

VISY LOGISTICS
STANDARD TERMS AND CONDITIONS OF SERVICES (RAIL) – AUSTRALIA



1 Application

- 1.1 All Services are provided by Visy Logistics Pty Ltd (**Visy**) subject only to these Conditions and any bill of lading, sea waybill, air waybill or consignment note issued by Visy or its agent in relation to the Goods.
- 1.2 In the event of (and only to the extent of) any inconsistency between these Conditions and the conditions contained in any bill of lading, sea waybill, air waybill or consignment note issued by Visy, the conditions in the bill of lading, sea waybill, air waybill or consignment note will prevail.
- 1.3 All rights, immunities, indemnities and limitations of liability in these Conditions shall continue to have their full force and effect in all circumstances and notwithstanding any breach of this contract or of these Conditions by Visy or any other person entitled to the benefit of these Conditions.
- 1.4 If any provision or any part of a provision in these Conditions is unenforceable, such unenforceability will not affect any other provision or any other part of a provision.
- 1.5 Visy shall not be bound by any agreement purporting to waive or vary these Conditions unless such agreement is in writing and signed by an authorised person on behalf of Visy.
- 1.6 Visy and the Customer acknowledge that under the *Australian Consumer Law*, as set out in Schedule 2 of the *Competition and Consumer Act 2010*, consumers (as defined in that legislation) have certain rights and guarantees which cannot be excluded. Subject to clause 6.6 of these Conditions, nothing in these Conditions will be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law and which by law cannot be excluded, restricted or modified.

2 Customer's Warranties

- 2.1 The Customer warrants that:
 - 2.1.1 It is either the owner and/or the authorised agent of the person or persons owning or having any interest in the Goods or any part of the Goods and enters into the contract with Visy on its own behalf and/or as authorised agent of that person or persons.
 - 2.1.2 The Goods are packed to withstand the ordinary risks of the Services having regard to the nature of the Goods, and have been appropriately secured within the Container.
 - 2.1.3 It has accurately and fully described the Goods and their weight and mass and it has provided all necessary instructions and information regarding handling, care and control of the Goods having regard to their nature, weight, mass and packaging.
 - 2.1.4 It has complied with the requirements of any applicable law (including the Australian Dangerous Goods Code) relating to the nature, condition, packaging, handling, labelling, storage and carriage of the Goods and it will provide all necessary assistance, information and documentation to enable Visy to comply with any of its obligations under such laws.
 - 2.1.5 It will not tender any Dangerous Goods or Temperature Controlled Goods for the provision of Services by Visy without presenting a full description of the Goods and disclosing their nature, and where relevant, information relating to the manner in which the Services must be provided.
 - 2.1.6 It has complied and will comply with its obligations under the Chain of Responsibility Laws.

3 Customer's Indemnities

- 3.1 The Customer shall be liable for and shall defend, indemnify and hold Visy harmless against all penalties, liability, claims, loss, damage, costs, expenses, fines, legal or other professional fees and all or any debt incurred by Visy arising out of or in connection with:
 - 3.1.1 Visy acting in accordance with the instructions of the Customer, Owner or bailee of Goods;
 - 3.1.2 any negligent act or omission of the Customer, Owner or bailee of Goods; or
 - 3.1.3 a breach of a warranty or obligation by the Customer.
- 3.2 Except to the extent caused by Visy's Gross Negligence, wilful misconduct or fraud the Customer shall be liable for and shall defend, indemnify and hold Visy harmless in respect of all costs, expenses, fines, duties, taxes, imposts, levies, deposits and outlays of whatsoever nature imposed by any Government Agency arising out of or in connection with the Goods or the Services.
- 3.3 Except to the extent caused by Visy's Gross Negligence, wilful misconduct or fraud the Customer shall be liable for and shall defend, indemnify and hold Visy harmless against any loss, damage, contamination, detention or demurrage of Containers supplied by or on behalf of Visy for use in the performance of the Services.

- 3.4 All advice and information provided by Visy is exclusively for the benefit of the Customer and the Customer shall defend, indemnify and hold Visy harmless for all liability, loss, damage, costs and expenses arising out of or in connection with any other person (including the Owner) relying on such advice or information.

4 Visy's Rights

- 4.1 Visy may provide the Services by any method which Visy in its absolute discretion deems fit notwithstanding any instructions of the Customer that the Services are to be supplied by another method.
- 4.2 Visy may comply with any orders, directions or recommendations made by a Government Agency in relation to the Goods and/or the provision of the Services without recourse by, and at the risk and expense of, the Customer.
- 4.3 If the Customer or the receiver fails to accept delivery of the Goods, Visy will be entitled to store the goods at the risk and expense of the Customer.
- 4.4 Visy will dispose of Abandoned Goods at the expense of the Customer in any way it deems fit and without compensation to the Customer. The Customer will be given 14 days written notice of Visy's intention to dispose of the Goods.
- 4.5 If, in the opinion of Visy, the Goods are Dangerous Goods, Visy in its absolute discretion may refuse to provide the Services, or may at any time destroy, dispose of, abandon or render harmless the Goods without compensation to and at the expense of the Customer.
- 4.6 If, in the reasonable opinion of Visy, the Goods do not meet the requirements of all applicable laws relating to the Goods and/or the Services or are unsuitable to be handled by Visy using the equipment and operating procedures normally employed by Visy in providing the Services, Visy in its absolute discretion may:
 - 4.6.1 refuse to provide the Services in respect of the Goods or any part of them; or
 - 4.6.2 take whatever measures are deemed necessary at the risk and expense 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 Visy.
- 4.7 Visy may open any Container, package, wrapping or document if, in the reasonable opinion of Visy, it is necessary and reasonable to do so to render the Goods or the Services safe.

5 Subcontracting

- 5.1 Visy may subcontract the Services (in whole or in part) on any terms and Visy is or will be deemed to be acting as agent or trustee on behalf of and for the benefit of the Subcontractor and/or any person who is or may be vicariously liable for the acts or omissions of Visy or a Subcontractor, each of who shall to this extent be or be deemed to be parties to this contract.
- 5.2 Every exemption, limitation, condition, right, defence and immunity available to Visy will be available and will extend to protect a Subcontractor or any person who is or may be vicariously liable for the acts or omissions of Visy or of a Subcontractor.
- 5.3 The Customer warrants that no servant or subcontractor of Visy shall in any circumstances whatsoever be under any liability to the Customer or the Owner for any claims, damages, costs or expenses of any kind arising directly or indirectly from an act or omission of the servant or subcontractor while acting in connection with the Goods or the Services. In the event that a claim of the type referred to in this clause 5.3 is initiated, the Customer shall defend, indemnify and hold Visy harmless against all liability, damages, costs and expenses arising out of the claim.

6 Visy's Liabilities

- 6.1 Visy will not be liable in tort, contract, bailment or otherwise for any, or the consequences of any:
 - 6.1.1 breach by the Customer of any warranty in these Conditions and/or any applicable Services Agreement; or
 - 6.1.2 loss of or damage to the Goods, concealed damage, deterioration, contamination or evaporation of the Goods, misdelivery of the Goods, or delay in delivering or failure to deliver the Goods, unless caused by the Gross Negligence, wilful misconduct or fraud of Visy; or
 - 6.1.3 delay in providing or failure to provide or perform the Services, unless caused by the Gross Negligence, wilful misconduct or fraud by Visy.
- 6.2 Visy accepts no responsibility for the accuracy or any part of any description of or declaration in relation to the Goods on any document to which the Services relate and will be under no liability for any inaccuracy, unless caused by the Gross Negligence, wilful negligence or fraud of Visy.
- 6.3 Visy will not be liable in tort, contract or otherwise for any, or the consequences of, any loss or damage, costs, fines or penalties incurred by the Customer or any other person resulting from or arising out of or in connection with any quotation, advice, statement, representation or information given or made by or on behalf of Visy to the Customer or others

- as to the classification of or any matter material to the valuation of or the liability for the amount, scale or rate of customs and/or excise duty or other impost, tax or rate charged in respect of the Goods or cargo which is the subject of or relates to the Services.
- 6.4 In giving or making any such quotation, advice, statement, representation or information of the kind referred to in clause 6.3, Visy relies solely on the particulars provided by the Customer in relation to the Goods and in relation to the Services.
- 6.5 Visy will not be liable in tort, contract or otherwise for any consequential loss suffered or incurred by the Customer arising out of or in connection with the Goods or the Services. For the purposes of this clause 6.5, 'consequential loss' means loss that is indirect loss or loss that was not reasonably foreseeable, and also includes deferment of income, loss of profit or revenue, loss of denial of opportunity, loss of access to markets, loss of goodwill, loss of business reputation, or damage to credit rating.
- 6.6 Visy's liability to the Customer in relation to the breach of any guarantee or right incorporated into this contract by reason of the Australian Consumer Law is in all circumstances limited to the resupply of the relevant Services or (where Visy decides at its discretion that the resupply of the relevant Services is impractical), the cost of supplying the relevant Services again.

7 Containers

- 7.1 The Customer will be responsible for the return of any Container to the person who owns it or has the right of possession of a Container or its agent and the Customer must indemnify, defend and hold Visy harmless against any claims, demands or liabilities which may arise as a result of a failure or a delay by the Customer in doing so.
- 7.2 Visy will not be responsible for the safe and proper packing and stowage of the Goods in any Container, having regard to the requirements of the Container, unless such packing and stowage is done by Visy.
- 7.3 Any Container supplied by Visy will be:
- 7.3.1 inspected by the Customer prior to packing and stowage to ensure that it is undamaged and suitable for carriage of the Goods; and
 - 7.3.2 returned to Visy clean and undamaged to the place nominated by Visy, failing which the Responsible Persons will be jointly and severally liable for demurrage which will be charged in accordance with the applicable Services Agreement or notified charge rate, and for all related costs and expenses reasonably incurred by Visy.

8 Rail Services

In no way limiting any other provision of these Conditions, if the Services include the provision of Rail Services, the following clause 8 applies.

Bookings:

- 8.1 The Customer may request an entitlement to a portion of capacity on a Rail Service to facilitate the Customer consigning one or more Containers on that Rail Service ("**Booking**").
- 8.2 The Customer must make a Booking by emailing Visy a completed booking form which shall include accurate details regarding the freight (such as a description, weight, packaging and other relevant information which may be requested by Visy). Applications for Bookings can be made by contacting RiFL.LogisticHub@visy.com.
- 8.3 Visy will confirm acceptance of a Booking in writing. Bookings will be allocated according to available capacity and at Visy's absolute discretion.
- 8.4 A request by the Customer to cancel a Booking must be in writing. A Booking can be cancelled at any time without charge prior to acceptance by Visy. The Customer will be charged for the applicable base charge per Container if a Booking has been accepted by Visy and later cancelled by the Customer (and Containers removed from the Customer's entitlement).

Customer Warranties:

- 8.5 In addition to the warranties in clause 2, if the Customer (either on its own behalf or on behalf of its customers) has engaged Visy to haul Containers on a Rail Service, then the Customer must ensure that:
- 8.5.1 Containers are packed in a manner which will ensure that the Containers will remain safe and secured in position during transport;
 - 8.5.2 the quantity of freight loaded in each Container does not exceed:
 - i. the allowable maximum gross weight for the type of Container (per clause 8.9);
 - ii. any other limitations advised in writing by Visy or a Subcontractor from time to time;
 - 8.5.3 every Container is packed with weight evenly distributed over the length of the Container, to ensure the load is balanced and otherwise in accordance with best practices;
 - 8.5.4 the Container doors are properly closed, secured and fully sealed, and in a serviceable condition; and
 - 8.5.5 the Containers are properly labelled in accordance with all relevant laws.
- 8.6 If the Customer fails to comply with clause 8.5, Visy may in its absolute discretion and at the Customer's cost:
- 8.6.1 re-pack or reload the Container and/or rolling stock, or require the Customer to re-pack the Container;
 - 8.6.2 refuse to carry the Goods or delay carriage of the Goods;
 - 8.6.3 remove the Goods from a Rail Service or require the Customer to remove the Goods; and/or

- 8.6.4 withhold release of the Container until it is satisfied appropriate transport arrangements are in place.

8.7 The Customer authorises Visy and any Subcontractor to:

- 8.7.1 use any reasonable method for handling, transporting or storing the Goods;
- 8.7.2 deviate from any usual route or mode of transport;
- 8.7.3 weigh or measure the Goods, including where Visy's charges are based on weight or measurement; and
- 8.7.4 open any Container or inspect the Goods to determine its nature, conditions, ownership or destination if Visy or any Subcontractor determines it is necessary to do so, in order to prevent damage to any property or harm or injury to any person, or to comply with any law provided that:
 - i. Visy has, when it is reasonably practicable, provided the Customer with prior notice of the intention to open the Container or inspect the Goods; and
 - ii. Visy has used reasonable endeavours to ensure that such inspection is only carried out in the presence of a representative of the Customer.

Container Conditions:

- 8.8 The Customer acknowledges and agrees that in many instances, Visy's ability to perform the Services will depend upon the requirements of Subcontractors which may change from time to time. As a consequence, Visy fully reserves the right (acting reasonably) to amend the conditions and requirements set out in clauses 8.9, 8.10, 8.11, 8.12, 8.13 and 8.15.
- 8.9 Visy will carry Containers up to 2.9 metres high. Top lift Containers are preferred. Visy may, in its absolute discretion, consider bottom lifting Containers subject to agreement in writing. Visy may charge a bottom lift fee at agreed rates.
- 8.10 The maximum allowance gross mass of a single Container is:
- 8.10.1 30 tonne for 20ft containers;
 - 8.10.2 30 tonne for 40ft containers; and
 - 8.10.3 30 tonne for 48 ft container, unless:
 - 8.10.4 a lower maximum allowable gross mass is specified on the relevant container compliance plate;
 - 8.10.5 the maximum gross mass is restricted by weight limits for local road transportation; or
 - 8.10.6 otherwise agreed in writing with Visy.
- 8.11 Temperature controlled Containers with power generation equipment attached to the end of the Container that occupy part of an adjacent slot will be charged for that additional space. Only generators with standard top lift facilities and securing points will be accepted for travel.
- 8.12 At the time of making a booking for a temperature controlled Container, the Customer must:
- 8.12.1 notify Visy in writing of the temperature setting to be maintained in the event of an emergency whilst the Container is under Visy's control; and
 - 8.12.2 notify Visy of 24 hour / 7 day a week emergency contact names and phone numbers.
- 8.13 The Customer must ensure all self-powered temperature controlled Containers are supplied with sufficient fuel to enable the Container to operate efficiently throughout the journey to be undertaken. If, in the event of an emergency, Visy re-fuels a Container, any costs incurred by Visy or anyone engaged by Visy will be payable by the Customer.
- 8.14 Visy will use reasonable endeavours to ensure Containers are maintained at the required temperature setting but accepts no responsibility for delay, loss, damage or any other costs or expenses of any nature whatsoever in relation to Temperature Controlled Goods.
- 8.15 Prior to loading, the Customer must provide Visy with evidence of the loaded weight of a Container by way of a container weight declaration. Containers delivered to the Terminal which vary from the booked container mass or do not match the Container size or type specified in the Booking, may affect train and/or wagon profiles. Visy may refuse permission for any such Container to travel on the booked service and accepts no responsibility for delay, loss, damage or any other costs or expenses of any nature whatsoever that a Customer may incur as a result of, or related to, a Container mass weight or type and size varying from the booked Container.

Relief Events:

- 8.16 Visy shall be relieved of its obligations under these Conditions and/or may delay (in whole or part) the supply of any Services (or any part of any Services) to the extent that any delay or failure to perform is attributable to the occurrence of:
- 8.16.1 operational or safety concerns;
 - 8.16.2 any direction, requirement, request, or other act or omission of the ARTC or any other Government Agency;
 - 8.16.3 any restriction or delay on access to or use of the rail corridor or any rail, intermodal, container park or port terminal required for the performance of the Services;
 - 8.16.4 any act or omission taken by another rail transport operator or other third party;
 - 8.16.5 any act or omission taken by another rail transport operator, the ARTC, a Government Agency or any other person to prevent, or to respond to an accident or emergency endangering the health and safety of persons, or harm to the environment or property, or to otherwise seek to prevent injury to persons or damage to property.

9 Terminal

Conditions of Entry:

- 9.1 Entry into the Terminal is subject to the Customer and its personnel, contractors, agents and representatives complying with the conditions of

entry of the Terminal, which include (without limitation):

- 9.1.1 any conditions of entry of any operator of the Terminal;
- 9.1.2 the completion of a site induction by persons entering the Terminal, including periodic refreshers;
- 9.1.3 the exercise of reasonable care by all persons entering the Terminal, to protect the property of Visy and other parties, including all plant, equipment and vehicles located at the Terminal;
- 9.1.4 the exercise of reasonable care by all persons entering the Terminal, to ensure, as far as practicable, the safety of any person within the Terminal (including the notification of any accidents, injuries or 'near-misses');
- 9.1.5 a requirement that each road vehicle (including trailers) entering the Terminal be fit for purpose, registered, roadworthy and fully insured;
- 9.1.6 a requirement that vehicle drivers must have sufficient road driving hours for the relevant task;
- 9.1.7 a requirement that the gross vehicle mass is not exceeded and the load is appropriately restrained as required under relevant legislation;
- 9.1.8 vehicle drivers must hold all necessary documentation to satisfy 'chain of responsibility' legislation;
- 9.1.9 vehicle drivers must be appropriately licenced for the class of vehicle they are driving and where required by legislation hold the relevant licences for the carriage of Dangerous Goods and security sensitive substances;
- 9.1.10 complying with all reasonable directions of Visy and the operator of the Terminal, while on site at the Terminal; and
- 9.1.11 complying with these Conditions.

Terminal Access:

- 9.2 Subject to strict compliance with clause 9.1, the Customer is granted a right to access the Terminal for the purposes of:
 - 9.2.1 Delivering Goods that are being hauled on a Rail Service pursuant to an accepted booking; and/or
 - 9.2.2 Collecting Goods after they have been hauled on a Rail Service, save that the Customer's right of access under this clause applies only during the period between the receivals open time and cut-off time for the relevant Rail Service (as notified by Visy from time to time).
- 9.3 The Customer agrees to access the Terminal at its own risk. Visy is not liable to the Customer for any loss or damage to any property of the Customer or the Owner, or to any other property in the possession of the Customer or any third party retained by the Customer, unless (and then only to the extent that) the loss or damage or caused by the negligence of Visy, and the Customer releases Visy from any such claims. This applies to any claims which arise from actions of other customers or users of the Terminal, including rail operators.
- 9.4 Where maintenance or repairs are required at the Terminal as a result of any act or omission by the Customer (including where damage is caused by the Customer or its contractors or agents), Visy will be entitled to recover the reasonable costs associated with such maintenance or repair works (other than maintenance costs that arise in connection with the normal wear and tear of the Terminal) from the Customer as a charge payable by the Customer to Visy. Visy will not be liable for any costs incurred by, or claims made by or against the Customer, as a result of Visy conducting any repairs or maintenance of the Terminal and any delay caused as a result.

Additional Charges:

- 9.5 If a Container is identified with doors or some other component not secured, Visy will secure the Container with the number and type of seals it considers appropriate, having regard to the nature of the Container and charge the Customer a container door security fee. Visy accepts no responsibility for delays, losses, damages or any other costs or expenses of any nature whatsoever that a Customer may incur as a result of, or related to, a Container that is not appropriately secured or as a result of Visy taking or omitting to take action under this clause.
- 9.6 In addition to the Charges, Visy may charge for:
 - 9.6.1 any expenses Visy incurs as a result of any incorrect declaration by the Customer of the weight, volume, description or packaging of the Goods or Visy having to re-pack or re-load any Goods to comply with any laws;
 - 9.6.2 any expense or loss incurred by Visy as a result of the Customer's act or omission which prevents Visy from using any rolling stock, vehicle or other item of equipment;
 - 9.6.3 any third party storage fees or other charges or expenses Visy incurs in relation to arranging storage of the Goods at a third party storage facility;
 - 9.6.4 any re-fuelling costs relating to a temperature controlled Container in circumstances referred to in clause 8.13;
 - 9.6.5 any increase in Visy's cost base of performing the Rail Services caused by:
 - i. the imposition of any tax, levy, charge, impost, duty or other charges which are assessed, levied, imposed or collected by any Government Agency; or
 - ii. the introduction of or a change in any applicable law or access charges that directly regulates the manner of conducting the Rail Services.

10 Insurance and Liability Cap

- 10.1 Visy shall not arrange or provide insurance for the Customer. The Customer must obtain its own insurance in respect of the Goods and/or Services, with a deductible of no more than \$5000 and no right of subrogation against Visy. To the extent Visy has any liability to the Customer under clause 6 or elsewhere under these Conditions, Visy's liability is limited (other than in circumstances of fraud by Visy) to the lesser of three times the Charge for the affected Service or \$5000.

Customer must first exhaust its recovery rights under its own insurance before seeking recovery from Visy.

- 10.2 If the Customer (or any third party retained by the Customer) is granted a right to access the Terminal, the Customer must effect and maintain the following insurances (and shall ensure that every third party retained by the Customer is either covered by the Customer's insurance or is similarly insured) which are required to note the interest of Visy on each policy:
 - 10.2.1 public and products liability with a minimum indemnity limit of \$20,000,000 any one occurrence and in the aggregate in respect to Goods covering:
 - i. personal injury or death; and
 - ii. property damage;
 - 10.2.2 workers compensation liability as required by law; and
 - 10.2.3 third party motor vehicle liability for and in respect of any vehicles used by the Customer or any other person, whether or not owned by the Customer, for a sum of not less than \$20,000,000;
- 10.3 The Customer must provide Visy with a copy of a certificate of currency of the insurances required as reasonably requested by Visy from time to time.

11 Payment

- 11.1 Visy's charges must be paid in full within 30 days of the date of the Invoice issued by Visy without discount, deduction, counterclaim or setoff, and regardless of any dispute between Visy and the Customer. Interest will be payable on any sum which remains due and unpaid after the date for payment and will be charged at the Reserve Bank of Australia official cash rate plus 3% per annum, calculated daily on any overdue amounts. In the event of a breach by the Customer of this clause, Visy reserves the right to suspend or to refuse to provide the Services to the Customer in its absolute discretion.
- 11.2 Visy may charge by weight, measurement or value and may at any time re-weigh or re-value or re-measure or require the Goods to be re-weighed, re-valued or re-measured and may charge proportional additional charges accordingly.
- 11.3 Visy's charges will be considered earned as soon as the Goods are delivered to Visy and under no circumstances will those charges be refunded.
- 11.4 Every special instruction to the effect that charges will be paid by a person other than a Customer will; be deemed to include a stipulation that if that person does not pay those charges within 7 days of the date set for payment, or if no date is set for payment within 7 days of delivery or attempted delivery of the Goods, then the Customer will pay those charges within 7 days of being notified of that person's failure to pay.

12 Lien

- 12.1 Visy shall have a particular and general lien on all Goods and any and all other property of the Customer coming into Visy's actual or constructive possession or control, for any amount due to Visy arising out of or in connection with any Services provided in relation to the Goods and/or for any other services provided to the Customer or Owner; and.
- 12.2 Prior to exercising the lien, Visy shall provide written notice to the Customer of its intent to exercise its lien, the property over which the lien will be exercised and the exact amount due and owing.
- 12.3 Visy will have the right to charge for storage and/or may remove to a warehouse or bond store the Goods and/or other property of the Customer, subject to a lien at the risk and expense of the Customer.
- 12.4 Unless, within 14 days of receiving the written notice referred to in clause 12.2, the Customer pays the entire amount due and owing, Visy will have the right to sell the Goods and/or other property at public or private sale or auction and apply the proceeds to the amount due and owing and also toward the costs and expenses of exercising the power of sale (including legal fees).

13 Force Majeure

- 13.1 If at any time (by reason of war, storm, severe weather event, fire, explosion or gas leak, smoke, flood, landslide, earthquake or other act of God or natural disaster (including lightning, inductions caused by lightning storm, and fallen trees), terrorism, epidemic or other public health emergency, strike, labour dispute, shortage of labour, parts, fuel or other raw materials, road or track blockage, trespassers, accident, emergency services operations and directives, incidents caused by rail service operators, vehicle breakdown, cyberattack, software malfunction, utility interruption, damage or breakdown of plant and equipment, changed market conditions, order of any governmental or regulatory body, or any other reason beyond Visy's control) it becomes practically impossible or commercially unviable in the opinion of Visy to supply the Services (or part of the Services), then Visy shall, for the affected period, be relieved of its obligations under these Conditions and/or may delay (in whole or part) supply and/or terminate any Services, without penalty and on written notice to the Customer.

14 Notice of Claim and Time Bar

- 14.1 Visy shall be discharged of all liability unless:
 - 14.1.1 notice of any claim for loss of or damage to the Goods or relating to the performance of the Services is received by Visy in writing within 21 days of the date specified in clause 14.2 below, or within a reasonable time after such date if the Customer proves that it was impossible to notify within 21 days; and
 - 14.1.2 suit is brought in a proper forum and written notice thereof received by Visy within 9 months after the date specified in clause 14.2 below.
- 14.2 For the purposes of clause 14.1, the relevant date is:
 - 14.2.1 in the case of loss or damage to Goods, the date of delivery of the

Goods;

14.2.2 in the case of delay or non-delivery of Goods, the date the Goods should have been delivered;

14.2.3 in any other case, the event giving rise to the claim.

15 Governing law and jurisdiction

15.1 This contract is governed by the law of Victoria. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

16 Definitions

16.1 In these Conditions:

Abandoned Goods means Goods which have not been accepted for delivery and which have remained in the possession of Visy or its Subcontractor for at least 90 days.

ARTC means the Australian Rail Track Corporation.

Charges means Visy's quoted charges for Services calculated under its rate schedule or other agreed rates and the charges and any cost of any extra service provided by Visy under any contract or agreement with the Customer, and including any tax including a goods and services tax pursuant to the GST Law.

Chain of Responsibility Laws means the Heavy Vehicle National Law and Regulations, and all related State and Federal laws, including (without limitation) those enacting the Heavy Vehicle National Law and Regulations.

Conditions means these Standard Terms and Conditions of Services.

Container means any container, trailer, transportable tank, pallet, flat rack, bolster or any device used to carry on consolidate goods.

Customer means the person at whose request or on whose behalf Visy provides the Service.

Dangerous Goods means dangerous goods as defined in the Australian Dangerous Goods Code, and any Goods which are dangerous, volatile, explosive, inflammable, or offensive or which may become so, or which may become harmful to any person, property or the environment whatsoever.

Goods means the cargo, baggage, vehicle or item in relation to which any part of the Services have been or are to be performed and also includes any Container supplied by the Customer that is used, or is to be sued in relation to the Goods.

Government Agency means government or government department or other body, a governmental, semi-governmental or judicial person, or a person (whether autonomous or not) who is charged with the administration of a law.

Gross Negligence means any act or failure to act which materially and substantially deviates from a reasonable course of action and demonstrates a reckless disregard for foreseeable, harmful and avoidable consequences (but does not include any error of judgment or mistake that is made in good faith).

GST Law has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Invoice means a tax invoice issued under the GST Law.

Owner means the owner, shipper, buyer and consignee of the Goods and any other person who is or may become interested in the Goods and anyone acting on their behalf.

Rail Service means a rail haulage service for the haulage of containerised freight supplied by Visy or its Subcontractor.

Responsible Persons means the Customer, the Owner and anyone enjoying the benefit (whether directly or indirectly) of any part of the Services whether as principal, employee or agent.

Services means the whole of the operations and service undertaken by Visy in any way whatsoever connected with or concerning the Goods.

Services Agreement means, where applicable, an agreement with the Customer which includes these Conditions and contains other provisions relating to the Services

Subcontractor means any person, and its employees or agents, who pursuant to a contract or arrangement with any other person (whether or not Visy) provides or agrees to provide the Services or any part of the Services.

Temperature Controlled Goods means Goods which require, or may require, temperature control.

Terminal means the Riverina Intermodal Freight and Logistics Terminal located at Wagga Wagga, New South Wales, or any other freight terminal referred to in a Services Agreement

Visy means Visy Logistics Pty Ltd (ACN 089 137 986)