

ENFORCEABLE UNDERTAKING UNDER

THE AUSTRALIAN CONSUMER LAW (WA)

BETWEEN

R.F & M.D MILLER'S MOVES PTY LTD (ACN 005 908 190)

AND

COMMISSIONER FOR CONSUMER PROTECTION

RECITALS

WHEREAS:

- A. R.F & M.D Miller's Moves Pty Ltd ACN 005 908 190 ("**Company**") carries on business under the business names "Millers Moves" and "Millers Moves (Vic)" in supplying removal, storage and transport services to consumers across Australia, including in Western Australia.
- B. The Commissioner for Consumer Protection ("**Commissioner**") designated pursuant to section 55 of the *Fair Trading Act 2010 (WA)* ("**FT Act**") is the Regulator for the purposes of the *Australian Consumer Law (WA)* ("**ACL (WA)**").
- C. For the purposes of this Enforceable Undertaking:
 - (i) "**consumer**" has the same meaning as it does under the FT Act or the *ACL (WA)*, whichever is applicable;

- (ii) **“Contract”** means the standard contract used by the Company as found on the reverse side of the Company’s tax invoices and attached as Annexure A to this Enforceable Undertaking; and
- (iii) **“consumer contract”** has the same meaning as it does in section 23(2) of the *ACL (WA)*..

D. Clause 14 of the Contract provides (**“Relevant Clause”**):

Insurance Information

IMPORTANT NOTICE

I/We acknowledge that we have been given by Millers Moves the option of:

- (a) Arranging insurance for ourselves, on our goods being carried, loaded, stored or moved by Millers Moves Through- Carts or another insurer of our own choice.*
- (b) Having our goods being carried, loaded, stored, or moved by Millers Moves uninsured.*

I/We further acknowledge that we do not require Millers Moves to:

Be responsible for any loss or damage to the goods being transported or stored whatsoever caused by any circumstances.

We will not pursue a claim against Millers Moves P L as the cartage conditions have been made perfectly clear to us prior to the commencement of the removal service.”

E. The Relevant Clause is unfair within the meaning of section 24 of the *ACL (WA)* in that it:

- (i) permits the Company to avoid or limit its performance of the Contract; and
- (ii) limits the ability of the consumer, but not the Company, to commence proceedings in respect of a breach of the Contract.

F. In including the Relevant Clause in the Contract, the Company, in contravention of section 29(1)(m) of the *ACL (WA)* makes a false or misleading representation, in trade or commerce, in connection with the supply or possible supply of services that consumers do not have a right to compensation for a breach by the Company of the guarantee of due skill and care provided by section 60 of the *ACL (WA)*.

G. The Commissioner accepts this Enforceable Undertaking under section 218 of the *ACL (WA)*.

- H. Upon the Commissioner being satisfied of a breach, this Enforceable Undertaking is enforceable by a court upon the Commissioner's application in accordance with section 218 of the *ACL (WA)*.
- I. This Enforceable Undertaking is not confidential and may be published by the Commissioner.

UNDERTAKING

R.F & M.D MILLER'S MOVES PTY LTD, upon this Enforceable Undertaking being accepted by the **COMMISSIONER, UNDERTAKES**, pursuant to section 218 of the *ACL (WA)*, that:

- 1. On and from the expiry of **twenty-eight (28)** days after the Commissioner accepts this Enforceable Undertaking, notice of which shall be given to the Company, the Company will not enter into any consumer contract containing:
 - 1.1. the Relevant Clause; or
 - 1.2. any clause excluding a consumer's right to recover for loss or damage to their goods where such loss or damage is caused by the Company, including but not necessarily limited to damage caused by:
 - 1.2.1. the Company's failure to comply with section 60 of the *ACL (WA)*; or
 - 1.2.2. the Company's negligence; or
 - 1.2.3. the Company's failure to perform, whether partially or wholly, the consumer contract; or
 - 1.3. any clause removing, restricting or limiting a consumer's right to commence legal proceedings against the Company for loss or damage to their goods where such loss or damage is caused, directly or indirectly, by the Company.

2. Within **twenty-eight (28)** days of the Commissioner accepting this Enforceable Undertaking, the Company will provide to the Commissioner a copy of the standard form consumer contract that the Company proposes to use in compliance with clause 1 of this Enforceable Undertaking.

3. The Company will not, in connection with the supply of removal, storage and transport services, represent, whether expressly, impliedly or otherwise, by means of any written or oral communication to a consumer, that a consumer:
 - 3.1. does not have a right to recover for loss or damage to their goods where such loss or damage is caused by the Company, including but not necessarily limited to damage caused by:
 - 3.1.1. the Company's failure to comply with section 60 of the *ACL (WA)*; or
 - 3.1.2. the Company's negligence; or
 - 3.1.3. the Company's failure to perform, whether partially or wholly, the consumer contract; or
 - 3.2. does not have a right to take legal action against the Company for loss or damage to their goods where such loss or damage is caused, directly or indirectly, by the Company; or
 - 3.3. does not, unless the consumer purchases insurance from the Company or another insurer, have either or both of the rights referred to in subclauses 3.1 and 3.2.

4. It is understood and acknowledged that these undertakings are enforceable under section 218 of the *Australian Consumer Law (WA)*, and are made pursuant thereto.

Signed for and on behalf of:

R.F & M.D Miller's Moves Pty Ltd
ACN 005 908 190
In accordance with section 127 of the
Corporations Act 2001 (Cth)

ROWAN FRANCIS MILLER
Director



Signature

MARGARET DENISE MILLER
Director & Secretary



Signature

ANNE MARIE DRISCOLL
COMMISSIONER FOR
CONSUMER PROTECTION



Signature

DATE UNDERTAKING ACCEPTED

Date

20th July 2013 .