



1 DEFINITIONS

In these Terms:

Consignee means the consignee named in the Consignment Note or as otherwise agreed in writing by the parties.

Consignment Note means the transportation instructions as attached to these Terms or as otherwise agreed in writing by the parties.

Delivery Address means the address specified in the Consignment Note or as otherwise agreed in writing by King & Wilson and You.

Delivery Receipt means the receipt required to be signed upon delivery of the Goods at the Delivery Address.

Goods means the artwork, sculpture, multimedia works or objects and any other component of the works or objects and any other articles or items accepted from You which are to be the subject of the Services together with any container, packaging or pallets supplied to on behalf of You.

King & Wilson means King & Wilson Transportation Pty Ltd ACN 119 323 394.

Services means the services undertaken by King & Wilson (its Subcontractors and any Third Party Provider) including but not limited to, the transportation, storage, packing (including the design and construction of crates or other articles used to carry the Goods), importation or exportation of the Goods, construction, erection, installation, hanging, dismantling or removal of exhibits, exhibitions, artwork or similar in relation to the Goods and/or freight forwarding or customs brokerage services.

Subcontractor means any person other than one of King & Wilson's employees who, under any agreement or arrangement with King & Wilson (whether directly or indirectly) performs or agrees to perform the whole or any part of the Services, but does not include any Third Party Provider.

Terms means King & Wilson's standard terms and conditions set out in this document, unless the context otherwise requires.

Third Party Provider means any person who King & Wilson has arranged to carry out any part of the Services which is not performed by King & Wilson but which is outsourced including any overseas contractor or sea, air or land carrier located overseas, freight forwarding and customs brokerage services.

You means the person entering into this agreement for the provision of the Services and in the case of a company shall include successors, agents and permitted assigns and in the case of an individual shall include that administrators, heirs and executors.

2 ENGAGEMENT TO PROVIDE SERVICES

You agree to engage King & Wilson and King & Wilson agrees to provide the Services in accordance with these Terms. These Terms prevail over any inconsistent terms in any document of You.

3 TERMS AND CONDITIONS OF CARRIAGE

3.1 The terms and conditions upon which King & Wilson carry or store Goods are confined to these Terms and except where You have rights under the Australian Consumer Law, King & Wilson's liability to You including in relation to loss or damage to the Goods is limited to these Terms.

3.2 Notwithstanding any other provision of these Terms, King & Wilson reserves the right to refuse to quote for the carriage or storage of any goods for any particular person and for carriage or storage of the Goods.

3.3 Notwithstanding any other provision of these Terms, King & Wilson reserves the right to decide the method and route for carriage of any goods, the conditions on which capacity and volumes will be utilised and the location for storage of any Goods at King & Wilson's discretion in accordance with these Terms.

4 FEES, CHARGES AND PAYMENT

4.1 You agree to pay for the Services at rates agreed upon in writing by You and King & Wilson from time to time. Payment shall be made into King & Wilson's nominated bank account.

4.2 King & Wilson may invoice You at any time after it collect the Goods.

4.3 You must make payment of the Goods in accordance with the requirements set out in the invoice rendered by King & Wilson, or if no requirements are set out in the invoice, within 14 days of the date of the invoice.

4.4 Time is of the essence in respect of payment of invoices.

4.5 If You default in the payment of money:

a) If amounts are outstanding from You to King & Wilson for more than 30 days, King & Wilson will be entitled to charge interest calculated monthly for the period of default for amounts not exceeding \$100,000 at the Commonwealth Bank maximum personal overdraft interest rate;

b) You must pay King & Wilson all expenses including, without limitation, legal expenses, and all debt collection agency costs incurred by King & Wilson in enforcing its rights under these Terms;

c) King & Wilson may by notice state that, unless the default is remedied, all money owing under these Terms which is not yet due for payment is now due. If the notice is not complied with then that money becomes due; and

d) King & Wilson may, without prejudice to any other right or remedy available to King & Wilson, suspend the provision of the Services and any future deliveries of any Goods to You or the Consignee.

5 LIEN AND INSPECTION

5.1 Without prejudice to the rights of King & Wilson, the Goods and all documents relating to the Goods which come into the possession or under the control of King & Wilson shall be subject to a special and general lien and pledge for monies due to King & Wilson in respect of services and/or disbursements relating to the Goods, and for any other indebtedness to King & Wilson from whatever cause by the Customer, the consignor, owner or consignee of the Goods in so far as permitted by law.

5.2 King & Wilson is entitled to retain possession of the Goods and suspend its further transit without incurring liability until all sums owing to King & Wilson have been paid. This right is additional to any right or rights conferred upon King & Wilson by these Terms and any statute.

5.3 King & Wilson may open and inspect or remove the Goods or part of the Goods and store them in such place and in such manner as it thinks appropriate at the risk and expense of the Customer.

6 YOUR OBLIGATIONS

6.1 Except where King & Wilson agrees to pack the Goods:

a) You warrant that You have complied with all laws and regulations relating to the packaging, labelling or carriage of the Goods, and that the Goods are packed in a manner adequate, having regard to their nature, to withstand the ordinary risks of transport, carriage and storage. Packing, labelling and packaging does not form part of the Services;

b) King & Wilson provides no guarantee to You or anyone else that the packing, labelling and packaging is appropriate or adequate to protect the Goods in transit or storage or complies with applicable laws;

c) King & Wilson is not liable for any loss, damage or tampering of the Goods that occurs during transit or storage or any costs or expenses arising from packing, labelling and packaging;

d) You release and hold King & Wilson harmless from any and all liability for loss, damage or tampering of the Goods and for any other expenses suffered by You as a consequence of the packing, labelling and packaging of the Goods.

6.2 You warrant and represent to King & Wilson:

a) that You are the legal owner of the Goods or legally entitled to authorise the carriage of the Goods;

b) the accuracy and completeness of all information proceeded or to be provided to King & Wilson;

c) the accuracy of the descriptions, values and other particulars provided to King & Wilson and You or Your representatives will properly and accurately describe and will never conceal or misrepresent any fact or circumstance concerning the Goods and has declared its full market value both, for customs purposes and other purposes;

d) that the Goods do not constitute contraband and that its transport or handling is not prohibited by any applicable international laws or treaties or federal state, provincial, municipal or local laws;

e) that all Goods are not noxious, dangerous, hazardous, explosive, likely to cause damage or may become dangerous, inflammable or offensive;

f) that the Goods are not perishable and are safely packaged for transport by air, sea or land without further packing requirements;

g) that the carriage of the Goods does not contravene any law or regulation;

h) that none of the activities or operations requested by You under these Terms, are in any way linked to anti-money laundering or terrorist activities and does not contravene the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth).

6.3 You must provide King & Wilson with sufficient information for King & Wilson to perform its duties and functions under these Terms. Such information shall include, but shall not necessarily be limited to:

a) accurate and detailed descriptions of the Goods coming into King & Wilson's custody or control;

b) detailed transport instructions including the collection and delivery locations and times; and

c) if applicable, all information required for customs clearance and documentation purposes. This could include, but not be limited to weight and measurements, certificate of origin and invoice.

6.4 If applicable, You warrant that the consignee of the Goods (whether You or some other person) is the holder of such entry documentation (passport, visa etc) for, or has such residency status in, the country of destination of the Goods as may be necessary to authorise the importation of the Goods to that country.

6.5 You must ensure that the Goods are available for collection at the times and locations agreed to between King & Wilson and You or Your representatives.

6.6 You understand that civil and criminal penalties, including forfeiture and sale, may be imposed for making false or fraudulent statements relating to the Goods or any person who has or may have an interest in the Goods or for the violation of applicable laws.

6.7 You acknowledge that You are responsible for all taxes, freight, duties, charges and other expenses, as well as any penalties, relating to the Goods.

6.8 You are responsible for verifying the correctness of any document issued pursuant to these Terms, for the transportation of the Goods, and any errors and/or amendments, if required, should be reported in writing to King & Wilson no later than the next working day, otherwise the documents shall be considered correct and binding in accordance with these Terms.

7 METHOD OF TRANSIT, STORAGE OR DELIVERY

7.1 King & Wilson agrees to collect or receive the Goods from You or Your representative and arrange for the transit and delivery of the Goods to the Consignee in accordance with any Consignment Note or as otherwise agreed in writing with You.

7.2 In the absence of express instructions in writing given by You and accepted by King & Wilson, the Goods may be carried by:

a) any method, means, route or procedure (whether by road, rail, sea or air) which King & Wilson determines in its sole discretion; and

b) any employees, Sub-contractors or any Third Party Provider as King & Wilson deems appropriate.

7.3 Where King & Wilson agrees, to use a particular method of transporting (whether by road, rail, sea or air) or storing the Goods, prior to the delivery of the Goods to King & Wilson, King & Wilson shall endeavour to employ that method unless if in the sole opinion of King & Wilson the particular method cannot be conveniently employed, King & Wilson may employ any other method to transport or store the Goods.

7.4 You authorise any deviation from the usual route of carriage or place of storage of the Goods which may, in the absolute discretion of King & Wilson, be deemed desirable or necessary to perform the Services. To the maximum extent permitted by law, where King & Wilson engages any Third Party Providers, King & Wilson do so on Your behalf, and as Your agent, and subject to the terms and conditions of that party. King & Wilson accepts no liability, including liability for any loss or damage, arising out of the provision of services by a Third Party Provider.

7.5 If King & Wilson arranges for a Subcontractor to undertake carriage of the Goods, and the Goods suffer loss or damage at some time when they are either in King & Wilson's possess or the possession of the Subcontractor, and if King & Wilson cannot establish, on the balance of probabilities, that the Goods were in the possession of the Subcontractor when that loss or damage occurred, the Goods will be deemed to have been in Our possession at that time.

7.6 You acknowledge and agree that the Goods may be consolidated by King & Wilson with shipments destined to the same destination and/or Consignee.

7.7 Where You have requested King & Wilson to transport the Goods by air, rail or sea the Goods shall be deemed duly delivered when they arrive at the airport, railhead or seaport nearest the location to which they were requested to be delivered.

8 INTERNATIONAL TRANSITS, THIRD PARTY PROVIDERS AND SUBCONTRACTORS

8.1 Unless otherwise instructed by You in writing, King & Wilson will arrange for one or more Third Party Providers or Subcontractors to undertake the overseas transport to the extent that that transport is by road.

8.2 If You instruct King & Wilson to arrange for any part of the overseas transport of the Goods by road to be undertaken by a transport contractor nominated by You, King & Wilson will do so as Your agent, and subject to the terms and conditions of that contractor.

8.3 Whenever King & Wilson agrees to carry, or arrange for the carriage of, the Goods into or out of the United States of America, except where you are entitled to the guarantees set out in sections 60, 61 and 62 of the *Australian Consumer Law* (as enacted as Schedule 2 of the *Competition and Consumer Act 2010*), the terms of carriage are subject to the provisions of the United States Carriage of Goods By Sea Act 136 (US COGSA). King & Wilson is liable only for loss or damage to the Goods up to the limit per package prescribed by US COGSA (being up to US \$500), unless the nature and value of the Goods has been declared to King & Wilson prior to uplift of the Goods.

8.4 You must provide whatever information may reasonably be required by King & Wilson or any governmental or quasi-governmental organisation with respect to the Goods or any party interested in the property including but not limited to information of a type referred to in the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth).

8.5 You acknowledge that all Goods may be subject to security controls by air, sea or rail carriers and government entities, and King & Wilson will submit to all required security controls and You consent to a search of any Goods if and as required by any air, sea or rail carrier or government entity. You understand and agree that King & Wilson may be required to maintain copies of shipping documents in accordance with applicable laws.

- 8.6 In the event that You instruct King & Wilson to clear the Goods through customs, You appoint King & Wilson to perform customs clearance and authorises King & Wilson or its employees, agent and Subcontractors to complete any document required to comply with customs laws and regulations for the export or import of the Goods.
- 8.7 You acknowledge that every King & Wilson employee, agent, Subcontractor or Third Party Provider including, but not limited to, any company acting as a King & Wilson agent, Subcontractor or Third Party Provider performing any of the Services is entitled to the benefit of every limitation and defence to which King & Wilson is entitled under these Terms, and to the extent necessary, King & Wilson acts as trustee for those people to enable such benefit to be given to them.

9 VALUE OF THE GOODS

- 9.1 In the case of carriage by sea, the value will not be declared or inserted in the bill of lading for the purpose of extending the shipowners' liability under Article IV Rule 5(a) of Schedule 1 or 1A of the Carriage of Goods by Sea Act 1991 except upon express instructions given in writing by You.
- 9.2 In the case of carriage by air, no optional declaration of value to increase the air carrier's liability under the Carriage by Civil Aviation (Carrier's Liability) Act 1959 Article 22(2) of Schedules 1, 2 or 5 will be made except upon express instructions given in writing to You.
- 9.3 In all other cases where there is a choice of tariff rates according to the extent of the liability assumed by carriers, warehousemen or others, no declaration of value (where optional) will be made for the purposes of extending liability and Goods will be forwarded or dealt with at Your risk or other minimum charges unless express instructions in writing to the contrary are given by You.

10 PAYMENT OF TAXES

- (a) You must, if required by applicable law, pay the amount of any withholding or other required taxes due relating to any amount payable under or in relation to these Terms and remit the tax directly to the appropriate taxing authorities at the time payment is made to King & Wilson.
- (b) You agree to fully indemnify King & Wilson, its Subcontractors and Third Party Providers against any tax liability, penalties, interest and expenses incurred by or assessed against King & Wilson, its Subcontractors or Third Party Providers as a result of Your failure to remit taxes to the appropriate taxing authority. If a tax refund becomes due to You by King & Wilson under these Terms, King & Wilson will remit this amount as and when the respective refund is received by King & Wilson from the respective taxing agency.
- (c) King & Wilson is entitled to charge and/or recover any other relevant taxes on the transit, storage and delivery which is payable in accordance with applicable law including any taxes required to be paid in respect of the Services.

11 COLLECTION, STORAGE AND DELIVERY OF THE GOODS

- 11.1 Any collection or delivery time King & Wilson gives You, Your representative or the Consignee is only an estimate. King & Wilson will endeavour to meet any reasonable time frame for collection or delivery of the Goods. To the maximum extent permitted by law, King & Wilson is not liable to You for any loss or damage (including any consequential loss or damage) arising from late collection or delay in delivery.
- 11.2 Delivery occurs when the Goods are delivered to You, Your representative or the Consignee at the Delivery Address and You must:
- ensure that You, Your representative or the Consignee have a safe and appropriate area available for delivery of the Goods which complies with all applicable workplace health and safety laws; and
 - ensure that You, Your representative or the Consignee is available at the time of delivery to confirm delivery by signing the delivery receipt. If You, Your representative or the Consignee is not in attendance when the Goods are delivered, King & Wilson reserves the right to unload the Goods at that time, provided that the Goods are capable of being reasonably secured at the Delivery Address. To the maximum extent permitted by law, You will be liable for loss or damage to the Goods if King & Wilson unloads the Goods when You, Your representative or the Consignee is not in attendance at the Delivery Address.
- 11.3 Delivery of the Goods shall be conclusively evidenced by a Delivery Receipt signed by You, Your representative or the Consignee or if You, Your representative or the Consignee is not in attendance when the Goods are delivered, by a person over the age of 18 years at the Delivery Address.
- 11.4 Unless loss, damage or tampering to the Goods is detected at the time of delivery and recorded on the Delivery Receipt, except where it is not permitted by law, You release and indemnify King & Wilson from any and all liability for loss, damage or tampering to the Goods which may or may not have occurred during transit and/or storage of the Goods. You acknowledge that the failure to inspect and then record loss, damage or tampering of the Goods on the Delivery Receipt is conclusive evidence that the Goods were delivered in accordance with these Terms, in good order and condition, intact, without shortage, damage or loss.
- 11.5 Where the Goods are stored by King & Wilson or its Subcontractors (or with a Third Party Provider at the request of You or King & Wilson) for any reason including as a result of a failure to unload, to collect or to accept the Goods:
- King & Wilson may charge for storage of the Goods and You must pay storage charges monthly at the rates advised to You by King & Wilson; and
 - If the Goods are stored with a Third Party Provider, King & Wilson shall have no liability for loss and damage to the Goods for any reason.

12 NOTIFICATION OF LOSS OR DAMAGE

- 12.1 If You, Your representative or the Consignee was unable to inspect the Goods at the time of delivery, and this is acknowledged on the Delivery Receipt by You, Your representative or the Consignee, at a time after the delivery date on inspection of the goods any loss, damage or tampering to the Goods is detected, You must notify King & Wilson in writing of any loss of or damage to the Goods within 7 days after this loss, damage or tampering is detected.
- 12.2 You undertake to execute and deliver all documents required by King & Wilson or its insurers, and to cooperate with and fully assist the insurer, including but not limited to the maintenance of any legal proceeding in Your name. You further undertake that neither You nor Your representatives shall do anything to prejudice these rights.

13 SALE OR DISPOSAL OF UNCOLLECTED GOODS

- 13.1 Subject to the operation of any applicable laws and after giving You 21 days' notice at Your last known address, King & Wilson or its Subcontractor or a Third Party Provider in possession of the Goods may sell (by private sale or auction) or otherwise dispose of the Goods if:
- the Goods are not collected or accepted by the Consignee at the Delivery Address for any reason and no alternate arrangements for delivery or storage have been agreed with King & Wilson; or
 - You remain indebted to King & Wilson (whether for transit, storage or other charges) for a period of more than 6 months from the original delivery date.
- 13.2 You are responsible for all costs, charges and expenses incurred by King & Wilson in relation to the sale or return of the Goods and such costs will be deducted along with the amount of any debt owed or owing to King & Wilson from the proceeds of the sale of the Goods.

14 INDEMNITY BY YOU

Without limiting these Terms, You agree to indemnify and keep King & Wilson indemnified:

- for any liability whatsoever as a result of or arising out of the failure of You or Your representatives to comply with these Terms;
- for loss or damage incurred by King & Wilson due to a breach of any of the warranties and representations set out in clause 6 or elsewhere in these Terms;

- from and against any tax, import or export cost, duty, payment, fine, penalty, expense, loss or damage made, incurred or sustained by King & Wilson in connection with possession or transportation of the Goods; and
- for liabilities or costs incurred by King & Wilson on behalf of You for the transport of the Goods including but not limited to cleaning of containers, return of pallets etc.

15 LIABILITY FOR LOSS OR DAMAGE TO GOODS – COMMERCIAL CUSTOMERS

- 15.1 If the Services are required by You for the purposes of a business, trade, profession or occupation in which You are engaged, the following conditions of this clause will apply.
- 15.2 Subject to clause 17, King & Wilson will only be liable for loss or damage to the Goods or any other property resulting from Our negligence (including the negligence of any Subcontractor, but excluding the negligence of any Third Party Provider).
- 15.3 King & Wilson's liability for damage or loss of the Goods arising out of the Services except where there has been a declaration of value of the Goods howsoever arising, is limited to any of the following as determined by King & Wilson:
- the supplying of the services again; or
 - the payment of the cost of having the services supplied again; or
 - the lesser of A\$200.00 for loss of or damage to any such Goods, packages or units or A\$2.00 per kilogram of the gross weight for loss of or damage to any such goods, packages or units or A\$20.00 per package or unit lost or damaged.
- 15.4 For the purposes of this clause the word "package" shall include the contents even if particulars have been provided or incorporated in any document of King & Wilson.

16 LIABILITY FOR LOSS OR DAMAGE TO GOODS – PRIVATE CUSTOMERS

- 16.1 Except where the Services are required by You for the purposes of a business, trade, profession or occupation in which You are engaged, if You are a consumer under the Australian Consumer Law, this agreement will be subject to the guarantees set out in sections 60, 61 and 62 of the Australian Consumer Law (as enacted as Schedule 2 of the Competition and Consumer Act 2010) being, in particular, a guarantee that the Services to be undertaken by Us and Our Subcontractors will be rendered with due care and skill, and the following conditions of this clause will apply.
- 16.2 Subject to clause 17 King & Wilson will only be liable for loss or damage to the Goods or any other property resulting from Our negligence (including the negligence of any Subcontractor, but excluding the negligence of any Third Party Provider).

17 EXCLUSIONS FROM KING & WILSON'S LIABILITY

- 17.1 King & Wilson (its Subcontractors and any Third Party Providers) will not be liable for loss or damage to the Goods in the following circumstances:
- for loss of or damage to Goods, unless such loss or damage occurs whilst the Goods are in the actual custody of King & Wilson and under its actual control and unless such loss or damage is due to the wilful neglect or default of King & Wilson or Subcontractors;
 - except for the guarantees provided in the Australian Consumer Law, for any delay in delivery, forwarding or transit or failure to deliver Goods, any deterioration, contamination, evaporation or any consequential loss or loss of market however caused;
 - for any damage or expense arising from or in any way connected with marks, numbers, brands, contents, quality or description of any Goods;
 - for loss or damage resulting from fire, water, explosion or theft;
 - for war, civil war, revolution, rebellion, insurrection, or civil strife arising there from, or any hostile act by or against a belligerent power including capture, seizure, arrest, restraint or detainment, arising from such risks; or
 - for confiscation, seizure, appropriation, expropriation, requisition for title of use or wilful destruction of the Goods, or portion thereof, by/or under the order of any Government (whether civil, military or de facto) and/or public authority; or
 - for loss or damage to the Goods arising from:
 - acts of God; or
 - means beyond King & Wilson's control; or
 - shortage in or damage to contents of any parcel described herein where such shortage or damage occurred as a result of the parcel being opened and inspected by appraisers, customs officials or diamond authorities or other governmental or quasi-governmental authority; or
 - any loss or damage sustained to Goods and/or parcel, which is occasioned and/or caused by breach of, or the failure of You, Your agents, employees, or representatives to comply with or fulfil any of its obligations and/or warranties under these Terms to the extent such breach or failure interferes directly or indirectly with performance of King & Wilson's obligations; or
 - where the Goods are packed by You or someone other than King & Wilson, in which case clause 6.1d) will apply.

18 INSURANCE

King & Wilson holds insurance coverage for its carrier's legal liability when transporting and storing the Goods. Unless King & Wilson causes loss or damage to the Goods, the Goods will not be protected by insurance unless You insure them for damage caused by other events (for example derailment, fire, natural disaster etc.). King & Wilson can arrange insurance for the Goods prior to collection and delivery at Your cost.

19 CANCELLATION

- 19.1 Prior to the commencement of transit of the Goods, You may cancel the Services agreed to in these Terms. King & Wilson must be notified in writing of this request.
- 19.2 Upon cancellation of the Services, You must indemnify King & Wilson for any costs and expenses incurred for any collection or preparation of Goods for transit or storage, including Third Party Provider costs incurred prior to cancellation and You must pay any reasonable cancellation charges fixed by King & Wilson.
- 19.3 You have no claim against King & Wilson for any cancellation whether by You or Us.
- 19.4 King & Wilson may cancel the Services in the following events:
- if King & Wilson reasonably considers that it may be unable to satisfy the Services within a reasonable time; or
 - an application to wind You up is made or if a controller or administrator is appointed in respect of You or any of Your assets.

20 NOTICES

A notice, consent or other communication under these Terms is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail or fax. If it is sent by mail, it is taken to have been received 3 working days after it is posted. If it is sent by fax, it is taken to have been received when the addressee actually receives it in full and in legible form.

21 VARIATION

Any modification of these Terms cannot be agreed orally with You and must be confirmed in writing by King & Wilson (by email or letter).

22 GOVERNING LAW

These Terms are governed by the laws of the State of Victoria in the Commonwealth of Australia. The parties agree to submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in the State of Victoria and the Commonwealth of Australia and any court that may hear appeals from any of those courts, for any proceedings in connection with these terms, and waives any right it might have to claim that those courts are an inconvenient forum.