

STANDARD TERMS AND CONDITIONS OF CONTRACT FOR TRANSPORT SERVICES - E-GO.COM.AU - A DIVISION OF MX ENTERPRISES PTY LTD ACN 650 217 351, ("MXE")

THESE TERMS AND CONDITIONS:

- A. EXCLUDE OR LIMIT THE LIABILITY OF MXE FOR LOSSES AND DAMAGES TO THE EXTENT THAT THE LAW PERMITS. INTENDING CONSIGNORS ARE ADVISED TO READ THEM CAREFULLY AND TO CONSIDER PURCHASING APPROPRIATE INDEMNITY OR INSURANCE COVER TO ENSURE THEIR INTERESTS ARE ADEQUATELY PROTECTED;
- B. PRE-AUTHORISE MXE TO MAKE A TEMPORARY HOLD OF THE HOLD AMOUNT AGAINST THE PAYMENT FUNDING SOURCE OF THE CONSIGNOR, UNTIL THE HOLD DATE; AND
- C. AUTHORISE MXE TO APPLY THE HOLD AMOUNT TO ANY ADDITIONAL CHARGES PAYABLE BY THE CONSIGNOR.

1. *Definitions, Interpretation and application*

- 1.1 These terms and conditions (hereinafter referred to as 'conditions') shall apply to provision of services arising from orders placed through the computer-based internet on-line booking system situated at and known as 'e-go.com.au' (in these conditions referred to as 'e-go') owned and operated by MXE.
- 1.2 In these conditions, except where otherwise expressly provided or where such meaning would be repugnant to or manifestly inconsistent with the context in which the word or expression appears:
 - (a) 'Additional Charges' means any amount(s) in addition to the price originally quoted, including:
 - (i) any shortfall between that price based on incorrect or incomplete data input by the consignor and the price that would have been quoted based on correct and complete data; and
 - (ii) any additional amounts chargeable in accordance with the surcharges schedule or these conditions; and
 - (iii) any other amounts payable by the consignor under these conditions.
 - (b) 'Australian Consumer Law' means Schedule 2 of the Competition and Consumer Act 2010 (Cth) and the corresponding provisions of the relevant State and Territory fair trading acts.
 - (c) 'Charges' means the prices, fees and charges being consideration due and payable to MXE for provision of services comprising:
 - (i) the charge quoted by e-go.com.au in response to data regarding the intended consignment input by the consignor ('quoted price'); and
 - (ii) any Additional Charges.
 - (d) 'Consequential Loss' means 'any loss, damage or costs incurred by a party or any other person that is indirect or consequential, as well as loss of revenue; loss of income; loss of business; loss of profits; loss of production; loss of or damage to goodwill or credit; loss of business reputation, future reputation or publicity;

loss of use; loss of interest; losses arising from claims by third parties; loss of or damage to credit rating; loss of anticipated savings and/or loss or denial of opportunity.

- (e) 'consignee' means the intended recipient of the consignment as advised to MXE by the consignor through e-go.com.au.
- (f) 'consignment' means goods (together with any containers, packaging, pallets or similar items containing, holding or accompanying the goods) accepted by MXE from a sender for the purpose of supplying the services.
- (g) 'consignment note' means either:
 - (i) a document (in a form approved by MXE) raised by MXE or the sender to accompany a consignment; or
 - (ii) an entry on MXE's form known as a run sheet, identifying the sender and consignee of the consignment to which (i) or (ii) hereof relates and used to obtain a recipient's signature as proof of delivery of the consignment.
- (h) 'consignor' means the person (or persons) who places and pays for an order through e-go.com.au for the provision of services.
- (i) 'Contract' means the contractual relationship between MXE and the consignor arising from the placement of and payment for an order through e-go.com.au for the provision of services.
- (j) 'dangerous goods' means goods classified as such by any applicable Dangerous Goods Code or similar instrument applicable to the goods, or goods which are or may become dangerous, volatile, offensive, noxious, hazardous, inflammable, poisonous, corrosive, explosive or radioactive or which are or may become liable to injure people or cause damage to the environment or any property whatsoever.
- (k) 'financial institution' means any bank or other financial institution with whom the consignor conducts the payment funding source.
- (l) 'goods' means the wares and other tangible items of property (including liquids and bulk materials) comprised in a consignment.
- (m) 'Government Agency' means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world and includes any self-regulatory organisation established under statute or any stock exchange.
- (n) 'hold amount' means \$200 or such other amount advised by MXE in writing prior to an order being placed by the Consignor.
- (o) 'hold date' means the date on which:
 - (i) the consignment is delivered pursuant to these conditions; and
 - (ii) MXE has applied the hold amount to satisfy any Charges and Additional Charges, whichever is later.
- (p) 'invoice' (and 'invoicing') means a tax invoice issued by MXE for the purposes of the A New Tax System (Goods and Services) Tax Act, 1999 (as amended) or any other legislation

imposing a goods and services tax or value added tax with respect to the provision of services and which can be sent by email in the same way as provided for notices pursuant to sub-clause 1.2(v) hereof.

- (q) 'Laws' means:
 - (i) legislation, ordinances, regulations, by laws, orders, awards, proclamations, directions and practice notes of the Commonwealth, a State or Territory or any Government Agency;
 - (ii) certificates, licenses, consents, permits, approvals, qualifications, registrations, standards and requirements of organisations having jurisdiction in connection with the goods; and
 - (iii) all other laws from which legal rights and obligations may arise.
- (r) 'Loss' means any losses, liabilities, damages, costs, charges or expenses (including lawyer's fees and expenses on a full indemnity basis) whether direct or indirect (including Consequential Loss), fines and penalties.
- (s) 'loss' and 'damage' in relation to goods shall include concealed damage, deterioration, contamination or evaporation and all other loss (including Consequential Loss) or damage (including personal injury and death).
- (t) 'MXE' means MX Enterprises Pty Ltd (ACN 650 217 351), howsoever trading, its employees and agents.
- (u) 'normal trading hours' means the time between 7.30am and 6.30pm on a working day.
- (v) 'notice' means written notice to be given by email which, with respect to MXE, will be valid if sent to enquiries@e-go.com.au and, with respect to any other party, will be valid if sent to the address shown on the last email received by MXE from that party, and, the period prescribed herein for any notice will exclude the date of the notice.
- (w) 'owner's risk' means that, subject only to the provisions of these conditions, MXE shall not be liable for loss of or damage to goods or other specified risks (including but not limited to mis delivery or late delivery).
- (x) 'pallet' means any mobile platform or container made of wood, metal, plastic or other material used for storage and/or transportation of goods (including liquids) and includes equipment referred to as 'skids' and 'pallets'.
- (y) 'payment funding source' means the consignor's credit card or other (such as 'PayPal') account from which Charges are to be paid and includes any alternative or secondary source of funds nominated by the consignor to the financial institution concerned.
- (z) 'POD' means proof of delivery of a Consignment.
- (aa) 'services' means the whole or any part of the operations and services performed or supplied by MXE in connection with a consignment, including but not limited to the collection, carriage, transportation, delivery and/or storage of the consignment.
- (bb) "sender" means the person (including a consignor) from whom MXE collects a consignment for the purpose of supplying services;
- (cc) 'subcontractor' includes any person who, pursuant to a contract or arrangement with any other person (whether or not MXE) performs or agrees to perform services or any part thereof.

- (dd) 'surcharge' means a charge payable pursuant to and invoiced in accordance with the Surcharges Schedule.
- (ee) 'Surcharges Schedule' means a document so or similarly titled and produced by MXE appearing on the e-go website immediately following these conditions at the time of the e-go order being placed.
- (ff) 'tender' (and 'tendered') in relation to goods consigned to MXE includes goods picked up from a sender (other than the consignor) on the instructions of the consignor.
- (gg) 'weight' includes mass.
- (hh) 'working day' means any day from and including Monday to Friday but excluding public holidays in the place of residence of the consignee.

1.3 In these conditions:

- (a) the singular includes the plural and the other way around;
- (b) 'person' includes natural person, partnership, corporation, unincorporated association, regulatory body or governmental or semi-governmental organisation;
- (c) reference to clauses/sub-clauses is reference to corresponding clauses and sub-clauses in these conditions.
- (d) reference to legislation, regulations and other statutory enactments and instruments shall include reference to amendments thereto and successors thereof.

2. **Payment**

- (a) The consignor hereby authorises MXE to debit or charge the consignor's payment funding source with the hold amount ("consignor authorisation") in accordance with these conditions.
- (b) By making the consignor authorisation, the consignor irrevocably and unconditionally authorises MXE to:
 - (i) make a temporary hold of the hold amount against the consignor's payment funding source; and
 - (ii) apply the hold amount, without any further authorisation or notice to the consignor, to satisfy any Charges including any Additional Charges payable under these conditions; and
 - (iii) to the extent that the hold amount is not required or there is any part of the hold amount remaining after the relevant portion of the hold amount is applied, release the hold amount (or part thereof, as applicable) as soon as practicable after the hold date.
- (c) By making the consignor authorisation, the consignor agrees to be bound by these conditions, including payment of all moneys payable in accordance with these conditions, (including any Additional Charges).
- (d) Where the person placing the order through e-go is not the same as the person who has made the consignor authorisation, both shall be defined as the consignor for the purposes of these conditions, each shall be jointly and severally liable for breach of or failure to comply with these conditions and reference in these conditions to placement of an order shall be deemed to include payment of charges with respect to that order.

- (e) Any Charges, including Additional Charges shall become due and payable as soon as they have been calculated, without MXE having to give prior notice to or to obtain the express prior consent from the consignor, PROVIDED HOWEVER that MXE shall, at or about the same time as it applies the hold amount to any Charge including any Additional Charge issue to the consignor a combined invoice/receipt containing particulars of all such charges.
- (f) Additional Charges shall be calculated in accordance with Clause 6 and shall be subject to the provisions of Clause 10 regarding the bringing of credit claims.
- (g) The consignor shall indemnify and keep indemnified MXE from and against all liability whatsoever to any other person arising from any action taken by MXE pursuant to sub-clause 2(i).

3. Variation

No person (including an employee, agent or subcontractor of MXE) has authority from MXE to waive or vary any of these conditions or the application of the Surcharges Schedule unless the waiver or variation is in writing and signed by a director of MXE.

4. Conditions will prevail

- 4.1 The terms of any documentation accompanying the consignment raised by the sender shall not diminish or negate the application of these conditions or Surcharges Schedule to the consignment.
- 4.2 The signature of a consignment note by an employee or other representative of MXE on collection of goods shall constitute no more than an acknowledgment of pick-up of those goods but not as to their nature, number, quantity, quality or value.
- 4.3 Further to sub-clause 4.2, it is acknowledged and agreed that MXE relies on details recorded on the consignment note by the sender but cannot verify and does not admit their accuracy or completeness.

5. Pricing and Surcharge

- 5.1 MXE shall have the right at any time (and from time to time) to review and increase existing surcharges or impose new surcharges provided that such increase or imposition will only apply to any bookings made by the consignor after the new changes have been notified to the consignor in accordance with clause 5.2.
- 5.2 For the purposes of clause 5.1, notification shall be deemed to have been given by MXE from and including the day when these details are displayed on e-go's website and it is the absolute responsibility of the consignor to ensure they are aware of those details.
- 5.3 Under the conditions, MXE has the right at any time to increase existing or impose new surcharges upon giving the consignor at least one month's notice. Consignors are required and expected to be aware that:
 - (a) notification will be deemed properly given by MXE displaying details of changes on its website as prescribed under clause 5.2; and
 - (b) it is the absolute responsibility of consignors at all times to ensure awareness of changes; and
 - (c) if in any doubt, consignors should contact MXE to clarify or confirm the nature of any such changes including in the manner prescribed under clause 5.4.
- 5.4 Where a consignor has or should reasonably have a doubt as to whether and/or what surcharge applies (including with respect to 'capital cities', 'other areas' and 'P.A.A.' items) it is the consignor's

sole responsibility before or at the time of placing a booking to contact MXE and provide full and accurate particulars to enable that doubt to be resolved, and in the case of a 'P.A.A.' item to ask for and obtain a price based on those particulars.

5.5 Where the consignor fails to act responsibly in accordance with subclauses 5.3 and 5.4 MXE shall be at liberty to impose a surcharge in accordance with the Surcharge Schedule based on the nature and characteristics of the freight as determined or measured by electronic or mechanical device or by any other means, and, in the case of 'P.A.A.' items or distinction between 'capital cities' and 'other areas', based on a charge normally levied by MXE on similar freight sent in similar circumstances to the same or a similar destination as nominated by the consignor, and, in the absence of compelling evidence to the contrary the surcharge so determined by MXE shall conclusively be deemed true and correct for invoicing purposes.

6. ***Liability***

6.1 MXE is not a common carrier and accepts no liability as such (including, subject to exception referred to in sub-clause 8.9 to insure goods against loss or damage) and may in its absolute discretion:

- (a) refuse (without need to show cause) provision of services to any person (including the consignor) whether before or after collection of goods or transportation by MXE has occurred due to an act or omission by the consignor that is in contravention of these Condition or Laws;
- (b) without limiting the generality of sub-clause 6.1(a), refuse to pick up or deliver goods where, in the absolute discretion of MXE, facilities and resources available at the point of pick-up or delivery (as the case may be) are not adequate to properly and safely effect loading, unloading or handling of goods;
- (c) without limiting the generality of sub-clause 6.1(a), refuse to pick up or deliver freight where, the consignor has failed to comply with its obligation to obtain insurance in accordance with clause 7; and
- (d) open any document, envelope, package or other container in which goods are placed or packaged to inspect the goods to determine their nature or condition, or, where any consignment note or identifying document or mark is lost, damaged or destroyed, to ascertain the ownership or intended destination of the goods provided however that MXE shall not be obliged to do so and shall incur no liability whatsoever in consequence of either doing or not doing so.

6.2 Any refusal by MXE pursuant to sub-clauses 6.1(a) or 6.1(b) or 6.1(c):

- (a) shall be conditional upon refund by MXE to the consignor of moneys paid by the consignor for services not supplied; and
- (b) entitle MXE to impose a cancellation charge on the consignor under clause 6.3, unless the reasons or circumstances giving rise to MXE's refusal to provide the services were entirely and solely within the control of MXE (**MXE Fault**).

6.3 Where MXE is unable or unwilling to provide the services for reasons or circumstances other than a MXE Fault, MXE may retain the quoted price paid by the consignor as a cancellation fee and pursue recovery from the consignor of any unpaid Additional Charges.

6.4 Without limiting the generality of sub-clause 6.3, circumstances giving rise to the entitlement of MXE to refuse pick-up and retain or claim moneys as a cancellation fee will include the following:

- (a) failure on the part of the consignor to have the consignment:
 - (i) packaged properly in accordance with sub-clause 8.8(a); or

- (ii) suitably identified by consignment note or otherwise as to the identity and location of the consignee; or
- (iii) otherwise suitable or available for pick-up, at the time MXE's representative calls for pick-up at the designated place and at or about the time appointed by the consignor or otherwise at a time reasonable in all the circumstances (which shall include normal trading hours);

(b) the consignment contains dangerous goods or other goods listed on e-go as goods MXE does not carry;

(c) particulars of the consignment (including as to the nature, number of items, weight and dimensions) recorded by the consignor at the time of placing the order through e-go understate those of the actual consignment by a magnitude that MXE in its absolute discretion considers unreasonable;

(d) the consignor cancels pick-up after MXE's vehicle has been dispatched to carry out the pick-up notwithstanding that the consignor is advised by MXE that:

- (i) the vehicle has been dispatched; and
- (ii) the moneys paid through e-go will be forfeited as a cancellation fee;

(e) the place designated for pick-up and/or delivery is changed after the vehicle has been dispatched.

6.5 If MXE proceeds to pick-up despite having a right to refuse to do so under clause 6.3, and /or 6.4 the consignor shall be liable for Additional Charges incurred by MXE in collecting and delivering the consignment, including those attributable to:

- (a) the difference between the actual weight and/or dimensions of the consignment and the weight and/or dimensions declared by the consignor through e-go (including, where applicable, any need to use an additional or replacement vehicle as a result of that difference);
- (b) the change in pick-up and/or delivery location;
- (c) the need to package, re-package, palletize, wrap or otherwise deal with and handle the freight in consequence of a failure on the part of the sender to have it properly prepared for transport.

6.6 It is acknowledged and agreed that where a representative of the sender is not available to verify and rectify any discrepancy as to weight and/or dimensions, the measurements and calculations of MXE's representative shall be conclusive evidence of the correct particulars in the absence of any demonstrable and manifest error.

6.7 Where subsequent to pick-up and before delivery MXE measures the dimensions and/or weight of a consignment by electronic or mechanical device or any other means, the dimensions and/or weight so determined shall in the absence of any demonstrable and manifest error be deemed to be the actual dimensions and/or weight for the purposes of charging and invoicing the consignor.

6.8 It is also acknowledged and agreed that:

- (a) all consignments will be charged at the rate of three hundred and thirty three kilograms (333kgs) per cubic metre or on the actual weight of the consignment whichever produces the greater charge;
- (b) that the weight so calculated shall be rounded up to the next whole kilogram for charging purposes;

- (c) for differences referred to in sub-clauses 6.5(a) and 6.5(b), Additional Charges shall include the difference between the quoted price and such other price, if any, as would have been produced had the correct data been input into e-go;
- (d) if another price cannot be generated by e-go from input of correct data, Additional Charges shall include as reasonably calculated by MXE having regard to the charge which would have been levied on a substantially similar consignment (including as to pick-up and delivery locations) for a consignor placing a one-off order with MXE otherwise than through e-go;
- (e) charges for activities referred to in sub-clause 6.5(c), elsewhere in this clause 6 and in these conditions shall, as far as possible, be calculated in accordance with the Surcharges Schedule, or, to the extent that the Surcharges Schedule cannot be applied, in accordance with the reasonable calculation provisions of sub-clause 6.8(d);
- (f) Additional Charges shall become due and payable in accordance with clause 2(b).

6.9 If the sender expressly or impliedly instructs MXE to perform services in a particular way (whether as to means or route of carriage, place of storage or otherwise) MXE shall endeavor to give priority to that way but in any event the way of providing services shall be at the sole discretion of MXE and the consignor authorises MXE in its absolute discretion to adopt any way of providing services other than the way instructed or agreed.

6.10 The consignor authorises any deviation from the customary or usual means or route of carriage or place of storage (if any) as MXE may in its absolute discretion deem desirable or necessary.

6.11 MXE is authorised to deliver goods to the consignee at the address nominated by the consignor or sender or consignee and shall be deemed to have delivered the goods in accordance with the Contract if at that address it obtains a signature as evidence of POD from or on behalf of the consignee by a person who holds themselves out to be or to have the authority of the consignee.

6.12 Subject to clause 9.1 and 10(a), an acknowledgement of receipt of the goods in good order and condition shall be conclusive evidence that the goods were delivered and received without loss or damage.

6.13 Subject to sub-clause 6.15, if the nominated place for delivery is unattended at the time delivery is attempted during normal trading hours or at the timespecified by the consignor (and agreed to by MXE) or if delivery cannot otherwise be effected for any reason whatsoever beyond the control of MXE, MXE may at its absolute discretion and without having to obtain prior instructions from the consignor or sender:

- (a) leave the goods at the nominated place which shall be conclusively presumed to be delivery of the goods in accordance with the Contract;
- (b) without being obliged to do so, store the goods pending redelivery or return;
- (c) attempt redelivery of the goods at the nominated place for delivery; and/or
- (d) return the goods to the consignor or sender (as the case may be).

6.14 Storage, each attempt at re-delivery, and return of goods shall be at the owner's/ consignor's risk, and, subject to sub-clause 6.15, at the expense of the consignor in accordance with the Surcharges Schedule.

6.15 Where the consignor pays a re-delivery charge at the time of placement of the order through e-go, the provisions of sub-clauses 6.13 and 6.14 shall only apply begin to apply after the first attempt at re-delivery is unsuccessful.

6.16 The consignor acknowledges and agrees that in some circumstances, due to the nature or location

of a nominated address for pick-up or delivery (such as remoteness, accessibility or distance from the nearest depot of MXE or its local sub-contractor), or the characteristics of the goods (such as their weight or bulk), or the lack of resources available to effect pick-up or delivery (such as forklifts or other appropriate equipment), it will be impracticable for MXE to effect pick-up or delivery at the address nominated by the sender in which case it will be necessary for:

- (a) the sender to drop off the goods at a place nominated by MXE (or its sub-contractor); or
- (b) the consignee to pick-up the goods at such a nominated place; and
- (c) the consignor to pay MXE's reasonable charges, if any, that are attributable to any additional cost and expense caused by such circumstances.

7. *Negotiation of Extension of Responsibility/Liability/Warranty/Insurance*

- 7.1 Upon negotiation with the consignor, MXE may agree to greater responsibility and liability than set out in these conditions upon payment of additional charges by the consignor as required and subject to specific warranty conditions. Applicable rates for greater responsibility and liability are subject of discussion and negotiation between the parties.
- 7.2 Should the consignor not choose nor the parties agree to MXE taking greater responsibility and liability for the services for additional charge pursuant to subparagraph 7.1 above, the parties agree that MXE provides a lower cost service on the premise that it has the right to exclude or limit liability and/or seek indemnity as provided for in these conditions.
- 7.3 Additionally or alternatively, MXE provides warranties with warranty limits in respect of loss or damage to Goods at prices and limits stated in the Surcharges Schedule subject to MXE's warranty terms and conditions ("WTCs" and referred interchangeably by MXE as "Damage / Loss Protection") (refer to www.e-go.com.au for a current copy of the warranty terms & conditions) and which if applicable are supplementary terms to these conditions and are incorporated herein.
- 7.4 Depending on the level of responsibility and liability or warranty cover agreed or arranged between the consignor and MXE pursuant to clauses 7.1 to 7.3 above, the consignor must seek its own insurance cover for loss or damage it may incur that is not fully indemnified by MXE's warranties as agreed. No insurance will be arranged or effected by MXE on the consignor's behalf.

8. *Warranty and Indemnity*

- 8.1 The consignor warrants and agrees that any person who purports to tender goods to MXE on behalf of the consignor (or any sender from whom MXE picks up goods at the direction or in accordance with the instructions of the consignor) is authorised by the consignor to do so, to sign the relative consignment note and to accept these conditions on behalf of the consignor and any person having an interest in the goods.
- 8.2 Where the consignor is not the owner of the goods tendered to MXE, it warrants its authority to act as agent of the owner of, or any other person having an interest in, the goods for all purposes in connection with provision of services and is authorised to accept and does accept these conditions not only for itself but as agent for and on behalf of all other persons who are or may hereafter be interested in the goods.
- 8.3 The consignor warrants that all information provided to MXE in relation to an order through e-go.com.au is true and correct.
- 8.4 The consignor warrants that it has obtained the relevant insurance pursuant to clause 7.
- 8.5 The consignor indemnifies and shall keep indemnified MXE in respect of all Loss arising out of or in connection with the consignor's failure to comply with the warranties referred to in clause 8.2,

8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9, 8.10, 8.12, 8.13 and 8.14 and the acknowledgement referred to in clause 8.11.

8.6 All rights, powers, authorities, immunities and limitations of liability in these conditions shall continue to have their full force and effect in all circumstances and notwithstanding any breach of these conditions or the Contract or negligence on the part of MXE or any person entitled to the benefit of these conditions.

8.7 The provisions of sub-clauses 8.5 and 8.6 shall apply irrespective of whether MXE's liability arises in circumstances which may constitute a fundamental breach of the Contract or a breach of a fundamental term thereof or breach of duty as a bailee.

8.8 The consignor for itself and the sender (where they are not identical):

- (a) warrants that it has complied with all laws and regulations relating to the nature, packaging, labelling, storage and transportation of the goods and that the goods are packed in a manner adequate to withstand the ordinary risks associated with performance of services having regard to the nature of the goods; and
- (b) warrants the accuracy of all markings and brandings of the goods and all particulars furnished to MXE for the purpose of provision of services;
- (c) indemnifies and holds harmless MXE against all loss and damage arising and all costs and expenses incurred as a consequence of failure to comply with the warranty referred to in sub-clause 8.8(a) and any inaccuracy or omission in respect of matters referred to in sub-clause 8.8(b).

8.9 Except where the consignor has elected to purchase indemnity cover through e-go with respect to the consignment including under clause **Error! Reference source not found.** the consignor shall be entirely responsible for insuring the goods against loss or damage and against all other risks associated with provision of services in respect of the goods.

8.10 Subject to the exception referred to in sub-clause 8.9 and 9.1, the goods shall be at the owner's risk and MXE shall not be responsible to, nor shall it insure, the goods against loss or damage and shall not be responsible in tort or contract or otherwise (including, without limiting the generality of the foregoing, breach of duty as a bailee) for any loss of or damage to goods or mis delivery or failure to deliver or delay in delivery of goods (including perishable goods) either in transit or in storage, for any reason whatsoever including (without limiting the generality of the foregoing) the negligence or default of MXE or others, and, this clause shall apply to all such loss of or damage to goods or mis delivery or failure to deliver or delay in delivery of goods as aforesaid whether or not the same occurs in the course of:

- (a) performance by MXE of services; or
- (b) events which are in the contemplation of or are foreseeable by MXE and/or the consignor; or
- (c) events which would constitute a fundamental breach of the Contract or a breach of a fundamental term thereof.

8.11 The consignor acknowledges and agrees that the provisions of sub-clause 8.10 also apply to pallets (whether or not laden with goods) and to dockets relating to the transfer, exchange, hire or de-hire of pallets taken into the custody and control of MXE in the course of provision of services to the intent and effect that MXE shall not be liable in any way to the sender or to the owner of a such a pallet or docket for the hiring or other charges and fees payable in respect of the pallet or for damage to or loss of the pallet or docket and the consignor shall indemnify and hold harmless MXE from and against all claims and demands to pay such charges and fees or to make good any damage to or loss of any pallet or docket.

8.12 The consignor shall be liable to MXE for all charges and expenses incurred for any reason in the

provision of the services including the charges set forth in the Surcharges Schedule for packaging, re-packaging, wrapping or palletising goods to the extent that MXE considers in its absolute discretion to be required for the proper provision of services.

8.13 Notwithstanding the provisions of clause 8.12:

- (a) MXE shall not be obliged to carry out any of the activities referred to therein and shall incur no liability whatsoever in consequence of either doing or not doing so;
- (b) whether or not MXE carries out such activities, the goods shall remain at the owner's / consignor's risk; and
- (c) the consignor and/or sender shall at all times be responsible (as against MXE) for the conformity of any containers, packaging, pallets or similar items with any requirements of the consignee and any liability or expense incurred by MXE from any failure to so conform.

8.14 In the event that any loading, unloading, handling, removal, dismantling, assembly or erection of any kind whatsoever is involved in the performance of services, it is done at the owner's risk. This disclaimer extends to include not only loss of or damage to itemised goods or equipment itself, but loss, damage or injury to any person, property or thing caused during the activity and to any Consequential Loss or any other loss, damage or injury otherwise arising.

8.15 The consignment will be collected by MXE on the condition that MXE shall not be responsible for the collection on behalf of the consignor or any other person of payment of moneys (in cash or otherwise) from the consignee or any other person for the goods and/or charges paid or payable to MXE, and, when goods are tendered to MXE with instructions to collect such payment and MXE fails to comply with those instructions:

- (a) MXE shall not be liable to the consignor or any other person for such failure;
- (b) the consignor shall indemnify MXE against any claim or demand brought against it arising from such failure; and
- (c) the consignor shall nevertheless be liable for payment in full of all MXE's charges relating to provision of services with respect to those goods.

9. ***Limitation of liability***

9.1 Any relief from liability in these conditions is to be read subject to any restriction on contracting out of liability and to any implied guarantees, terms, conditions and warranties imposed by any legislation (including the Australian Consumer Law) binding on MXE so that the provisions for relief in these conditions are limited or rendered ineffective only to the extent required to give effect to that legislation but are otherwise fully effective or independent of any provisions which are void or ineffective by reason of the legislation.

9.2 If the consignor is a "Consumer" or "Small Business" and this agreement is a "Consumer Contract" or "Small Business Contract" all as defined under the Australian Consumer Law (ACL), the parties agree that:

- (a) the warranty in Clause 11.4 (a) will not apply.
- (b) MXE's right to limit or exclude liability or seek indemnities (subject to (iii) below) in these conditions is reasonable and not "unfair" in circumstances where prior to the provision of the Services, the parties agree on the allocation of costs, risks and liability where:
 - (i) the Company has given the Customer a reasonable opportunity to request that the Company take a higher level of risk and liability at a higher cost;
 - (ii) the Customer chooses and agrees to a lower cost for a lower level of risk and

liability level from the Company; and

(iii) such practice is not otherwise "unfair" as defined under the ACL.

(c) the consignor's indemnities referred in these conditions will not apply to the extent that the claim, loss, damage, payment, fine, expense, duty, tax, impost, outlay, cost or other liability incurred by the Company resulted from the negligence, recklessness or willful act of MXE, its servants, agents or subcontractors or is otherwise unreasonable or unreasonably incurred.

9.3 Where the Contract relates to the supply of services not ordinarily acquired for personal, domestic or household use or consumption, or otherwise where contracting out of liability is not rendered invalid by legislation, the liability of MXE in respect of failure to comply with any guarantees, terms, conditions or warranties referred to in sub-clause 9.1 shall be limited to:

(a) supplying the services again; or

(b) paying the cost of having services substantially similar to those services supplied again.

9.4 Except only for those rights and remedies that the consignor may have in respect of the services under the Australian Consumer Law which cannot be lawfully excluded, restricted or modified:

(a) MXE's liability for any loss suffered or incurred in connection with the supply of the services is limited to the price of the services;

(b) MXE excludes any liability for Consequential Loss; and

(c) MXE exclude all conditions, warranties and implied terms, whether statutory or otherwise, in relation to the services.

9.5 Subject to clause 9.1, MXE gives no warranty or undertaking:

(a) as to time of pick-up or delivery of goods; or

(b) that it will inform the sender of the expected or actual time of pick-up or delivery.

10. ***Making a claim***

Without limiting the force and effect of relief from liability conferred on MXE by these conditions but subject to clause 9.1:

(a) Any claim by a consignor against MXE for loss and/or damage to goods and/or other property or otherwise allegedly arising from the provision of services by MXE, to be valid and eligible for consideration, must be made in writing by the consignor, contain all relevant details and be supported by all relevant documentation and other material, and:

(i) where the claim relates to alleged damage to goods or any other property, must be made within 2 working days after delivery;

(ii) in the case of alleged loss, must be made within 2 working days after the time the goods allegedly lost should in the ordinary course have been delivered; or

(iii) where the claim arises from any other cause (including with respect to any Additional Charge) must be made within 3 working days from date of the invoice being issued pursuant to sub-clause 2(e).

(b) Where a claim is made within the relevant prescribed period and MXE makes written request of the claimant for further particulars, the time period prescribed in sub-clause 10(a)

shall be deemed to be extended for a further 7 working days from the date that the request was made and will expire at 5.00pm on the day marking the expiration of that period except where that day is not a working day in which case it shall expire at 5.00pm on the next working day.

- (c) Acceptance of claims made outside these periods will be entirely at the discretion of MXE and failure to notify a claim within the relevant prescribed period will be evidence of satisfactory performance by MXE of its obligations under the Contract.
- (d) A claim will not be valid or eligible for consideration if it is based only on the absence of POD evidence endorsed on the consignor's paperwork if that evidence is provided by MXE's consignment note and vice versa.
- (e) A valid claim cannot be brought at any time with respect to the e-go quoted price or to Additional Charges paid by the consignor except where it is based on the allegation that the service to which these amounts relate was never provided.
- (f) A claim for loss of or damage to goods or other property will not be valid or eligible for consideration by MXE unless at the time of delivery (provided the consignee or some other person is in attendance at the place of intended delivery) a notation is made by the consignee or that other person on the consignment note as to such loss or damage.
- (g) MXE shall promptly consider and give written notice to the consignor of its decision with respect to any claim validly submitted, and, unless manifestly and demonstrably wrong or unreasonable, the decision of MXE shall be final and conclusive.
- (h) Where MXE does not give written notice of its decision regarding a claim within 14 days from expiration of the prescribed period or the extended period referred to in sub-clauses 10(a) and 10(b), in the absence of written agreement between MXE and the claimant to the contrary, MXE will be deemed to have rejected the claim.
- (i) MXE's charges shall be deemed fully earned as soon as the goods are received by the consignee from the consignor and shall be payable in full by the consignor without deduction or set-off for any outstanding credit claim which, if approved, will be the subject of reimbursement by MXE.

11. *Subcontracting*

- 11.1 MXE and any subcontractor may subcontract on any terms all or any part of the services.
- 11.2 Every exemption, limitation, condition and liberty herein contained and every right, power, authority, exemption from liability, defense and immunity of whatsoever nature applicable to MXE or to which MXE is entitled hereunder shall also be available and shall extend to protect:
 - (a) all subcontractors;
 - (b) every employee or agent of MXE and of every subcontractor;
 - (c) every other person (except MXE) by whom services or any part thereof are performed; and
 - (d) all persons (including MXE) who are or may be vicariously liable for the acts or omissions of any person falling within 11.2(a), 11.2(b) or 11.2(c).
- 11.3 For the purpose of this clause 11, MXE is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all persons falling within 11.2(a), 11.2(b) and 11.2(c) who shall to that extent be deemed to be parties to the Contract.
- 11.4 The consignor:

- (a) warrants that no claim inconsistent with this clause 11 shall be made by the consignor or any other person who is or may hereafter be interested in the goods;
- (b) indemnifies and shall keep indemnified MXE and each subcontractor against all claims including liability for legal costs incurred in relation to any such claim on a full indemnity basis; and
- (c) agrees that the indemnity in sub-clause 11.4(b) operates irrespective of whether the liability of MXE or any other person arises in events which may constitute a fundamental breach of the Contract or a breach of a fundamental term of the Contract or a breach of the duties of a bailee.

12. *Lien over the goods*

- 12.1 Without limiting or prejudicing other legal and equitable rights and remedies available to it, MXE shall have a lien on any goods or other items (and any documents relating to the goods or items) of the consignor that are in the custody or control of MXE, for any moneys owing to MXE by the consignor (whether in connection with the carriage of the goods or otherwise). MXE may detain and sell any or all of the goods or other items by public auction or private treaty without notice to the consignor to satisfy any obligation owing to MXE, as well as any costs incurred by MXE for storage or in relation to the sale (including legal costs on a full indemnity basis).
- 12.2 Any sale conducted in accordance with sub-clause 12.1 shall not prejudice or restrict the entitlement of MXE to recover charges due or payable in respect of the provision of services not covered by the proceeds of sale.
- 12.3 The lien conferred on MXE by the provisions of sub-clause 12.1 shall extend to allowing MXE without liability to withhold delivery and retain possession of the goods, other items and documents referred to therein pending payment of the moneys owing whether or not the goods, other items and documents are or reasonably appear to be the property of the consignor.
- 12.4 The consignor shall indemnify and keep indemnified MXE from and against all liability whatsoever to any other person arising from any action taken by MXE pursuant to the provisions of this clause 12.

13. *Dangerous goods*

- 13.1 The consignor shall not tender to MXE any dangerous goods without firstly presenting to MXE a full description disclosing the nature of the goods, and in any event shall be liable for and shall indemnify and hold harmless MXE from and against all loss or damage caused by those goods.
- 13.2 If in the opinion of MXE the goods are, or are liable to become, dangerous goods, MXE may at any time, at the cost of, and without compensation or liability to, the consignor, take such action with respect to the goods as it considers appropriate including retention, destruction, disposal, abandonment or rendering harmless of the goods AND any such action shall be without prejudice to MXE's right to payment from the consignor of all charges as would have been payable if the goods concerned had been delivered undisturbed and intact as well as the costs of taking action pursuant to this clause 13.

14. *Enforceability*

- 14.1 If any provision or part of any provision in these conditions is or becomes unenforceable, that unenforceability shall not affect the enforceability of the balance of the provision or any other provisions.

15. *Dispute*

- 15.1 Subject to clause 9.1, the consignor (and any party seeking to claim through the consignor) shall be completely and forever barred from bringing suit against MXE with respect to a consignment unless:
 - (a) the claim giving rise to the alleged cause of action has been the subject of a valid claim made to MXE in accordance with clause 10; and

- (b) the claim has been rejected wholly or in part by MXE or is deemed to have been rejected pursuant to sub-clause 10(h); and
- (c) the proceedings are commenced against MXE within 14 days from rejection or deemed rejection of the claim (as the case may be),

AND it is acknowledged and agreed that these provisions may be adduced by MXE as an absolute bar and estoppel in any proceedings brought in contravention of these provisions.

16. *Governing law and jurisdiction*

16.1 These conditions and the Contract shall be governed by and construed in accordance with the laws in force from time to time in the State of New South Wales and the parties submit to the exclusive jurisdiction of the courts of that State.

17. *Motor vehicle parts exclusion*

17.1 MXE prohibits the consignment of motor vehicle parts, including engines, transmissions, car bonnets, doors, bull bars, bumpers, nudge bars, wheels & tyres. Small car accessories (defined as items less than 50cm width x 50cm length x 50cm height) that are new, in a cardboard box and can be lifted by hand may be accepted if suitably packaged.

17.2 Indemnity will not be provided for these excluded consignments and the consigner forfeits any rights to a refund of charges paid. Excluded goods will be made available for collection at the MXE depot where the excluded goods are identified.

SURCHARGES SCHEDULE

DESCRIPTION	CHARGE
Con note reprint	\$2.50
Calling sender prior to pickup	\$2.50
Calling receiver prior to delivery	\$2.50
Tail Lift at pickup ^(A)	\$120.00
Tail Lift at delivery ^(A)	\$120.00
9am/Priority Delivery (Under 25kg) ^(B)	\$100.00
9am Delivery (Over 25kg) ^(B)	\$200.00
9am Delivery (Under 25kg) - Non Capital Cities ^(B)	\$300.00
9am Delivery (Over 25kg) - Non Capital Cities ^(B)	\$500.00
Post paid redelivery 0 - 35kg (charge weight) ^(C)	\$22.00
Post paid redelivery 36 - 60kg (charge weight) ^(C)	\$28.00
Post paid redelivery 60kg + (charge weight) ^(C)	\$35.00
Post paid redelivery Per pallet (charge weight) ^(C)	\$40.00
Country - Post paid redelivery 0 - 35kg (charge weight)	\$35.00
Country - Post paid redelivery 36 - 60kg (charge weight)	\$45.00
Country - Post paid redelivery 60kg + (charge weight)	\$50.00
Country - Post paid redelivery Per pallet (charge weight)	\$50.00
Guaranteed Uplift (Under 40kg) METRO ONLY	\$5.00
Guaranteed Uplift (Over 41-125kg) METRO ONLY	\$15.00
Guaranteed Uplift (Over 125kg) METRO ONLY	\$30.00
Non Business Day Job (Under 25kg)	\$250.00
Non Business Day Job (Over 25kg)	\$500.00
Non Business Day Job (Under 25kg) - Non Capital Cities	\$500.00
Non Business Day Job (Over 25kg) - Non Capital Cities	\$500.00
DG - General surcharge	\$22.50
DG - Paperwork duplication fee (<i>when insufficient paperwork copies are provided</i>)	\$10.00
DG - Labelling fee (<i>When application of DG class labelling is required</i>)	\$10.00
DG - Paperwork processing fee (<i>when DG declaration not provided</i>)	\$50.00
DG - Undeclared Dangerous Goods (<i>no labelling or DG declaration form provided</i>)	\$100.00
Repackaging - Pallet ^(D)	\$50.00
Time Specific Delivery (Under 25kg) ^(E)	\$100.00
Time Specific Delivery (Over 25kg) ^(E)	\$250.00
Time Specific Delivery (Under 25kg) - Non Capital Cities ^(E)	\$500.00
Time Specific Delivery (Over 25kg) - Non Capital Cities ^(E)	\$500.00
Check / Incorrect address ^(F)	\$25.00
Detention/waiting time/demurrage per 5 mins after first 10 mins free ^(G)	\$8.33
Cancellation	\$5.00
Futile pickup ^(H)	\$40.00
Driver assist \$100.00 min. - \$25.00 per 15 minute unit or part over 1 hour ^(I)	\$100
Above discounted for deliveries into Tasmania (TAS)	\$50 (Discounted rate into Tasmania)
Rubbish/packaging disposal ^(J)	Dependant on item (Minimum charge \$10)
Oil / fluid leak, cleanup fee (Does not include drainage of motorpart or repack fees)	\$100-200
Storage per week (Carton/Pallet)	\$3.50 / \$15.00
Minimum Weight Charge for Skids, Pallets (and Non-palletised Goods equal to or exceeding 35kg dead weight per item where palletising is deemed necessary) Applicable only for deliveries to business locations ^(K)	The Minimum Weight Charge (applicable only on basic/kilogram rate schedules) for a skid is 125kg/0.5m ³ and for a pallet is 250kg/1.0m ³ . A skid is defined as a pallet with less than 80% the surface area of a standard pallet (less than 1.152m ²)
Change Request ^(L)	\$15.00 per consignment
Telephone booking fee (Bookings made via the call centre)	\$10.00
Damage / Loss Protection - \$50	\$2.00
Damage / Loss Protection - \$100	\$5.00
Damage / Loss Protection - \$250	\$15.00
Damage / Loss Protection - \$500	\$25.00
Damage / Loss Protection - \$1000	\$40.00

DESCRIPTION	CHARGE
Prepaid redelivery / Signature required 0 - 35kg (charge weight)	\$5.00
Prepaid redelivery / Signature required 36 - 60kg (charge weight)	\$15.00
Prepaid redelivery / Signature required 60kg + (charge weight)	\$25.00
Prepaid redelivery / Signature required - Per pallet (charge weight)	\$30.00
Lengths - 120 - 149cm	\$3.00
Lengths - 150 - 249cm	\$10.00
Lengths - 250 - 399cm	\$50.00
Lengths - 400 - 599cm	\$200.00
Lengths - 600cm +	\$500.00
Bulk Surcharge GENERAL - 35-49kg (total consignment weight)	\$6.00
Bulk Surcharge GENERAL - 50-74kg (total consignment weight)	\$12.00
Bulk Surcharge GENERAL - 75-99kg (total consignment weight)	\$15.00
Bulk Surcharge GENERAL - 100-249kg (total consignment weight)	\$24.00
Bulk Surcharge GENERAL - 250-999kg (total consignment weight)	\$36.00
Bulk Surcharge GENERAL - 1000kg+ (total consignment weight)	\$60.00
Bulk Surcharge PLATINUM - 35-49kg (when one item exceeds)	\$3.00
Bulk Surcharge PLATINUM - 50-74kg (when one item exceeds)	\$6.00
Bulk Surcharge PLATINUM - 75-99kg (when one item exceeds)	\$9.00
Bulk Surcharge PLATINUM - 100-249kg (when one item exceeds)	\$12.00
Bulk Surcharge PLATINUM - 250-999kg (when one item exceeds)	\$15.00
Bulk Surcharge PLATINUM - 1000kg+ (when one item exceeds)	\$30.00

FOOTNOTES:

- (A) Fee applies when tail-lift specified or nature of job requires.
- (B) Monday to Friday excluding public holidays (in the place(s) work required). Capital cities only (excluding Darwin).
- (C) For each attempt to re-deliver goods after initial failure (not applicable if the prepaid redelivery / signature required service has been purchased and paid for in advance.)
- (D) Where specified or MXE reasonably considers nature of job requires supply of disposable (plain) pallet or skid.
- (E) Consignment requiring delivery at a time or within a period (e.g. hour) specified by sender or Consignee (e.g. at distribution, exhibition and function centres) typically involving exclusive, additional or special arrangements compared with 'standard' deliveries
- (F) If a consignment has insufficient or incorrect details such that the delivery cannot be made, we will endeavor to resolve the issue by calling the receiver if a telephone contact is supplied on the label, otherwise via online searches including Google and Google Maps. If that fails we will contact the sender to ascertain the correct delivery address details. The fee applicable excludes redelivery charges (if already attempted previously and prepaid service has not been purchased) or subsequent return to sender charges if required but includes telephone charges, storage, handling and reprint of new labels as required.
- (G) When a driver is required to wait in excess of 10 minutes for loading or unloading at either the pick-up or delivery.
- (H) Inability to pick-up at nominated site for any reason beyond control of MXE, e.g. where 'permanent' (regular) pick-up run has been established, no freight is available for pick-up on a regular day at or around the regular time, and no advice to this effect is received by MXE from the customer before 3.00 pm on that day; or, in the case of 'casual' ('ad hoc') jobs, no freight is available for pick-up on nominated day after pick-up for any reason beyond control of MXE.
- (I) Where nature of job requires additional driver/labour (e.g. loading, unloading, security) (* for each additional person required).
- (J) Removal of incidental packaging and materials including cardboard, shrink-wrapping when not required for transportation or left after collection of freight from depot.
- (K) If the freight item is not presented on a skid or pallet, the Minimum Weight Charge may apply if the item is equal to or greater than 35kg; (35kg is considered too heavy for a single person to lift). It may also apply if the consignment requires palletisation prior to line-haul departure due to safety issues/reasons.
- (L) A Change Request fee of \$15.00 will apply in order to cover the administrative and operational costs arising from the following services:
 - (i) A request from the Consignor with regards to an existing booking or consignment to change or edit one or more components including:
 - number of items
 - dimension(s) of any item(s)
 - dead weight of any item(s)
 - service type/level

- pickup address or delivery address
- delivery instructions
- account to which the booking/consignment is to be charged

(ii) A request from the Consignor, sender or receiver to an existing booking or consignment to add Special Instructions or other service request for action with regards to a pending delivery.

(iii) A request from the Consignor to cancel an existing booking or consignment.

(iv) A request from the Consignor for a credit against or refund of a paid charge for an existing booking or consignment as a result of changes arising from i-iii above, subject to approval.

When a credit request is approved, the Change Request fee will be automatically deducted from the total of the credit request and the remainder/difference will be issued. Because of the basic administration charge, credit requests below \$15.00, excluding GST, will not be processed.

The following Terms & Conditions are applicable to customers who have registered for and are using an EGO Platinum account

“PLATINUM ACCOUNT” PROGRAM - TERMS AND CONDITIONS

E-GO.COM.AU - A DIVISION OF MX ENTERPRISES PTY LTD ABN 54 650 217 351 (“MXE”)

1. Legal Effect and Capacity:

- (1) These terms and conditions together with the “e-go Standard Terms and Conditions of Contract for Transport Services” (collectively hereinafter referred to as “these conditions”) will apply to and govern the agreement (“this agreement”) between MXE and each customer (referred to herein by neuter gender) who chooses to open a Platinum Account (“PA”) by accepting the offer made by MXE via its e-go website (“website”) to become a PA customer and participate in the e-go Platinum Account Program (“program”).
- (2) Where provisions of these Terms and Conditions are repugnant to or inconsistent with provisions in the “e-go Standard Terms and Conditions of Contract for Transport Services” then to the extent of such repugnancy or inconsistency the provisions of these Terms and Conditions shall prevail.
- (3) These conditions should be read carefully by the prospective PA Customer or its representative who should obtain all appropriate advice before proceeding to accept the option now offered.
- (4) If the prospective PA Customer is a natural person, it must be of not less than 18 years of age and otherwise of full contractual capacity.
- (5) Reference in this Agreement to “e-go” shall, unless inconsistent with or repugnant to the context in which it appears, mean the so-named computerised on-line booking system owned and operated by MXE.

2. Variation of Terms:

- (1) MXE may vary the contents or format of these conditions from time to time and at any time in its sole discretion by posting an amended version of them on the website whereupon the variations shall be and be deemed to be incorporated in the expression “this agreement”.
- (2) If any variation referred to in (1) hereof is unacceptable to the PA customer the only recourse available to it is to cancel this agreement in accordance with these conditions. Continued participation of the PA customer in the program following posting of variations on the website shall be deemed to constitute enforceable acceptance by it of any and all variations.

3. Establishment and Maintenance of Platinum Account:

(1) By accepting the aforementioned offer to participate in the program and selecting a TopUp Amount ("TUA") from the optional TUA's displayed on the website, the PA customer thereby authorises MXE to:

- (a) establish a PA to record transactions and register amounts paid and received by, from or on behalf of the PA customer pursuant to this agreement;
- (b) directly debit the PA customer's payment funding source with the TUA and credit it to the PA as a prepayment of charges to be debited to the PA;
- (c) thereafter, from time to time as the balance of the PA reaches or falls below the minimum amount directly debit the payment funding source with the TUA and credit it as a further prepayment to the PA.

(2) The PA customer is obliged to ensure that the available credit limit on or available clear funds in the payment funding source is or are sufficient to meet payment of each TUA as and when it falls due.

(3) In the event that the available credit limit or available clear funds is or are insufficient to meet a TUA, or if for some other reason beyond the control of MXE an attempt by MXE to directly debit the payment funding source to meet a TUA fails, MXE shall have the right, but not be obliged, to make further attempts to directly debit the payment funding source at such times as in its absolute discretion it chooses and the PA customer shall be liable for any fees in relation to such attempts charged by the financial institution with which the payment funding source is conducted.

(4) Notwithstanding the right conferred on MXE pursuant to subclause (3) hereof, if for any reason MXE cannot effect payment of a TUA by direct debit of the payment funding source, MXE may give notice to this effect to the PA customer and of intention to cancel the PA within a period of not less than three (3) working days if a direct debit cannot be made against the payment funding source to meet the outstanding TUA.

(5) For the purposes of this agreement:

- (a) "payment funding source" shall have the same meaning as in the e-go Standard Terms and Conditions of Contract for Transport Services;
- (b) "minimum amount" means the amount so described corresponding to the TUA as displayed on the website; and
- (c) the amount of each prepayment shall be inclusive of GST which shall be accounted for in each tax invoice/statement subsequently issued to the PA customer.

3. Invoices, Statements, Access to Data and Claims:

(1) MXE will via the e-go website provide monthly invoices/statements ("statements") to the PA customer containing details of transactions including particulars of moneys credited to and debited from the PA over the preceding period.

(2) At intervening times the PA customer will have access to data relating to transactions on the PA via the website.

(3) It is the responsibility of the PA customer to check that all items entered on statements and appearing on the website in connection with the PA are correct.

(4) If the PA customer believes that any item is incorrect it is obliged to give notice to MXE to this effect within seven (7) clear working days from the date of the statement containing the item concerned.

(5) Any claim for monetary compensation relating to such an item to be valid and eligible for consideration by MXE must contain all relevant details and be supported by all relevant documentation and other material in accordance with Clause 19(1) of the Standard Conditions and will (subject to necessary and appropriate adjustments being made) otherwise be subject to the provisions of subclauses 19(2) to (9) inclusive of the

Standard Conditions.**4. Variations to TUA:**

- (1) The PA customer may from time to time vary the TUA to a new TUA by accessing the "My Platinum Account" link on the e-go website page relative to its PA.
- (2) The variation shall take effect when transactions cause the balance of the PA to reach or fall below the minimum amount applicable to the new TUA at which time the new TUA will be debited against the payment funding source and credited to the PA.
- (3) The PA customer shall not be entitled to a refund of moneys from the PA in consequence of a variation.

5. Cancellation of PA:**(1) By PA Customer:**

- (a) The PA may be cancelled by the PA Customer giving notice to this effect via the "My Platinum Account" link referred to in 5(1) above.
- (b) Cancellation will be subject to payment of a Cancellation Fee of \$33.00 (incl. GST).
- (c) The Cancellation Fee plus that part of the credit balance of the PA representing the unused Bonus Amount ("UBA") will be deducted from the credit balance and the remainder of the balance ("Net Refund"), if any, will be refunded to the PA Customer by direct credit to the payment funding source or as otherwise instructed by the PA Customer.

Any short-fall between the credit balance of the PA and the total of the amounts to be deducted pursuant to (d) (comprising the Cancellation Fee and the UBA) shall be recoverable by MXE by direct debit from the payment funding source.

If the available credit limit on or available clear funds in the payment funding source is or are insufficient to fully pay the short-fall, the unpaid amount will be immediately due and payable by, and recoverable by MXE from, the PA Customer.

Any moneys which cannot be refunded to a PA Customer due to lack of adequate particulars and/or instructions will be subject to the Unclaimed Money Act, 1995 (NSW).

The PA Customer acknowledges and agrees that the Cancellation Fee is not a penalty for breach of or non-compliance with the terms of this Agreement but a pre-estimate of the reasonable costs and expenses to MXE associated with processing a cancellation initiated by the PA Customer in accordance with this Agreement.

(2) By MXE:

(a) MXE may cancel the PA pursuant to a notice given in accordance with sub-clause 3(4) in consequence of which the provisions of sub-clauses 7(1)(b) to (h) inclusive will apply.

(b) In the event that MXE decides to exercise its right to cancel access by a PA Customer to e-go in accordance with sub-clause 6(2) of the e-go Standard Terms and Conditions of Contract for Transport Services, MXE shall give notice to the Customer of intention to cancel the PA within a period of not less than three (3) working days after expiration of which:

(i) access by the PA Customer to e-go will be cancelled;

(ii) no Cancellation Fee will be charged; and

(iii) the credit balance of the PA will be refunded without delay to the PA Customer.

The Net Refund shall be calculated in accordance with the following:

Net Refund = Credit balance – Cancellation fee \$33.00

Any short-fall between the credit balance of the PA and the total of the amounts to be deducted pursuant to (d) (comprising the Cancellation Fee and the Bonus Amount) shall be recoverable by MXE by direct debit from the payment funding source.

If the available credit limit on or available clear funds in the payment funding source is or are insufficient to fully pay the short-fall, the unpaid amount will be immediately due and payable by, and recoverable by MXE from, the PA Customer.

Any moneys which cannot be refunded to a PA Customer due to lack of adequate particulars and/or instructions will be subject to the Unclaimed Money Act, 1995 (NSW).

The PA Customer acknowledges and agrees that the Cancellation Fee is not a penalty for breach of or non-compliance with the terms of this Agreement but a pre-estimate of the reasonable costs and expenses to MXE associated with processing a cancellation initiated by the PA Customer in accordance with this Agreement.