

BTG Storage & Distribution

Terms and Conditions

<p>1. Interpretation</p> <p>1.1 “BTG” means Bigtee Group Pty Ltd ACN 609 065 349 as set out in the Agreement. “Contract” means the Storage & Distribution Agreement and these Terms and Conditions. “Force Majeure” means any cause outside the control of the party affected, including any event defined as an event of Force Majeure in a contract between the affected party and any other party the occurrence of which prevents the affected party from performing its obligations under this Contract. “Goods” means any item or thing which is brought to the Site by or on behalf of the Storer and/or kept in storage on the Site. “GST” means GST imposed by the GST law, applicable from time to time, as that term is defined in A New Tax System (Goods and Services Tax) Act 1999 or a successor Act. “Services” means the storage and distribution of goods as described in the Agreement. “Site” means the address at which the Services will be provided as set out in the Agreement. “Space” means the space, area or container in which the Goods are stored. “Storer” means the person, corporation or entity requesting storage of Goods as identified in the Storage Agreement. “Agreement” means the document titled “Storage & Distribution Agreement” to which these Terms and Conditions are attached as provided by BTG.</p> <p>1.2 These Terms and Conditions form part of any Agreement in which they are referred to or to which they are attached.</p> <p>2. Entire Agreement</p> <p>2.1 The Contract supersedes all other discussions, representations and arrangements relating to the supply of the Goods or Services and constitutes the entire agreement between BTG and the Storer with respect to the Services.</p> <p>2.2 No variation, modification or alteration of any of the terms of the Contract shall be of any effect unless in writing and signed by each of the parties.</p> <p>2.3 If there is any inconsistency between the Agreement and these Terms and Conditions then the Agreement will prevail.</p> <p>3. Storage</p> <p>3.1 The Storer:</p> <ul style="list-style-type: none">(a) has the right to store Goods in the Space;(b) must collect any goods stored at the Site in accordance with this Contract;(c) is deemed to have knowledge of the Goods in the Space;(d) warrants that they are the owner of the Goods in the Space, and/or are entitled at law to deal with the Goods in accordance with all aspects of this Contract;(e) warrants that any Goods stored in the Space are not hazardous, dangerous, flammable, explosive, environmentally harmful, perishable, illegal, or stolen; and(f) must not store any Goods which are irreplaceable in	<p>the Space including but not limited to cash, currency, jewellery or jewels, furs, deeds, paintings, curios, works of art or items of sentimental value.</p> <p>3.2 BTG:</p> <ul style="list-style-type: none">(a) does not have, and will not be deemed to have, knowledge for the Goods;(b) is not a common carrier; and(c) is entitled to claim a lien over the Goods for any unpaid fees, costs or expenses. <p>3.3 Should circumstances beyond BTG’s control prevent or hinder delivery of the Services, BTG will be free from any obligation to deliver Services while such circumstances continue. Such circumstances beyond the control of BTG include, but are not limited to: strikes, lockouts, rebellions; fire; Force Majeure; Government decrees, proclamations or orders; transport difficulties; and failures or malfunctions of computers or other information technology systems.</p> <p>4. Distribution</p> <p>4.1 If provided for in the Agreement BTG will arrange for the transportation the Storer’s Goods to an address or addresses specified by the Storer in writing during the term of the Agreement.</p> <p>4.2 BTG is not a common carrier and will accept no liability as such.</p> <p>4.3 Any transportation of Goods shall be governed by the Terms and Conditions of Transport as attached to this Contract.</p> <p>4.4 If the Agreement provides for the distribution of Goods, the Terms and Conditions of Transport shall form part of these terms and conditions.</p> <p>5 Fees, Costs and Expenses</p> <p>5.1 The Storer must, upon signing the Agreement, pay to BTG the first payment of the storage fee, being the amount identified in the Agreement.</p> <p>5.2 The Storer will pay:</p> <ul style="list-style-type: none">(a) the storage fee, being the amount indicated in the Agreement, or such other amount as notified to the Storer in accordance with clause 5.3 below, in advance on the payment date specified in the Agreement;(b) the distribution fee, being the amount indicated to the Storer or such other amount as notified to the Storer in accordance with clause 5.3 below.(b) a late payment fee, identified in the Agreement, which becomes payable each time a payment is late;(c) the Invoice Preparation and Postage fee if the Storer chooses to receive invoices by post;(e) the Failed Payment fee in the event of a returned cheque or a failed credit card, debit card or direct deposit payment;(f) the Security Call-Out fee, if the Storer chooses to access the Space other than in accordance with clause 7.1;(g) any costs or expenses incurred by BTG in collecting late or unpaid storage fees, maintaining the Goods, selling the Goods in enforcement of the Contract, or in otherwise enforcing this Contract in any way; <p>5.3 BTG may vary the amount of any fees, costs or expenses by providing the Storer with one month’s written notice of any such</p>
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<p>variation.</p> <p>5.4 The Storer will be responsible for payment of any government taxes or charges (including any GST) being levied on the Contract, or any supply pursuant to the Contract.</p> <p>5.5 the Storer's liability for any unpaid fees, costs and expenses survives the termination of the Contract.</p> <p>6. Payment</p> <p>6.1 The Storer must pay the storage fee, along with any other fees, costs or expenses, in advance on the Payment Date specified in the Agreement, or as otherwise agreed with BTG in writing.</p> <p>6.2 All payments by the Storer under this Contract must be paid as and when they fall due (regardless of whether they are to be invoiced) without set-off or deduction.</p> <p>6.3 Any payment that is made by direct deposit or credit must be clearly identified as a payment under this Contract and the Storer agrees to follow any directions of BTG associated with the identification of payments. The Storer has no claim against BTG and indemnifies BTG against the any claim in respect of the Storer's breach of this clause 6.3.</p> <p>7. Access</p> <p>7.1 The Storer may only access the Space by prior agreement with BTG and at a time during which BTG is ordinarily open for business.</p> <p>7.2 BTG may refuse the Storer access to the Space if any amount is outstanding under the Contract whether or not demand for payment has been made.</p> <p>7.3 The Storer acknowledges and agrees that BTG has no liability for and it will indemnify BTG from any claim for cost, loss or damage suffered as a result of being unable to access the Space or the Goods.</p> <p>8. Risk and Responsibility</p> <p>8.1 Risk in the Goods shall not pass from the Storer to BTG.</p> <p>8.2 The Goods are stored at the sole risk and responsibility of the Storer who shall be responsible for any and all theft, damage to, and deterioration of the Goods, and shall bear the risk of any and all damage caused by flood, fire, leakage or overflow of water, mildew, heat, spillage of material from any other space, removal or delivery of the Goods, pests, vermin or any other reason whatsoever including the acts or omissions, negligent or deliberate, of BTG or persons acting for or on behalf of BTG or under its direction or control.</p> <p>9.3 The Storer agrees to indemnify, and keep indemnified, BTG from all claims for any loss or damage to the property of, or of personal injury to, the Storer or any third party resulting from or incidental to the Storer's use of the Site, including the storage of the Goods in the Space.</p> <p>9. Termination</p> <p>9.1 This Contract shall come to an end on the date specified in the Agreement.</p> <p>9.2 During the course of the Contract either party may terminate this Agreement by giving the other party 14 days' notice.</p> <p>9.3 BTG may terminate the Contract without notice:</p>	<p>(a) in the event of default under clause 10.1; or</p> <p>(b) in the event that the Storer engages in activities reasonably considered by BTG to be illegal or environmentally harmful in the Space.</p> <p>9.4 The Storer must pay all amounts due under this Contract up to the date of termination.</p> <p>9.5 The Storer must take possession of all Goods and any other items in the Space before close of business on the day of termination.</p> <p>9.6 Any of the Storer's Goods that remain in the Space 7 days after the date of termination will be deemed abandoned and may be sold or disposed of in accordance with clause 11.</p> <p>10. Default</p> <p>10.1 The Storer shall commit an act of default in the event that any storage fees, or any other moneys owing under this Contract, remain in arrears and are unpaid for a period of 42 days.</p> <p>10.2 Upon default BTG may terminate this Contract without notice, and without limitation to any other remedy it may have, sell or dispose of the Goods in the Space in accordance with clause 11..</p> <p>11. Sale and Disposal of Goods</p> <p>11.1 In the event of default or the abandonment of the Goods, BTG may enter the Space, by force or otherwise, and take possession of sell or dispose of any Goods in the Space on such terms that BTG may determine.</p> <p>11.2 For the purposes of the Personal Property Securities Act 2009, BTG is deemed to be in possession of the Goods from the moment BTG accesses the Space.</p> <p>11.3 If, in the opinion of BTG, the Goods are not saleable, are of insufficient value to warrant a sale, may pose a health risk to its staff or the public if handled, or the Goods fail to sell when offered for sale, then BTG may dispose of any or all of the Goods in the Space by any means.</p> <p>11.4 The Storer consents to and authorises the sale or disposal of all Goods regardless of their nature or value.</p> <p>11.5 BTG may also require payment of any costs associated with the sale or disposal of the Goods including any costs associated with accessing the Space.</p> <p>11.6 If the proceeds of the sale of any Goods sold exceed the amount due to BTG under this Contract then BTG will pay the excess to the Storer within 28 days of the date of sale. If the Storer cannot be located the excess funds shall be deposited with the Public Trustee.</p> <p>12. Storage Liens Act</p> <p>12.1 In addition to the power of Sale and Disposal referred to at clause 11 above BTG has a statutory lien over the Goods for all moneys payable by the Storer to BTG pursuant to section 3 of the Storage Liens Act 1935 (NSW) (Act).</p> <p>12.2 Should some part of the moneys payable to BTG remain in arrears for a period of not less than 6 months (or such other period as may be allowed by the Act), BTG will, after providing written notice in accordance with the Act, sell the Goods by public auction.</p> <p>12.3 After deducting the costs associated with or connected to the sale BTG is entitled to retain and apply the proceeds of sale to the payment of any outstanding fees and charges.</p>
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13. Exclusion of Implied Terms

13.1 The Storer may have the benefit of consumer guarantees under the Australian Consumer Law. Otherwise, to the maximum extent permitted by law, all terms, conditions or warranties that would be implied into these Terms and Conditions or in connection with the supply of any Services by BTG under law or statute or custom or international convention are excluded.

14 Liability

14.1 The Storer shall be liable for, and to the extent permitted by law hereby releases and indemnifies BTG against all claims, loss or expense including claims in contract, tort or otherwise whether arising out of, or in connection with or relating to any breach of this Contract, the performance or provision of the Services or any fact, matter or thing relating to the Services or error in information supplied to the Storer before or after the date of the Storer's use of or Services.

14.2 Notwithstanding anything else expressed or implied in these terms, to the extent permitted by law, BTG shall not be liable for any injury to persons or damage to property, loss of production, or for any special indirect or consequential loss or damage whatsoever such as but not limited to loss of profits, loss of use, loss of power, costs of capital or costs of replacement power, arising in any way whether directly or indirectly and whether as a result of negligence on the part of BTG or its employees, agents and contractors or otherwise arising out of or resulting from, whether directly or indirectly, the supply or use of the Services.

15. Force Majeure

15.1 The failure by BTG to observe or perform wholly or in part any of its obligations in this Contract is deemed not be a breach if the failure was caused by Force Majeure.

16 Waiver

16.1 The failure of any party to enforce any provision of this Contract or exercise any rights expressed in this Contract, shall not be a waiver of such provisions or rights and shall not affect the enforcement of this Contract.

17. No Assignment

17.1 The Storer shall not assign its rights or obligations under

this Contract without the prior written consent of BTG.

18. Governing law

18.1 This Contract shall be governed by and construed in accordance with the laws of New South Wales, Australia. Each party to this Contract submits to the non-exclusive jurisdiction of the Courts of that State.

19. Notices

19.1 A notice in connection with the Contract

- (a) must be in writing;
- (b) must be marked for the attention of the person described in the Agreement; and
- (c) must be :
 - (i) left at the address of the addressee; or
 - (ii) sent by email or prepaid ordinary post (airmail if posted to or from a place outside Australia) to the address of the addressee; or
 - (iii) sent by way of SMS or text message to the mobile phone number of the addressee which is specified in the Agreement; or
 - (iv) sent by facsimile to the facsimile number of the addressee which is specified in the Agreement; or
 - (v) if the addressee notifies another address, mobile phone number or facsimile number then to that address, mobile phone number or facsimile number.

20. GST

20.1 All amounts payable or the value of other consideration provided in respect of supplies made in relation to this Contract are exclusive of GST (if any). If a GST is levied or imposed on any supply made (or deemed to have been made) under or in accordance with this Contract the amounts payable or the value of the consideration provided for that supply (or deemed supply) must be increased by the amount of GST payable in relation to the Supply.

21 Unenforceability

21.1 If any clause, term or provision of this Contract is rendered invalid or unenforceable by operation of any law or otherwise then:

- (a) the offending clause, term or provision should be read down to give it a valid or enforceable operation of a partial nature, if possible, otherwise;
- (b) the offending clause, term or provision should be severed from this Contract, in which event the remaining clauses, terms and provisions operate as if the offending clause, term or provision had never been included.