

Terms and Conditions 2016

1 Definition

1.1 Definitions

In this Agreement:

1. **Act** means the *Corporations Act (2001)* and includes any amendment or re-enactment of it or any legislation passed in substitution for it;
2. **Agreement** means the Application Form and these Terms & Conditions including any schedules or annexures thereto;
3. **Application Form** means the application form completed by the Licensee;
4. **Box** means the safety deposit box in the Vault Facility allocated for exclusive use to a Licensee as listed in the Schedule;
5. **Business Day** means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in Sydney New South Wales Australia;
6. **Company** means Custodian Vaults Pty Limited ABN 54 159 994 108;
7. **Company Key** means a key that corresponds to the relevant Licensee Key and is retained by the Company;
8. **Commencement Date** means the commencement date of this Agreement;
9. **Deposit** means the fee payable by the Licensee to the Company as security for this Agreement detailed in the Schedule;
10. **Fee** means any monies payable by the Licensee to the Company in connection with this Agreement detailed in the Schedule;
11. **Governmental Agency** means any government or governmental, semi governmental, fiscal, administrative or judicial body, department, commission, authority, instrumentality, tribunal, agency or entity, and includes a revenue authority and any self-regulatory organisation established under statute or a stock exchange;
12. **GST Act** means *A New Tax System (Goods and Services Tax) Act (1999)* and includes other GST related legislation and regulations under the legislation, as amended from time to time;
13. **Identification Requirements** means the requirements set out in clause 20 of this Agreement;
14. **Insolvency Event** means, in relation to a person or entity (as the case may be), the person or entity being made bankrupt, being placed into liquidation, receivership, administration or official management, entering into a scheme of arrangement, compromise or composition with creditors or being or becoming unable to pay one's debts as they fall due or similar event occurring to the person;
15. **Liability Policy** has the meaning set out in clause 16 of this Agreement;
16. **Licensee** means:
 - (a) the person listed as the Licensee in the Application Form; or
 - (b) any person nominated by the Licensee in accordance with this Agreement or otherwise approved by the Company;
17. **Licensee Keys** means the keys referable to a specific Box, issued by the Company to the Licensee and retained by that Licensee or its Specified Person;
18. **Property** means your property which is stored in the Box;
19. **Rules** means this Agreement and any other rules determined by the Company relating to the use of the Box and the Vault Facility, as amended by the Company in its discretion;
20. **Specified Persons** means the persons so named in the Application Form;
21. **Term** means the period as set out in the Application Form;
22. **Termination Date** means the date that this Agreement terminates for whatever reason;
23. **Terms and Conditions** means the terms of this Agreement;
24. **Uncollected Goods** has the meaning set out in section 5 of the *Uncollected Goods Act (1995)*;
25. **Vault Facility** means the premises at which the relevant Box is located.

1.2 Interpretation

1. Reference to:
 - (a) one gender includes the others;
 - (b) the singular includes the plural and the plural includes the singular; and
 - (c) a person includes a body corporate.
2. Except so far as the contrary intention appears in this Agreement:
 - (a) an expression has in this constitution the same meaning as in the Act; and
 - (b) if an expression is given different meanings for the purposes of different provisions of the Act, the expression has, in a provision of this constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.
3. "Including" and similar expressions are not words of limitation.
4. Headings and any table of contents or index are for convenience only and do not form part of this Agreement or affect its interpretation.
5. "our" and "we" and "us" are references to the Company and to "you" are to the Licensee.

2 Agreement

- 2.1 In consideration of the payment by the Licensee to the Company of the Fee and the compliance by the Licensee and its Specified Persons with this Agreement, the Company agrees to allocate the Box to the Licensee for the Licensee's exclusive use during the Term.



3 Term

- 3.1 The Term will, subject to the terms of this Agreement, and unless otherwise indicated, be renewed on payment of the Fee, made in advance, at least 7 Business Days prior to the end of the Term.

4 Fee and Deposit

- 4.1 The Fee and Deposit are set out in the Schedule.
- 4.2 You:
1. must pay the Fee and Deposit for the full Term in advance and on or before the Commencement Date. The Agreement will not commence until the Fee and Deposit is paid;
 2. must pay the Fee for subsequent renewals in advance and at least 7 Business Days prior to the end of the Term. The Agreement will terminate if it is not renewed.
- 4.3 All other charges which may be payable by you at any time are as set out in the Schedule.
- 4.4 All payments must be made by cash, bank transfer or approved credit or debit card.
- 4.5 On execution of this Agreement you must provide a direct debit authority in a form required by us to automatically debit each annual fee from your credit card or bank account.
- 4.6 Unless otherwise determined by the Company, the Fee increases annually by 5%.
- 4.7 The Deposit will be refunded to you after the Termination Date subject to any deduction for costs incurred by the Company. Such costs are to be determined by the Company and include:
1. any administrative costs incurred by the Company by reason of cancellation by you prior to the end of the Term;
 2. costs to repair or alter any Box lock to which a Licensee Key relates, including costs in relation to:
 - (a) engaging a locksmith to open the Box; and
 - (b) changing the lock and keys to the Box.
- 4.8 The Deposit will not be refunded in the event the Licensee Keys are lost, damaged or destroyed or otherwise not returned on the termination of the Agreement.

5 Licensee Keys

- 5.1 Two (2) Licensee Keys will be issued per Box to one (1) Specified Person on receipt by the Company of the Deposit and Rental Fee. No other Licensee Keys are in existence; a Box may only be opened when both a Licensee Key and a Company Key are present.
- 5.2 All Licensee Keys remain the property of the Company.
- 5.3 You must:
1. not make or arrange for any person to make a copy of the Licensee Keys;
 2. not mark the Licensee Keys in any way;
 3. ensure that all Licensee Keys provided to you are not destroyed, damaged, lost or given to any person other than the Specified Persons; and
 4. On termination of this Agreement you must return all Licensee Keys to us in good condition.

6 Contents

- 6.1 You may use the Box to store Property, which you are legally entitled to store and which is accessible only by you and your Specified Persons.
- 6.2 You may not store:
1. liquids;
 2. anything which is offensive in nature or illegal;
 3. anything that has been declared dangerous or hazardous under State or Federal legislation;
 4. any dangerous, flammable, corrosive or perishable items;
 5. weapons, regardless of whether or not they are in working order;
 6. anything which may become a nuisance to any person;
 7. any Property which you do not have full legal entitlement to store to the exclusion of third parties (for example property of another person, or property owned jointly with another person which is, or is likely to become, subject to a claim or dispute over ownership or entitlement);
 8. any property the storage of which will make us subject to any liability or penalty;
 9. anything that requires any special handling or storage to enable its safe or effective storage.
- 6.3 You warrant and agree that your Property stored in the Box complies with this clause 6.
- 6.4 If we become aware that Property stored in the Box is of a kind that contravenes this clause 6, we may remove it and deal with it as we consider appropriate in the circumstances. This may include destroying the Property or handing it to an appropriate authority. We will not be liable to you for any loss you incur as a result of taking such action, and you indemnify us in that regard



7 Access

- 7.1 The Licensee agrees that only the Specified Persons shall have access to the Box and its contents. We require our Identification Requirements to be met before allowing access to the Box and we may refuse access if our Identification Requirements are not met.
- 7.2 The Licensee may nominate additional or withdraw Specified Persons by notice in writing to the Company.
- 7.3 The Company may regulate access to the Vault Facility in its reasonable discretion.
- 7.4 The Specified Person may only access the Box with the relevant Licensee Key in the presence of a Company representative with the corresponding Company Key. A Box can only be opened when both the Licensee Key and the Company Key are inserted into the key holes of the relevant Box. The Company reserves the right to deny access to the Box if any provision of this Agreement has been breached by the Licensee including but not limited to a failure to pay Fees or other costs referred to in this Agreement.
- 7.5 Once the Box has been opened, the Specified Person may view or remove the contents of the Box without the supervision of a Company representative in an allocated viewing suite and/or within the Vault Facility.
- 7.6 In the event that a duly authorised representative of a Governmental Agency serves upon the Company a legal demand to access a Box, or information held by it about the Licensee, the Company will comply with such a request. The Company expressly disclaims any liability for any loss or damage suffered by the Licensee in such an instance. All other attempts to access a relevant Box or information held by the Company about a Licensee will be resisted by the Company unless the Licensee has instructed the Company in writing otherwise. All costs incurred in resisting access will be borne by the Licensee.

8 Liability

- 8.1 Subject to clause 16, to the extent permitted by law:
1. we are not liable to you for any loss or damage you may suffer or incur in connection with this Agreement including for any loss of or damage to your Property in excess of your nominated amount under the Liability Policy; and
 2. all warranties that would otherwise be implied into this Agreement are excluded.
- 8.2 You indemnify us for any loss or liability we may incur (including liability to any third party) arising from the provision of the Box (and access to the Vault Facility).

9 Termination

- 9.1 This Agreement terminates on the earlier of:
1. Either the Company or the Licensee giving the other party not less than 30 days written notice of the intended termination; or
 2. where the Company in its discretion elects to immediately terminate this Agreement where any of the events specified in clauses 6.2, 7.1 or 11.1 occurs; or
 3. the end of the Term where the Licensee has not renewed the Agreement in accordance with clause 4.2.
- 9.2 Termination of this Agreement is without prejudice to any accrued rights of the parties.
- 9.3 The Licensee must return the Licensee Keys to the Company and remove the contents of the Box prior to the Termination Date.
- 9.4 Where the Agreement is terminated by either party by the giving of notice under clause 9.1(1) before the end of the Term, the Company will provide the Licensee with a refund of the Fee that is commensurate with the period of the reduction of the Term on a pro rata basis.
- 9.5 Where the Agreement is terminated for any other reason than the giving of notice under clause 9.1(1) before the end of the Term, the Licensee will not be entitled to any refund of the Fee.
- 9.6 Where the Agreement is terminated for any reason, the Licensee will not be entitled to a refund of any administrative or other charges paid by the Licensee to the Company.
- 9.7 Where this Agreement is terminated for any reason, the Licensee will immediately cease to be a named party on the Liability Policy.

10 Disposal

- 10.1 Where this Agreement is terminated for any reason, the Licensee must remove the Property from the Box within two Business Days of termination.
- 10.2 Where the Licensee fails to remove the Property from the Box in accordance with clause 10.1, the Property will be held to be Uncollected Goods for the purposes of the *Uncollected Goods Act (1995)*.
- 10.3 Where the Company holds Uncollected Goods, the Company may:
1. Remove Uncollected Goods from the Box and store them at the Company's discretion;
 2. Apply to the appropriate Court for an order for the sale and/or disposal of the Uncollected Goods and apply the proceeds of the sale to any outstanding Fees or charges owing by the Licensee to the Company and refund the balance of the proceeds of the sale (if any) to the Licensee.



11 Insolvency, Incapacity or Death

- 11.1 Where a Licensee:
1. suffers an Insolvency Event;
 2. dies; or
 3. otherwise becomes unable to exercise its rights under this Agreement for reasons of incapacity, and the property of the Licensee is vested in a relevant trustee or executor as the case may be, the Company may terminate this Agreement and permit such trustee or executor to access the Box to remove its contents, subject to compliance with the provisions of this Agreement.

12 Goods and services tax

- 12.1 Definitions
In this clause:
1. GST means GST as defined in *A New Tax System (Goods and Services Tax) Act (1999)* as amended (GST Act) or any replacement or other relevant legislation and regulations;
 2. words or expressions used in this clause which have a particular meaning in the GST law (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires;
 3. any reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member;
 4. any reference to an input tax credit entitlement by a party includes any corresponding input tax credit entitlement by the representative member of any GST group of which that party is a member; and
 5. if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.
- 12.2 Supply is a taxable supply
1. Unless GST is expressly included, the consideration to be paid or provided under any other clause of this Agreement for any supply made under or in connection with this Agreement does not include GST.
 2. To the extent that any supply made under or in connection with this Agreement is a taxable supply, the GST exclusive consideration otherwise to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is otherwise to be paid or provided. A party's right to payment under this clause is subject to a valid tax invoice being delivered to the recipient of the taxable supply.

13 Variation

- 13.1 We:
1. may vary the Terms and Conditions, or change or introduce any fee or charge, at anytime;
 2. will give you notice of any variation to these Terms and Conditions no later than 30 days before the change takes effect;
 3. will give you at least 30 days prior notice if we change or introduce a new fee or charge.
- 13.2 If you do not accept any variation or change that we make, and you are not in breach of this Agreement, you can terminate this Agreement within 30 days from the date of our notice under clause 13.1(2).
- 13.3 If you do not notify us that you wish to terminate this Agreement within 30 days from the date of our notice under clause 13.1(2), you will be deemed to have accepted the variation set out in our notice.
- 13.4 You may not vary this Agreement.

14 Late payment of fees and changes

- 14.1 If you do not pay any fee or charge within 30 days of the date that it becomes due without limiting your rights under this Agreement:
1. we will immediately suspend your access to the Vault Facility;
 2. you will be charged a holding fee and administration fee if the Property remain in the Box, after the suspension;
 3. you must pay a late payment fee of 12% per annum on all overdue amounts (on a monthly basis) until the day of actual payment.

15 Change of address or other details

- 15.1 You must notify us promptly and in writing of any change to the details of the Licensee or Specified Person set out in the Schedule.
- 15.2 We will not accept any changes to those details set out in the Schedule unless they are given to us in writing and signed by the Licensee.



16 Insurance

- 16.1 The Company has insurance in place for its liability under this Agreement (**Liability Policy**) for all claims and damages, including any costs and expenses incurred in connection therewith which are, during the period of cover, sustained or discovered to have been sustained by reason of damage, destruction, theft, disappearance or physical loss by any cause of gold, silver, diamonds, precious metals, jewellery, specie, cash, securities, bonds, certificates, bills of exchange or any other property or articles of intrinsic value for a period of 12 months, at which time it is renewed.
- 16.2 The Company is not an insurance provider and does not hold an Australian Financial Services (AFS) licence. The Company has a Liability Policy which covers the contents of all safety deposit boxes. Although you have contractual rights under this Agreement against Custodian Vaults for any potential loss and damage, you are not a listed party to Custodian Vault's own Liability Policy between Custodian Vaults and its insurer. The Company can request that its insurance broker issues a Notification of Insurable Interest in your name. You should consider obtaining your own financial product advice about the Liability Policy from a person who is able to give such advice under an AFS licence.
- 16.3 The Company will provide you with a copy of the terms and conditions of the Liability Policy on your request, without charge, within a reasonable time after the request.
- 16.4 There is no charge for a Notification of Insurable Interest where you nominate the Property has a value of \$10,000 or less. The Company does charge an administration fee in relation to costs reasonably incurred for Notifications of Insurable Interest where you nominate the Property has a value of greater than \$10,000 .
- 16.5 The Company does not receive payments (e.g. as sponsorship or in the form of rebates) from the issuer of the Liability Policy or any AFS licensee or their associates to arrange for the issue of a risk management product or for a person to be covered by an existing risk management product. If the Company does receive these payments, the Company will advise you of the amounts (if any) that will be paid to the person to be covered by the Liability Policy from those rebates or, if the amounts cannot be ascertained, general information about how the amounts will be determined.
- 16.6 The Company will provide a facility to you so that you may check, without charge, that the Liability Policy has been issued to the Company and remains current.
- 16.7 The Company will take reasonable steps to promptly bring to your attention, if:
1. the cover will not take effect for the period that has been represented to you; or
 2. the cover is, or is likely to be, cancelled or not renewed,
- unless the issuer of the Liability Policy has an obligation to do so under the terms of the Liability Policy. The Company does not have to give you the notification if it reasonably believes that substantially similar cover applies, or will apply, for the relevant period under another risk management product.
- 16.8 The Company undertakes to you that in consideration of you paying the Fee and otherwise complying with the terms of this Agreement, the Company will take reasonable steps to provide information about the status of the Liability Policy. The Company will be liable for any loss or damages suffered by you by reason of the Company's failure to provide you with that information in accordance with its undertaking.

17 Specified Person

- 17.1 If you are an individual, you can nominate one or more persons over the age of 18 years to be Specified Persons. We reserve the right to refuse to accept any person as your Specified Person.
- 17.2 If you are a company or other entity, you must nominate one or more Specified Persons over the age of 18 years. We reserve the right to refuse to accept any person as your Specified Person.
- 17.3 Your Specified Persons will have the same control over Property as you do, including the rights to:
1. access the Property;
 2. remove the Property; and
 3. terminate this Agreement
- 17.4 If we cannot contact you using the details you have provided in the Schedule, we may contact your Specified Persons including to give notice that we require the Property to be removed.
- 17.5 You can revoke the authority of any Specified Person by notifying us in writing.

18 Access to Vault Facility

- 18.1 Access to Property stored at the Vault Facility is limited to you and your Specified Persons.
- 18.2 We will require photo identification and biometric security authorisation before allowing access (by appointment only) to the Vault Facility and we may refuse access if we are not satisfied with the form of identification produced.
- 18.3 You can access the Vault Facility between 8.30am and 5:00pm Monday to Friday (public holidays excepted) and Saturday between 8.30am and midday. Access outside the hours must first be agreed by us. We may charge you additional fees to cover the cost of staffing outside these hours.
- 18.4 We may refuse any person access to the Vault Facility or to their Property where required to do so by lawful instructions, notices, orders or directions.



19 Joint Ownership

- 19.1 If the Licensee comprises 2 or more parties, you will be jointly and severally liable under the terms of this Agreement and treated as jointly and severally entitled to the Property. If you are individuals, access to the Vault Facility and the Property will be treated as that of the survivor if any of the Licensees die.

20 Identification

- 20.1 The *Anti-Money Laundering and Counter-Terrorism Financing Act (2006)* (AML/CTF Act) was introduced to reduce the risk of money laundering or terrorism financing. As a result of the AML/CTF Act, Custodian Vaults along with other organisations (including financial organisations), must verify the identity of Licensee's to this Agreement and in certain circumstances, the beneficial owners of companies, trusts, partnerships, incorporated associations and registered co-operatives of the Licensee.
- 20.2 A beneficial owner is defined as the natural person who ultimately owns or controls a Licensee and/or the natural person on whose behalf the Licensee has entered into the Agreement. It includes those persons who exercise effective control over a legal person or arrangement. It includes a person who directly or indirectly owns 25% or more of an entity or who controls another person. If there is a chain of ownership, the relevant beneficial owner is the person who ultimately owns or controls the Licensee.
- 20.3 All Custodian Vaults Licensees are required to complete the current Application Form, which includes our AML/CTF Act Identification Requirements. These requirements are in place to:
1. ensure all Custodian Vault Licensees are properly identified through a documented process; and
 2. verify the identity of customers/businesses using reliable electronic and independent documentation.
- 20.4 In relation to our activities we undertake to comply with the AML/CTF Act, we also have obligations under the Privacy Act 2008, including the requirement to comply with the Australian Privacy Principles. A copy of our Privacy Policy can be found on our website at www.custodianvaults.com.au
- 20.5 Pursuant to the Australian Privacy Principles, you hereby authorise the Company to collect personal information provided to the Company by you (including your full name, address, date of birth, email address, contact details and copies of personal ID documents such as your Driver's Licence, Passport, Medicare Card, Bank Statements, Rates Notices or any other documents that prove your identity). The Company may provide this personal information to its related companies so that we may administer our relationship with you; provide you with products and services you request, provide you with information about Custodian Vaults' products and services as well as products and services of related companies. To complete the Custodian Vault Identification Requirements, you hereby authorise the Company to use personal information provided by you to request information from credit agencies, financial institutions and government agencies as necessary to verify your identity.

21 General

- 21.1 Notices
1. Any notice or other communication including, but not limited to, any request, demand, consent or approval, to or by a party to this Agreement:
 - (a) must be in legible writing and in English addressed in accordance with the recitals or as specified to the sender by any party by notice;
 - (b) where the sender is a company, must be signed by an officer or under the common seal of the sender;
 - (c) is regarded as being given by the sender and received by the addressee:
 - (i) if by delivery in person, when delivered to the addressee;
 - (ii) if by post, on delivery to the addressee;
 - (iii) if by electronic mail, when received by the addressee; or
 - (iv) if by facsimile transmission to the facsimile number specified at the commencement of this Agreement or such other number as may be notified to the Company, whether or not legibly received, when received by the addressee, but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time) it is regarded as received at 9.00 am on the following Business Day; and
 - (d) can be relied upon by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.
 2. A facsimile transmission is regarded as legible unless the addressee telephones the sender within 2 hours after transmission is received or regarded as received under error and informs the sender that it is not legible.
 3. In this clause, a reference to an addressee includes a reference to an addressee's officers, agents or employees.
- 21.2 Governing law and jurisdiction
1. This Agreement is governed by the laws of New South Wales.
 2. Each of the parties irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.
- 21.3 Assignment
1. The Licensee may not assign, transfer or in any other manner deal with its rights under this Agreement without the prior approval of the Company;
 2. The Company may assign its rights under this Agreement provided it first notifies the Licensee.
- 21.4 Prohibition and enforceability
1. Any provision of, or the application of any provision of, this Agreement or any power which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.



2. Any provision of, or the application of any provision of, this Agreement which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

21.5 Waivers

Waiver of any right arising from a breach of this Agreement or of any power arising upon default under this Agreement must be in writing and signed by the party granting the waiver.

21.6 Entire agreement

This Agreement incorporates the entire understanding of the parties and supersedes all previous arrangements and understandings, written and oral, between the parties in relation to the same.

21.7 Costs and outlays

1. Each party must pay its own costs and outlays connected with the negotiation, preparation and execution of this Agreement.
2. The Licensee must, when due or earlier, pay all stamp duty and other government imposts payable from time to time in connection with this Agreement and all other documents and matters referred to in this Agreement.

End.

