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## ABLE REMOVALS – TERMS & CONDITIONS

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### 1. Acceptance of Terms

Any order, request or other instructions received by the Service Provider from the Customer for the supply of Services, or the Customer's acceptance of Services supplied by the Service Provider, constitutes acceptance of these Terms on the part of the Customer, following which these Terms will apply to and govern the purchase and supply of Services.

### 2. Description of Services

The Services are as described on the invoice, quote, work authorisation, work order or any other work commencement form as provided by the Service Provider to the Customer.

### 3. Service Provider not a common carrier

The parties acknowledge and agree that the Service Provider is not a common carrier and expressly disclaims any liability as such. The Service Provider reserves the right, in its sole discretion, to refuse to quote for:

- (a) the carriage of goods for any particular person; or
- (b) the carriage of any goods or particular classes of goods.

### 4. Customer's obligations

#### 4.1 Access to property

- (a) The Customer must provide the Service Provider clear and safe access to the Pick-Up Address and the Drop-Off Address at the agreed date and time for, and for the duration of, the performance of the Services.
- (b) Without limiting clause 4.1(a), the Customer must ensure that:
  - (i) to the extent reasonably possible, loading docks and lifts are made available to the Service Provider at the Pick-Up Address and the Drop-Off Address for the duration of the Services; and
  - (ii) adequate parking is available at the Pick-Up Address and the Drop-Off Address.
- (c) The Customer represents and warrants that:
  - (i) the Service Provider is authorised to enter any premises, building or property at which the Services are to be performed (**Premises**); and
  - (ii) if the Customer is not the owner of the Premises, the Customer has obtained all necessary consents, authorisations and permits required in connection with the performance of the Services by the Service Provider.

#### 4.2 Information provided for quoting purposes

The Customer represents and warrants that the information that the Customer or any Authorised Person provides to the Service Provider and on which the Service Provider has relied in formulating or assessing a quote or estimate in respect of the Services:

- (a) is true and accurate and not misleading, and is not likely to mislead or deceive in any material way, whether by content or omission; and

- (b) comprises all material information about the Services that the Service Provider requires, and which is material to be known by an intending provider of the Services.

#### 4.3 Owner or authorised agent

The Customer represents and warrants that it is the owner of the Goods or is authorised to accept delivery of the Goods on the owner's behalf.

#### 4.4 Fragile, quarantined and valuable Goods

The Customer must, prior to the commencement of the Services notify the Supply in writing of any Goods which are or may be:

- (a) inherently fragile, brittle or easily damaged;
- (b) valued at or greater than \$500;
- (c) subject to quarantine restrictions; or
- (d) are otherwise of a nature, importance or value (whether financially or otherwise), that require the exercise of special care or skill which would not be apparent from ordinary visual inspection of the relevant Good.

#### 4.5 Dangerous Goods

- (a) The Customer must, prior to the commencement of the Services, provide the Service Provider with written notice of the existence and details of any Dangerous Goods.
- (b) The Customer acknowledges and agrees that the Service Provider is under no obligation to deliver or store any Dangerous Goods.
- (c) If the Customer fails to notify the Service Provider of the existence and details of any Dangerous Goods prior to the commencement of the Services:
  - (i) the Service Provider may, at the Customer's expense and without incurring any liability to the Customer, take reasonable action to dispose of, destroy or otherwise deal with the Dangerous Goods; and
  - (ii) the Customer must indemnify and keep indemnified the Service Provider from and against all Losses suffered or incurred by the Service Provider, and all claims made against the Service Provider, arising out of or in connection with the delivery, storage and handling of the Dangerous Goods.

#### 4.6 Presence at loading and unloading

The Customer must ensure that the Customer or an Authorised Person is present at the Pick-Up Address and the Drop-Off Address.

#### 4.7 Condition of Goods

The Customer must ensure that all Goods are provided to the Service Provider in a suitable condition, including, if applicable, by ensuring any Goods are packed adequately to withstand the ordinary risks of removal, transport and storage, unless and except to the extent that the Service Provider is engaged to pack the Goods on the Customer's behalf.

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### 4.8 Electrical equipment

The Customer must organise the offsetting of all electrical equipment and computer equipment prior to commencement of the Services.

### 4.9 Inventory and confirmation of delivery of Goods

The Customer may be asked by the Service Provider to sign an inventory or other documents at the conclusion of performance of the Services, at which time the Customer will be required to confirm that all of the Goods have been delivered, that there are no missing items or boxes and that the Goods are in an acceptable condition.

### 4.10 Other obligations

The Customer must ensure, to the extent reasonably possible, that:

- (a) all Goods are loaded and delivered by the Service Provider and that no Goods belonging to the Customer are overlooked; and
- (b) in the course of performing the Services, goods belonging to third parties are not transported or stored by the Service Provider in error.

## 5. Delivery

### 5.1 Manner of delivery

The Customer acknowledges and agrees that:

- (a) the Service Provider is not required to deliver Goods to, or unload the Goods at, the Drop-Off Address unless the Customer or an Authorised Person is present at the Drop-Off Address; and
- (b) the Service Provider may, in its sole discretion and acting reasonably, determine the means and route by which the Services will be performed.

### 5.2 Ancillary Services

Upon request, the Service Provider may (but is under no obligation to) arrange for Ancillary Services to be provided by Third Party Providers, subject to the terms and conditions of the relevant Third Party Provider. The Service Provider is under no liability whatsoever to the Customer for any Loss arising out of or in connection with the provision of Ancillary Services by a Third Party Provider and the Customer irrevocably and unconditionally waives and releases the Service Provider from a liability for any such Loss.

### 5.3 Service delay or interruptions

- (a) The Customer acknowledges and agrees that any timeframe provided by the Service Provider for performance of the Services is an estimate only and will vary depending on the location of the Pick-Up Address and the Drop-Off Address and adverse weather or road conditions, amongst other factors.
- (b) The Service Provider will use all reasonable endeavours to perform the Services at the scheduled date and time but is not liable for any delay in performing the Services where the cause of such delay is outside the control of the Service Provider.
- (c) If the Service Provider is delayed or prevented from providing the Service due to circumstances beyond its control, the Service Provider may reschedule the

delivery of the Service to an agreed date and time, and will use reasonable endeavours to minimise the impact of such circumstances on the Customer.

### 5.4 If Goods undeliverable

If the Service Provider is unable to deliver the Goods to the Drop-Off Address due to the Service Provider being denied clear and safe access to the Drop-Off Address, or there being no authorised person to receive the Goods at the Drop-Off Address or any other reason beyond the Service Provider's control, then the Service Provider will endeavour to contact the Customer to ascertain whether an alternate arrangement with respect to the delivery of the Goods can be agreed within a reasonable period of time, failing which the Service Provider may:

- (a) unload and store the Goods in any storage venue or warehouse until such time as the Service Provider is able to deliver the Goods to the Drop-Off Address in accordance with these Terms; and
- (b) charge an additional reasonable amount for the storage and subsequent re-delivery of the Goods.

### 5.5 Service limitations

Where the Service Provider reasonably determines that:

- (a) the situation presents occupational health and safety risks to the Service Provider or its employees or subcontractors; or
- (b) there is a real risk or danger to the life, health, safety or property of any person or of causing significant damage to the environment,

the Service Provider may only be able to provide limited assistance, or may be unable to provide the Service at all.

## 6. Service cancellation

- (a) The Customer may elect to cancel a request for a Service (**Service Request**) no later than 48 hours prior to the Service Provider's scheduled date and time of arrival.
- (b) If a Service Request is cancelled after the time referred to in sub-clause (a), the Service Provider may charge, and the Customer will be required to pay, a cancellation fee equal to \$250.

## 7. Price and Payment

### 7.1 Price

At the Service Provider's sole discretion, the Price is;

- (a) as indicated on any invoice provided by the Service Provider to the Customer for the provision of the Services (**Service Invoice**); or
- (b) subject to clause 7.2, the Service Provider's quoted price which is binding on the Service Provider provided that the Customer accepts the Service Provider's written quote within 7 days after it is given and subject to the work commencing within 90 days of the date of acceptance of the quote.

### 7.2 Variations to Services required or delay

- (a) Any estimate or quote provided by the Service Provider is provided on the basis that the Customer has given full and frank disclosure of the nature and extent of the

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Services required and given all information to the Service Provider that is material for the purposes of the quote (to the extent possible). The Service Provider reserves the right to amend its quoted price after attendance at the Customer's property and full assessment of the Services that are required to be provided.

- (b) If the Services which the Customer ultimately requires the Service Provider to perform vary from the Services for which a quotation or estimate has been provided, or additional Services are subsequently required or are requested by the Customer, the Service Provider is entitled to impose, and the Customer is required to pay in full, a reasonable additional charge to cover the modified or additional Services that the Service Provider is required or is requested to perform.
- (c) Any variation or addition to the Services will be shown as a variation on the Service Provider's invoice to the Customer.

### 7.3 Third party costs and delay

- (a) The Customer must pay to the Service Provider, or reimburse the Service Provider for, third party costs that are incurred by the Service Provider in connection with the performance of the Services.
- (b) If the Service Provider is prevented from or delayed in performing the Services or any part thereof (except where that prevention or delay results from a factor within the Service Provider's control), the Service Provider may impose a reasonable additional charge to cover any costs or expenses associated with such prevention or delay.

### 7.4 Alteration of Service date

If a date for the performance of the Services has been agreed and the Customer subsequently requires the Service Provider to perform the Services on another date, the parties must use all reasonable endeavours to agree another mutually convenient date to perform the Services. If another date for performance of the Services is agreed, the Service Provider may charge a reasonable additional charge for any Loss, costs or expenses suffered or incurred by the Service Provider arising out of or in connection with the alteration or variation of the scheduled date for performance of the Services.

### 7.5 Payment by Third Party

If the Customer has informed the Service Provider that the Price will be paid by a third party and the Service Provider has consented to that arrangement, and that third party does not pay the Price on the date set for payment, or if no date is set for payment, within 7 days of the date of the Service Invoice, the Customer thereupon becomes liable for payment of the Price.

### 7.6 Payment

- (a) Time is of the essence in relation to payment of the Price and will be stated on the Service Invoice. If a time is not stated, payment must be made by the Customer to the Service Provider within 7 days of the date of the Service Invoice.

- (b) Payment must be made from the Customer to the Service Provider by cash, bank cheque or electronic funds transfer or any other method of payment specified in the Service Provider's written quote or Service Invoice.
- (c) Unless expressly stated in the Service Provider's written quote or Service Invoice, the Price excludes all transport/freight costs, storage costs, security costs, insurance, customs and import duties and other out-of-pocket expenses and the Customer must pay or reimburse the Service Provider for the same.
- (d) If the Customer disputes an amount shown on a Service Invoice, it must:
  - (i) notify the Service Provider within 3 days of receipt of the Service Invoice that it disputes the invoice; and
  - (ii) pay the amount not in dispute.
- (e) If the Customer does not give the notice referred to in clause 7.6(d), the Service Invoice is deemed not to be disputed.
- (f) The Customer must pay the Price and any amounts owing to the Service Provider under these Terms without set-off, conditions, restrictions or deductions unless required by law.

### 7.7 GST and duties

- (a) All amounts payable by the Customer to the Service Provider and all other references to monetary amounts under these Terms are exclusive of GST, unless expressly stated otherwise.
- (b) The Customer must pay to the Service Provider an additional amount equal to the GST liability on a supply or transaction to which GST applies.

## 8. Warranties

- (a) Any term, condition, guarantee or warranty which would otherwise be implied into these Terms is excluded to the maximum extent permitted by law.
- (b) Nothing in these Terms is intended to have the effect of contracting out of any applicable provisions of the *Competition and Consumer Act 2010* (Cth) or the *Fair Trading Acts* in each of the States and Territories of Australia, except to the extent permitted by those Acts.
- (c) If a law implies a warranty, guarantee, condition or imposes an obligation or liability on the Service Provider in respect of the Services that cannot be excluded, restricted or modified, then the Service Provider's liability is, to the extent permitted by law, limited to, at the Service Provider's option:
  - (i) supplying the Services again; or
  - (ii) paying for another party to supply the Services again.

## 9. Liability for Loss or Damage – Private Removals

- (a) **(Consumer guarantees)** Except where the Services are performed for the purposes of a business, trade, profession or occupation carried on or engaged in by the Customer, the Services come with non-excludable

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guarantees set out in sections 60, 61 and 62 of the Australian Consumer Law, including that the Services will be provided with due care and skill.

- (b) **(Defect Notice)** The Customer may, within the period specified in clause 9(e), notify the Service Provider of any Goods or Services that the Customer reasonably consider to be defective, in any material respect, by giving written notice to the Service Provider to that effect **(Defect Notice)**. The Customer must provide the Service Provider an opportunity to inspect all alleged defective Goods or Services as soon as practicable following the issue of a Defect Notice.
- (c) **(Limitation of liability)** The Service Provider does not have any liability for any Loss or damage to Goods to the extent that any such Loss or damage is caused, directly or indirectly, by:
- (i) any act or omission on the Customer's part, including the failure of the Customer to notify the Service Provider of the existence of Dangerous Goods or to follow any instructions or guidelines provided by the Service Provider;
  - (ii) a circumstance outside the reasonable control of the Service Provider, including Loss or delay arising out of or in connection with the provision of Ancillary Services by Third Party Providers;
  - (iii) the defective or inadequate packing or unpacking of Goods, where the packing or unpacking of the relevant Goods (as the case may be) was not undertaken by the Service Provider.
- (d) **(Goods inherently at risk)** Certain goods (including electrical and mechanical appliances, television equipment, computer equipment, scientific instruments and certain musical instruments) are inherently susceptible to suffer damage or disorder upon removal or during transit. The Service Provider does not have any liability for any Loss or damage to such Goods unless, and only to the extent that, such Loss or damage is directly caused by the negligence of the Service Provider. Without limiting the foregoing, the Service Provider is not liable for:
- (i) electrical or mechanical damage to Goods;
  - (ii) damage to the internal wiring of Goods; or
  - (iii) damage to Goods involving the restoration or reconstruction of information or data,
- unless and only to the extent that such damage is caused directly by the negligence of the Service Provider.
- (e) **(Notification of Loss or Damage)** The Service Provider has no liability for any claim under this clause 9 unless the Customer gives the Service Provider written notice of such claim **(Claim Notice)** within a reasonable time and in any event, no later than 7 days after the date of delivery of the Goods or, in the case of lost or misplaced Goods, the date on which the Goods were scheduled to be delivered. The Customer acknowledges that the Service Provider will have the best chance of locating any misplaced Goods, or ascertaining the cause of any damage to Goods, if a Claim Notice is given to the

Service Provider within 2 days after the date of delivery.

- (f) **(Damaged Goods)** If the Customer elects not to take out any insurance over furniture items whilst in transit or storage, the Service Provider will only be liable for damage to the Goods up to a maximum amount of \$500 per Good or \$2,500 in the aggregate (whichever is the lesser).
- (g) **(Lost or misplaced Goods)** If the Customer elects not to take out any insurance over the Goods whilst in transit or storage, the Service Provider will only be liable for damage for lost, misplaced or stolen Goods up to a maximum amount of \$300 per Good or \$2,000 in the aggregate (whichever is the lesser).
- (h) **(Maximum value of Goods)** In any claim for Loss or damage under this clause 9, any estimate of the inventory and value of the Goods which the Customer has provided to the Service Provider, whether for the purposes of insurance or otherwise, will be prima facie evidence that the total value of the Goods did not exceed that estimate at the time of Loss or damage.

### 10. Liability for Loss or Damage – Commercial Removals or storage

If the Services are required for the purposes of a business, trade, profession or occupation carried on or engaged in by the Customer:

- (a) clauses 9(a) and 9(f) – 9(h) do not apply;
- (b) clauses 9(b) – 9(e) apply; and
- (c) the following additional clauses apply:
  - (i) in satisfaction of any claim for Loss or damage to Goods by the Customer, the Service Provider may elect to either replace the Good or repair the Good, and in this event the Service Provider's liability is limited to the cost of repair or replacement of the Good (as the case may be); and
  - (ii) despite anything else in these Terms, the maximum amount that the Customer may recover from the Service Provider for a claim for lost or damaged Goods under this clause 10 is limited to the lesser of:
    - A. \$100 per Good; and
    - B. \$1,000 in the aggregate.

### 10.1 Excluded Loss

The Service Provider is not liable to the Customer for loss of profit, loss of revenue, loss of product, loss of expected savings, loss of income or any other indirect or consequential loss or expense incurred by the Buyer relating to the Services.

### 11. Default

- (a) **(Interest)** The Customer must pay interest to the Supplier on:
- (i) any unpaid portion of the Price which is overdue; and
  - (ii) any other overdue amount, which the Service Provider is entitled to charge under these Terms.

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- (b) The Customer must pay interest at the Commonwealth Bank maximum personal overdraft interest rate for amounts not exceeding \$100,000 from time to time, calculated on monthly rests.
- (c) **(Lien)** All Goods received by the Service Provider will be subject to a general lien for any moneys due by the Customer to the Service Provider relating to the provision of the whole or any part of the Services **(Relevant Goods)**. Without prejudice to any other rights which the Service Provider may have under these Terms or otherwise at law, if any amounts payable to the Service Provider under these Terms have been outstanding for a period of 26 weeks, the Service Provider may give 28 days' written notice to the Customer of its intention to sell the Relevant Goods, and if the outstanding amount is not paid within that period, the Service Provider may sell all or any of the Relevant Goods and apply the net proceeds in satisfaction of the amount due to the Service Provider.
- (d) **(Sale of Goods)** For the purposes of preparing for the sale of the Goods under clause 11(c) or otherwise as permitted by law, the Service Provider is authorised by the Customer to open any boxes in storage to inspect and identify the contents and the Service Provider may at its discretion decide which Goods will be offered for sale to the general public.
- (e) **(Indemnity)** If the Customer defaults in payment of any amount due and owing to the Service Provider under these Terms, the Customer indemnifies the Service Provider from and against all costs incurred by the Service Provider in enforcing its rights to recover the outstanding amount.
- (f) **(Insolvency, etc)** In the event that:
  - (i) the Service Provider reasonably forms the opinion that the Customer will be unable to meet its payments as and when they fall due;
  - (ii) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (iii) a receiver, receiver and manager, liquidator (provisional or otherwise), administrator, bankruptcy trustee or similar person is appointed in relation to the Customer or any asset of the Customer;then without prejudice to the Seller's other remedies at law or under these Terms:
  - (iv) the Service Provider will be entitled to cancel all or any part of any order of the Services which remains unperformed; and
  - (v) all amounts owing to the Service Provider, whether or not due for payment, will immediately become due and payable.

### 12. Insurance

It is the Customer's responsibility to take out and maintain appropriate insurance for the Goods during transit and/or storage.

### 13. Dispute resolution

- (a) If the Service Provider or the Customer consider that a dispute has arisen in relation to the Services **(Dispute)**, written notice of the dispute must be provided to the other party as soon as reasonably practicable after the date that the dispute arises **(Dispute Notice)**.
- (b) The parties must use all reasonable endeavours to resolve the Dispute within 28 days after the date of the Dispute Notice **(Dispute Period)**.
- (c) While attempting to resolve the Dispute the parties must continue to carry out and comply with these Terms.
- (d) If the parties do not resolve the Dispute within the Dispute Period, then either party may refer the dispute to litigation.
- (e) Despite anything in this clause 13, a party may seek urgent interlocutory relief.
- (f) Each party must bear its own costs of the dispute, unless the Court or a government agency having authority over the Dispute determines otherwise.

### 14. Subcontracting

The Service Provider may subcontract the performance of the whole or any part of the Services under these Terms to a third party **(Subcontractor)**. Any provisions in these Terms which limit the Service Provider's liability also limit the liability of any Subcontractor and its officers and employees.

### 15. General

- (a) The laws of Western Australia govern these Terms.
- (b) A term or part of a term in these Terms that is void, illegal or unenforceable may be severed from the terms and the remaining terms continue in force.
- (c) The Service Provider reserves the right to amend these Terms from time to time and any changes will take effect from the date of notification.
- (d) Any notice required to be served on a party may be served personally, sent by email or letter addressed to that party at the party's address specified in the Service Provider's written quote or Service Invoice.
- (e) A party's failure, partial failure or delay in exercising a right relating to these Terms, is not a waiver of that right. If a party waives any rights available to it under these Terms on one occasion, this does not mean that those rights will automatically be waived on any other occasion.
- (f) Neither party is liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party, provided that the party in default takes reasonable steps to mitigate any Loss or damage arising as a result.

### 16. Definitions and Interpretation

#### 16.1 Definitions

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In these Terms:

- (a) **Authorised Person** means a person authorised in writing by the Customer to receive Goods on behalf of the Customer.
- (b) **Ancillary Services** means any services which are ancillary or incidental to the provision of the Services by the Service Provider, including transportation of Goods by sea, air or rail and transportation of vehicles, trailers, caravans, boats and animals.
- (c) **Business Day** means a day that is not a Saturday, Sunday or a public holiday in Perth, Western Australia.
- (d) **Customer** means a person who orders or otherwise requests Services from the Service Provider and any other person acting on behalf of and with the authority of the first-mentioned person.
- (e) **Dangerous Goods** includes goods which are or may be dangerous, corrosive, highly combustible, explosive, damaging or noxious in nature, or goods which encourage or may encourage the creation or spread of vermin or pests.
- (f) **Drop-Off Address** means the drop-off address specified in the Service Provider's written quote or Service Invoice.
- (g) **Goods** means all furniture, materials and other effects the subject of the Services.
- (h) **GST** means a tax imposed under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (i) **Loss** means any loss, damage, cost, liability, charge or expense of any kind and however arising, including penalties, fines and interest and including any that are prospective or contingent and the amount of which for the time being are not ascertained or ascertainable.
- (j) **Pick-Up Address** means the pick-up address specified in the Service Provider's written quote or Service Invoice.
- (k) **Price** means the price for the Services, as determined by the Service Provider under clause 7.1, which excludes GST.
- (l) **Service** means the work to be undertaken by the Service Provider in connection with the Goods as described in any written quote or Service Invoice provided by the Service Provider to the Customer.
- (m) **Service Invoice** has the meaning given in clause 7.1(a).
- (n) **Service Request** has the meaning given in clause 6(a).
- (o) **Service Provider** means Able Removals (ABN 62 668 193 198) and its officers, employees and agents.
- (p) **Terms** means these terms and conditions.
- (q) **Third Party Provider** means a third party engaged by or on behalf of the Customer to provide Ancillary Services.

### 16.2 Interpretation

In these Terms:

- (a) if a word or phrase is defined, then its other grammatical forms have a corresponding meaning;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a gender includes any gender;
- (d) the words "includes" and "including" are not words of limitation;
- (e) a reference to a statute includes its subordinate legislation, proclamations, ordinances and a modification, replacement, or re-enactment of the same;
- (f) a reference to person, includes a reference to:
  - (i) an individual, a body corporate, a trust, a partnership, a joint venture an unincorporated body or other entity, whether or not it is a separate legal entity; and
  - (ii) the person's personal representatives, successors and assigns (as applicable);
- (g) an agreement, representation or term of these Terms in favour of or on the part of two or more people, benefits or binds them jointly and severally;
- (h) a reference to "\$" or currency is to the Australian currency;
- (i) a reference to time is to Australian Western Standard Time in Perth, Western Australia;
- (j) if a period of time runs from a given date, act or event, then the time is calculated exclusive of the date, act or event;
- (k) a provision in these Terms must not be construed adversely to a party solely on the ground that the party was responsible for the preparing these Terms or that provision;
- (l) a reference to "writing" or "written" includes any electronic transmission;
- (m) a reference to a right includes a benefit, remedy, discretion or power; and
- (n) the phrase "in relation to" has the widest possible import and encompasses the phrases "in connection with", "in respect of", "arising out of" and "resulting from".