver the Goods to the Customer.

5.8 There are many events and circumstances outside the reasonable control of Qube or Qube Personnel which can affect the timing for the delivery out of the Goods or performance of the Services. Qube is not liable for any delay in delivery out of the Goods or in the delayed performance of the Services except to the extent caused by the negligent or willful acts or omissions of Qube or Qube Personnel (with its liability limited as provided for in this Contract). By notification to the Customer, Qube reserves the right to reasonably extend the date for delivery out of the Goods and for the supply of Services where such delay arises directly or indirectly from any events or circumstances which are outside the reasonable control of Qube or Qube's Personnel, or from genuine operational constraints affecting Qube.

5.9 The Customer must:

- (a) give prior written notice to Qube if any of the Goods are liable to customs duties or port charges or other supply chain costs and charges and pay such charges or, if agreed by Qube, reimburse Qube if it agrees to pay those costs and charges on behalf of the Customer;
- (b) ensure that the Goods are ready for pickup so that Qube is not delayed in performing the Services.
- (c) unless Qube has agreed in writing to load or unload the Goods as part of the Services, arrange at its cost, all necessary labour and facilities to load and unload the Goods. The Customer must ensure loading and unloading of the Goods complies with all relevant laws, and Qube's reasonable directions.

5.10 Both the Customer and Qube acknowledge their respective HVNL Duties and must take positive steps to facilitate the other party's ability to meet that other party's own HVNL Duties. Each party must also take care not to cause the breach of any HVNL Requirements including, for example, by requiring travel at unacceptable speeds to reach destinations, causing delays due to Goods being unprepared for loading, or engaging in other actions or behaviours which are inconsistent with the HVNL as in force in the relevant State or Territory in which the Goods were accepted by Qube for transport. In this clause 5.10:

- (a) **"HVNL Duties"** means the duty of each person involved in transport activities, imposed by the HVNL, to ensure, so far as is reasonably practicable, the safety of transport activities and to eliminate public risks (and, to the extent it is not reasonably practicable to eliminate public risks, minimize the public risks); and
- (b) **"HVNL Requirements"** means a relevant requirement imposed by the HVNL as set out in that Law, which includes obligations in relation to fatigue management, loading, load restraint, travel speed, record-keeping, implementing effective safety systems and other requirements.

6. CHARGES AND THIRD PARTY COSTS

- 6.1 The Charges and Third Party Costs do not include any applicable taxes (including but not limited to GST, import duties and export duties). The Customer must pay any relevant Third Party Costs, taxes, duties and government charges payable or in connection with the provision of the Services.
- 6.2 The Charges applying to an Order are those set out in the relevant Contract or any Master Agreement and will be current for the period set out in a written quote or rate schedule or the relevant Contract or Master Agreement, as varied in accordance with clause 6.3 and pursuant to any applicable fuel surcharge adjustment mechanism. If no period is specified in writing because, for example, a quote may not specify a validity period or the quote may have been given by email, the period for which the quote is current will be 7 days. It is the Customer's responsibility to understand the applicable Charges and Third Party Costs prior to placing an Order, noting that Charges and Third Party Costs may change from time to time as contemplated by these Terms (for example, in accordance with clauses 4.3 and 6.3).
- 6.3 Despite any other provision of the Contract or any Master Agreement, Qube may vary the Charges on the provision to the Customer of 14 days' written notice (**Charges Variation Notice**). Through that Charges Variation Notice, Qube may make any variations to Charges which are reasonable to compensate Qube for relevant changes affecting Qube's performance of the Services and for any change in Qube's cost base for providing the Services and may include Qube's typical margin within the varied Charges. The parties note that the Customer must already pay for variations in Third Party Costs as contemplated by clause 4.3 and other provisions of these Terms, and that Qube may also vary the Charges at any time to correct any material or blatant errors and omissions in the quotation because the right to correct errors and omissions is necessary in relation to the kind of complex logistics services which Qube provides. The Customer will be entitled to cancel any affected Order made prior to the date of the Charges Variation Notice in the event that it decides not to accept the Charges Variation Notice by giving Qube written notice within 14 days from the date of the Charges Variation Notice. The Customer's sole liability for cancellation is limited to the Charges due and payable to Qube in respect of any Services performed prior to the date of such cancellation and otherwise in accordance with clause 15.3 (which, for the avoidance of doubt, are calculated at the Charges in effect immediately prior to the Charges Variation Notice). The varied Charges will only apply to existing Orders after expiration of the 14 day notice period or for new Orders placed after the date of the Charges Variation Notice.
- 6.4 The Charges and Third Party Costs are stated, and payment must be made, in Australian dollars (unless otherwise agreed).
- 6.5 The Customer will be liable to pay to Qube the Charges and Third Party Costs for all Services performed, including in circumstances where the Goods are not delivered, damaged or lost due to circumstances outside the reasonable control of Qube.
- 6.6 Qube reserves the right to impose waiting time charges in respect of loading or unloading delays in excess of 30 minutes. In relation to perishable Goods, the delay period shall commence upon Qube responding for loading or unloading.
- 6.7 Qube may, at the Customer's cost (other than where required due to an act or omission of Qube or Qube Personnel), expend an amount it reasonably considers necessary in order to preserve the Goods or to secure the safety, storage, carriage or shipment of the Goods.

7. INVOICING AND PAYMENT

- 7.1 Qube will issue to the Customer a tax invoice for the Services and any goods supplied in accordance with the requirements of the law relating to GST and the Customer must pay the Charges and Third Party Costs as indicated on Qube's invoice or other similar document.
- 7.2 Unless otherwise expressly stated, Charges and Third Party Costs and other amounts payable are exclusive of GST. The Customer must pay GST on the Charges and Third Party Costs at the same time as payment is made under clause 7.3.
- 7.3 Unless the payment terms applying to the Customer's trading account are otherwise specified by Qube in writing, the due date for payment is 7 days from the date the invoice is issued by Qube.
- 7.4 Subject only to this clause 7.4, the Customer must pay the invoice in full without any deduction, set-off or counter-claim. Where an invoice or part of an invoice is genuinely disputed by the Customer, the Customer must provide written notice of such payment dispute before the due date for payment and must pay any undisputed portion of the invoice by the due date. Qube and the Customer must communicate about the dispute in good faith and must attempt to resolve the dispute within 7 days. Following that attempt, if Qube reasonably considers that the disputed amount remains payable to it then Qube may give written notice to the Customer and require the Customer to pay the disputed amount within the later of the original due date specified on the invoice and 7 days after Qube's written notice. If the Customer does not pay the outstanding amount in accordance with this clause 7.4, then Qube may exercise any of its rights under these Terms as if the outstanding amount was due and owing to Qube. If the Customer pays the outstanding amount in accordance with this clause 7.4 and a further resolution of the dispute subsequently determines that such amount or portion thereof was not payable to Qube, then Qube must repay that amount to the Customer plus interest as set out in clause 7.8.
- 7.5 If payment remains unpaid once it is due (as contemplated by clause 7.3), then Qube may, in addition to its other rights and remedies under these Terms and at law:
 - (a) on the provision of 7 days' written notice, suspend performance of its obligations under the Contract until the full amount outstanding is paid in full;
 - (b) exercise a general lien over, and power of sale of, the Goods under clause 8. The Customer is still liable to pay any amount still owing to Qube after such sale; and
 - (c) on the provision of 7 days' written notice, commence legal proceedings to recover the amount owed and all costs incurred by Qube in collecting any overdue amounts including but not limited to debt collection agency fees, legal fees on a full indemnity basis and court costs will be a debt due and payable by the Customer. Nothing in these Terms restricts Qube's ability to bring urgent, interim or interlocutory proceedings in any court of competent jurisdiction.

Unless Qube has required the Customer to pay any outstanding amount pursuant to clause 7.4, this clause 7.5 does not apply to the extent that the Customer has genuinely disputed an invoice and provided written notice in the manner provided in clause 7.4.

- 7.6 Qube is entitled to receive and retain all commissions, allowances and remuneration paid including those customarily paid by or to forwarding agents, customs agents, shipping agents, forwarders, storers, carriers or bailees.
- 7.7 If Qube makes credit available to the Customer, Qube may amend, alter or terminate the Customer's trading account, terms of credit or alter its payment terms (for example, where Qube perceives that there is a relevant change in circumstances or that Qube faces increased credit risk in connection with the Customer) on 7 days' notice and will use reasonable endeavours to provide reasons (**Payment Terms Notice**). If Qube ceases to supply the Services to the Customer on credit then:
- (a) all Charges and Third Party Costs relating to Services performed after the Payment Terms Notice is effective will be payable immediately at the time when they are invoiced, because credit will no longer be available; and
 - (b) Charges and Third Party Costs relating to Services performed before the Payment Terms Notice is effective will, whether or not previously due for payment, become due and payable 7 days after the Payment Terms Notice is effective. The Customer acknowledges that any acceleration of the obligation to pay for those Charges and Third Party Costs is reasonable due to the legitimate business interest which Qube has in being paid quickly, when Qube perceives that there are adverse circumstances or increased credit risk.

The Customer may elect to terminate the Services upon the provision of 7 days' written notice from the date of the Payment Terms Notice, if the Customer does not wish to continue trading with Qube based on the alterations set out in the Payment Terms Notice.

- 7.8 Qube may charge the Customer interest on any overdue amount calculated daily at 4% above the cash rate target determined by the Reserve Bank of Australia applicable during the period that the amount is overdue.

8. LIEN

- 8.1 In addition to any statutory rights or remedies available to Qube and to the extent permitted by law, the Goods are accepted subject to a general and particular lien for all charges due, or which may become due, to Qube by the Customer in respect of the Services. If Qube intends on exercising its lien over, and power of sale of, the Goods, Qube must first notify the Customer of that intention, identify the matters to which the Customer must attend in order to avoid that outcome, and allow the Customer 7 days in which to attend to those matters. If at the conclusion of that period, the lien has not been satisfied and/or the Goods are not collected, then subject to law, Qube may at its option - in the case of perishable Goods immediately and in any other case upon the expiration of a further 7 days' notice:

- (a) remove such Goods or part thereof and store them in such place and manner as Qube reasonably considers proper at the risk and cost of the Customer;
- (b) sell by public auction or private sale such Goods or part thereof, acting reasonably, and apply the proceeds in or towards discharge of the lien without being liable to any person for any Loss thereby caused; or
- (c) adopt a reasonable method of disposal of abandoned Goods at the expense of the Customer,

without compensation being payable to the Customer other than accounting to the Customer for any balance proceeds from sale of the Goods in accordance with clause 8.1(b) after any money owed to Qube (including recovery costs and the costs of sale), and the Customer must indemnify Qube for all costs incurred by Qube in the exercise of these rights to the extent such costs are not recovered from the sale proceeds.

9. FORCE MAJEURE

- 9.1 If Qube or the Customer (the **affected party**) is wholly or partially precluded or delayed from performing the Services or otherwise complying with its obligations under these Terms by anything outside the affected party's reasonable control (the **Force Majeure Event**), then the affected party's obligation to perform the affected obligations under these Terms (other than the Customer's obligation to pay Qube the Charges, Third Party Costs or other amounts due under these Terms) will be suspended for the duration of the delay arising out of the Force Majeure Event.
- 9.2 If the Force Majeure Event (and consequential inability to perform delay in the performance of the Contract) continues for a period longer than 30 days from its initial occurrence, then either party may terminate this Contract by written notice to the other with no liability to the other as a result.

10. LIMITATION OF LIABILITY

- 10.1 If the Customer is a consumer as defined under the ACL, then Qube's Services come with guarantees that cannot be excluded under the ACL. For major failures with the Services, the Customer is entitled:
- (a) to cancel the Customer's service contract with Qube; and
 - (b) to a refund for the unused portion, or to compensation for its reduced value.

The Customer is also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure, the Customer is entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel the contract and obtain a refund for the unused portion of the contract.

- 10.2 The Customer notes and confirms it is aware that:
- (a) where the Services relate to the transportation or storage of Goods; and
 - (b) any consignee of Goods is carrying on or engaged in a business, trade, profession or occupation in relation to the Goods, the Services provided will be covered by s.63 of the ACL and as a result, the consumer guarantees contained in s.60 to s.62 of the ACL will not apply.
- 10.3 To the extent permitted by law, if Qube is liable for a breach of a guarantee imposed by the ACL then Qube and the Customer note that none of the Services are of a kind ordinarily acquired for personal, domestic or household use or consumption, and Qube's liability for a breach of any such guarantee (or condition or warranty, express or implied) will be limited, at its option, to any one or more of the following:
- (a) the supply of the Services again;
 - (b) the payment of the cost of having the Services supplied again.
- 10.4 To the extent permitted by law, Qube's liability for any Claims arising out of this Contract, including liability for breach of this Contract, in negligence or in tort or for any other common law or statutory action, shall:

- (a) be limited to the extent the Loss the subject of the Claim was caused directly by Qube or Qube Personnel; and
 - (b) in any one case be limited to the re-supply of the Services, or at Qube's option, payment of the cost of having the Services re-supplied.
- 10.5 There are many events and circumstances outside Qube's control which can affect the timing for the performance of the Services, including the delivery or collection of a container to or from the wharf or nominated empty container park (as the case may be). Further, as between the parties to this Contract, it is only the Customer (or the Owner) that is the party to the contract with the relevant ocean carrier which determines the performance standards and costs attributable to the import and export of containers. To the extent permitted by law, Qube is not liable to the Customer (or any person claiming through the Customer) for any Claims arising out of or in connection with any charges levied or claimed against or incurred by, the Customer (or any person claiming through the Customer) in respect of:
- (a) for a container in the export phase:
 - (i) late receipt fees levied by a port terminal operator for processing any application for a laden container delivered to the wharf after the relevant vessel cut-off time; or
 - (ii) detention charges levied by an ocean carrier for each day that a laden container is detained after the last free day applying to that container until the laden container is delivered to the relevant port terminal; and
 - (b) for a container in the import phase:
 - (i) wharf storage charges levied by a port terminal operator for each day that a laden container remains at the wharf or other storage location after the allotted free days applying to that container until the laden container is collected from the wharf or other storage location; or
 - (ii) detention charges levied by an ocean carrier for each day that an empty container is detained after the last free day applying to that container until the empty container is returned to the nominated empty container park,
- (together, the **Delay Charges**) except to the extent that the Delay Charges were caused or contributed to by the negligence or willful acts or omissions of Qube or Qube Personnel (with Qube's liability limited as provided for in this Contract). The Customer acknowledges and agrees that:
- (c) Qube is not liable to the Customer (or any person claiming through the Customer) for Delay Charges to the extent that such Delay Charges were caused or contributed to by any act or omission by or on behalf of the Customer, or to the extent that such Delay Charges were caused or contributed to by any events or circumstances outside the reasonable control of Qube or Qube Personnel;
 - (d) given the Customer (or the Owner) is the party capable of negotiating with the ocean carrier under the relevant contract which is a source of Delay Charges, the Customer must take all reasonable steps to avoid, minimise and mitigate the Delay Charges (including but not limited to securing waivers and discounts in respect of any detention charges from the relevant ocean carrier);
 - (e) the Customer must properly substantiate any Claim against Qube for Delay Charges and must also provide Qube with evidence of each step taken to mitigate such Delay Charges. The Customer must give notice to Qube of and may only pursue its Claim against Qube in the manner contemplated by these Terms; and
 - (f) in all cases where the Customer is not a consumer under the ACL or the Contract is not a small business contract (as defined in the ACL), to the extent permitted by law, the maximum liability of Qube to the Customer (or any person claiming through the Customer) for any Delay Charges in relation to a container howsoever arising (including but not limited to any act or omission of Qube or Qube Personnel) is limited to the Charges paid by the Customer for the Services performed in relation to the relevant container the subject of the Delay Charges.
- 10.6 To the extent permitted by law, neither party is liable to the other party for any Claims arising out of this Contract for any Consequential Loss, including Claims for breach of this Contract, in negligence or in tort or for any other common law or statutory action, provided that nothing in this clause 10.6 relieves the Customer from its obligation to pay Qube the Charges or Third Party Costs.
- 10.7 To the extent permitted by law, every exemption, exclusion or limitation in these Terms applicable to Qube or to which Qube is entitled (under these Terms or otherwise) shall also be available and shall extend to protect:
- (a) all Qube Personnel; and
 - (b) all persons who are or might be vicariously liable for the acts or omissions of any such person,
- and for the purposes of this clause 10.7, Qube holds the benefit of each exemption, exclusion or limitation in these Terms on trust for all such persons and each of them and may enforce the exemptions, exclusions or limitations on their behalf.

11. NOTIFYING OF CLAIMS

- 11.1 Subject to any statutory rights and remedies, the Customer's rights and remedies will be subject to the following:
- (a) The Customer must as soon as reasonably practicable after delivery of the Goods by Qube to the Customer inspect the Goods. If the Customer believes Qube is liable for any defect in, loss of or damage to the Goods, the Customer must notify Qube in writing within 7 days of delivery of the Goods by Qube to the Customer (unless Qube agrees to a longer period) setting out details of any defects, loss or damage and of the reasons why the Customer believes Qube is liable. In those circumstances, the Customer must provide reasonable evidence and must promptly give Qube access to the Goods to inspect and assess them. This procedure is necessary to:
 - (i) enable Qube to assess whether it has caused or contributed to any relevant defects, loss or damage. Goods can be lost or damaged due to a variety of events or circumstances after delivery by Qube (including but not limited to conduct of third parties, natural degradation or other processes, the manner in which they are stored or handled, or other events unrelated to Qube or its performance of the Services); and
 - (ii) allow Qube to identify potential operational issues and to mitigate the potential for future damage.

If Qube does not receive a written notice from the Customer in accordance with clause 11.1(a), Qube reserves the right to reject any later Claim by the Customer for any defect in, loss of or damage to such Goods and Qube will have no liability to the Customer in respect of such rejected Claim.
 - (b) If the Customer believes Qube is liable for any Loss whatsoever or howsoever arising (other than loss or damage to the Goods to be notified under clause 11.1(a)), the Customer must notify Qube in writing within 7 days of the breach or other event giving rise to the Loss or the time the Customer became aware of the breach or event giving rise to the Loss, whichever is the later, (unless Qube agrees to a longer period) setting out details of relevant events and of the reasons why the Customer believes

Qube is liable. This is necessary to enable Qube to investigate the alleged event to assess whether the breach or event occurred and, if so, the extent to which the breach or event caused or contributed to any Loss and to ensure that Qube has access to all relevant company records, data (including CCTV footage), equipment and personnel relevant to the alleged event. If Qube does not receive a written notice from the Customer in accordance with this clause 11.1(b), Qube reserves the right to reject any later Claim by the Customer for any Loss (other than loss or damage to the Goods to be notified under clause 11.1(a)) and Qube will have no liability to the Customer in respect of such rejected Claim.

- (c) To the extent permitted by law, Qube will have no liability to the Customer for any Claim for any defect in, loss of or damage to any Goods or for any other Loss if the Customer does not commence legal proceedings against Qube within 12 months of the Customer providing Qube with written notice in accordance with clauses 11.1(a) or 11.1(b) (as applicable) or of the date the Customer should have provided Qube written notice in accordance with clauses 11.1(a) or 11.1(b) (as applicable). This is necessary to allow for the prompt and efficient management of claims and to ensure that Qube has access to all relevant company records or other data, or to the Qube Personnel or other parties who may have had an involvement in, or knowledge of and are able to properly recall, the matters in connection with the Claim.
- 11.2 If the Customer becomes aware of any Claim made, contemplated or taken against it by any third party in respect of Goods or the Services, the Customer must, within 7 days of becoming aware, notify Qube of that Claim and give Qube a reasonable opportunity to respond before taking any action in respect of it.
- 11.3 Before settling any third party Claim in respect of which the Customer seeks or may seek compensation or a contribution from Qube, the Customer must first notify Qube of that proposed settlement and reasonably consider feedback from Qube.

12. INSURANCE

- 12.1 The Customer is, as between Qube and the Customer, solely responsible for arranging and maintaining appropriate and adequate insurance in relation to the Goods.
- 12.2 Unless otherwise agreed in writing by Qube, the Goods are not insured by Qube nor will insurance be arranged by Qube on behalf of the Customer.

13. WARRANTIES AND OBLIGATIONS

- 13.1 The Customer represents, warrants and must ensure that:
- (a) it has responded to all of Qube's questions accurately and has accurately and fully described and clearly marked the Goods and has provided all necessary instructions and accurate information regarding handling, care and control of the Goods having regard to the nature and packaging of the Goods;
 - (b) it has complied with and will continue to comply with the requirements of any applicable laws relating to the nature, condition, packaging, packing, handling, labelling, storage and carriage of the Goods and it shall provide all necessary assistance, information and documentation to enable Qube to comply with any of its obligations under such laws;
 - (c) it shall not tender any Dangerous Goods or temperature-controlled Goods for the provision of Services by Qube without complying with the requirements in clause 5.3;
 - (d) the Goods are received in by Qube:
 - (i) where the Goods are temperature-controlled Goods, within the correct temperature range;
 - (ii) are packaged to withstand the risks of or incidental to the handling, transport and storage; and
 - (iii) unless Qube has agreed in writing to pack and load the Goods as part of the Services, are packed in a manner to ensure balance across and along a container or trailer and are adequately restrained to prevent movement during transport;
 - (e) it alone owns the Goods, or if the Customer is not the Owner, it has the authority of the Owner to agree to these Terms and acts as the Owner's agent who agrees to the handling, transport and storage of the Goods on these Terms;
 - (f) it has authorised any person who delivers any Goods to, or collects any Goods from, Qube for and on behalf of the Customer to do so;
 - (g) the Goods are and will remain free of any objectionable matter or odours which may affect other Goods in storage, unless the condition of the Goods has previously been notified in writing to Qube and Qube has accepted the Goods in that condition;
 - (h) the Goods are not illegal, sanctioned or contraband and the Customer has not asked Qube to handle, transport or store the Goods in any way that could be unlawful and that the actual handling, transport or storage of the Goods by Qube in the usual course will not be unlawful; and
 - (i) all relevant weight data will be supplied to Qube and the weight data (if any) will include all accompanying packaging (including cartons, pallets and stretch-wrap).

14. INDEMNITY

- 14.1 To the maximum extent permitted by law, the Customer agrees to indemnify and keep indemnified Qube and Qube Personnel against all Loss that Qube or Qube Personnel may pay, sustain or incur as a result of:
- (a) any negligence by or on behalf of the Customer; or
 - (b) any breach of or non-compliance with clause 13.1 by the Customer.
- 14.2 This indemnity does not apply to the extent that Loss is reasonably attributable to an act or omission of Qube or Qube Personnel.
- 14.3 Qube may enforce this right of indemnity at any time, including before it has incurred actual Loss.

15. DEFAULT AND TERMINATION

- 15.1 A party (**Non-Defaulting Party**) may cancel all or any part of an Order which remains unperformed in addition and, without prejudice to its other remedies, terminate the Contract by giving written notice to the other party (**Defaulting Party**) in the event that the Defaulting Party:
- (a) becomes a Chapter 5 Body Corporate, bankrupt or insolvent or makes or is likely to make an arrangement with its creditors;
 - (b) commits a breach of these Terms which in the reasonable opinion of the Non-Defaulting Party is incapable of remedy;
 - (c) commits a breach of these Terms and the Defaulting Party fails to rectify the breach within the time stipulated in a notice from the other party requiring such breach to be remedied (which must not be less than 14 days).

- 15.2 Where the Order is wholly or partially cancelled or the Contract is terminated by Qube under clause 15.1, all Charges and Third Party Costs outstanding under any Order and any other amounts owing to Qube will, whether or not due for payment, immediately become due and payable by the Customer.
- 15.3 Subject to the Customer paying all outstanding amounts that are due for payment to Qube (and including, as applicable, any amounts that become due and payable in accordance with clause 15.2), where the Order is wholly or partially cancelled or the Contract is terminated by either party for any reason:
- (a) Qube must promptly make available to the Customer for collection, and the Customer must promptly collect, the Goods in the care, custody or control of Qube or Qube's Personnel; or
 - (b) if agreed by both parties in writing, Qube will continue with the performance of the Services until delivery of the Goods in accordance with the Order, in which case the Terms will continue to apply in respect of such Services,
- and Qube is entitled to payment of the applicable Charges and Third Party Costs in respect of any Services performed after termination of this Contract (including any ongoing Services in respect of the Goods until delivery to or collection by the Customer) and the Customer must pay those amounts in accordance with clause 7.
- 15.4 Any accrued rights and obligations of the parties as at the date of termination will be unaffected by termination.
- 16. PERSONAL PROPERTY SECURITIES REGIME**
- 16.1 The Customer must not register a security interest against Qube without first notifying Qube in writing.
- 16.2 The parties agree that the subject matter referred to in section 275(1) of the PPSA is confidential and each party must not disclose any such information to a third party.
- 17. PRIVACY AND CONFIDENTIALITY**
- 17.1 Both the Customer and Qube agree to comply with the Australian Privacy Principles established by the *Privacy Act 1988* (Cth) (**Privacy Act**) and each party must promptly notify the other party in writing if it becomes aware of any alleged, potential or actual privacy breach, and provide full details of the breach and any actions taken or planned to remedy the breach (including in respect of obligations under the Notifiable Data Breach Scheme under the Privacy Act).
- 17.2 The Customer agrees that Qube may obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by Qube. The Customer consents to Qube being given a consumer credit report to collect overdue payment on commercial credit (under section 18K(1)(h) of the Privacy Act).
- 17.3 The Customer agrees that Qube may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for any of the following purposes:
- (a) to assess an application by Customer;
 - (b) to notify other credit providers of a default by the Customer;
 - (c) to exchange information with other credit providers as to the status of the Customer's credit account, where the Customer is in default with other credit providers; or
 - (d) to assess the credit worthiness of Customer and obtain a consumer credit report.
- 17.4 All documents and other information concerning the business, affairs or personal information (as defined under the Privacy Act) of a party made available by or behalf of that party (**Discloser**) to the other party to this Contract (**Recipient**) in connection with this Contract which is identified as confidential or which the Recipient knows, or ought reasonably to be expected to know, is confidential to the Discloser, in any form or media whatsoever, whether before or after the date of this Contract, must only be used for a legitimate purpose in connection with this Contract and must not be disclosed by the Recipient to a third party except
- (a) where the Recipient needs to make a disclosure to its officers, employees, agents, auditors, insurers, professional advisers or, in the case of Qube, its subcontractors, provided that such disclosure is for a legitimate purpose in connection with this Contract;
 - (b) as required by law or court order, the requirements of any lawful authority or the rules of any recognised stock exchange, and in those circumstances the Discloser must, where it is lawful to do so, give prompt written notice of such disclosure requirement and the confidential information must only be disclosed to the extent necessary to comply with the disclosure requirement; or
 - (c) with the written prior consent of the Discloser.
- 18. MISCELLANEOUS**
- 18.1 If a clause or part of a clause is illegal, unenforceable, void or invalid, that clause or part of it is to be read down to the minimum extent necessary to achieve its validity or intent, if applicable, or else severed from this Agreement, without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision.
- 18.2 This Contract is governed by the laws of the Commonwealth of Australia and:
- (a) where this Contract relates to Services performed in any one State or Territory, that State or Territory in which the Goods were accepted by Qube for transport; or
 - (b) where this Contract relates to Services performed in more than one State or Territory, New South Wales,
- and the parties submit to the exclusive jurisdiction of the courts exercising jurisdiction in that State or Territory (as applicable).
- 18.3 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right and the exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing and is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.