

SCHEDULE 1: Terms and Conditions

1. Defined Terms

In these terms and conditions unless the context otherwise requires:

Administration Fee is the fee set out in the Cover Page payable by the Customer for the finalising of its account, preparing invoices, status reports and conducting an audit on the status of all Stored Material in readiness for delivery to the Customer.

Agreement means the "Terms of Agreement" as defined in the Cover Page.

Anniversary means each anniversary of the date of this Agreement.

Cover Page means the cover page to which this Schedule 1 is attached.

Customer means the person listed as the customer on the cover page and, where the context permits, includes any person appropriately authorised by the Customer.

Default Interest Rate means the rate of two (2) percent per annum above the standard rate published by the Commonwealth Bank of Australia for unsecured business overdraft facilities over \$100,000.00 from time to time.

Fee Fixed Rate Period means the "Fee Fixed Rate Period" as defined in the Cover Page.

Fees means the Storage Fee and Service Fee collectively and any other fees or charges payable by the Customer to Grace pursuant to this Agreement.

Grace means Grace Information & Records Management (Australia) Pty. Ltd and, where the context permits, includes any agents, contractors and subcontractors of Grace Information & Records Management (Australia) Pty. Ltd ABN 93 097 110 257.

Initial Quantity means the highest level of Stored Materials stored by the Customer with Grace during the first ninety (90) day period commencing from the date of this agreement.

The Initial Quantity is to be increased by 5% in each subsequent 12 month period of the Term.

Privacy Policy means the privacy policy adopted by Grace from time to time.

Retrieval Fee means any per box standard retrieval fee charged by Grace from time to time.

Services means the services to be provided by Grace, such services including the storage of the Stored Material.

Service Fee means the service fee charged by Grace from time to time in accordance with its Schedule of Rates attached at Schedule 2.

Statement of Works means the Statement of Works previously provided by Grace to the Customer which forms part of this Agreement.

Storage Fee means the fee charged by Grace from time to time in accordance with its Schedule of Rates attached at Schedule 2.

Stored Material means any document or other material which you request us to store for you, whether at the time of this Agreement or subsequently.

Term means the term set out in the Cover Page.

Variation Formula means the "Variation Formula" set out in the Cover Page.

2. Agreement and Term

- (1) Grace and the Customer agree that Grace is to provide the Services to or on behalf of the Customer for the Term in accordance with this Agreement.
- (2) The parties agree that the Customer will be deemed to have accepted the terms of this Agreement upon either:
 - (a) the execution and return of this Agreement by the Customer to Grace; or
 - (b) if this Agreement is not returned in accordance with paragraph (a), within one (1) month of the date of issue of this agreement to the Customer and the continued use of the Services by the Customer.
- (3) Where this Agreement is for a fixed term (**Fixed Term**) it is automatically extended for a further period equivalent to the Fixed Term unless the Customer gives notice to Grace at least 30 days prior to the date of expiry of the Fixed Term (as extended) that it does not wish the Fixed Term to be extended. Where the Customer gives notice to Grace in accordance with this clause this Agreement is to terminate 90 days from the date of the Customer's notice.
- (4) Grace may terminate this Agreement at any time, without reason, upon giving 90 days notice in writing to the Customer.
- (5) On termination of this Agreement the Customer must pay to Grace the Administration Fee, the Retrieval Fee, any transport fees or associated handling costs (if transport is not provided by Grace, then palletisation and labour costs will apply to the account termination..

3. Payment

- (1) The Customer must pay to Grace:
 - (a) the Storage Fee monthly in advance; and
 - (b) the Service Fee monthly in arrears.
- (2) The Storage Fee and Service Fee must each be paid by the Customer to Grace within 14 days of the date of invoice issued by Grace.
- (3) The Fees are to be automatically increased upon expiry of the Fee Fixed Rate Period, or if no such period is specified, on each Anniversary.
- (4) The increase to the Fees referred to in paragraph (3) above is to be calculated in accordance with the Variation Formula.
- (5) Where Stored Material is received or stored for part of a month only the Fees for that Stored Material is to be calculated proportionally to the period for which that material was subject to this Agreement.
- (6) Paragraph (5) does not apply to Stored Material that is retrieved by the Customer for the purpose of final retrieval or destruction. In the circumstances set out in the preceding sentence, the Customer must give 30 days notice in writing to Grace of final retrieval or destruction (**Retrieval/Destruction Notice**) prior to the Fees for that Stored Material ceasing to accrue. The Fees will cease to accrue in accordance with this Agreement at the end of the month following the month in which the Retrieval/Destruction Notice was received by Grace.
- (7) Where:
 - (a) the Customer provides instructions for the performance of Services;
 - (b) Grace acts on those instructions; and
 - (c) the Customer subsequently cancels the instructions or request for Services;
 - (d) the Customer remains liable to pay for the Services, such liability to be calculated by reference to the Fees.
- (8) Where the Customer has not paid an invoice within 14 days of the date of that invoice Grace may charge, and the Customer must pay to Grace, interest on the total unpaid amount (**Interest**). The Interest will be calculated:
 - (a) based on the Default Interest Rate;
 - (b) on the amount owed by the Customer to Grace; and
 - (c) daily and compounded monthly,
 until such time as the outstanding amount has been paid.
- (9) In consideration of Grace providing the Services, the Customer agrees that Grace may exercise a lien over the Stored Materials until payment of the Fees have been satisfied in accordance with this Agreement.

4. Obligations of Grace

Grace must:

- (1) Store the Stored Material at one of its facilities;
- (2) Permit the Customer to access and collect the Stored Material (or any part of it) during ordinary business hours;
- (3) Deliver the Stored Material (or any part of it) to an address notified by the Customer by the time specified in, and in accordance with the Statement of Works.;
- (4) Destroy the Stored Material (or any part of it) upon receipt of an appropriate authorisation from the Customer by the time specified in, and in accordance with the Statement of Works.;
- (5) Keep all information acquired by Grace confidential as a consequence of it providing the Services;
- (6) Comply with the Privacy Policy; and
- (7) Exercise reasonable care in providing the Services to the Customer.

5. Minimum levels of Stored Materials

Where

- (1) This Agreement is for a Fixed Term; and
- (2) The Customer:

- (a) breaches or tries to terminate this Agreement before the expiry of the Fixed Term; or
- (b) permits either the Initial Quantity of Stored Materials, or the present level of Stored Materials stored by Grace on behalf of the Customer (whichever is the greater) to decrease below 50%.

Then irrespective of whether Grace terminates this Agreement the Fees for the remainder of the Fixed Term are to be calculated by reference to the greater of:

- (c) the Fees calculated by reference to the Initial Quantity; or
- (d) the present level of Stored Materials stored by Grace on behalf of the Customer.

6. Warranties from the Customer

The Customer warrants that:

- (1) The Customer is the owner, or the authorised agent of the owner, of the Stored Material;
- (2) The Stored Material comprises only boxes, cartons, files, journals, binders, documents, correspondence, magnetic tapes, computer media, printed materials, audio tape, film or other material of a like or related nature;
- (3) Unless disclosed to Grace in writing, the Stored Material does not contain any materials which are or may become of a dangerous, corrosive, highly combustible, explosive, damaging or noxious nature not likely to encourage any vermin or pest.

7. Limitation of Grace liability

- (1) Grace is not a common carrier and accepts no liability as a common carrier.
- (2) The total liability of Grace to the Customer is limited to the lesser of the following two amounts:
 - (a) The value of the physical Stored Material without having regard to any writing, data codes, plans, drawings or any other form of information which may be contained in or on the Stored Material;
 - (b) The amount of all Fees paid by the Customer in the preceding 12 month period.

8. Default

- (1) The Customer breaches this Agreement if:
 - (a) The Customer breaches a term of this Agreement;
 - (b) The Customer becomes insolvent or subject to external administration;
 - (c) The Customer becomes subject to a resolution or order for it to be wound up or deregistered.
- (2) Where the Customer is in breach of this Agreement:
 - (a) the Customer may not exercise any right conferred upon it pursuant to the terms of this Agreement;
 - (b) Grace may suspend performance of the Services; and
 - (c) Grace may terminate this Agreement with immediate effect by serving notice in writing on the Customer.
- (3) Where Grace terminates this Agreement:
 - (a) Grace may deliver the Stored Materials to the address of the Customer set out in the Cover Page;
 - (b) In the case of insolvency or termination pursuant to paragraphs (1)(b) and (1)(c) – Grace may deliver the Stored Materials to the receiver, administrator or liquidator of the Customer at Grace's scheduled rates and charges applicable from time to time;
 - (c) The Customer may request delivery of the Stored Material but Grace is not required to comply with such request until the Customer has paid the amounts set out in paragraph (d); and
 - (d) Grace may recover from the Customer:
 - (i) the Fees for the balance of the Term;
 - (ii) the Administration Fee and Retrieval Fee (if applicable);
 - (iii) the Interest; and
 - (iv) any other costs and expenses incurred by Grace as a consequence of the Customers breach (including legal costs on a full indemnity basis).
- (4) Where Grace exercises the rights set out in paragraph (3) above Grace is to have no liability to the Customer in respect of theft, loss, damage or destruction of the Stored Materials once they have been delivered to the appropriate address.
- (5) Where the Customer breaches this Agreement Grace may, at its absolute discretion:
 - (a) notify the Customer that it intends to destroy the Stored Material; and
 - (b) if, within 30 days of the notice referred to in paragraph (a) above, the Customer does not:
 - (i) pay all amounts owed to Grace in accordance with this Agreement;
 - (ii) provide an address to which the Stored Material may be delivered; and
 - (iii) pay the costs of the delivery at Grace's scheduled rates and charges applicable from time to time;
 then Grace may, without any liability to the Customer, destroy the Stored Material.
- (6) Notwithstanding any other term of this Agreement the Customer indemnifies Grace against all loss, costs, expenses, claims, demand or liability of any nature arising as a consequence of:
 - (a) the Customer's breach of any term of this Agreement; and
 - (b) any action taken by Grace in accordance with the terms of this Agreement, where such action is taken as a consequence of the Customer's breach.

9. No Soliciting or interference

The Customer (either directly or indirectly) during the term of this Agreement and for a term of two (2) years after this agreement comes to an end (**Restraint Period**), must not:

- (1) seek to procure or solicit any person who was, at any time during the Restraint Period, an employee or contractor of Grace to leave the employ of, or cease providing the services to Grace; or
 - (2) interfere, in any way, with the relationship between Grace and its employees, client, customers, contractors or suppliers.
- without the prior written consent of Grace which may be refused at its absolute discretion or granted on such terms as Grace thinks fit.

10. Miscellaneous

- (1) This Agreement is governed by the laws of New South Wales. Each party submits to the exclusive jurisdiction of the Courts of New South Wales.
- (2) The rights contained in this Agreement are personal to the Customer and may not be assigned or transferred without the prior written consent of Grace.
- (3) The non exercise or delay in performance of a right under this Agreement does not constitute a waiver. A waiver of a right may only be made by notice in writing signed by the party waiving the right.
- (4) This Agreement is the entire agreement of the parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this Agreement.
- (5) This Agreement may only be amended or varied by agreement in writing signed by both parties.
- (6) Any notice required or permitted to be given under this Agreement must be in writing and may be delivered personally or by pre-paid post or by facsimile or by electronic mail. In the case of posting notices will be deemed to have been delivered on the day of receipt, unless receipt is at a time after 5pm or on a date which is not a business day. In which event the date of deliver will be the next business day.