

FREIGHTWORKS NZ LIMITED – TERMS & CONDITIONS OF TRADE

1. INTERPRETATION

- 1.1. In this agreement, unless the context otherwise requires:
- (a) "Authority" means a duly constituted legal or administrative person, acting within its legal powers and exercising jurisdiction within any nation, state, municipality, port or airport.
 - (b) "Conditions" means the terms and conditions contained within this document.
 - (c) "Customer" means any person or entity which contracts (either as principal or agent for another) with Freightworks for the performance of Services and includes any person who has an interest in the Goods.
 - (d) "Dangerous Goods" includes noxious goods, explosives, poisons, corrosive, inflammable or radioactive substances, compressed gases, goods harbouring or likely to harbour or encourage vermin, borer or other pests, and any other goods or substances which, in the opinion of Freightworks, are likely to cause damage or injury to other goods, property or persons.
 - (e) "Freightworks" means Freightworks NZ Limited, a duly incorporated company with its registered address in Auckland, and any agents or employees thereof.
 - (f) "Goods" means the cargo and/or any container in respect of which Freightworks provides Services.
 - (g) "Services" means all freight forwarding services undertaken and customs management arranged by Freightworks for the Customer and shall include without limitation all freight, storage, customs and distribution services and all charges for labour, hire charges, insurance charges or any fee or charge associated with the supply of services by Freightworks to the Customer, and all incidental services.
 - (h) "Subcontractor" means any person, firm or corporation with whom Freightworks may arrange for the carriage of Goods or enter into any other contract with in relation to the provision of the Services, and such entities' employees, agents and representatives.
 - (i) Except where otherwise defined in these Conditions, terms which are defined in the Contract and Commercial Law Act 2017 have the same meaning.
 - (j) References to persons include natural persons, companies, and any other body corporates (wherever incorporated) and unincorporated bodies (wherever formed).
 - (k) References to the parties include their respective executors, administrators, successors and permitted assigns.
 - (l) A gender includes each other gender and the singular includes the plural and vice versa.
 - (m) No rule of construction applies to the disadvantage of a party because that party (or its relevant advisor) was responsible for the preparation of this agreement or any part of it.

2. APPLICATION OF THESE CONDITIONS

- 2.1. All Services, including the provision of advice or information, whether gratuitous or not, are provided by Freightworks to the Customer subject to these Conditions which prevail at all times over any terms and conditions in any document used by the Customer purporting to have contractual effect.
- 2.2. In the event of and to the extent of any inconsistency between these Conditions and the conditions which are incorporated into any bill of lading, waybill, consignment note or other transport document issued by Freightworks, these Conditions prevail.

3. ROLE OF FREIGHTWORKS

- 3.1. Freightworks is not a common carrier and will accept no liability as such. Freightworks carries on business as a customs and forwarding agent and is not the actual carrier unless the Goods are carried on an aircraft, ship or other conveyance owned or operated by Freightworks. Freightworks may refuse to provide services to any person, or for any class of goods.
- 3.2. The Customer authorises Freightworks, as their authorised agent, to enter into contracts on behalf of the Customer, and without notice to the Customer, for the carriage, storage and/or handling of Goods or for any other services as may be required, by any route, means or person.
- 3.3. To the extent that Freightworks acts as an agent, Freightworks does not make or purport to contract with the Customer for the carriage, storage and/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 the direct contractual relationships are between the Principal and such third parties.

- 3.4. Freightworks shall not be liable for the acts and omissions of third parties referred to in subclause 3.3.
- 3.5. Freightworks, when acting as an agent, has the authority of the Customer to enter into contracts on the Customer's behalf and to do acts which bind the Customer in all respects notwithstanding any departure from the Customer's instructions.
- 3.6. Freightworks is authorised to arrange on any terms for the Services in relation to the Goods by any Subcontractor. The Subcontractor shall then be entitled to the full benefit of these Conditions to the same extent as Freightworks. Freightworks shall be deemed to enter into any contract for the provision of the Services for its own benefit and also for the benefit of and as agent and trustee for any Subcontractor and its and the Subcontractor's officers, employees, agents and representatives.

4. ROLE OF CUSTOMER AND CUSTOMER WARRANTIES

- 4.1. The Customer warrants that it is either the owner or authorised agent of the owner of the Goods.
- 4.2. By entering into this contract, the Customer accepts these Conditions on behalf of itself and warrants that it is authorised to accept and does accept these Conditions on behalf of all other persons who have, or may acquire, an interest in the Goods.
- 4.3. The Customer shall provide to Freightworks all such assistance, information, descriptions, valuations and documents as Freightworks considers to be necessary or prudent to enable Freightworks to comply with all relevant laws, customs, conventions, codes and regulations in a timely manner. The expenses and charges of Freightworks in effecting such compliance, and compliance with the requirements of any harbour, dock, airport, railway, shipping, customs, warehouse or other authority shall be paid by the Customer.
- 4.4. The Customer warrants that:
 - (a) all Goods have been properly and sufficiently packed and prepared to withstand the risks of carriage and handling having regard to their nature and destination;
 - (b) all marks, weights, numbers, brands, contents, descriptions, values and other particulars furnished to Freightworks relating to the Goods are correct; and
 - (c) the Customer has complied with all applicable laws and government regulations of any country to, from, through or over which the Goods may be carried relating to the nature, packaging, labelling or carriage of the Goods.

5. DANGEROUS GOODS

- 5.1. The Customer shall not tender for the provision of Services by Freightworks any Dangerous Goods without first presenting to Freightworks a full description disclosing their nature and securing Freightworks' express agreement to provide Services in respect of such Dangerous Goods. In any event the Customer shall be liable for all death, bodily injury, loss and or damage caused by Dangerous Goods and shall indemnify Freightworks for such liability.
- 5.2. Any Dangerous Goods that have been presented to Freightworks in breach of subclause 5.1 may at any time be destroyed, disposed of or abandoned or rendered harmless by Freightworks without compensation to and at the cost of the Customer. The Customer shall indemnify Freightworks against all cost, liability and expense of whatever nature caused by or arising from a breach of subclause 5.1.

6. CHARGES AND EXPENSES

- 6.1. The Customer agrees to pay all charges made by Freightworks in accordance with the terms of any separate agreement relating to the Services provided or, if there is no such agreement, Freightworks' standard charges at the time, and any other expenses (including, without limitation, taxes or duties) reasonably incurred by Freightworks in connection with the Goods or the Services provided, or otherwise on behalf of the Customer.
- 6.2. Freightworks shall be under no obligation to incur or pay any additional costs or expenses unless the Customer has provided Freightworks with sufficient funds in advance to meet the same.

- 6.3. Freightworks may fix its charges by weight, measurements or value, and may at any time have or require the Goods to be re-weighed, re-measured or re-valued and re-fix its charges accordingly.
- 6.4. All quotations given by Freightworks are based on costs for freight, insurance and other charges, 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 Freightworks, and in reliance on the information provided by the Customer in relation to the Goods. If such costs increase at any time as a result of variations in the foregoing, the charges payable by the Customer shall increase accordingly.
- 6.5. Freightworks charges a fee for each of the Services it provides, including the arranging of insurance and the payment on the Customer's behalf of disbursements such as insurance premiums, airline fuel surcharges, shipping company CAF and BAF charges and port service charges. Such fees will be included in the amounts shown on Freightworks' invoices as disbursements and will not be separately identified.
- 6.6. Freightworks' charges and expenses shall be deemed earned as soon as any handling of the Goods has occurred. Where Freightworks has agreed to provide Services to the Customer without requiring payment in advance, the Customer must:
- pay any duty and GST disbursements prior to delivery of the Goods;
 - pay the full amount of any other disbursements and expenses incurred on behalf of the Customer within 7 days of receiving Freightworks' invoice detailing the same; and
 - pay the balance of the account no later than the 20th day of the month following the date of the invoice.
- 6.7. Without prejudice to any right of termination available to Freightworks in this agreement, if the Customer does not make payment on the due date, Freightworks may:
- charge the Customer interest at the rate of 1.5% per month calculated daily and payable from the original due date on the amount of any payments which have not been made on the due date; and/or
 - suspend the provision of the Services.
- 6.8. Unless otherwise stated, all charges quoted are exclusive of GST and where GST is applicable to any such charges, it will be payable by the Customer in addition to those charges.
- 6.9. The terms of Freightworks' Credit Account Agreement, where credit has been granted to the Customer, are deemed to be incorporated into and to form part of these Conditions.

7. BROKERAGE AND OTHER REMUNERATION

- 7.1. The Customer acknowledges that Freightworks has a pecuniary interest in all contracts entered into by Freightworks as its agent in terms of these Conditions and agrees that Freightworks may receive and retain all brokerage, commission, discounts, allowances and other remuneration paid by any other party and customarily received or retained by customs, shipping and forwarding agents in addition to the charges and expenses referred to elsewhere in these Conditions and that Freightworks is under no obligation to separately identify or disclose to the Customer the nature or amount of such brokerage, commission, discounts, allowances and other remuneration at any time.

8. INSURANCE

- 8.1. Insurance of the Goods is the responsibility of the Customer.
- 8.2. Freightworks will not arrange insurance in respect of the Goods except on the express written instructions of the Customer, and then only at the Customer's expense and on lodgement of a declaration as to value prior to acceptance of the Goods by Freightworks. In effecting any such insurances, Freightworks shall be deemed to be an agent only of the Customer (other than where by law Freightworks is deemed to be an agent of the insurer) and not as an insurer, insurance broker or other form of intermediary.
- 8.3. The insurance in subclause 8.2 may be on the terms and conditions of a marine open cargo policy held by Freightworks, and if so the full policy wording will be available on request. Freightworks makes no representation 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 or exclusions, or as to the competitiveness of the cost of the insurance. The Customer warrants that it relies entirely on its own skill and judgement in accepting the policy on the terms offered.

- 8.4. In the event of a claim the Customer shall have recourse solely against the insurer and Freightworks shall not be under any responsibility or residual liability in relation to the Customer for the loss of or damage to any of the Goods or the failure of the policy to meet a claim in respect of the same.

- 8.5. The Customer acknowledges and agrees that Freightworks pays its insurer an annual or declaration premium for its marine open cargo policy, the effect being that the sum charged to the Customer is:

- not directly payable to the insurer and is therefore not held in trust by Freightworks for either the insurer or the Customer; and
- includes a fee component for the service Freightworks provides in securing insurance for the Customer. The Customer further agrees that Freightworks is under no obligation to separately identify the fee component even if requested to do so.

9. LIEN

- 9.1. Immediately as they come into the possession of Freightworks or any contractor or subcontractor, all Goods and documents relating to Goods shall be subject to a general and particular possessory lien in favour of Freightworks and securing payment of all moneys due to Freightworks by the Customer or the consignee, consignor or owner, whether in respect of such Goods or otherwise, and whether or not such moneys are overdue for payment, until all accounts or other sums due to Freightworks by the Customer, consignee, consignor or owner are paid in full (including all interest, costs and expenses incurred by Freightworks in recovering or enforcing payment of such accounts).

- 9.2. Freightworks may sell all or any of the Goods by public auction or private treaty without notice to the Customer, and at the Customer's expense, and apply the net proceeds of sale in reduction of the unpaid accounts (including the costs of detaining and selling the Goods). No such sale shall prejudice or affect Freightworks' rights to recover any balance owing to Freightworks.

- 9.3. The lien claimed by this clause is in addition to and not in substitution for any other rights or remedies available to Freightworks under these Conditions or by law or statute.

10. LIMITATION OF LIABILITY

- 10.1. All Services that are compulsorily subject to Part 5, Subpart 1 of the Contract and Commercial Law Act 2017 shall be performed at limited carrier's risk and any liability of Freightworks shall be calculated accordingly and limited to the statutory limitation sum then applicable.

- 10.2. Subject to subclause 10.1 and to the extent allowed by any other mandatory provision of law to the contrary, Freightworks shall not be liable under any liability, however caused or arising and (without limiting the generality of the foregoing) whether arising or resulting from negligence, breach of contract on the part of Freightworks or otherwise, for:

- any damage to or loss, deterioration, contamination, misdelivery, delay in delivery or non-delivery of Goods;
- any loss of or damage to perishable goods due to any failure or breakdown of machinery or plant, shortage of power or labour, or pilferage, theft or burglary (or any attempt at the same) whether by any servant or agent of Freightworks or any other person;
- in connection with any instruction, advice, information or service given or provided to any person whether in respect of Goods or any other matter; or
- any direct, indirect or consequential loss or damage caused by or arising from delay, loss of market or loss of or damage to Goods, or otherwise howsoever and whether or not Freightworks had actual or constructive notice that such loss or damage could arise.

- 10.3. The Customer shall indemnify Freightworks against any claims (whether resulting from the negligence of Freightworks or otherwise) brought by any person in connection with an act, matter or thing said or omission by Freightworks in connection with the Services or Goods or by Freightworks acting as agent of the Customer.

- 10.4. All of the rights, immunities and limitations of liability in these Conditions shall continue to have full force and effect in all circumstances and for all parties benefitting from these Conditions and notwithstanding any breach of contract by, or negligence on the part of, Freightworks.

- 10.5. Subject to subclause 10.1, in any case Freightworks' liability has not been effectively excluded, whether by these Conditions or otherwise, the total liability of Freightworks to

the Customer or to any other person shall be limited to the lesser of:

- (a) \$100; or
- (b) the value of the Goods at the time the Goods were received by Freightworks; or
- (c) a resupply of the Goods or payment of the cost of resupplying the Goods.

10.6. Where subclause 10.5 applies, the maximum aggregate liability of Freightworks for all claims arising out of any one incident or occurrence shall be limited:

- (a) in any case where liability arises as a result of misdelivery, delay in delivery or non-delivery of any Goods, to \$10,000; and
- (b) in any other case to \$1,000,000.

10.7. Where, as a result of the application of subclause 10.6 not all claims can be paid in full, all claims properly payable shall be pro rata.

11. CLAIMS

11.1. Any claim for loss or damage must be notified in writing to Freightworks within 3 days of delivery of the Goods or of the date upon which the Goods should have been delivered. Failure to give notice within the time stated shall discharge Freightworks from any liability in relation to the alleged loss or damage.

11.2. In any event Freightworks shall be discharged from all liability whatsoever in connection with the provision of the Services and or the Goods unless an action has been commenced by the Customer in a Court of competent jurisdiction and served within 9 months of the provision of the Services or delivery of the Goods or when the Services should have been provided or the Goods should have been delivered.

12. CONSUMER GUARANTEES ACT 1993

12.1. The Customer agrees that the guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires any Services from Freightworks for business purposes and/or in trade in terms of section 2 and 43 of that Act.

13. PERSONAL PROPERTIES SECURITY ACT 1999

13.1. Without limiting anything else in these Conditions, the Customer acknowledges that:

- (a) these Conditions create, in favour of Freightworks, a security interest in all goods and documents relating to goods which at any time come into the possession of Freightworks, to secure the payment by the Customer to Freightworks of all moneys due to Freightworks by the Customer, or the consignee, consignor or owner, where in respect of such goods or otherwise and whether or not such moneys are overdue for payment ("the Amount Owing");
- (b) these Conditions will apply notwithstanding anything, express or implied, to the contrary contained in any purchase order (or its equivalent, whatever called) of the Customer; and
- (c) the security interest shall continue until Freightworks gives the Customer a final release.

13.2. The Customer undertakes to:

- (a) promptly do all things, sign any further documents and/or provide any information which Freightworks may reasonably require to enable Freightworks to perfect and maintain the perfection of its security interest (including by registration of a financing statement); and
- (b) give Freightworks (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, email address, facsimile number, trading name or business practice).

13.3. The Customer waives its right to receive a verification statement in respect of any financing statement relating to the security interest.

13.4. To the extent permitted by law, the Customer and Freightworks contract out of:

- (a) section 114(1)(a) of the PPSA; and
- (b) the Customer's rights referred to in sections 107(2)(c), (d), (h) and (i) of the PPSA.

13.5. The Customer agrees that the security has the same priority in relation to all amounts forming part of the Amount Owing, including future advances.

13.6. If an event of default occurs:

- (a) Freightworks may suspend or terminate any contract;

(b) the Amount Owing shall immediately become due and payable notwithstanding that the due date for payment has not arisen;

(c) Freightworks may enforce the security interest; and

(d) Freightworks may (without the consent of the Customer) 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.

13.7. 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, Freightworks may:

(a) take or retain possession of any goods; and/or

(b) 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 could do in relation to those goods. Freightworks 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, Freightworks is not the secured party with priority over all other secured parties in respect of those goods. As the Customer's agent, Freightworks (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 Freightworks (and its employees and agents) against all liability incurred in connection with, such entry, taking of possession and removal. Freightworks may resell any of the goods and apply the proceeds of sale in reduction of the Amount Owing.

14. GENERAL TERMS

14.1. All notices, requests, demands or other communications to or upon the parties to these Conditions shall be made in writing and shall be deemed to be duly given or made when received in the case of a physical notice or in respect of an email when the email servers of the recipient receive such notice. The parties authorise service of notices to such addresses, fax numbers or email addresses that have been used or provided by one party to the other.

14.2. No modification of these Conditions shall be effective unless written and signed by authorised representatives of both parties.

14.3. In the event that any clause or part of any clause is declared invalid or unenforceable, all other clauses or parts of clauses shall nevertheless remain in full force and effect.

14.4. A failure by a party to enforce any right or remedy under this agreement shall not be deemed to be a waiver of that right or remedy and no waiver of any one right or remedy shall be deemed to be a waiver of any subsequent right or remedy.

15. COLLECTION AND USE OF INFORMATION

15.1. The Customer authorises Freightworks to collect, retain and use any information about the Customer for the purpose of assessing the Customer's credit worthiness, enforcing any rights under these Conditions or marketing any Services provided by Freightworks, including the sharing of such information with any third party for these purposes, and for the purpose of providing the Services.

15.2. The Customer acknowledges and agrees that Freightworks may disclose any information to any Authority for the purpose of providing the Services or as required by law.

15.3. In the case of personal data, the Customer and its agents and employees agree to the collection, use and retention of such data in accordance with Freightworks' privacy policy which will be available in full on the Freightworks' website.

16. GOVERNING LAW

16.1. These Conditions, and any act or contract to which they apply, shall be governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.