



Your shipment... Our personal commitment

GDF New Zealand Ltd

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STANDARD TRADING CONDITIONS

The "Company" in these Standard Trading Conditions ("Conditions") is GDF New Zealand-Limited

PART I: General

1. Application

(A) Subject to sub-clause (B) below, all services of the Company whether gratuitous or not are subject to these Conditions, and:

(i) The provisions of Part I shall apply to all such services.

(ii) The provisions of Part II shall only apply to the extent that such services are provided by the Company as agents.

(iii) The provisions of Part III shall only apply to the extent that such services are provided by the Company as principal.

(B) Where a document bearing a title of or including "bill of lading" (whether or not negotiable), or "waybill" is issued by or on behalf of the Company and provides that the Company contracts as carrier, the provisions set out in such document shall be paramount in so far as such provisions are inconsistent with these Conditions, but no further.

(C) Every variation, cancellation or waiver of these Conditions must be in writing signed by a Director of the Company. Notice is hereby given that no other person has or will be given any authority whatsoever to agree to any variation, cancellation or waiver of these Conditions.

(D) These Conditions shall prevail over the terms and conditions set out in any document used by the Customer, the Owner or any other person having an interest in the Goods and purporting to have a contractual effect.

2. All services are provided by the Company as agents except in the following circumstances where the Company acts as principal:

(A) where the Company performs any carriage, handling or storage of Goods but only to the extent that the carriage is performed by the Company itself or its servants and the Goods are in the actual custody and control of the Company; or

(B) where prior to the commencement of the carriage of Goods the Customer in writing demands from the Company particulars of the identity, services or charges of persons instructed by the Company to perform part or all of the carriage, the Company shall be deemed to be contracting as a principal in respect of that part of the carriage in respect of which the Company fails to give such particulars demanded within 28 days of the Company's receipt of such demand; or

(C) to the extent that the Company expressly agrees in writing to act as a principal, or

(D) to the extent that the Company is held by a court of law to have acted as a principal.

3. Without prejudice to the generality of clause 2:

(A) the charging by the Company of a fixed price for a service or services of whatsoever nature shall not in itself determine or be evidence that the Company is acting as an agent or a principal in respect of such service or services;

(B) the supplying by the Company of their own or leased equipment shall not in itself determine or be evidence that the Company in acting as agent or a principal in respect of any carriage, handling or storage of Goods;

(C) the Company acts as an agent where the Company procures a bill of lading or other document evidencing a contract of carriage between a person, other than the Company, and the Customer or Owner; and

(D) the Company acts as an agent and never as a principal when providing services in respect of or relating to customs requirements, taxes, licenses, consular documents, certificates of origin, inspection, certificates and other similar services.

4. Definitions

In these Conditions:

(A) "Company" is GDF New Zealand Limited and or its subsidiary companies;

(B) "Customer" means any person at whose request or on whose behalf the Company provides a service;

(C) "person" includes natural persons or any body or bodies corporate;

(D) "Owner" includes the owner, shipper and consignee of the Goods and any other person who is or may become interested in the Goods and anyone acting on their behalf;

(E) "Authority" includes a duly constituted legal or administrative person, acting within its legal powers and exercising jurisdiction within any nation, state, municipality, port or airport;

(F) "Goods" includes the cargo and items in respect of which the Company provides a service, as well as any Container not supplied by or on behalf of the Company;

(G) "Container" includes any container, flexitank, trailer, transportable tank, flat, pallet or any article of transport used to carry or consolidate Goods and any equipment of or connected thereto;

(H) "Dangerous Goods" includes goods which are or may become of a dangerous, inflammable, radio-active or damaging nature and goods likely to harbour or encourage vermin or other pests including, but not limited to, those specified in the International Civil Aviation Organisation (ICAO) technical instructions, the International Air Transport Association (IATA) dangerous goods regulations, the International Maritime Dangerous Goods (IMDG) code, the European Agreement concerning the international carriage of dangerous goods by Road (ADR) regulations or any other national or international rules applicable to the transport of, or the performance of other services regarding dangerous goods;

(I) "Hague Rules" means The Amended Hague Rules as contained in Schedule 5 of the Maritime Transport Act 1994;

(J) "Instructions" means a statement of the Customer's specific requirements;



(J) "Valuable Goods" means cigarettes, spirits, precious metal objects, bullion, coin, precious stone, precious jewellery, antiques, valuable works of art, human remains, plants, livestock and thoroughbred horses; and

(L) "Warsaw Convention" means the Convention for the Unification of Certain Rules Relating to International Carriage by Air 1929 as amended at the Hague, 1955 and by Additional Protocols 1, 2 and 4 of 1975, and the Montreal Convention 1999, supplemented by the Guadalajara Convention 1961 as applied by the law of New Zealand pursuant to the Civil Aviation Act 1990.

Obligations of Customer

5. The Customer warrants that:

(A) the Customer is either the Owner or the authorised agent of the Owner of the Goods and that the Customer is authorised to accept and is accepting these Conditions not only for the Customer but also as agent for and on behalf of the Owner of the Goods;

(B) the Customer has reasonable knowledge of matters affecting the conduct of the Customer's business, including but not limited to the terms of sale and purchase of the Goods and all other matters relating thereto;

(C) the Goods are properly packed and labelled, except where the Company has accepted Instructions in respect of such packing and labelling services; and

(D) the performance of any service or carriage provided or arranged by the Company to effect the instructions of the Customer in respect of the Goods shall not be in breach of any law.

6. The Customer shall give sufficient and executable Instructions, and warrants that the description and particulars of the Goods are complete and correct. The Customer shall be liable for and pay to the Company any additional costs or expenses the Company may incur and for any loss or damage occasioned either directly or indirectly to the Company as a result of the Company relying upon the description and particulars provided by the Customer or by reason of any illegal, incorrect or insufficient marking, numbering or addressing of the Goods.

7. Goods carried, or handled, by the Company may be subject to security screening which could include the use of X-ray equipment and the Customer accepts that packages containing the Customer's Goods may be opened and the contents of the Customer's packages may be examined in transit.

8. The Customer declares that the Customer has prepared the Goods for carriage, or for the performance by the Company of other services, in secure premises using reliable staff employed by the Company and that the Goods have been safeguarded against unauthorised interference during preparation, storage and transportation immediately prior to acceptance for carriage of the Goods by the Company.

9. Methods of Carriage

Methods of carriage include road, air, rail or sea by way of services that include (but are not limited to) postal, express courier, specialised freight, general freight and furniture moving services. If the Customer instructs the Company to use a particular method of carriage the Company will give priority to the method designated but if that method cannot conveniently be adopted by the Company then the Customer shall be deemed to authorise the Company to carry or have the Goods carried by another method or methods.

10. Special Instructions, Goods and Services

(A) Unless otherwise previously agreed in writing, the Customer shall not deliver to the Company or cause the Company to deal with or handle Dangerous Goods.

(B) If the Customer is in breach of sub-clause (A) above the Customer shall be liable for all loss or damage whatsoever caused by or to or in connection with the Goods howsoever arising and shall defend, indemnify and hold harmless the Company against all penalties, claims, damages, costs and expenses whatsoever arising in connection therewith and the Goods may without notice be destroyed or otherwise dealt with at the sole discretion of the Company or any other person in whose custody they may be at the relevant time.

(C) If the Company agrees to accept Dangerous Goods and then in the opinion of the Company or any other person they constitute a risk to other goods, property, life or health they may without notice be destroyed or otherwise dealt with at the expense of the Customer or Owner.

(D) Unless agreed in writing prior to receipt, the Company will not accept or deal with Valuable Goods. Should any Customer nevertheless deliver any Valuable Goods to the Company or cause the Company to handle or deal with any Valuable Goods other than in accordance with prior written agreement, the Company shall be under no liability whatsoever for or in connection with such Valuable Goods howsoever arising.

(E) The Company is not a common carrier and will accept no liability as such and it reserves the right to accept or refuse the carriage of any Goods or to provide any other service at its discretion.

11. Temperature and Rust

(A) The Customer undertakes not to tender for transportation any Goods which require temperature control without previously giving written notice of their nature and particular temperature range to be maintained and in the case of a temperature-controlled Container stuffed by or on behalf of the Customer further undertakes that the Container has been properly pre-cooled or pre-heated as appropriate, that the Goods have been properly stuffed in the Container, and that its thermostatic controls have been properly set by the Customer. If the above requirements are not complied with the Company shall not be liable for any loss of or damage to the Goods caused by such non-compliance.



(B) It is agreed that superficial rust, oxidation or any like condition due to moisture is not a condition of damage, but is inherent in the nature of the Goods and acknowledgement of receipt of the Goods in apparent good order and condition is not a representation that such conditions of rust, oxidation or the like did not exist on receipt.

12. Insurance

(A) Insurance is the responsibility of the Customer, and the Company is not obligated or required to effect insurance except upon express Instructions given in writing by the Customer. Unless otherwise agreed in writing, the Company shall not be under any obligation to effect a separate insurance on each consignment but may declare it on any open or general policy. The Company is an agent in respect of the effecting of insurance and should the insurers dispute their liability for any reason the insured shall have recourse against the insurers only and the Company shall not be under any responsibility or liability whatsoever in relation thereto notwithstanding that the premium upon the policy may not be the same as any insurance-related costs charged by the Company or paid to the Company by the Customer.

(B) Notwithstanding (A) above, the Company may effect insurance if the Company considers it necessary, and shall then charge the Customer a premium accordingly.

(C) The Customer acknowledges and agrees that the Company may pay the insurer a premium for its marine cargo policy, the effect of this being that any insurance-related costs charged to the Customer may not be directly payable to the insurer. The Customer further acknowledges and agrees that in any event the premium charged may not be the same as that charged by the Insurer or paid to the Company by the Customer; and that it will include an administration and handling component for the service the Customer provides in securing insurance for the Customer. The Company shall be under no obligation to separately identify the administration and handling component.

(D) If the Company does effect insurance (whether upon Instructions or otherwise) then all insurances effected by the Company are subject to the usual exceptions and conditions of the policies of the insurance company or underwriters taking the risk. The Company makes no representations and gives no advice regarding any aspect of the policy, including as to the suitability or appropriateness of the policy for the Customer's requirements, the policy's terms, conditions and exclusions, or as to the competitiveness of the premium. The Customer warrants that it relies solely on its own skill and judgment in accepting the policy on the terms offered. Should the insurers dispute their liability for any reason the Customer shall have recourse against the insurers only and the Company shall not be under any responsibility or liability whatsoever in relation thereto.

13. Except in accordance with express Instructions previously received in writing and accepted in writing by the Company, the Company shall not be obliged to make any declaration for the purposes of any statute, convention or contract as to the nature or value of any Goods or as to any special interest in delivery.

14. Delivery

(A) The Company will not be obliged to deliver any Goods except to the Customer or the Owner as known to the Company or to a person authorised in writing by the Customer or Owner to receive the Goods without:

- (i)** written Instructions from the Customer or Owner; and
- (ii)** payment of all amounts due by Customer to the Company to the carrier on any account whatsoever.

(B) If any identifying document or mark is lost, damaged, destroyed or defaced, the Company may open any document, wrapping, packaging or other container in which the Goods are placed or carried to inspect them either to determine their nature or condition or to determine their ownership.

(C) Unless otherwise previously agreed in writing or otherwise provided for under the provisions of a document signed by the Company, Instructions relating to the delivery or release of Goods against payment or against surrender of a particular document shall be in writing and the Company's liability shall not exceed that provided for in respect of mis-delivery of Goods.

15. The Company accepts no responsibility for departure or arrival dates of Goods. Nor shall the Company be responsible for any charges arising out of any delay, including but not limited to any consequential loss or damage, loss of profit, nor any delay due to the provision of incorrect documentation to any customs service, quarantine inspection service or to any other relevant or equivalent authority.

16. General Indemnities

(A) The Customer and Owner shall defend, indemnify and hold harmless the Company against all liability, loss, damage, costs and expenses arising:

- (i)** from the nature of the Goods unless caused by the Company's negligence;
- (ii)** from inaccuracies in or inaccuracies of such particulars or from any other cause in connection with the Goods for which the Company is not responsible;
- (iii)** out of the Company acting in accordance with the Customer's or Owner's Instructions; or
- (iv)** arising from a breach of warranty or obligation by the Customer or the Owner or arising from the negligence of the Customer or Owner.

(B) Except to the extent caused by the Company's negligence the Customer and Owner shall be liable for and shall defend indemnify and hold harmless the Company in respect of all duties, taxes, imposts, levies, deposits and outlays of whatsoever nature levied by any Authority and for all payments, fines, costs, expenses, loss and damage whatsoever incurred or sustained by the Company in connection therewith.

(C) Advice and information, in whatever form it may be given, are provided by the Company for the Customer only and the Customer shall defend, indemnify and hold harmless the Company for all liability, loss, damage, costs and expenses arising out of any other person relying on such advice or information. Except as accepted by the Company in writing, any advice or information that is not directly related to specific Instructions accepted by the Company is provided gratuitously and without liability.



(D) The Customer undertakes:

- (i)** that no claim be made against any servant subcontractor or agent of the Company which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods;
- (ii)** if any such claim should nevertheless be made, to indemnify the Company against all consequences thereof.
- (iii)** the Customer shall defend, indemnify and hold harmless the Company from and against all claims, costs and demands whatsoever and by whomsoever made or preferred in excess of the liability of the Company under the terms of these Conditions and without prejudice to the generality of this clause this indemnity shall cover all claims, costs and demands arising from or in connection with the negligence of the Company, its servants, sub-contractors and agents.

(E) The Customer shall be liable for the loss, damage, contamination, soiling, detention or demurrage before, during and after the carriage of property (including, but not limited to, Containers) of:

- (i)** the Company;
- (ii)** the Company's servants, sub-contractors or agents;
- (iii)** independent contractors engaged by the Company for performance of part or all of the services under this contract;
- (iv)** any person; or
- (v)** any vessel

caused by the Customer or Owner or any person acting on behalf of either of them or for which the Customer is otherwise responsible.

(F) Without prejudice to the foregoing, every servant, sub-contractor or agent of the Company shall have the benefit of all provisions herein, as if such provisions were expressly for their benefit. In entering into this contract the Company, to the extent of these provisions, does so not only on its behalf, but as agent and trustee for such servants,

17. Charges, Payments, Tariffs, etc.

(A) The Customer agrees to pay all charges and tariffs invoiced by the Company in accordance with the terms of any separate agreement relating to the Goods or, if there is no such agreement, the Company's standard charges and tariffs, and any other expenses (including, without limitation, taxes or duties) reasonably incurred by the Company in connection with the Goods or the services provided by the Company. The Company may change its standard charges and tariffs at any time and in response to any event or circumstance (including but not limited to currency fluctuations and changes to the applicable tax rates)

(B) The Company shall be under no obligation to incur or pay any expenses unless the Customer has provided the Company with sufficient funds to meet the same.

(C) The Company may fix its charges and tariffs by weight, measurements or value, and may at any time have or require the Goods to be re-weighed, remeasured or re-valued and re-fix its charges and tariffs accordingly. If the Goods have not been sighted by the Company, the Company's price estimate is based on the information the Customer has communicated to the Company.

(D) All quotations given by the Company are based on costs for freight, insurance and other charges including (without limitation) rates of exchange, taxes, duties and other imposts, prevailing at the date of quotation and on the latest available quotations from contractors or subcontractors used by the Company. If such costs increase at any time as a result of variations in any of the foregoing, upon giving notice to the Customer, the charges payable by the Customer shall increase accordingly.

(E) All the landing charges and all the expenses arising after discharge of the Goods including discharge onto quay, surtax d'entrepôt, stevedoring, handling, overtime, tally, quay dues, storage together with any other costs associated with such discharge shall be payable by the Customer, any custom or alleged custom of the port to the contrary notwithstanding. Any lighterage necessary for the discharge of the goods as well as any expenses of weighing, measuring, valuing and counting the goods at the port of discharge shall similarly be paid by the Customer, any custom or alleged custom of the port to the contrary notwithstanding.

(F) The Company's charges tariffs and expenses shall be deemed earned as soon as any handling of the Goods has occurred. Unless otherwise agreed in writing, the Company's charges tariffs and expenses shall be paid, without any deductions, counterclaims or set off, prior to the release of the goods by the Company.

(G) Subject to sub-clause (H) below, the Customer shall pay to the Company in cash or as agreed all sums immediately when due without deduction or deferment on account of any claim, counterclaim or setoff.

(H) If agreed in writing between the Company and the Customer, the Customer is able to pay any charges and tariffs in instalments. The number and timing of instalments will be at the Company's discretion, and the Company may charge interest and/or an administration fee in respect of the instalments.

(I) When the Company is instructed to collect freight, duties, charges or other expenses from any person other than the Customer, the Customer shall be responsible for the same on receipt of evidence of demand and non-payment by such other person when due.

(J) Instructions to collect payment on delivery in cash or otherwise are accepted by the Company upon and on the condition that the Company in the matter of such collection will be liable for the exercise of reasonable diligence and care only. Unless express written Instructions are received that the Goods are not to be delivered without payment, the Company accepts no liability if, upon delivery of the Goods, payment is not made.

(K) The Customer shall remain liable to the Company for all the Company's charges and tariffs notwithstanding any direction that the whole or any part of them shall be payable by some other person.

(L) On all accounts overdue to the Company, the Company shall be entitled to interest calculated at 7.25% per month applicable during the periods that such amounts are overdue.

(M) If at any time any payment due by the Customer to the Company is in arrears, any subsisting obligations of the Company to the Customer shall be suspended.



(N) If the Company employs the services of a solicitor, debt collector, and/or any other necessary professional, for the purposes of repayment by the Customer of overdue charges, the Customer shall be responsible for any costs incurred as a result of the foregoing services.

(O) The Customer will indemnify the Company against and pay upon demand all expenses and legal costs (on a solicitor/agent/client basis) incurred by the Company in the collection of overdue moneys or in the exercise of any rights or remedies under any contracts to which these Conditions apply.

18. Credit Facility

(A) The Company may grant or decline to grant credit to any Customer. Any credit limit may be altered, suspended or cancellation at the Company's discretion with effect from the date of notification to the Customer where the Company considers the credit worthiness of the Company to be unsatisfactory.

(B) The Company may require the Customer to arrange for the Customer's liability to the Company to be guaranteed by third persons or secured by securities on terms satisfactory to the Company. This requirement may be imposed by the Company at any time and the Company may suspend the Customer's entitlement to credit pending its fulfilment to the satisfaction of the Company.

19. Liberties and Rights of Company

(A) The Company shall be entitled, except insofar as has been otherwise agreed in writing, to enter into contracts on behalf of itself or the Customer and without notice to the Customer for the:

- (i)** carriage of Goods by any route, means or person;
- (ii)** carriage of Goods of any description whether containerised or not on or under the deck of any vessel;
- (iii)** storage, packing, transhipment, loading, unloading or handling of Goods by any person at any place whether on shore or afloat and for any length of time;
- (iv)** carriage or storage of Goods in containers or with other goods of whatever nature;
- (v)** performance of its own obligations, and to do such acts as in the opinion of the Company may be necessary or incidental to the performance of the Company's obligations.

(B) The Company shall not be under any liability to the Customer by reason of having entered into any contract on behalf of the Customer, whereby the extent or degree of the liability assumed by a third party is in any respect excluded or limited, unless such contract is entered into contrary to Instructions received in writing and accepted by the Company.

20. (A) The Company shall be entitled but under no obligation, to depart from the Customer's Instructions in any respect if in the opinion of the Company there is good reason to do so in the Customer's interest and it shall not thereby incur any additional liability.

(B) The Company may at any time comply with the orders or recommendations given by any Authority. The responsibility of the Company in respect of the Goods shall cease on the delivery or other disposition of the Goods in accordance with such orders or recommendations.

(C) If at any time the performance of the Company's obligations, in the opinion of the Company or any person whose services the Company makes use of, is or is likely to be effected by any hindrance, risk, delay, difficulty or disadvantage whatsoever and which cannot be avoided by reasonable endeavours by the Company or such other person, the Company may, on giving notice in writing to the Customer or Owner or without notice where it is not reasonably possible to give such notice, treat the performance of its obligations as terminated and place the Goods or any part of them at the Customer or Owner's disposal at any place which the Company may deem safe and convenient, whereupon the responsibility of the Company in respect of the Goods shall cease. The Customer shall be responsible for any additional costs of carriage to and delivery and storage at such place and all other expenses incurred by the Company.

21. Storage of Goods

(A) If delivery of the Goods or any part thereof is not taken by the Customer or Owner at the time and place when and where the Company, or any person whose services the Company makes use of, is entitled to call upon the Customer or Owner to take delivery thereof, the Company or such other person shall be entitled to store the Goods in the open or under cover at the sole risk and expense of the Customer.

(B) Where Goods are stored by the Company at the request of the Customer, the Customer will upon request by the Company furnish an address to which notices shall be sent, and will provide samples of the signatures of persons entitled to collect the Goods.

(C) The Company will be entitled to remove the Goods from a place of storage to another place of storage at its discretion.

(D) The Company must be given 48 hours' notice by the Customer of its intention to remove Goods from any storage arranged by the Company.

22. Notwithstanding clauses 20 and 21, the Company shall be entitled but under no obligation at the expense of the Customer payable on demand and without any liability to the Customer and Owner, to sell or dispose of:

- (i)** on giving 21 days notice in writing to the Customer, all Goods which in the opinion of the Company cannot be delivered as instructed; and
- (ii)** without notice, Goods which have perished, deteriorated or altered, or are in immediate prospect of doing so in a manner which has caused or may be reasonably expected to cause loss or damage to any person or property or to contravene applicable regulations.

23. Liens and Security Interests

(A) Without limiting anything else in these Conditions, the Customer acknowledges that these Conditions:



- (i) constitute a security agreement for the purposes of the Personal Property Securities Act 1999 ("PPSA");
 - (ii) create, in favour of the Company, a security interest as defined in the PPSA in all Goods and documents relating to Goods which at any time come into the possession of the Company, to secure the payment by the Customer to the Company of all moneys due to the Company by the Customer or the Owner, whether in respect of such Goods or otherwise and whether or not such moneys are overdue for payment; and
 - (iii) will apply notwithstanding anything, express or implied, to the contrary contained in any purchase order (or its equivalent, whatever called) of the Customer.
- (B)** The security interest hereby created shall continue until the Company gives the Customer a final release.
- (C)** The Customer undertakes to:
- (i) inform the Company of any known registered security interests in the Goods;
 - (ii) promptly do all things, sign any further documents and/or provide any information which the Company may reasonably require to enable the Company to perfect and maintain the perfection of its security interest (including by registration of a financing statement on the Personal Property Securities Register);
 - (iii) give the Company (addressed to the Financial Controller or equivalent) not less than 14 days' prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including, but not limited to, changes in the Customer's address, facsimile number, trading name or business practice);
 - (iv) indemnify, and upon demand reimburse, the Company for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby; and
 - (v) not register a financing change statement or a change demand without the prior written consent of the Company.
- (D)** The Customer waives its right to receive a verification statement in respect of any financing statement relating to the security interest.
- (E)** To the extent permitted by law, the Customer and the Company contract out of:
- (i) sections 114(1)a, 133, and 134 of the PPSA; and
 - (ii) the Customer's rights referred to in sections 107(2) of the PPSA.
- (F)** If a default as defined in the PPSA occurs (including any failure by the Customer or Owner to comply with their obligations under these Conditions):
- (i) the Company may suspend or terminate any contract;
 - (ii) all amounts owing by the Customer and/or Owner shall immediately become due and payable notwithstanding that the due date for payment has not arisen;
 - (iii) the Company may enforce the security interest; and
 - (iv) the Company may (without the consent of the Customer or Owner) appoint a receiver in respect of any Goods and any receiver is authorised to do anything referred to in these Conditions and otherwise to exercise all rights and powers conferred on a receiver by law.
- (G)** Without limiting sub-clause (F) above, the Customer agrees that, at any time after an event of default has occurred and is continuing or at any time if any Goods are at risk, the Company may:
- (i) take or retain possession of any Goods; and/or
 - (ii) sell or otherwise dispose of any Goods,
- in each case in such a manner and generally on such terms and conditions as it thinks fit and, in each case, otherwise do anything the Customer or Owner could do in relation to those Goods. The Company and the Customer agree that section 109(1) of the PPSA is contracted out of in respect of particular goods if, and only for so long as, the Company is not the secured party with priority over all other secured parties in respect of those goods. As the Customer's agent, the Company (and its employees and agents) may, without prior notice, enter any land or premises where the Goods are kept in order to take possession of and/or remove them, without being responsible for any damage caused in doing so. The Customer agrees to procure all other rights (including consents) necessary to enable, and to indemnify the Company (and its employees and agents) against any liability incurred in connection with, such entry, taking of possession and removal. The Company may resell any of the Goods and apply the proceeds of sale in reduction of the amount owing to the Company.
- (H)** Without limiting anything else in these Conditions, the Company shall have a particular and general lien on all Goods or documents relating to Goods in its possession for all sums due at any time from the Customer or Owner and on giving 28 days notice in writing to the Customer, shall be entitled to sell or dispose of such Goods or documents at the expense of the Customer and without liability to the Customer and Owner and apply the proceeds in or towards the payment of such sums. Where the Company also has a lien under the Contract and Commercial Law Act 2017 the Company may elect whether to exercise its rights under that Act or at common law.

24. The Company shall be entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by or paid to freight forwarders without notice to the Customer.

25. The Company shall have the right to enforce against the Owner and the Customer jointly and severally any liability of the Customer under these Conditions or to recover from them any sums to be paid by the Customer which upon demand have not been paid.

26. Containers

(A) If a Container has not been packed or stuffed by the Company, the Company shall not be liable for loss of or damage to the contents if caused by:

- (i) the manner in which the Container has been packed or stuffed,
- (ii) the unsuitability of the contents for carriage in Containers, unless the Company has approved the suitability;
- (iii) the unsuitability or defective condition of the Container (provided that where the Container has been supplied by or on behalf of the Company this paragraph (iii) shall only apply if the unsuitability or defective condition arose:



- (a) without any negligence on the part of the Company; or
- (b) would have been apparent upon reasonable inspection by the Customer or Owner or person acting on behalf of either of them).

(iv) if the Container is not sealed at the commencement of the carriage except where the Company has agreed to seal the Container.

(B) The Customer shall defend, indemnify and hold harmless the Company against all liability, loss, damage, costs and expenses arising from one or more of the matters covered by sub-clause (A) above except for sub-clause (A)(iii)(a) above.

(C) Where the Company is instructed to provide a Container, in the absence of a written request to the contrary, the Company is not under an obligation to provide a Container of any particular type or quality.

(D) The Customer's entitlement to use any Container supplied by or through the Company ends at the terminal of arrival. The Company may allow the Customer to use the Container for the purposes of transporting the Goods away from the terminal for unpacking strictly on the following terms:

- (i) the Customer will pay any charges associated with its use of the Container, including but not limited to daily detention charges imposed by the owner of the Container;
- (ii) the Customer must promptly empty its Goods from the Container and return the Container in a clean state and in good condition to the depot nominated by the Company;
- (iii) the Customer will be liable for any damage done to the Container, as well as all cleaning, or fumigation requirements; and
- (iv) without limiting any of the foregoing, the Customer agrees to indemnify the Company for all charges, fees, or any other liability of whatsoever nature imposed on the Company (including without limitation, interest charges and any legal costs) directly or indirectly arising from the use of the Container beyond the terminal gate by the Customer, or by all or any agents, acting on the Customer's behalf either directly or indirectly.

27. General Liability

(A) All handling which is subject to the Contract and Commercial Law Act 2017 shall be performed at limited carrier's risk.

(B) Except insofar as otherwise provided by these Conditions, the Company shall not be liable for any loss or damage whatsoever arising from:

- (i) the act or omission of the Customer or Owner or any person acting on their behalf;
- (ii) compliance with the Instructions given to the Company by the Customer, Owner or any other person entitled to give them;
- (iii) insufficiency of the packing or labelling of the Goods except where such service has been provided by the Company;
- (iv) handling, loading, stowage or unloading of the Goods by the Customer or Owner or any person acting on their behalf;
- (v) inherent vice of the Goods;
- (vi) riots, civil commotions, strikes, lockouts, stoppage or restraint of labour from whatsoever cause;
- (vii) fire, flood or storm;
- (viii) theft and/or any attempt thereat and loss or damage to the goods caused by a third party; or
- (ix) any cause which the Company could not avoid and the consequences whereof it could not prevent by the exercise of reasonable diligence.

(C) The Company shall not be liable for loss or damage to property by indirect or consequential loss or damage, loss of profit, delay or deviation.

(D) The defences and limits of liability provided for by these Conditions shall apply in any action against the Company whether such action be founded in contract or in tort.

(E) Nothing in these Conditions shall be constructed as a surrender by the Company of any of its rights or immunities or as an increase in any of its responsibilities or liabilities under any legislation or international convention.

28. Amount of Compensation

(A) Except in so far as otherwise provided by these Conditions, the liability of the Company, howsoever arising, and notwithstanding that the cause of loss or damage be unexplained is limited to any of the following as determined by the Company:

- (i) in respect of all claims other than those under clause 29, whichever is the least of
 - (a) the value of; or
 - (b) NZ\$2.00 per gross kilogram of; or
 - (c) NZ\$20.00 per package or unit of,the Goods lost, damaged, misdirected undelivered or in respect of which a claim arises ("Lost Goods");
- (ii) the replacement of the Lost Goods or the supply of equivalent goods to the Lost Goods;
- (iii) the repair of the Lost Goods;
- (iv) the payment of the cost of replacing the Lost Goods or of acquiring equivalent goods to the Lost Goods;
- (v) the supplying of the services again;
- (vi) the payment of the cost of having the services supplied again; or
- (vii) in respect of claims for delay where not excluded by the provisions of these Conditions, the amount of the Company's charges in respect of the Goods delayed.

(B) Notwithstanding sub-clause (A) above, the Company's liability shall in no circumstances exceed NZ\$100,000.00 each incident.

(C) Where compensation is to be determined by the value of the Lost Goods, then the value of the Lost goods shall be calculated by reference to the invoice value of the Goods plus freight and insurance if paid. If there be no invoice value for the Goods, the compensation shall be calculated by reference to the value of such Goods at the place and time when they were delivered to the Customer or Owner or should have been so delivered. The value of the Goods shall be fixed according to



the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

29. By special agreement in writing and on payment of additional charges, higher compensation may be claimed from the Company not exceeding the value of the Goods or the agreed value, whichever is the lesser.

30. Notice of Loss, Timebar

(A) The Company shall be discharged of all liability unless:

- (i)** notice of any claim is received in writing by the Company or its agent within 14 days after the date specified in sub-clause (B) below, or within a reasonable time after such date if the Customer proves that it was impossible to so notify; and
- (ii)** suit is brought in the proper forum and written notice thereof received by the Company within 9 months after the date specified in sub-clause (B) below.

(B) The applicable dates for sub-clause (A) are:

- (i)** in the case of loss or damage to Goods, the date of delivery of the Goods;
- (ii)** in the case of delay or nondelivery of the Goods, the date that the Goods should have been delivered; and
- (iii)** in any other case, the event giving rise to the claim.

31. Force Majeure

(A) Should the Company be delayed, hindered, or otherwise prevented from providing the services to the Customer in accordance with these Conditions by reason of events or circumstances beyond the reasonable control of the Company including but not limited to acts of God, wars, hostilities, military actions, riots, civil commotions, strikes, lockouts, trade disputes or labour disturbances, port congestion, accident, storm, fire, flood, ice, storms, pandemic, quarantine, declaration of lockdown or emergency by any nation or state then the Company shall not be liable to the customer for any loss or damage which may be suffered by Goods or by the Customer or the Owner whether as a direct or indirect result of any such occurrences.

(B) Without limiting sub-clause (A) above, in the event of any of the circumstances listed in sub-clause (A) above or any other cause whatsoever beyond the Company's control, whether threatened or otherwise, the Company shall have the following liberties, any warranty or rule of law notwithstanding:

- (i)** to proceed to such convenient port as the Company shall in its absolute discretion select and discharge the Goods there;
- (ii)** to carry the Goods back to the place of departure and discharge them there;
- (iii)** to retain the goods on board the ship and/or return them to the original port of discharge in the same or substituted ship and there discharge the Goods at the sole risk and expense of the Customer; and
- (iv)** to abandon the carriage of the Goods by land at such convenient place as the Company shall in its absolute discretion select and discharge the Goods from any Container owned by the Company or its agents,

and when the Goods have been abandoned or discharged from the ship or Container they shall be at the sole risk and expense of Customer and such discharge shall constitute a full discharge of all the Company's obligations. Full freight shall be deemed to be earned and the Company shall be entitled to all extra expenses incurred in the performance of any of the foregoing liberties.

32. General Average

The Customer shall defend, indemnify and hold harmless the Company in respect of any claims of a General Average nature which may be made on the Company and the Customer shall provide such security as may be required by the Company in this connection.

33. Cancellation

(A) The Company may suspend or cancel all or part of any contract with the Customer if:

- (i)** any amounts payable by the Customer to the Company under any contract are overdue;
- (ii)** the Customer fails to meet any obligation under any contract to which these Conditions apply;
- (iii)** the Customer is declared bankrupt, resolves to go into liquidation or has a petition for bankruptcy or the appointment of a liquidator presented against it;
- (iv)** if any liquidator, provisional liquidator, administrator, receiver, receiver and manager, or official manager is appointed in respect of the assets of the Customer; or
- (v)** the Customer enters into a scheme of arrangement with its creditors.

(B) Upon cancellation of this contract all of the Customer's indebtedness to the Company under any contract or contracts shall become immediately due and payable.

34. Privacy Act 1993

(A) The Customer authorises the Company or the Company's agent to:

- (i)** access, collect, retain and use any information about the Customer (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness or for the purpose of marketing products and services to the Customer; and
- (ii)** disclose information about the Customer, whether collected by the Company from the Customer directly or obtained by the Company from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.

(B) Where the Customer is an individual the authorities under sub-clause (A) above are authorities or consents for the purposes of the Privacy Act 2020.



(C) The Customer shall have the right to request the Company for a copy of the information about the Customer retained by the Company and the right to request the Company to correct any incorrect information about the Customer held by the Company.

35. Delivery of Notices

(A) Any notices or notifications to be given or made under these Conditions must be in writing and must be made by personal delivery to the party concerned or by post to the business address of the party concerned.

(B) No notices will be effective until received. Notices are deemed to be received:

- (i)** In the case of personal delivery, when:
 - (a)** Handed-delivered to any natural person who is a party to these Conditions; or
 - (b)** Handed-delivered to any director of any incorporated company which is a party to these Conditions; and
- (ii)** In the case of a correctly addressed business letter, on the third (3rd) day after posting.

36. Interpretation

For the purpose of interpretation or construction of these Conditions and unless the context otherwise requires:

(A) Headings of clauses or groups of clauses in these Conditions are for indicative purposes only.

(B) Any covenant not to do anything also constitutes an obligation not to suffer, permit, commit or cause that thing to be done.

(C) A right granted or reserved may be exercised from time to time and at all times.

(D) The obligations of each party contained or implied in this Agreement shall bind each such party and every two or more of them jointly and each of them severally. Where any party comprises more than one person, such persons shall be deemed to have entered into this Agreement both jointly and severally.

(E) Words importing the singular or plural number include the plural and singular number respectively. Words importing any gender include every gender.

(F) References to any statutory provision include any statutory provision which amends or replaces it, and any subordinate legislation made under it.

(G) References to anything of a particular nature either before or after a general statement do not limit the general statement, unless the context requires.

(H) Expressions referring to writing shall be construed as including references to words printed, typewritten or otherwise reproduced.

(I) If one or more of the provisions of these Conditions is invalid or unenforceable, the remaining provisions will not be affected and will continue in full force and effect, and such invalidity or unenforceability shall not affect the validity or enforceability of the balance of these Conditions.

(J) No waiver of any breach of these Conditions shall be treated as a waiver of any other or any subsequent breach. The failure of either party to enforce any provision of these Conditions at any time shall not be interpreted as a waiver of that provision.

37. New Zealand Law

(A) These Conditions and any claim or dispute arising out of or in connection with the services of the Company shall be subject to the law of New Zealand and any such claim or dispute shall be determined by the Courts of New Zealand and no other Court.

(B) If any legislation is compulsorily applicable to any business undertaken, these Conditions shall, as regards such business, be read as subject to such legislation and nothing in these Conditions shall be construed as a surrender by the Company of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation and if any part of these Conditions be repugnant to such legislation to any extent such part shall as regards such business be overridden to that extent and no further.

(C) Without limiting the generality of sub-clause (B) above:

- (i)** where any part of these Conditions is rendered void, unenforceable or otherwise ineffective by such legislation, whether in respect of the whole or part of the services provided by the Company, that will not affect the enforceability or effectiveness of any other part of these Conditions or any other part of the services.
- (ii)** sections 274 to 281 of the Contract and Commercial Law Act 2017 shall apply to the services provided by the Company only to the extent that they extend or enlarge the Company's rights and powers under these Conditions; and
- (iii)** where the Customer is in trade, it agrees that these Conditions constitute an agreement in writing and agrees also to contract out of the provisions of the Consumer Guarantees Act 1993, which shall be of no application.

PART II: Company As Agent

38. Special Liability and Indemnity Conditions

(A) To the extent that the Company acts as an agent, the Company does not make or purport to make any contract with the Customer for the carriage, storage or handling of the Goods nor for any other physical service in relation to them and acts solely on behalf of the Customer in securing such services by establishing contracts with third parties so that direct contractual relationships are established between the Customer and such third parties.

(B) The Company shall not be liable for the acts and omissions of such third parties referred to in sub-clause (A) above.

39. (A) The Company when acting as an agent has the authority of the Customer to enter into contracts on the Customer's behalf and to do such acts so as to bind the Customer by such contracts and acts in all respects notwithstanding any departure from the Customer's Instructions.



(B) Except to the extent caused by the Company's negligence, the Customer shall defend, indemnify and hold harmless the Company in respect of all liability, loss, damage, costs or expenses arising out of any contracts made in the procurement of the Customer's requirements in accordance with clause 38.

40. Choice of Rates

Where there is a choice of rates according to the extent or degree of liability assumed by persons carrying, storing, handling the Goods, no declaration of value where optional will be made unless otherwise agreed in writing.

PART III: Company as Principal

41. Special Liability

To the extent that the Company contracts as principal for the performance of the Customer's Instructions, the Company undertakes to perform or in its own name to procure the performances of the Customer's Instructions and subject to the provisions of these Conditions shall be liable for the loss of or damage to the Goods occurring from the time that the Goods are taken into its charge until the time of delivery.

42. Where the Company contracts as a principal and sub-contracts the performance of the Company's services and it can be proved that the loss of or damage to or in respect of the Goods arose or was caused whilst the Goods were in the care or custody of the sub-contractor the Company shall have the full benefit of all rights, limitations and exclusions of liability available to such sub-contractor in the contract between the Company and such subcontractor and in any law, statute or regulation and the liability of the Company shall not exceed the amount recovered, if any, by the Company from such sub-contractor.

43. Notwithstanding other provisions in these Conditions, if it can be proved where the loss of or damage to the Goods occurred, the Company's liability shall be determined by the provisions contained in any international convention or national law, the provisions of which:

(A) cannot be departed from by private contract, to the detriment of the claimant, and

(B) would have applied if the claimant had made a separate and direct contract with the actual provider of the particular service in respect of that service or stage of carriage where the loss or damage occurred and received as evidence thereof any particular document which must be issued if such international convention or national law shall apply.

44. Notwithstanding other provisions in these Conditions, if it can be proved that the loss of or damage to the Goods occurred at sea or inland waterway and the provisions of clause 42 do not apply, the Company's liability shall be determined by the Hague Rules. Reference in the Hague Rules to carriage by sea shall be deemed to include reference to carriage by inland waterways and the Hague Rules shall be construed accordingly.

45. Notwithstanding the provisions of clauses 42, 43 and 44 if the loss of or damage to the Goods occurred at sea or on inland waterways, and the owner, charterer or operator of the vessel establishes a limited fund, the liability of the Company shall be limited to the proportion of the said limitation fund allocated to the Goods.

46. Air Carriage

If the Company acts as a principal in respect of a carriage of Goods by air, the following notice is hereby given: If the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to Goods. Agreed stopping places are those places (other than the places of departure and destination) shown under requested routing and/or those places shown in carrier's timetables as scheduled stopping places for the route. The address of the first carrier is the airport of departure.

47. Both to Blame Collision Clause

The current Both-to-Blame Collision Clause as adopted by BIMCO (The Baltic and International Maritime Council) registered with the Central Business Register of Denmark, is incorporated in these Conditions.

48. USA and/or Canada

(A) With respect to transportation within the United States of America ("USA") or Canada the responsibility of the Company shall be to procure transportation by carrier's (one or more) and such transportation shall be subject to such carrier's contracts and tariffs and any law compulsorily applicable.

(B) If and to the extent that the provisions of the Harter Act of the USA 1893 would otherwise be compulsorily applicable to regulate the Company's responsibility for the Goods during any period prior to loading on or after discharge from the vessel on which the Goods are to be or have been carried, the Company's responsibility shall instead be determined by the provisions of these Conditions, but if such provisions are found to be invalid such responsibility shall be determined by the provisions in the Carriage of Goods by Sea Act of the USA Approved 1936.