

## TERMS AND CONDITIONS

### 1 TERMS OF CONTRACT

1.1 These are the terms (**Terms**) on which we contract with you for logistics and freight forwarding services to be provided by us (**Services**). These Terms, Account Application Form, Payment Term Application Form and other agreement (if any) comprise our contract with you and shall be read as one document. If there is any inconsistency between these Terms and Account Application Form, Payment Term Application Form and/or other agreement, these Terms shall be read subject to the relevant document.

### 2 PAYMENT

2.1 Unless otherwise agreed in writing, where we have agreed to extend credit to you, you must pay invoices for the Services issued by us in full immediately before the Services. Payment is made only when funds have fully cleared into our bank account.

2.2 If full payment is not made by the due date, then without prejudice to any other rights or remedies available to us:

- charge interest on overdue monies on a daily basis at 3% per annum above the current overdraft rate charged by our bankers at that time, and interest shall continue to accrue until payment is made in full;
- in the absence of an agreed payment plan, a \$500 monthly admin fee applies;
- you are responsible for all costs incurred by us in recovering such monies; and/or
- we may cancel or suspend the Services.

2.3 We may accept and apply payments from you in respect of any indebtedness as we see fit, and will not be bound by any conditions or qualifications attaching to the payments.

2.4 Where we have agreed to extend credit to you, we may impose or change your current credit limit. If your current credit limit exceeds, we may require payment in cash of the excess before delivery of any Goods.

2.5 If you dispute any invoice, you must notify us of such dispute within 14 days of the applicable invoice. If such dispute being resolved (between the parties or by court) in favour of us, we may charge interest and other costs pursuant to clause 2.2. After 14 days after the date of an invoice, the invoice shall be deemed to be correct and you shall have no right to dispute the invoice.

### 3 RISK AND INSURANCE

3.1 Risk in your goods (**Goods**) shall remain with you at all times during the Services, and it shall be your sole responsibility and at your cost to arrange appropriate insurance cover for your Goods, except where your Goods are stored (and handled by us pursuant thereto) in our storage warehouse, we have insurance against loss or damage to your Goods up to a maximum aggregate amount of \$7,000,000 for all claims. It is your responsibility to take out a separate and additional insurance if the foregoing cover limit is inadequate or insufficient for your requirements.

### 4 YOUR RESPONSIBILITIES

4.1 You warrant to us that:

- you will supply us with accurate, true and complete details about your Goods and any other information we may request;
- your Goods are properly packaged and labelled and in compliance with all applicable laws to be stored, carried or otherwise handled as part of the Services in every country where your Goods will land or transit;
- you will comply with our instruction and all applicable laws; and

4.2 you have title to and ownership of your Goods You shall be liable for all loss or damage to your Goods, and we may at any time:

- refuse to accept any Goods for Services; and/or
- open and inspect any Goods.

### 5 DELIVERY

5.1 Delivery (whether by instalments) shall be deemed to have been made at the earlier of:

- the time we deliver the Goods to your nominated delivery address;
- the time you collect the Goods; and
- on the fifth day after we notify you that the Goods are ready for collection.

5.2 We may hold your Goods as bailee and may charge you additional fees for storage, demurrage and container detention if:

- we are unable to deliver the Goods; or
- you or consignee have not collected the Goods within 3 days from the time at which they are available for collection, provided that:
- you agree that the Goods are held "at owner's risk";
- we shall not be liable for any loss of or damage to the Goods; and
- we may, in our discretion, return the Goods to you at your risk and expense or sell or dispose of the Goods.

5.3 We do not guarantee delivery within any target timeframe given.

### 6 LIEN AND SECURITY INTEREST

6.1 Immediately the Goods come into our possession we shall have a first and paramount lien over your Goods for all amounts owing by you to us.

6.2 If you do not pay, in full, any amounts owing to us on or before their due date, or if you fail to collect your Goods, we may exercise all or any of the following rights and remedies without liability to you:

- remove such Goods or part thereof and store them in such place and manner as we think proper and at your risk and expense;
- dispose or sell your Goods at your expense; and
- apply the proceeds of sale of your Goods towards the satisfaction of all charges, debts and liabilities owed by you to us.

6.3 You acknowledge that the lien in clauses 6.1 and 6.2 above are a security interest for the purposes of the Personal Property Securities Act 1999 (**PPSA**).

6.4 You:

- undertake to do all acts and provide us on request all information we require to register a financing statement or financing change statement on the Personal Property Securities Register;
- advise us immediately in writing of any proposed change in your name or other details on the Personal Property Securities Register;
- waive your right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interests created under these Terms;
- agree that nothing in sections 114(1), 133 and 134 of the PPSA shall apply to these Terms and contract out of such sections; and
- waive your rights and contract out of your rights under sections 116, 120(2), 121, 125, 129 and 131 of the PPSA.

6.5 The terms and expressions in clause 6 have the meanings given to them in the PPSA.

### 7 LIMITATION OF LIABILITY AND INDEMNITY

7.1 Subject to clause 7.6, our liability under these Terms excludes and replaces all other warranties, conditions or obligations imposed or implied by common or statute law, usage or otherwise to the maximum extent.

7.2 We are not liable for any indirect or consequential loss or damage which you suffer.

7.3 We are not liable for delay or failure to perform the Services as a result of anything beyond our reasonable control.

7.4 Our total liability in respect of all claims which you or other person may have against us for the supply of the Services shall not exceed \$2000 per each unit of goods lost or damaged, as defined in Carriage of Goods Act 1979, or, if less, such amount as equals our charges for the Services Fee (excluding third party disbursement).

7.5 If you have a claim against us for which we may be liable under these Terms, you must write to us, giving full details of the claim, within 5 days after the delivery of the Goods. If you do not, we will not be liable in respect of that claim.

7.6 If the Consumer Guarantees Act 1993 applies, these Terms shall be read subject to your rights under that Act. Where you are in trade and the Services are supplied and acquired in trade you agree that none of the rights and remedies under that Act will apply.

7.7 You indemnify us against all losses which we may suffer or incur in connection with any third party claim, proceedings or investigations against us which arises out of a breach of the Terms by you or any negligent or unlawful act or omission by you.

### 8 DEFAULT AND TERMINATION

8.1 We may suspend the Services or terminate these Terms (and our Services) at any time with immediate effect if you have:

- committed a material breach of these Terms and have failed to remedy that breach within 7 days after you have received a notice from us; or
- adjudicated bankrupt and/or an administrator, liquidator or receiver is appointed.

8.2 The termination of our Services and these Terms will be without prejudice to our rights and remedies in respect of any breach of the Terms by you.

8.3 The provisions of clauses 2, 5, 6, 7, 8, 9, 11 and 14 together with those other provisions of these Terms which are incidental to, and required in order to give effect to those clauses, will remain in full force and effect.

### 9 DISPUTE RESOLUTION

9.1 Subject to clause 2.5, either party may, at any time while there is a genuine dispute involving that party relating in any way to the Terms (**Dispute**), give notice (**Dispute Notice**) to the other party specifying the subject matter of the Dispute and requiring that the parties meet in person or by video or telephone conference within 14 days after delivery of the Dispute Notice, to attempt to resolve the Dispute.

9.2 No party may issue any legal proceedings relating to any Dispute, unless that party has first taken all reasonable steps to comply with clause 9.1.

### 10 PRIVACY ACT 2000

10.1 We may use any personal information that you give to us for credit, administration, service and marketing purposes. If you do not give this information, we may not be able to provide the Services.

10.2 You authorise any person or company to give us such information as we may require in response to our credit and other enquiries.

10.3 You understand that we may use a credit reporting agency to credit check you. In such case:

- the agency will give us information about you for that purpose;
- we will give your personal information to the agency, and the agency will hold the information on its systems and use it to provide their credit reporting service;
- when other customers use the service, the agency may give the information to those customers; and
- if you default in your payment obligations to us, information about the default may be given to the agency, and the agency may give the information to other customers.

10.4 You have a right of access to, and may request correction of, your personal information.

### 11 CONFIDENTIALITY AND INTELLECTUAL PROPERTY

11.1 Each party shall keep confidential, and not disclose to any third party or use for its own business purposes, any Confidential Information, except:

- with the prior written consent of the other party;
- to the extent reasonably required in order to perform each party's obligations under these Terms;
- to the extent required by law; or
- where the disclosure is made in confidence to its professional advisers

The term "Confidential Information" in this clause means any information:

- relating to these Terms;
- relating to the business, customers, contractors, suppliers, products, research and development, trade secrets, finances, accounts, assets or affairs of a party, its personnel and third party licensors (if any);
- provided by or on behalf of a party to the other party under or in connection with these Terms or the Services on the express basis that the information is confidential, but does not include any information which is or becomes publicly available, otherwise than as a result of a breach by a party of clause 11.1.

11.3 Each party will retain ownership of its intellectual property in existence as at the date of the Account Application Form.

11.4 All new intellectual property created or developed by a party under or in connection with these Terms or the performance of the Services will vest in, and be owned by, us.

11.5 Unless otherwise agreed by the parties in writing, each party grants to the other party a non-exclusive, non-transferable, royalty-free licence to use each party's intellectual party, but only to the extent necessary under or in connection with these Terms.

### 12 NOTICES

12.1 Every notice given or required to be given under these Terms (**Notice**) shall be in writing and be served on the other party at one of its addresses set out in the Account Application Form.

12.2 Every Notice shall be sent by courier or by email.

12.3 A Notice shall be deemed to be served if by courier, at the time of delivery and, if sent by email and the intended recipient acknowledges receipt (other than by means of an "out-of-office" auto reply), it shall be deemed to be served at the time of transmission.

### 13 ASSIGNMENT AND SUBCONTRACTING

13.1 We may perform any of our obligations, and exercise any of the rights granted to us, under these Terms through any agents or sub-contractors appointed by us in our absolute discretion for that purpose.

13.2 None of your rights or obligations under these Terms may be assigned or transferred without our prior written consent. No assignment or transfer of title in your Goods shall relieve you of your obligations under these Terms.

### 14 GUARANTEE AND LIMITED LIABILITY

14.1 The directors, owners (owning at least 15% of you), partners or trustees (**Guarantor**) as recorded in the Account Application Form, jointly and severally, unconditionally guarantee the payment of all amounts and the performance of your obligations under these Terms and indemnify us against any loss we may suffer as a result of your default.

14.2 Where a Guarantor is an independent trustee and is not otherwise beneficially entitled to the applicable trust, the liability of that Guarantor is not unlimited or personal, but is limited to the assets of that trust in that Guarantor's hands from time to time, general terms

14.3 Nothing in these Terms shall be deemed to constitute a partnership between the parties or constitute either party the agent of the other party for any purpose.

14.4 We may amend these Terms from time to time by notice to you in writing and hold the final right of interpretation for these Terms.

14.5 These Terms (together with any agreement between you and us which incorporates these Terms) constitute the entire agreement between us and you for the Services and exclude any other representations, understandings, terms, agreements and arrangements, including those in any proposal, document or terms provided by you.

14.6 No delay or failure by us to exercise our rights under these Terms operates as a waiver.

14.7 If a court decides that part of these Terms is unenforceable, the part concerned shall be deleted from the rest of these Terms, which will then continue in force.

14.8 These Terms will be governed by the laws of New Zealand, and the New Zealand courts will have non-exclusive jurisdiction in respect of all matters between us.