

# eServices Agreement

This agreement is made the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

between

Star Track Express Pty Limited ("the *Carrier*") a Company duly incorporated in New South Wales and having its registered office at StarTrack House, Level 2, 219-241 Cleveland Street, Strawberry Hills NSW 2012 (ABN 44 001 227 890).

and

\_\_\_\_\_ ("the *Customer*") a Company duly incorporated in \_\_\_\_\_ and having its registered office at \_\_\_\_\_ (ABN: \_\_\_\_\_).

Whereas:

- A) The Carrier conducts a transport business and the Customer contracts business to it.
- B) The Carrier has agreed to receive automated requests for data from the Customer and generate automated data responses to the Customer ("the eServices").
- C) The Customer will develop software using the eServices to provide information to the Customer's clients ("the Customer's Software").
- D) The Carrier has agreed to grant the Customer use of the eServices on certain terms and conditions.

It is agreed as follows:

## 1. ESERVICES LICENSE

- a) The Carrier licenses to the Customer for the purpose of its business the use of the eServices for the Customer's legitimate business use.
- b) The Customer agrees not to try to reverse engineer the eServices or any data provided by the Carrier.
- c) The Customer must not sub-licence, assign or otherwise provide the eServices to any other person.

## 2. DATA

- a) The Carrier owns any data generated by the eServices.
- b) The Customer agrees to use its best endeavours to control and monitor the accuracy of data supplied to and monitor the accuracy of the data received from the Carrier.

- c) The Customer acknowledges that the eServices may rely on links to external sites. The eServices are provided subject to any terms and conditions and limitations of liability in respect of obtaining and use of the data from those external sites.
- d) The Customer must ensure that any data provided by the Customer does not delay, damage or interrupt the eServices or any computer which provides the eServices.
- e) The Customer agrees to keep confidential any authentication information including passwords or identification certificates (if any). The Customer agrees that the use of any such authentication information will, in the absence of manifest error, be deemed to confirm the Customer's use of the eServices.

### **3. LIABILITY AND INDEMNITY**

- a) The Carrier will not be liable to the Customer or any third party in contract, negligence or otherwise in respect of anything done in reliance on the eServices.
- b) The Customer must indemnify the Carrier on demand for any liability for any claims made against the Carrier by any person in reliance of the eServices irrespective of whether such loss, damage, injury or liability has arisen in connection with the eServices, the Customer's Software or as a result of negligence or breach of contract on the part of the Carrier.

### **4. USE OF ESERVICES**

The Carrier will provide basic training in the use of the eServices and explanations about how they may be incorporated in the Customer's business.

### **5. ESERVICES OPERATING INSTRUCTIONS**

- a) The Carrier will provide the Customer with operating instructions which will enable the Customer to operate the eServices in the manner contemplated by the parties.
- b) The Customer will be responsible for ensuring that the eServices are used in accordance with the operating instructions.

### **6. CUSTOMER'S SOFTWARE**

- a) The Customer will be responsible for the development of any Customer's Software which uses the eServices.
- b) The Customer will provide the Carrier with the source code and any operating instructions for any Customer's Software developed by the Customer as they relate to the eServices.

- c) The Carrier is not required to check the Customer's Software developed by the Customer for any errors or inadequacies.
- d) If requested by the Carrier, the Customer's Software must acknowledge the eServices provided by the Carrier.
- e) The Customer must comply with the Privacy Act 1998 and all relevant State legislation relating to privacy and protection of personal information. The Customer warrants that it will have the authorities and consents necessary to disclose any personal information to the Carrier.

## **7. PROPERTY RIGHTS**

- a) The Customer recognises that all intellectual property rights in the eServices, including the operating instructions and any other material relating to the eServices belong to the Carrier and are supplied for use by the Customer only for the duration of this license.
- b) If the Carrier develops eServices at the request of the Customer, the intellectual property rights in the developed eServices belong to the Carrier.
- c) Within 14 days of the termination of this Agreement the Customer shall deliver up to the Carrier the materials relating to eServices (including all copies, authorised or otherwise) the operating instructions and any other supporting material whether in their original form or as modified by the Customer and render inactive the data generated by the eServices.

## **8. CONSEQUENTIAL LOSS**

The Carrier shall have no liability in respect of any consequential loss arising from the Customer's use of the eServices.

## **9. CONFIDENTIALITY**

- a) The Customer shall keep confidential all details of the function, purpose and/or operation of the eServices and of the contents of the operating instructions and any other material supplied by the Carrier. This obligation of confidentiality shall continue after the expiration of this license unless and until released by the Carrier.
- b) The parties acknowledge that the eServices are intended for use solely in relation to freight transactions between them.
- c) The Carrier shall keep confidential all details of the function, purpose and/or operation of the Customer's Software and of the contents of the operating instructions and any other material supplied by the Customer. This obligation of confidentiality shall continue after the expiration of this license unless and until released by the Customer.

**10. VARIATIONS AND IMPROVEMENTS**

- a) The Carrier agrees to make available to the Customer any updated versions of the eServices and any modified operating instructions and/or other supporting material.
- b) The Customer will incorporate any such updated versions of the eServices into its Customer’s Software immediately on the updated versions of the eServices becoming available.
- c) The Carrier may discontinue versions of the eServices 2 months after the introduction of updated eServices.

**11. TERMINATION**

- a) In the event of any breach by the Customer or if the Customer ceases to do business with the Carrier for any reason whatsoever, the Customer's rights hereunder shall cease and the Carrier shall be entitled to recover all material supplied and copies thereof.
- b) The Carrier reserves the right to cease the provision of the eServices without compensation to the Customer at any time and for any reason.

**12. GENERAL**

The Customer acknowledges and agrees to be bound by the Carrier’s Terms and Conditions of Contract annexed to this Agreement.

I/We the Customer acknowledge and agree to be bound by the terms and conditions as laid out in the eServices Agreement.

Signed by an Authorised Officer of the Customer

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

Signed by an Authorised Officer of **Star Track Express Pty Limited:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print Name

## Star Track Express Pty Limited ACN 001 227 890 - Service Conditions

### 1. Introduction

- 1.1 These conditions state the terms on which **Star Track Express Pty Limited ACN 001 227 890** ("**StarTrack**") will accept your freight for provision of the Service.
- 1.2 Unless you have a separate Service Agreement with us, these conditions apply to all Services.

### 2. Dictionary

"**Aviation Transport Security Laws**" means the Aviation Transport Security Act 2004 and any regulations made under that Act and any legislation which implements the Convention on International Civil Aviation signed at Chicago on 7 December 1944.

"**Bulk Cube Method**" means the method which takes the cubic to Dead Weight ratio (obtained by dividing the total cubic measurements by the total Dead Weight for the day's dispatch), multiplies it by the greater of the weight of the Goods as specified to us by you (whether on a CN or a Despatch Summary Report) or as measured by us and then multiplies that figure by the standard cubic factor of 250 kgs per cubic metre, rounded up to the nearest whole kilogram.

"**Charges**" means the StarTrack rates, charges, additional service charges and surcharges agreed between us from time to time (whether expressly or impliedly), the charges in clause 8, expenses to comply with any law or regulation or any order or requirement made under them, or with the requirement of any market, harbour, dock, railway, airline, shipping line, customs, excise, or warehouse authority or other person including any duties, excise and costs charged by any governmental, non-governmental or administrative authority which we become liable to pay in respect of the Goods arising out of or in connection with providing the Service and any tax including GST levied directly on a supply under these conditions.

"**CN**" means Consignment Note issued by us.

"**Cubic Weight**" means the weight determined by us by multiplying the height, width and depth of the Goods by the standard cubic factor of 250 kgs per cubic metre, rounded up to the nearest whole kilogram and if packed in a tube, the diameter of the tube will be used as both the width and height of the Goods.

"**Dangerous Goods**" means any goods deemed of a dangerous or hazardous nature including but not limited to Goods which are or may become dangerous, inflammable, explosive, volatile or offensive (including radioactive materials) or Goods which are or may become liable to damage or injure any property or persons, whether you were aware of the dangerous or hazardous nature of the Goods or not, and includes, without limitation, goods forbidden, limited or restricted from time to time by:

- (a) the International Air Transport Association ("IATA");
- (b) the International Civil Aviation Organisation;
- (c) the Civil Aviation Safety Authority;
- (d) the Australian Dangerous Goods Code; or
- (e) any applicable law, regulation, guideline or requirement of a regulatory body or government of a country or territory from which, through which or into which the Goods are carried.

"**Dangerous Goods Declaration**" means a written form of declaration that declares whether airfreight consignments contain or do not contain Dangerous Goods, which complies with the IATA Regulations and is signed by the Sender or its authorised agent.

"Date of Despatch" means the date on which the Goods are accepted by us from you and removed by us from the premises from which you ask us to collect the Goods.

"**Dead Weight**" means the weight designated by us to the Goods rounded up to the nearest whole kilogram.

"**Delivery Address**" means the address on the CN or as we are notified otherwise by you as the address to which the Goods must be delivered by us to the Receiver.

"**Delivery**" means leaving the Goods at the Delivery Address, or as close to that as we reasonably and practically can.

"**Excluded Goods**" means Dangerous Goods and each of the following items: currency, cash and banknotes; negotiable instruments of any kind; gold, silver and other precious metals; jewellery; gemstones; wrought or unwrought metals; antiques; works of art; securities; drugs; weapons; living animals or plants; refrigerated/perishable items; glass, china, household goods exceeding \$500 in value per consignment unless certified professionally packed as required by us or as otherwise agreed in writing; personal effects; second hand goods, cigarettes, tobacco and tobacco products; solar panels, any valuable documents; large sporting goods including but not limited to kayaks, surf skis, long boards (malibus) windsurfers or similar equipment exceeding 3 metres in length; Goods not adequately packaged in satchels or envelopes and Goods dispatched on a pre-paid service unless otherwise agreed in writing.

**"Force Majeure"** means any circumstance or cause beyond our control including without limitation inclement weather, acts of God, industrial disputes, air traffic control, unserviceable aircraft, war, terror, nuclear explosion, flood, fire, embargo, litigation, strikes, lockouts, riots, civil commotion, an airline captain's instructions, or act of a public authority, government or any agency instrumentality or any political subdivision thereof.

**"Fragile Goods"** means glassware, porcelain, enamel or fibreglass goods, furniture of any kind, household or personal effects or any goods that are fragile or marked fragile but do not include Semi-Fragile Goods.

**"Goods"** means the goods accepted from you with any Packaging supplied by you.

**"GST"** means any goods and services tax, value added or like tax.

**"Implied Terms"** means those terms, conditions and warranties implied into contracts at law for the supply of goods and services including, without limitation, those terms implied by the operation of the Competition and Consumer Act 2010.

**"Lost"** in clause 11 means all Goods in the consignment that have not been delivered and are unable to be located by us.

**"Montreal Convention"** means the Convention for the Unification of Certain Rules for International Carriage by Air, signed at Montreal, 28 May 1999.

**"Packaging"** means any container, packaging or pallet used for the purpose of containing and protecting the Goods for the purpose of the Service.

**"Perishable Goods"** means any Goods which are subject to waste, deterioration or spoilage over time or through contact with other goods or elements and include fruit, vegetables, dairy products, meat, newspapers and magazines.

**"POD"** means proof of delivery.

**"Receiver"** means the person, organisation, business or company who receives the Goods upon delivery by us.

**"Related Body Corporate"** has the same meaning as in the Corporations Act 2001.

**"Semi-Fragile Goods"** means Goods that are semi-fragile or marked semi-fragile including computers and electrical equipment but do not include Fragile Goods.

**"Sender"** means the person, organisation, business or company who consigns Goods to us for the purposes of us providing the Service.

**"Service"** means the whole of the carriage, operations and services we undertake for the Goods, including but not limited to the transportation and storage of the Goods. **"Sub-**

**Contractor"** means:

- (a) any person we arrange to perform the Service or any part thereof, and
- (b) any person who is an employee, agent or sub-contractor of any person in paragraph (a).

**"Transit Warranty"** means the warranties in clause 11 or any other class of warranty agreed to by us.

**"Warsaw Convention"** means the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw, 12 October 1929, or that convention as amended at The Hague, 28 September 1955, and as amended by the Montreal Additional Protocol 4 signed at Montreal on 25 September 1975 ("Montreal Additional Protocol"), whichever may be applicable.

**"We"** or **"us"** or **"our"** means **Star Track Express Pty Limited ACN 001 227 890** and its Related Bodies Corporate and its officers, employees, agents and Sub-Contractors.

**"You"** or **"your"** means any person, organisation, business or company who requests the Service from us and with whom we contract and if more than one in relation to any Service, whoever we designate is responsible for the request of the Service..

### 3. Service basis

3.1 The Service commences when the Goods are delivered to or received by us and terminates on Delivery.

3.2 Where the Receiver is unavailable or the Delivery Address is unattended, we may, at our sole discretion and at your sole cost and expense:

(i) deposit the Goods at the Delivery Address, which shall be conclusively deemed to be due Delivery of the Goods;

(ii) return the Goods to our nearest depot or Australia Post Office and advise you to collect the same;

(iii) store the Goods at your sole risk and you agree to indemnify us for all costs and expenses incurred in relation to such storage; or

(iv) attempt to re-deliver the Goods to the Receiver or the Sender.

3.3 WE ARE NOT A COMMON CARRIER and do not accept any liability as a common carrier and may refuse to transport any particular Goods for any person or Goods which are IATA restricted articles. Insurance is not included in the Charges.

- 3.4 We may establish POD by producing to you the CN or our driver's run sheet or any other acknowledgment of receipt of the Goods signed by any person present at the Delivery Address at the time of Delivery whether electronically or otherwise, which POD shall be binding on you or any person liable to pay the Charges. We do not have to produce a POD if the Goods were delivered more than 12 months prior to your request for a POD.

3.5 Subject to clauses 11 and 12, we transport all Goods at your own risk.

#### **4. Your acknowledgments and obligations**

- 4.1 You acknowledge all CNs will be, or have been prepared by you or on your behalf.
- 4.2 You acknowledge that we assume no liability for the transport of Excluded Goods.
- 4.3 You must not sell or provide to third parties any of our pre-paid products and you acknowledge that pre-paid products are non-refundable.
- 4.4 You acknowledge all the information in the CN and our contract with you and our Charges are confidential and you must not disclose them to any third party without our prior written consent.
- 4.5 You must not tender for Service a satchel or envelope containing Excluded Goods, Dangerous Goods, Semi-Fragile or Fragile Goods.
- 4.6 We will determine the Cubic Weight including that of irregular shaped packages but it is your responsibility to ensure the Goods are packed to minimise the Cubic Weight.
- 4.7 You must list the dimensions and weight of individually packed Goods on the CN.
- 4.8 You will be responsible for ensuring that all Packaging conforms with the requirements of the Receiver. If we incur any expense or liability as a result of the Packaging not conforming with the requirements of the Receiver, you must immediately upon demand by us, reimburse and indemnify us for all expense or liability incurred by us.
- 4.9 You acknowledge that subject to the Implied Terms it is your responsibility to ensure that the Service is sufficient and suitable for your purpose.

#### **5. Your warranties**

5.1 You warrant that:

- (a) you are the owner or the authorised agent of the person(s) owning or having an interest in the Goods and have full power, capacity and authority to agree to these conditions with respect to the Goods and to deal with the Goods or any part thereof as contemplated by these conditions (including to send the Goods to the Receiver); and you accept these conditions for yourself and as authorised agent for the Receiver and for any person having an interest in the Goods or for whom you are acting;
- (b) all the Goods are or will be accurately described in the CN, accurately marked, addressed and appropriately packed having regard to the nature of the Goods and suitable for the Service with ordinary care in handling;
- (c) you will fully declare all Dangerous Goods;
- (d) you will comply with all your obligations under the Aviation Transport Security Laws and provide all information and do all acts necessary for us to comply with our obligations under them;
- (e) all applicable customs, import, export and other laws and regulations of all countries to, from, through or over which the Goods may pass have been complied with, including procuring the payment of destination duties and taxes by the Receiver; and
- (f) where you are not the Sender, you must satisfy yourself that the Sender has done everything necessary to ensure that you do not breach any of the warranties under these conditions.

#### **6. Your indemnities**

Subject to clauses 11 and 12 and to the maximum extent permitted by law, you indemnify us against all loss, claims, damages, fines, expenses, demands or liabilities arising from negligent acts, omissions or breach of these conditions, breach of any applicable legislation including but not limited to legislation relating to Chain of Responsibility and dangerous goods, injury, illness or death however caused, including any claim relating to the Goods or the Service by the Receiver, Sender, owner or any other person claiming some interest in the Goods or part of the Goods.

#### **7. Our rights**

- 7.1 We may complete for you any documents required to comply with any laws (but only as authorised to do so by those laws) and act as your forwarding agent and customs broker for customs clearance, entry and export control purposes and you will pay any additional charges as advised by us.

- 7.2 We may abandon or release any Goods which are unacceptable for Service, which you undervalue for customs purposes or are misdescribed, without any liability to us.
- 7.3 We and our Sub-Contractors may, either in your name as principal or in our name as your agent, and at your sole cost and expense, enter into and perform contracts to:
- (i) use any Sub-Contractors or any aircraft or vehicle or Service methods to carry out the whole or any part of the Service;
  - (ii) lease or use any Packaging in which the Goods may be placed or packed;
  - (iii) give any receipt for the Goods or any Packaging;
- and any such contracts made for or on your behalf may be made subject to the terms and conditions of any bill of lading, any form or contract of carriage, whether by sea, rail, road or air, any lease arrangement and handover agreement or any receipt or other document, as the case may be.
- 7.4 We may open, inspect and examine any document, wrapping, package or other container of the Goods to determine their nature, condition, ownership or destination without any liability to you.
- 7.5 We may sell or dispose any uncollected or undeliverable Goods 60 days after making reasonable efforts to contact you and will not be required to account to you for the sale or disposal of the Goods unless required to do so by legislation.
- 7.6 We may accept for the purpose of the Service some Dangerous Goods, provided you have first provided to us a Dangerous Goods Declaration. Adherence (and the compliance of your consignments and documentation) to all laws and regulations relating to Dangerous Goods remain entirely your responsibility at all times. You agree to indemnify us for any liability whatsoever arising out of or as a result of your failure to comply with any law or regulations relating to Dangerous Goods.
- 7.7 If required by law, we may immediately destroy, dispose of, abandon or render harmless Dangerous Goods without first seeking your permission, without compensation to you and without prejudicing our rights to any Charges payable by you for the Service. Upon our request you must instruct us on the proper method of disposal and indemnify us for the costs incurred for disposal of such Dangerous Goods.

## 8. Charges

- 8.1 The Charges shall be considered fully earned as soon as the Goods are loaded and despatched from the Sender's premises and you must comply with the provisions of clause 8.2 irrespective of whether the Goods have been delivered to the Receiver or whether Goods which have been delivered are damaged or otherwise, and in all circumstances the Charges paid by you to us shall be absolutely non-refundable.
- 8.2 You must:
- (a) pay us, within 7 days of the date of our tax invoice/statement all Charges and if any Charges are not paid on the date for payment, pay interest on the unpaid Charges at the rate 2% higher than the prevailing rate under the Penalty Interest Rates Act 1983 (Vic); and
  - (b) pay Charges determined by the higher of the weight declared on the CN, the Dead Weight or Cubic Weight or cubic size or value of the Goods, by reference to our current rates schedule and/or the current special quoted rates offered by us to you, which may include additional charges for other services performed by us as specified in our current rates schedule.
    - (i) You agree that where you have provided information about the weight, cubic size or value of the Goods that we may use such information to determine the Charges or we may in our absolute discretion and at any time weigh, measure or value the Goods to determine the Charges whether or not you have provided such information and whether or not there is a discrepancy between the information which you have provided and the physical properties of the Goods that have been dispatched to us. For the avoidance of doubt, uncrated machinery will be measured to a minimum height of 2.7 metres.
    - (ii) You agree that we may determine the total weight and/or total cubic size and/or value of all Goods that are consigned (whether on pallets or as mixed loose freight or a combination of both) on the same day (whether in one or more locations and regardless of the destination of individual consignments), and use whatever method (whether by automatic cubing technology or the Bulk Cube Method) that we regard as the most practical at that time to attribute a weight, cubic size or value to the particular Goods for the purpose of calculating the Charges. For example, for dispatch of a small number of cartons, we may use the actual measurements of each item consigned or for large bulk dispatch which includes palletised consignments, we may employ the Bulk Cube Method.
    - (iii) We may charge an additional charge to you for the cost of any labour charges incurred by us as a result of any delay (where such delay has occurred other than



from our default) in excess of thirty (30) minutes in loading or unloading the Goods or in the event that the Receiver is not in attendance at the Delivery Address during normal hours when delivery is attempted.

- 8.3 If upon our receipt of Goods for which our Charges have been pre-paid:
- (a) in the case of prepaid CNs and prepaid satchels, we determine that you have understated the Cubic Weight or Dead Weight, you must pay us the difference between the pre-paid amount and the amount that we determine, plus an additional administration charge for the understatement; or
  - (b) in the case of prepaid CNs only, the Cubic Weight is higher than the Dead Weight, then we may charge you the Charges applicable to the Cubic Weight.
- 8.4 You agree that we are not bound by any instructions by you to collect any Charges from any other party (a "Third Party"), notwithstanding that we may accept the Goods as tendered for the Service. In the event that we agree in our absolute discretion that the Third Party may pay the Charges and the Third Party does not pay the Charges within seven (7) days from the date of the invoice issued by us to the Third Party, you must pay the Charges as specified in the original invoice issued to the Third Party within (seven) 7 days after an invoice has been issued by us to you. We advise that all Charges billed to parties who do not have an account with us will be calculated using our non-account schedule rates. Where the Third Party does not pay and you become liable for the Charges, in no case will the Charges be reduced. 8.5 We may change our Charges at any time and, after notice to you, charge you accordingly.
- 8.6 Unless otherwise agreed, if you do not select a service type on the CN, our overnight Charges will apply and the consignment will be treated and charged as a priority consignment in its service category.
- 8.7 If GST is imposed on any supply made by us to you pursuant to these conditions, you must pay to us, as part of the Charges, an amount equal to the GST payable by us in connection with that supply (as determined by us in good faith and not in contravention of the law).

## **9. Lien and set-off**

- 9.1 Save where prohibited by any applicable law or regulation, we have a general lien on the Goods and any documents relating thereto and on any other of your goods or documents in our possession for all Charges due to us or which become due to us on any account whether for the Service or any other of our services.
- 9.2 If the Charges are not paid by you or the person nominated by you or the Receiver fails to take delivery or return of the Goods, we may without notice :
- (a) store the Goods as we think fit at your risk and expense; or
  - (b) on the earlier of the expiration of a period of sixty (60) days from the date on which the Charges are payable by you or when the Receiver should have taken delivery or return of the Goods, open any Packaging and sell all or any of the Goods as we think fit (whether by public auction or private treaty) and apply the proceeds to discharge the lien and costs of sale.
- 9.3 In respect of Perishable Goods or Dangerous Goods, we may exercise our rights under clause 9.2 immediately.
- 9.4 We may deduct or set-off from any moneys due from us to you, or the person nominated by you, under any contract, debts and money due from you to us under these conditions or any contract.

## **10. Exclusions and limitations of liability**

- 10.1 Subject to the following paragraphs of this clause 10 and clauses 11 and 12, and except as otherwise set out in these conditions, the Goods are at your risk at all times and we are not liable to you or to any third party in tort, contract, bailment or otherwise for any loss, damage (including concealed damage), injury, delay, contamination, evaporation, deficiency, deterioration caused to the Goods, or misdelivery or failure to deliver the Goods whatsoever arising from the Service for any reason or any consequential loss arising therefrom howsoever caused including any failure by us to perform the Service, any negligence or breach of contract or statutory duty or wilful misconduct or default by us.
- 10.2 Clause 10.1 applies to all, and the consequences of all loss, damage, delay, deterioration, misdelivery or failure by us whether it occurs in events which are in our or your contemplation or in events which are foreseeable by you or us, or in events which could constitute a fundamental breach or breach of a fundamental term of the contract of which these conditions form part.
- 10.3 If the Service involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention or the Montreal Convention may be applicable and govern and, in most cases, limit our liability for loss of, or damage to, or delay in Delivery of the Goods. The Warsaw Convention and Montreal Convention also contain time limits for notification of claims to us and for commencement of any proceedings against us.

- 10.4 The Warsaw Convention's liability limits may vary depending on the country of delivery. If either the Warsaw Convention as amended by Montreal Additional Protocol 4 or the Montreal Convention applies to your Goods, our liability is limited to 17 Special Drawing Rights per kilo unless a higher value is declared in advance by you and an additional Charge is paid if required. The Montreal Convention's liability limits may be adjusted for inflation every 5 years.
- 10.5 If clause 10.1 of these conditions is deemed invalid by any law of any country including those which apply to damage occurring during international Service by air, then our liability, subject to clause 11, is limited to a sum not exceeding \$100 per consignment of Goods.
- 10.6 We exclude the Implied Terms to the extent that we are permitted to exclude at law and, where we are only permitted at law to limit the Implied Terms, we limit our liability for a breach of an Implied Term to, at our option, replacing or repairing the Goods, resupplying the Service or paying the cost of replacing or repairing the Goods or resupplying the Service.
- 10.7 Subject to the provisions of clause 11, you must notify us in writing of the substance of any claim (including a claim under clause 10), against us within 14 days from the date of Delivery or the date the Goods should have been Delivered if the Goods are not delivered. You must not commence legal proceedings against us until you do so.
- 10.8 If you do not institute legal proceedings for any claim against us within 120 days of Delivery or the date when the Goods should have been delivered, you release us from all liability.
- 10.9 For the avoidance of doubt, in the event that the Service involves a requirement for us to undertake any form of handling, storage, installation, removal, assembly or erection of Goods, we shall not be liable for any loss, damage or injury of any kind to any person or property howsoever arising or occurring during any part of the Service and you indemnify us in respect of any claim for:-
- (a) loss of or damage to the Goods or any other equipment belonging to or provided by you or any third party; and
  - (b) any consequential, direct or indirect loss or damage arising from any loss, damage or injury caused to you or any person or property.
- 10.10 All our rights, immunities and limitations of liability in these conditions shall continue to have full force and effect in all circumstances and notwithstanding any breach by us of these conditions.

## **11. Transit Warranty**

- 11.1 Subject to the following paragraphs of this clause, we offer you a warranty against the Goods being Lost or damaged due to our negligence or wilful act or omission during the Service and while the Goods are in our possession (the "**Transit Warranty**").
- 11.2 The Transit Warranty Cover Levels available are set out in **Schedule 1**. You may change your Cover Level at any time by [filling in our Transit Warranty Registration Form].
- 11.3 Unless you have elected that our Transit Warranty is to apply to a consignment, we do not provide a warranty against loss or damage to goods during carriage and while the Goods are in our possession.
- 11.4 If you elect to have Transit Warranty but do not select a cover level, each consignment will be covered by the Transit Warranty at the lowest Automatic Cover Level and you will be charged accordingly. You may select the level of protection you require by selecting the options available on the CN .
- 11.5 If you have indicated to us prior to a consignment of the Goods that you do not wish to have Transit Warranty, this clause 11 will not apply to the Service provided to you in relation to that consignment.
- 11.6 Any claim made by you under the Transit Warranty ("**Claim**") must be made in writing on a claim form supplied by us. Claims must be sent to "Corporate Claims Department, Star Track Express, Locked Bag 5700, Strawberry Hills, NSW, 2012" or email to transit.warranty@startrack.com.au.
- 11.7 You must notify us in writing of any Claim within the following time limits:
- (a) where the Receiver has indicated in writing on the CN that loss has occurred in respect of the Goods, within fourteen (14) days from the date of delivery of the Goods to the Delivery Address;
  - (b) where the Receiver has acknowledged that the Goods have been delivered and received in good order and condition, within seven (7) days from the date of delivery of the Goods to the Delivery Address;
  - (c) in respect of Claims for non-delivery, within fourteen (14) days after the Date of Dispatch.
- 11.8 The maximum amount that may claimed from us under the Risk Warranty is the lesser of the Transit Warranty Limitation Amount (as defined in **Schedule 1**) and the cost price of the Goods. In the case of accepted claims for Lost Goods or damage to Goods, we will pay the lesser of the declared value and the substantiated value of the Goods, or the agreed cost of repairs to the Goods as appropriate.
- 11.9 You must provide to us, together with any Claim, documentary evidence acceptable to us (for example, receipt, valuation or tax invoice):
- (a) for a Claim of the Transit Warranty Limitation Amount, as proof of the actual value of the Goods; or
  - (b) for a Claim of the cost price of the Goods, as proof of the cost price of the Goods.

- 11.10 The Transit Warranty is not available for any Excluded Goods, Dangerous Goods or Fragile Goods.
- 11.11 Unless otherwise agreed to by us, our Transit Warranty does not apply if:
- (a) the damage is caused or the Goods are Lost by electrical or mechanical derangement or injury, ordinary loss in weight or volume, shrinkage, ordinary leakage, wear and tear, insufficient or unsuitable packing or preparation, delay, inherent vice or Force Majeure;
  - (b) you do not comply with this clause 11;
  - (c) the Goods are Lost or damage occurs while the Goods are transported by air and the air carriage involves an ultimate destination or stop in a country other than the country of departure;
  - (d) where we are in possession of an unendorsed proof of delivery form for the consignment;
  - (e) we in our reasonable opinion consider the Packaging provided by you for the Goods to be inadequate for transportation;
  - (f) we in our reasonable opinion determine the Goods to have been defective prior to commencement of the Service;
  - (g) damage, mechanical failure or other operational defect in the Goods could not, in our reasonable opinion, have been caused by the Service;
  - (h) the Goods have been returned to us without a bar-coded CN and label from us or otherwise in accordance with our controlled returns procedure;
  - (i) the Goods returned to us have not been scanned into our pickup depot;
  - (j) we have not been responsible for the total Delivery of the Goods to the Delivery Address;
  - (k) where the Delivery Address is a post office box, roadside drop or postal mail box;
  - (l) where the Goods have been consigned by way of a prepaid satchel provided by us;
  - (m) where the Goods have not been packed in the original manufacturer's packaging or the equivalent.
  - (n) where the Goods are delivered unattended at your request under the special request form "Authority to Leave".
  - (o) where you fail to substantiate the declared value of Goods claimed to be Lost or damaged as and when requested by us.
- 11.12 If we pay damages under this clause for the replacement of the Goods we may retain or recover the damaged Goods.
- 11.13 We will only pay damages under this clause for Lost Goods or direct loss or damage to the Goods. We will not pay any indirect or consequential loss or increased cost of work or materials or damage including loss of profits, business or anticipated savings or any other economic loss even if we know they are possible or otherwise foreseeable.
- 11.14 GST will not be included in any payments made by us to you under clause 11.
- 11.15 You may only make one (1) Claim per consignment.
- 11.16 Where you make a valid Claim and there are outstanding amounts owed by you to us, we reserve the right to pay the Claim either directly to you or as a credit to your account.
- 11.17 Claims will only be paid by us in respect of any consignment after you have paid all your outstanding Charges, including any Transit Warranty charge applicable to your Transit Warranty Cover Level.

## **12. Credit Enquiries**

- 12.1 You expressly authorise us to make such lawful enquiries from time to time as we may require to satisfy us as to your creditworthiness including contacting all credit agencies and you undertake to provide signed written authorities when requested by us to your banker or other credit provider, credit bureaux, mercantile agencies and the like.

## **13. Paperless Despatch**

- 13.1 This clause applies where we have agreed to allow you to dispatch the Goods to us without the need to generate a CN at the point of dispatch ("**Paperless Despatch**").
- 13.2 All Paperless Despatch consignments must be despatched utilising the Star Track Despatch System or a modified system approved by us.
- 13.3 All Paperless Despatch consignments must be verified by an electronic transfer of data to us that matches the items sent on the same day.

- 13.4 We will charge your account for all Paperless Despatch consignments in accordance with the electronic data supplied by you. If for any reason data is not received by us, we reserve the right to charge you from sub-dockets raised to effect delivery.
- 13.5 Where consignments sent by Paperless Despatch contain Dangerous Goods, you must comply with all requirements under the IATA Regulations in the case of carriage by air and the Australian Dangerous Goods Code in the case of carriage by road or rail and provide to us a Dangerous Goods Declaration.
- 13.6 You must, for each Goods pick-up, prepare an Electronic Despatch Summary Report in the form provided by us ("Despatch Summary Report").
- 13.7 You must, for each Goods pick-up, provide to our pick-up person at the time of pick-up:  
(a) evidence of a successful transmission of data from you to us in respect of the Goods despatched to us on that day using Paperless Despatch (unless other arrangements have been made between us, a completed Despatch Summary Report will be sufficient evidence);  
(b) CNs for those consignments which still require paperwork;  
(c) Dangerous Goods Declaration (where applicable).
- 13.8 We will produce hard copy delivery dockets from the electronic data provided by you each day.
- 13.9 You must use your best endeavours to control and monitor the transfer of accurate data to us on a daily basis and you acknowledge that the failure to do so may result in Late Delivery of the Goods for which we will not be responsible.
- 14.10. You acknowledge that we rely on data provided by you to provide the Services to you. If you fail to provide your data to us or provide your data to us after the the time we need it to provide the Services to you within the agreed timeframe or at all, in addition to our other rights under these conditions, we reserve the right to charge your account for an additional administration fee for provision of the Service notwithstanding your failure to provide your data to us or your late provision of your data to us.
- 14.11. You must provide us with after-hours contact numbers and authorise us to access those numbers in the event that data is not received by us and we in our sole discretion determine that corrective action is required to be taken (but with no obligation to take corrective action).

#### **14. General**

- 14.1 These conditions represent the entire agreement between us.
- 14.2 We may change these conditions at any time by providing notice to you either electronically or in writing. If you continue to use our Services after notification to you of changes to these conditions, you are deemed to have accepted those changes.
- 14.3 These conditions are governed by the laws of New South Wales, Australia and any proceedings against us must be brought in New South Wales, Australia only.
- 14.4 If any part of a condition or our contract is illegal, unenforceable or invalid, it is to be treated as removed from these Conditions, but the remainder of the Conditions are not affected.

## Schedule 1 – Transit Warranty Cover Levels

We offer a comprehensive Transit Warranty service to protect your consignments against loss or damage whilst in our care. Three Transit Warranty Cover Levels are currently available for you to select at rates appearing on our website:

1. Automatic Cover Level 1 – for a Transit Warranty Limitation Amount of \$500 ; or
2. Automatic Cover Level 2 - for a Transit Warranty Limitation Amount of \$1,000 ; or
3. Optional Cover Level – for a Transit Warranty Limitation Amount of a value declared by you up to a maximum of \$10,000 on the CN or on the Star Track Dispatch System (where you use Paperless Dispatch)("Declared Value").

The "**Transit Warranty Limitation Amount**" means the maximum amount that can be claimed under the Transit Warranty pursuant to the Cover Level selected by you before commencement of the Service.

In relation to the Optional Cover Level, where the Declared Value is less than the actual value or cost price of the Goods, the maximum amount that can be claimed from us under the Transit Warranty will be the amount calculated in accordance with the following formula:

$$A = \frac{DV}{AV} \times DV$$

where:

*A* means the amount to be paid by us to you under the Transit Warranty;

*DV* means the Declared Value;

*AV* means the actual value or cost price of the Goods as supported by documentary evidence referred to in clause 11.9.

Any requests for Transit Warranty greater than \$10,000 would need to be authorised by StarTrack in writing before the Goods are consigned.

