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These Conditions apply to all Services provided by Graziosi Australia Pty Ltd. Please read these Conditions carefully

Terms and Conditions of Contract as at 15th December 2011

Introduction

1. All and any business (**Services**) undertaken by Graziosi Australia Pty Ltd and the subsidiary and associated companies thereof (**Company**) is transacted subject to these Conditions and every condition hereinafter set out shall be deemed to be a condition of any agreement between the Company and its Customer.
2. Any party (**Customer**) entering into transactions of any kind with the Company expressly warrant that they are either the owners or the authorised agents of the owners of any goods or property the subject matter of the transaction, and by entering into the transaction they accept these conditions for themselves as well as for all other parties on whose behalf they are acting.
3. The Company is NOT A COMMON CARRIER and will accept no liability as such and it is hereby expressly agreed by and between the Company and the Customer that the Company shall not be liable to be sued in like manner as if it had actually undertaken to carry the goods as a common carrier for hire. All articles are carried, moved, lifted or transported and all storage or other services are performed by the Company subject only to these Conditions AND THE COMPANY RESERVES THE RIGHT AT ITS Discretion TO REFUSE THE CARRIAGE, MOVEMENT OR TRANSPORT OF ARTICLES FOR ANY PERSON, FIRM OR COMPANY AND THE CARRIAGE OR TRANSPORT OF ANY CLASS OF ARTICLES and shall not be bound or required to give any reason for so doing.
4. Subject to and in accordance with these Conditions, the Company agrees and the Customer hereby employs and authorises the Company as agent for the Customer to contract either in its own name as principal or as agent with any person, firm or company (hereinafter referred to as "the sub-contractor") for carriage, movement, transport or storage of the goods or for the performance of any service to be performed by the company pursuant to or ancillary to these Conditions.
5. The Company may, and is hereby expressly authorised by the Customer, to delegate its authority hereunder to contract for the carriage, movement, transport and storage of the goods, and the performance of any of its obligations hereunder, to such other person, firm or company as it may think fit and also if it thinks fit may, and is hereby expressly authorised by the Customer, to constitute the relation of principal and agent between the Customer and any such person, firm or company for the purpose of contracting for such carriage, movement, transport or storage or for the performance of any such obligation.

The Company acting as principal or agent

- 6.1 The Company shall be entitled to procure any or all of the Services as an agent, or to provide those Services as a principal. Unless otherwise stated in writing by the Company to the Customer, the Company acts as principal for the purposes of the supply of the Services.
- 6.2 The Company reserves to itself full liberty as to the means, route and procedure to be followed in the performance of any Services provided in the course of business undertaken subject to these Conditions.
- 6.3 When the Company contracts as a principal for any Services, it shall have full liberty to perform such Services itself or, to

subcontract on any terms whatsoever, the whole or any part of such Services.

- 6.4 When the Company acts as an agent on behalf of the Customer and subject to advising the Customer in writing as set out in Clause 6.1, the Company shall be entitled, and the Customer hereby expressly authorises the Company, to enter into all and any contracts on behalf of the Customer as may be necessary or desirable to fulfil the Customer's instructions, and whether such contracts are subject to the trading conditions of the parties with whom such contracts are made, or otherwise. When the Company acts as agent, the Company does not make any contract with the Customer for provision of Services (other than agency services). Instead the Company secures any services by acting on the Customer's behalf in establish contracts with third parties so that direct contractual relationships are established between the Customer and such third parties. The Company is not liable for the acts and omissions of such third parties.
- 6.5 The Company shall, on demand by the Customer, provide evidence of any contract entered into as agent for the Customer. Insofar as the Company may be in default of the obligation to provide such evidence, it shall be deemed to have contracted with the Customer as a principal for the performance of the Customer's instructions.

Warehoused goods

7. Pending forwarding the goods may at any time and from time to time be warehoused or otherwise held at the sole discretion of the Company and in every case at the Customer's risk and expense as a charge or charges of and incidental to or in connection with the carriage of the goods hereunder.

Misdelivery, delay

8. The Company shall not be liable for any loss of or damage to or misdelivery, delay in delivery, failure to produce or non-delivery of goods either in transit or in storage or occurring during the term of this contract or whether caused by the negligence of the Company or by some other cause, whether the cause of damage or loss, misdelivery, delay in delivery, failure to produce or non-delivery is known or limited accordingly. It is specifically agreed that all rights, immunities and limitations of liability granted to the Company by the provisions set forth in these Conditions shall continue to have their full force and effect in all circumstances and notwithstanding any breach of the contract or any conditions hereof by the Company.

Method or route

9. If the Customer instructs the Company to use a particular method or route for movement of the goods, the Company will give priority to the method or route designated but if that method or route cannot conveniently be adopted by the Company, the Customer shall be deemed to authorise it to move or have the goods moved by another method or methods or by any other route.

Brokerages, commissions, allowances

10. The company is entitled to retain and be paid all brokerages, commissions, allowances and other remuneration customarily retained by or paid to Shipping and Forwarding Agents.

Amounts payable to the Company

- 11.1 Quotations are given on the basis of immediate acceptance and subject to the right or withdrawal or revision. If any changes occur in the rates of freight or other charges applicable to the

goods, quotations and charges shall be subject to revision accordingly with or without notice.

- 11.2 Time shall be of the essence for payment of any amounts payable under any agreement between the Company and the Customer and the time for payment will be stated on the invoice, consignment note, bill of lading, airway bill, manifest or any other order forms. The Customer shall pay to the Company in cash, or as otherwise agreed, all sums when due, immediately and without reduction or deferment on account of any claim, counterclaim or set-off.
- 11.3 If any amounts payable under any agreement between the Company and the Customer are not paid within seven days of the due date, the Customer is to pay to the Company, by way of liquidated damages, interest at the rate of [3 per cent] per month on the amount outstanding calculated from the due date until payment is made in full. The company may take legal proceedings to recover amounts owing pursuant to these Conditions and the Customer will be liable to the Company for all legal fees incurred in doing so.

Customer's warranties and indemnities

12. The Customer and its agents, if any, shall be deemed to be bound by and to warrant the accuracy of all descriptions, values and other particulars furnished to the Company for customs, consular and other purposes and they undertake to indemnify the Company against all losses, damages, expenses and fines arising from any inaccuracy or omission, even if such inaccuracy or omission is not due to any negligence.
13. The Customer shall indemnify the Company against any duties or other monies which the Company is called upon or obliged to pay in respect of the goods to any person or body and howsoever arising. Without in any way limited the generality of this indemnity, it is to include liability on the part of the Senders, Owners and Consignees to indemnify the Company in respect of any payment they may be called upon or obliged to pay to the Crown, the Collector of Customs or any other statutory body or authority whether representing the Crown or not as well as any private body company or person and whether the obligation to pay the said duties or moneys arises by reason of any statute, proclamation, declaration, rule, by-law or other legislative or quasi legislative act or by reason of liability arising in contract or in tort or by reason of the existence of any lien, charge, bill of sale, mortgage or other hypothecation of the goods or under any hire purchase agreement or by reason of the law relating to companies, bankruptcy, insolvency or executions or otherwise. The indemnity hereby conferred upon the proprietors shall continue in full force and effect whether or not the goods are or have been pillaged, stolen, lost, damaged or destroyed and shall not be affected in any way if such pillaging, stealing, loss, damage or destruction has occurred or been brought about wholly or in part by the negligence or the alleged negligence or any default omission, neglect or default or any breach of duty or obligation of the company its servants or agents.

Cargo insurance

14. The Company does not issue insurance. Upon request, the Company will provide the Customer with the contact details of insurance companies / brokers so that the Customer can obtain insurance from them directly.

Payment on delivery

15. Instructions to collect payment on delivery (COD) in cash or otherwise are accepted by the Company upon the condition that the Company in the matter of such collection will be liable for the exercise of reasonable diligence and care only.

Perishable goods

16. Perishable goods, which are not taken up immediately upon arrival or which are insufficiently addressed or marked or otherwise not identifiable, may be sold or otherwise disposed of without any notice to the Customer, Senders, Owners or Consignees of the goods and payment or tender of the net proceeds of any sale after deduction of charges shall be equivalent to delivery.

Insufficiently or incorrectly addressed goods

17. Non-perishable goods which cannot be delivered either because they are insufficiently or incorrectly addressed or because they are not collected or accepted by the Consignee may be sold or

returned by the Company. All charges and expenses arising in connection with the sale or return of the goods shall be paid by the Customer. A communication from any agent or correspondent of the Company to the effect that the goods cannot be delivered for any reason shall be conclusive evidence of that fact.

Noxious, dangerous, hazardous or inflammable or explosive goods, and other special goods

18. Except under special arrangements previously made in writing the Company will not accept or deal with any noxious, dangerous, hazardous or inflammable or explosive goods or any goods likely to cause damage. Any person delivering such goods to the Company or causing the Company to handle or deal with any such goods (except under special arrangements previously made in writing) shall be liable for all loss or damage caused thereby and shall indemnify the Company against all penalties claims damages costs and expenses arising in connection therewith and the goods may be destroyed or otherwise dealt with at the sole discretion of the Company or any other person in whose custody they may be at the relevant time. If such goods are accepted under arrangements previously made in writing they may nevertheless be so destroyed or otherwise dealt with if they become dangerous to other goods or property. The expression "goods likely to cause damage" includes goods likely to harbour or encourage vermin or other pests.
19. Except under special arrangements previously made in writing the Company will not accept bullion, coins, precious stones, jewellery, valuables, antiques, pictures, livestock or plants and the Company will not accept any liability whatever for any such goods except under special arrangements previously made in writing.

Special and General Lien – Security Interest

- 20.1 **Special and General Lien:** From the time the Company, or its servants or agents, receive the Goods into its custody, the Company, its servants or agents shall have a special and general lien on the Assets and Goods and a right to sell the Assets and Goods whether by public or private sale or auction without notice, for any unpaid amounts for freight, demurrage, container detention charges, duty, fines, penalties, salvage, average of any kind whatsoever and without limitation and for any and all debts, charges, expenses or any other sums due and owing by the Customer or the Customer's principals, servants or agents. In addition, the lien shall cover the costs and expenses of exercising the lien of such a sale including Legal Costs and Administration Costs. The lien and rights granted by this subclause 20(1) shall survive delivery of the Assets and Goods and the Company shall be entitled to retain the proceeds of sale of the Assets and Goods in respect of any outstanding amounts whatsoever referred to in this clause. The Customer accepts that any sums due and owing by the Customer are secured debts and that any payment made to the Company in discharge of the Company's lien does not amount to a preference, priority or advantage in any manner or turn.
- 20.2 The Company sells or otherwise disposes of such Assets and Goods pursuant to subclause 20(1) as principal and not as agent and is not the trustee of the power of sale.
- 20.3 **Security Interest:** The Assets and Goods, and all of the Customer's present and future rights in relation to the Assets and Goods, are subject to a continuing security interest in favour of Company for the payment of all amounts for freight, demurrage, container detention charges, duty, fines, penalties, salvage, average of any kind whatsoever and without limitation and for any and all debts, charges, expenses or any other sums due and owing by the Customer or the Customer's principals, servants or agents.
- 20.4 **Registration:** The Customer acknowledges that Company may, at the Customer's cost, register its security interest in the Assets and Goods, and all of the Customer's present and future rights in relation to the Assets and Goods, on the Personal Property Securities Register established under the Personal Property Securities Act 2009 (PPSA).
- 20.5 **Provide Information:** The Customer will immediately inform the Company if an Insolvency Event occurs with respect to the Customer. The Customer shall not change its name or other details without first notifying Company in writing at least 14 days before such change takes effect.

20.6 Contracting Out: The Customer and the Company agree pursuant to section 115 of the PPSA to contract out of sections 95, 96, 120, 121, 123 and 125 and, to the extent permitted by law, Divisions 3 and 4, of the PPSA.

20.7 Customer's Obligations: The Customer will not:

- a) permit to subsist any other security interest in relation to the Assets and Goods which would rank ahead of Company's interest; or
- b) except in the normal course of business, sell, lease or dispose of, or permit the sale, lease or disposal of, the Assets and Goods.

20.8 Company's Rights: In addition to any rights that Company has under the PPSA, Company shall have the right, as the Customer's agent, at any time while any amounts owing by the Customer to Company under any Contract remains outstanding, to enter into the premises where Assets and Goods are stored and remove them without being responsible for any damage caused in doing so. The Customer shall indemnify Company for all such moneys and all costs, charges and expenses in repossessing the Assets and Goods.

Liability for loss or damage during transport

21.1 Subject to special arrangements previously made in writing between the Company and its Customer, the Company's liability, when acting as principal, for loss or damage during transport is as follows:

21.2 Goods carried by **air** are subject to international conventions including the Convention for the Unification of Certain Rules relating to International Carriage by Air, signed in Montreal in 1999 (Montreal Convention). If Goods are lost or damaged while in the possession of the airline carrier, the Company's liability is limited to the maximum amounts of liability applicable at any time, as set out in the Montreal Convention with subsequent increases. The current limit is SDR 19.00 per kilogram for Goods damaged while in the possession of the airline carrier. However, if any applicable law applies provides for different limits of liability, those different limits will apply.

21.3 Goods carried by **sea** are subject to international conventions including the International Convention for the Unification of Certain Rules relating to Bills of Lading, signed in Brussels on 25 August 1924, with subsequent protocols (Hague/Visby Rules). If Goods are lost or damaged while in the possession of the sea carrier, the Company's liability is limited to the maximum amounts of liability applicable at any time, as set out in the Hague/Visby Rules with subsequent increases. The current limits SDR 666.67 per package or unit or SDR 2.00 per kilogram of gross weight of the Goods lost or damaged, whichever is the higher, for Goods damaged while in the possession of a sea carrier.

21.4 If Goods are lost or damaged while carried by **road or rail**, the Company's liability is limited to SDR 2.00 per kilogram for Goods damaged while in the possession of the road carrier.

21.5 If Services involve carriage by air, sea, road or other mode of transport, or possession of Goods before or after transport, and the stage in which loss or damage occurred is unknown, the loss or damage shall be deemed to have occurred while in the possession of the road-carrier.

Liability for loss or damage not occurring during transport

12. The liability of the Company, when acting as principal, arising out of any one incident not occurring during transport, whether or not there has been any declaration of value of the Goods, for breach of any guarantees implied into these Conditions by the Competition and Consumer Act 2010 and the Australian Consumer Law, or comparable legislation in each of the States and Territories of Australia, or howsoever arising, is limited to any of the following as determined by the Company:

- a. the supplying of the Services again; or
- b. the payment of the cost of having the Services supplied again; or
- c. SDR80 or the value of the Goods the subject of the Contract at the time the Goods were received by the Company, whichever is lower.

Liability of servants, agents and independent contractors

13. It is hereby expressly agreed that no servant or agent of the Company (including every independent contractor from time to time employed by the Company) shall in any circumstances

whatsoever be under any liability whatsoever to the Consignor, Consignee or Owner of the goods for any loss or damage or delay of whatsoever kind arising or resulting directly or indirectly from any act, neglect or default on his part while acting in the course of or in connection with his employment and without prejudice to the generality of the foregoing provisions in this clause, ever exemption, limitation, condition and liberty herein contained and every right, exemption from liability defence and immunity of whatsoever nature applicable to the Company or to which the Company is entitled hereunder shall also be available and shall extend to protect every such servant or agent of the Company acting as aforesaid and for the purpose of all the foregoing provisions of this clause the Company is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all persons who are or might be its servants or agents from time to time (including independent contractors as aforesaid) and all such persons shall to this extent be or be deemed to be parties to this contract.

Force majeure etc

14. The Company shall not be liable to the Customer for any breach or failure to perform its obligations under these Trading Conditions or any damage or loss to Goods resulting from one of the following:

- (1) perils, dangers and accidents of the sea or other navigable waters;
- (2) act of God;
- (3) act of war;
- (4) act of public enemies;
- (5) arrest or restraint of princes, rulers or people, or seizure under legal process;
- (6) strikes or lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general;
- (7) riots and civil commotions;
- (8) saving or attempting to save life or property at sea;
- (9) any other Force Majeure Event; or
- (10) any other cause arising beyond the reasonable control of the Company, without the actual fault or privity of the Company and without the actual fault or privity of the agents or servants of the Company.

If the occurrence of any event contemplated in this clause 14 causes a delay of over 21 days in any obligation of the Company, then the provision of Services may be terminated by notice in writing by either party to the other party.

15. The Company shall not be liable for —

- a. Any loss, injury or damage in respect of the goods caused by destruction, fire, explosion, stealing, fraud, burglary, theft, storm, flood, tempest or water or by any other cause whatsoever whether brought about wholly or in part by the negligence or alleged negligence of any act, omission, neglect, default, breach of duty or breach of obligation of the Company its servants or agents or not.
- b. Any loss, injury or damage suffered by delayed delivery of goods.
- c. Any loss, injury or damage in respect of the goods resulting from or contributed to by the contract of the goods with or proximity to other goods or sweating, wasting, decay, putrefaction, contamination, vermin, strikes, lockouts, shortage of labour or resulting from or contributed to by any circumstances beyond the reasonable control of the company.

Consequential loss

16. The Company shall not in any circumstances whatsoever be liable for indirect or consequential losses such as (but not limited to) loss of profit, loss of market, or the consequences of delay or deviation, however caused, whether or not the Company had knowledge that such losses might be incurred.

Liability in respect of rate of customs duty excise duty or other impost or tax

17. The Company shall not under any circumstances be liable for loss or damage resulting from or attributable to any quotation statement representation or information whether oral or in writing howsoever wheresoever or to whomsoever made or given by or on behalf of the Company or by servant employee or agent of the Company as to the classification of or the liability for amount scale

or rate of customs duty excise duty or other impost or tax applicable to any goods or property whatsoever.

Time Bar

- 28.1 Any claim by the Customer against the Company arising in respect of any Services provided for the Customer, or which the Company has undertaken to provide, shall be made in writing and notified to the Company within 14 days of the date upon which the Customer became, or ought reasonably to have become, aware of any event or occurrence alleged to give rise to such claim, and any claim not made and notified as aforesaid shall be deemed to be waived and absolutely barred, except where the Customer can show that it was impossible for him to comply with this time limit, and that he has made the claim as soon as it was reasonably possible for him to do so.
- 28.2 Notwithstanding the provisions of Clause 26.1, the Company shall in any event be discharged of all liability whatsoever and howsoever arising in respect of any service provided for the Customer, or which the Company has undertaken to provide, unless suit be brought and written notice thereof given to the Company within nine (9) months of the provision of the Services or delivery of the Goods or when the Services should have been provided or the Goods should have been delivered.

Jurisdiction and Law

29. These Conditions and any collateral contracts shall be governed and construed according to the laws of Australia. Any dispute, controversy or claim arising out of, relating to or in connection with these Conditions or the Services, including any question regarding existence, validity or termination of these Conditions, shall be resolved by arbitration in accordance with the Australian Centre for International Commercial Arbitration (ACICA) Rules. The seat of arbitration shall be Sydney, New South Wales. The language of the arbitration shall be English.

GST

- 30.1 Clause 30 applies if the Company is or may become liable to pay GST in relation to any Supply under these Conditions.
- 30.2 Unless otherwise stated, all charges quoted are exclusive of GST. In addition to such charges, the Customer must pay GST on the Taxable Supply to the Company of an amount equal to the GST exclusive consideration multiplied by the GST Rate. GST shall be payable by the Customer without any deduction or set off for any other amount at the same time as the GST exclusive consideration is payable. In all other respects, GST shall be payable by the Customer to the Company upon the same basis as the GST exclusive consideration is payable by the Customer under these Conditions.
- 30.3 The Company must issue an Invoice or Invoices to the Customer for the amount of GST referable to the Taxable Supply. The Company must include in any such Invoice such particulars as are required by the GST Law in order that the Customer may obtain an input tax credit for the amount of GST payable on the Taxable Supply.
- 30.4 If any part of the consideration is referable to both a Taxable Supply and anything that is not a Taxable Supply, the amount of GST payable by the Customer shall be determined by the Company and shall be the same amount of GST that would be payable if the Taxable Supply were the only Supply made to the Customer.
- 30.5 If the Customer makes default in the payment on the due date of any amount payable pursuant to Clause 28.4 then without prejudice to any other remedies of the Company, the Customer shall pay to the Company upon demand an amount equal to the amount of any damages or interest or additional GST that may become payable by the Company arising out of the default of the Customer.

Notices

31. Any notice required to be given to the Company shall be delivered to the Company to the Company's address by post, fax or email, and any such notice shall be deemed to have been given when, in the ordinary course of transmission, it would have been received by the Company.