

PART I: General Conditions

1. Application

- 1.1 Subject to Clause 1.2, all Services of the Company whether gratuitous or not are undertaken subject to these terms and conditions and not otherwise and:
- (a) the provisions of Part I shall apply to all such Services.
 - (b) the provisions of Part II shall only apply to the extent that such Services are provided by the Company as agents.
 - (c) the provisions of Part III shall only apply to the extent that such Services are provided by the Company as principals.
- 1.2 Where a document is issued by or on behalf of the Company and bears the title of, or includes the words, "bill of lading" (whether or not negotiable), or sea or air "waybill" and provides that the Company contracts as carrier, the provisions set out in that document, if inconsistent with these Conditions, shall be paramount and prevail over these Conditions to the extent that such provisions are inconsistent but no further.
- 1.3 Any variation, cancellation or waiver of these terms and conditions (or any of them) must be in writing signed by a Director of the Company. No other person has or will be given any authority whatsoever to agree to any variation, cancellation or waiver of these terms and conditions.
- 1.4 The terms and conditions set out herein 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.
- 1.5 The Customer shall give the Company not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any 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, or business practice). The Customer shall be liable for any loss incurred by the Company as a result of the Customer's failure to comply with this clause.

2. Provision of Services

- 2.1 All Services are provided by the Company as agents only, 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, and the Company fails to give the particulars demanded within 28 days. However, for the purposes of this sub clause, the Company shall only be deemed to be contracting as a principal in respect of that part of the carriage which the Company fails to give the particulars demanded; 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.
- 2.2 Without prejudice to the generality of clause 2.1.
- (a) the charging by the Company of a fixed price for any Services whatsoever shall not in itself determine or be evidence that the Company is acting as an agent or a principal in respect of those Services.
 - (b) the supplying by the Company of its own or leased equipment shall not in itself determine or be evidence that the Company is 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, sea or air waybill or other document evidencing a contract of carriage between a person, other than the Company, and the Customer or Owner;
 - (d) the Company acts as an agent and never as a principal when providing Services as a Customs Broker in respect of or relating to customs requirements, taxes, licenses, consular documents, certificates of origin, inspection, certificates and other similar Services or when obtaining insurances for or on behalf of the Customer or relating to the Goods (other than where by law the Company is deemed to be an agent of the insurer) or when providing any other Services whatsoever for or on behalf of the Customer.
- 2.3 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 any other Service at its discretion. All Services are performed subject only to these Conditions (and when applicable but subject to clause 23.6, the conditions on any Bill of Lading or Air Waybill issued by the Company as Principal).

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3. Definitions

3.1 In these conditions:

- (a) "Company" shall mean Easy Freight Limited. (or otherwise referred to as the "Vendor"), its successors and assigns or any person acting on behalf of and with the authority of Easy Freight Limited.
- (b) "Customer" means any person at whose request or on whose behalf the Company provides a service.
- (c) "Person" includes 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" means 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 any container not supplied by or on behalf of the Company, in respect of which the Company provides a service.
- (g) "Container" includes any Container, flexi tank, 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.
- (i) "Hague-Visby-Rules" means the provisions of the International Convention for the unification of certain rules relating to bills of lading signed at Brussels on 25th August 1924 as amended by the Visby Protocol of 23rd February 1968 and the SDR Protocol of 21st December 1979.
- (j) "Incidental Matters" means anything done or to be done in relation to the Goods or the provision of any Services ancillary to the Goods including but not limited to moving, storing or leaving the Goods at any warehouse, terminal, yard, wharf or other place or area, loading or unloading the Goods from any vehicle, vessel or other conveyance, stowing or packing the Goods or fumigating, trans-shipping, inspecting or otherwise handling the Goods or anything done in relation thereto.
- (k) "Instructions" means a statement of the Customer's specific requirements.
- (l) "Services" means the whole of the Services provided by the Company to the Customer and all matters necessarily related to the provision of the Services or ancillary to the provision of the Services.
- (m) "Montreal Convention" means the Montreal Convention 1999 as applied respectively by the legislation of the Commonwealth of Australia and of New Zealand.
- (n) "Guarantor" means that Person (or Persons), who agrees herein to be liable for the debts of the Customer on a principal debtor basis.

4. Obligations of Customer

- 4.1 The Customer warrants that it is either the Owner or the authorized agent of the Owner of the Goods and that it is authorized to accept and accepts these Conditions, not only for itself, but also as agent for and on behalf of the Owner
- 4.2 The Customer warrants that it has reasonable knowledge of matters affecting the conduct of its business, including, but not limited to, the terms of sale and purchase of the Goods and all other matters relating thereto.
- 4.3 The Customer shall give sufficient and executable instructions.
- 4.4 The Customer warrants that the description and particulars of the Goods are complete and correct.
- 4.5 The Customer warrants that the Goods are properly packed and labelled, except where the Company has accepted instructions in respect of packaging and/or labelling.

5. Special Instructions, Goods and Services

- 5.1 Unless agreed in writing, the Customer shall not deliver to the Company, or cause the Company to deal with or handle, Dangerous Goods.
- 5.2 If the Customer is in breach of Clause 5.1:
 - (a) the Customer shall be liable for all loss or damage whatsoever caused by or to or in connection with the Goods howsoever arising;
 - (b) the Customer shall defend, indemnify and hold harmless the Company against all penalties, claims, damages, costs and expenses whatsoever arising in connection therewith; and
 - (c) the Company (or any other person in whose custody the Goods may be in at the relevant time) may, at the Company's sole discretion, have the Goods destroyed or otherwise dealt with. For the purposes of this sub-clause, notice is not required to be given to any person of the intention to destroy or otherwise deal with the Goods.
- 5.3 If the Company agrees to accept Dangerous Goods and then it (or any other person) reasonably forms the view that those Goods constitute a risk to other goods, property, life or health, it may (without notice and without liability) have the Goods destroyed or otherwise dealt with at the expense of the Customer or Owner.

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- 5.4 The Customer undertakes not to tender for transportation any Goods which require temperature control without previously giving written notice of their nature and the particular temperature range to be maintained and or any other special handling requirements such as humidity, and in the case of a temperature controlled Container stuffed by or on behalf of the Customer, the Customer further undertakes that:-
- (a) the Container has been properly pre-cooled or pre-heated as appropriate;
 - (b) the Goods have been properly stuffed in the Container; and
 - (c) the Container's thermostatic controls have been properly set by the Customer.
- 5.5 If the requirements of Clause 5.4 are not complied with the Company shall not be liable for any loss of or damage to the Goods caused by such non-compliance.
- 5.6 Unless agreed in writing, 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 or to make any declaration as to specific stowage requirements of any Goods.
- 5.7 Unless 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 misdelivery of Goods.
- 5.8 Unless agreed in writing that the Goods shall depart by or arrive by a particular date, 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 delay due to the provision of incorrect documentation to any Customs Service, Quarantine Inspection Service or to any other relevant or equivalent authority.

6. Insurance

- 6.1 No insurance shall be effected except upon express instructions given in writing by the Customer and in effecting any such insurances, the Company shall be deemed to be an agent only of the Customer (other than where by law the Company is deemed to be an agent of the insurer) and not as an insurer, insurance broker or other form of intermediary.
- 6.2 All insurances effected by the Company are effected as agent only for the Customer (other than where by law the Company is deemed to be an agent of the insurer) and all such insurances are subject to the usual exceptions and conditions of the policies of the insurance company or underwriters taking the risk.
- 6.3 Unless 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.
- 6.4 The Company is an agent only of the Customer in respect of the effecting of insurance (other than where by law the Company is deemed to be an agent of the insurer) and in any event 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 at the same rate as that charged by the Company or paid to the Company by the customer.

7. General Indemnities and Liabilities of the Customer and Owner

- 7.1 The Customer and Owner shall defend, indemnify and hold harmless the Company against all liability, loss, damage, costs and expenses howsoever arising:
- (a) from the nature of the Goods, other than to the extent caused by the Company's negligence, or
 - (b) out of the Company acting in accordance with the Customer's or Owner's instructions, or
 - (c) from a breach of warranty or obligation by the Customer or arising from the negligence of the Customer or Owner.
- 7.2 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 whatsoever levied by any Authority and for all payments, fines, costs, expenses, loss and damage whatsoever incurred or sustained by the Company in connection therewith.
- 7.3 Advice and information, in whatever form it may be given, is 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.
- 7.4 The Customer shall be liable for the loss, damage, contamination, soiling, detention or demurrage before, during and after the Carriage of property of;
- (a) the Company (including, but not limited to, Containers),
 - (b) the Company's servants, sub-contractors or agents,

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(c) independent contractors engaged by the Company for performance of part or all of the Services,
(d) any person, or
(e) 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.

7.5 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.

8. Subcontractors

8.1 The Customer undertakes that no claim will be made against any servant, sub-contractor or agent of the Company which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods. If any such claim should nevertheless be made, the Customer undertakes to indemnify the Company against all consequences thereof.

8.2 Without prejudice to Clause 8.1, 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 those provisions, does so not only on its behalf, but as agent and trustee for such servants, sub-contractors and agents.

8.3 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 these Conditions.

8.4 Without prejudice to the generality of this Clause 8, the indemnity referred to in Clause 8.3, shall cover all claims, costs and demands arising from or in connection with the negligence of the Company, its servants, sub-contractors and agents.

8.5 In this Clause, “sub-contractors” includes direct and indirect sub-contractors and their respective employees, servants and agents.

9. Charges etc.

9.1 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 set-off. Unless otherwise stated in writing payment shall be due on the same date as the invoice date.

9.2 Payment may be made by credit card (plus a surcharge per transaction), or by direct credit, or by any other method as agreed to between the Customer and the Company.

9.3 The Company may by giving notice to the Customer increase the Price of the Services to reflect any increase in the cost to the Company beyond the reasonable control of the Company (including, without limitation, foreign exchange fluctuations, or increases in taxes, customs duties, insurance premiums, or warehousing costs).

9.4 When the Company is instructed to collect freight, duties, charges or other expenses from any third party, the Customer:
(a) shall remain responsible for these amounts; and
(b) shall pay these amounts to the Company on demand where these amounts have become due and have not been paid by the third party.

9.5 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at the Company's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgement.

9.6 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by the Company.

9.7 If the Customer owes the Company any money the Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Company's collection agency costs, and bank dishonour fees).

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- 9.8 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.
- 9.9 The Company's charges and expenses shall be deemed earned as soon as any handling of the goods has occurred.
- 9.10 The exchange rate used by the Company in calculating freight invoices is based on the then rate provided by the Company's bank plus 3% at the time of invoicing. This is to cover exchange rate fluctuations.
- 10. Liberties and Rights of the Company**
- 10.1 Unless otherwise agreed in writing, the Company shall be entitled to enter into contracts on behalf of itself or the Customer and without notice to the Customer:
- (a) for the carriage of Goods by any route, means or person,
 - (b) for the carriage of Goods of any description, whether containerized or not, on or under the deck of any vessel,
 - (c) for the storage, packing, trans-shipment, loading, unloading or handling of Goods by any person at any place whether on shore or afloat and for any length of time,
 - (d) for the carriage or storage of Goods in containers or with other goods of whatever nature,
 - (e) for the performance of its own obligations, and to do such acts as the Company reasonably considers may be necessary or incidental to the performance of the Company's obligations.
- 10.2 The Company shall be entitled (without incurring any additional liability), but shall be under no obligation, to depart from the Customer's instructions in any respect if the Company considers there is good reason to do so in the Customer's interest.
- 10.3 The Company may at any time comply with the orders or recommendations given by any Authority. The responsibility and liability 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.
- 10.4 The Company shall be entitled (but under no obligation) at any time and from time to time to inspect the Goods and for this purpose to open or remove any Containers.
- 10.5 If at any time the Company reasonably considers that the carriage of the Goods should not be undertaken or continued or only continued after effecting any necessary incidental matters or incurring additional expense or risk, the Company shall be entitled to:
- (a) abandon the carriage of such cargo or to effect such additional incidental matters and incur such additional expense, as may be reasonably necessary in order to enable the carriage to be effected or further effected; and
 - (b) be reimbursed by the Customer for the cost of all such additional incidental matters and all such additional expense incurred.
- 10.6 If the Company (or any person whose Services the Company makes use of) considers:
- (a) the performance of the Company's obligations are likely to be effected by any hindrance, risk, delay, difficulty or disadvantage whatsoever; and
 - (b) the hindrance, risk, delay, difficulty or disadvantage cannot be avoided by reasonable endeavours of the Company or such other person, the Company may (upon giving notice in writing to the Customer or Owner) treat the performance of its obligations as terminated and may, at the Customer's expense, place the Goods or any part of them at the Customer's or Owner's disposal at any place which the Company deems safe and convenient.
- 10.7 The notice in writing referred to in Clause 10.6 is not required where it is not reasonably possible to give such notice.
- 10.8 Where the Company exercises its rights and obligations under Clause 10.6, responsibility and liability of the Company in respect of the Goods shall thereupon cease absolutely.
- 10.9 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 of the Goods at a designated time and place and delivery of the Goods, or any part thereof, is not taken by the Customer or Owner at the designated time and place 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.
- 10.10 Notwithstanding Clauses 10.6 to 10.9, the Company shall be entitled (but under no obligation) without any responsibility or liability to the Customer and Owner, to sell or dispose of
- (a) all Goods which the Company considers cannot be delivered as instructed, but only upon giving 21 days notice

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in writing to the Customer, and

- (b) 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.
- 10.11 Where the Company sells or disposes of Goods pursuant to Clause 10.10 the Customer shall be responsible for any costs and expenses of the sale or disposal.
- 10.12 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.
- 10.13 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. The Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in pursuing such sums including legal costs on a solicitor and own client basis and the Company's collection agency costs.
- 10.14 Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment) the Company may suspend or terminate the supply of Services to the Customer and any of its other obligations under the terms and conditions. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company exercised its rights under this clause.
- 10.15 The failure by the Company to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Company's right to subsequently enforce that provision.

11. Privacy Act 2020

- 11.1 All emails, documents, images or other recorded information including Personally Identifiable Information (PII) as defined and referred to in this clause held or used by the Company is considered confidential. The Company acknowledges its obligation in relation to the handling, use, disclosure and processing of PII pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 8 of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Company acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's PII, held by the Company that may result in serious harm to the Customer, the Company will notify the Customer in accordance with the Act and/or the GDPR. Any release of such PII must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 11.2 Notwithstanding clause 11.1, privacy limitations will extend to the Company in respect of Cookies where transactions for purchases/orders transpire directly from the Company's website. The Company agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection the Customers Personal Information such as:
 - (a) IP address, browser, email Customer type and other similar details;
 - (b) tracking website usage and traffic;
 - (c) reports which are available to the Company when the Company sends an email to the Customer; so the Company may collect and review that information (collectively "PII").
- 11.3 If the Customer consents to the Company's use of Cookies on the Company's website and later wish to withdraw that consent, the Customer may manage and control the Company's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 11.4 The Customer authorises the Company or the Company's agent to:
 - (a) access, collect, retain and use any information about the Customer;
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Customer.
 - (b) 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.
- 11.5 Where the Customer is an individual the authorities under clause 11.1 are authorities or consents for the purposes of the Privacy Act 2020.
- 11.6 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

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Customer held by the Company.

12. Lien and Title

- 12.1 The Company shall have a particular and general lien on all Goods or documents relating to Goods in its possession the property of the Customer or Owner for all sums due at any time from the Customer or Owner (whether those sums are due from the Customer on those Goods or documents or on any other Goods or documents).
- 12.2 Where any sum due to the Company from the Customer or Owner remains unpaid, the Company, on giving 28 days notice in writing to the Customer, shall be entitled (without liability to the Customer and Owner) to sell or dispose of such Goods or documents by public auction or by private treaty at the risk and expense of the Customer and Owner and to apply the proceeds of any such sale or disposal in or towards the payment of the sums due.
- 12.3 The Company and the Customer agree that ownership of the Services shall not pass until:
- (a) the Customer has paid the Company all amounts owing to the Company; and
 - (b) the Customer has met all of its other obligations to the Company.
- 12.4 Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured or recognised.
- 12.5 It is further agreed that:
- (a) until ownership of the Services passes to the Customer in accordance with clause 12.3 that the Customer is only a bailee of the Services and unless the Services have become fixtures must return the Services to the Company on request; and
 - (b) the Customer holds the benefit of the Customer's insurance of the Services on trust for the Company and must pay to the Company the proceeds of any insurance in the event of the Services being lost, damaged or destroyed; and
 - (c) the production of these terms and conditions by the Company shall be sufficient evidence of the Company's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Company to make further enquiries; and
 - (d) the Customer must not sell, dispose, or otherwise part with possession of the Services other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Services then the Customer must hold the proceeds of any such act on trust for the Company and must pay or deliver the proceeds to the Company on demand; and
 - (e) the Customer should not convert or process the Services or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Company and must sell, dispose of or return the resulting product to the Company as it so directs; and
 - (f) unless the Services have become fixtures the Customer irrevocably authorises the Company to enter any premises where the Company believes the Services are kept and recover possession of the Services; and
 - (g) the Company may recover possession of any Services in transit whether or not delivery has occurred; and
 - (h) the Customer shall not charge or grant an encumbrance over the Services nor grant nor otherwise give away any interest in the Services while they remain the property of the Company; and
 - (i) the Company may commence proceedings to recover the Price of the Services sold notwithstanding that ownership of the Services has not passed to the Customer.

13. Personal Property Securities Act 1999 ("PPSA")

- 13.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all present or after acquired Goods and/or collateral (account) – being a monetary obligation of the Customer to the Company for Goods that have previously been supplied and that will be supplied in the future by the Company to the Customer.
- 13.2 The Customer hereby acknowledges that these Terms and Conditions of Trade constitute a security agreement which creates a security interest in favour of the Vendor:
- (a) for all Goods previously supplied by the Vendor to the Customer (if any);
 - (b) for all of its present and after acquired Goods.
- 13.3 The Customer agrees to grant a "Purchase Money Security Interest" to the Vendor in respect to all amounts owed by the Customer to the Vendor, as that term is defined in the PPSA.
- 13.4 Where Goods in respect of which title has not passed to the Customer are sold by the Customer in the ordinary course of business, the book debt created on the sale and the proceeds of sale when received shall be held by the Customer for the Vendor in terms of section 45 of the PPSA.
- (a) Where any proceeds of sale are placed in the Customer's bank account the funds in the Customer's bank account shall be deemed to be held on trust for the Vendor to the extent of proceeds of sale.
 - (b) Where any payments are made from the Customer's bank account otherwise than to the Company payment shall be deemed to have been made from all other funds in the Customer's bank account and not from funds held on trust for the Vendor.

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- (c) The trust obligation imposed by this clause and the Vendor's entitlements under the PPSA shall continue for so long as the Vendor is unpaid for all Goods supplied to the Customer.
- 13.5 The Customer undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Company may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) 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;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Company; and
 - (d) immediately advise the Company of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 13.6 The Company and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 13.7 If any of the Goods are incorporated in or used as material for other goods before payment is made ownership in the whole of the other goods shall be and remain with the Vendor until payment is made. The Vendor's Security Interest in the Goods shall continue in the terms of section 82 of the PPSA.
- 13.8 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 13.9 Unless otherwise agreed to in writing by the Company, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 13.10 The Customer shall unconditionally ratify any actions taken by the Company under clauses 13.1 to 13.9. Subject to any express provisions to the contrary (including those contained in this clause 16), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

14. Containers

- 14.1 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:
- (a) the manner in which the Container has been packed or stuffed,
 - (b) the unsuitability of the contents for carriage in Containers, unless the Company has approved the suitability,
 - (c) 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 (c) shall only apply if the unsuitability or defective condition arose:
 - (i) without any negligence on the part of the Company; or
 - (ii) would have been apparent upon reasonable inspection by the Customer or Owner or person acting on behalf of either of them.
 - (d) the fact that the Container is not sealed at the commencement of the Carriage, except where the Company has agreed to seal the Container.
- 14.2 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 referred to in Clause 14.1, except for Clause 14.1(c) (i).
- 14.3 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.
- 14.4 For Full Container Loads (FCL) by sea the Customer's entitlement to use the container(s) ends at the terminal of arrival. The Company shall however (but strictly as set out in this clause) allow the Customer to use the Container(s) for the purposes of transporting the Customer's goods away from the terminal for unpacking on the following understanding:
- (a) the Company may be liable to the ocean carrier for the clean and prompt return of the Container(s) in good condition to the nominated depot.
 - (b) the ocean carrier has allowed a number of free days use of the Container(s) after which daily detention charges shall apply.
 - (c) the Company may be liable for any damage done to the Container(s), cleaning, or fumigation requirements. Accordingly in consideration of the Company's agreement to make the Container(s) available the Customer beyond the terminal gate, the Customer agrees to indemnify the Company for all charges, fees, or any other liability of whatsoever nature (including without limitation, interest charges and any legal costs) directly or indirectly arising from the use of the Container(s) beyond the terminal gate by the Customer, or by all or any agents, acting on the Customer's behalf either directly or indirectly.

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15. General Liability

- 15.1 Except where otherwise provided in these Conditions, the Company shall not be liable for any loss or damage whatsoever arising from:
- (a) the act or omission of the Customer or Owner or any person acting on their behalf,
 - (b) compliance with the instructions given to the Company by the Customer, Owner or any other person entitled to give them,
 - (c) insufficiency of the packing or labelling of the Goods, except where such service has been provided by the Company,
 - (d) handling, loading, stowage or unloading of the Goods by the Customer or Owner or any person acting on their behalf,
 - (e) inherent vice of the Goods,
 - (f) riots, civil commotions, strikes, lockouts, stoppage or restraint of labour from whatsoever cause,
 - (g) fire, flood, storm, explosion or theft or
 - (h) any cause which the Company could not avoid and the consequences whereof it could not prevent by the exercise of reasonable diligence.
- 15.2 Subject to Clause 5.8, the Company shall not be liable for loss or damage howsoever caused (whether or not indirect or consequential) to property other than the Goods themselves and shall not be liable for any pure economic loss or loss of profit, delay or deviation howsoever arising.

16. Amount of Compensation

- 16.1 Except in so far as otherwise provided by these Conditions, the liability of the Company, howsoever arising, shall not exceed the following and the total liability of the Company for any loss or damage is limited to the lesser of:
- (a) \$20.00 (NZD);
 - (b) the replacement of the Goods or the supply of equivalent Goods;
 - (c) the repair of the Goods;
 - (d) the payment of the cost of replacing the Goods or of acquiring equivalent Goods;
 - (e) the supplying of the Services again; or
 - (f) the payment of the cost of having the Services supplied again.
 - (g) 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.
- 16.2 In any case where the Contract and Commercial Law Act 2017 applies, the Company's liability shall be calculated in accordance with the limited carriers provisions of that Act.
- 16.3 Notwithstanding clauses 16.1 and 16.2, and except as is otherwise required by statute the maximum liability of the Company for all claims arising out of any one instance or occurrence shall be limited to:
- (a) in any case where the liability arises as a result of misdelivery, delay in delivery or the non-delivery of any Goods, to \$10,000 (NZD); and
 - (b) in any other case to \$1,000,000 (NZD), and
 - (c) where as a result of the application of this clause not all claims can be paid in full, then all claims properly payable shall abate pro rata.
- 16.4 The limitation of liability referred to in Clauses 16.1 to 16.3 shall apply notwithstanding that the cause of the loss or damage is unexplained.
- 16.5 If agreed in writing prior to receipt of the Goods, the Company may accept liability in excess of the limits set out in these Conditions upon the Customer agreeing to pay the Company's additional charges for accepting such increased liability. Details of the Company's additional charges will be provided upon request.
- 16.6 Compensation shall be calculated by reference to the invoice value of the Goods plus freight and insurance if paid.
- 16.7 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.
- 16.8 Unless agreed in writing prior to receipt, the Company will not accept or deal with bullion, coin, precious stone, jewellery, antiques, and works of art or other valuable Goods. Should any Customer nevertheless deliver any such Goods to the Company or cause the Company to handle or deal with any such Goods other than in accordance with prior written agreement, the Company shall be under no liability whatsoever for or in connection with such Goods howsoever arising.

17. Notice of Loss, Time bar

- 17.1 The Company shall be discharged of all liability unless:

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- (a) notice of any claim is received by the Company or its agent in writing within fourteen (14) days of the date specified in Clause 17.2, or within a reasonable time after that date if the Customer proves that it was impossible to so notify, excepting that in the case of delay the claim must be received by the Company or its agent within twenty-one (21) days of the date specified in Clause 16.2, and
- (b) suit is brought in the proper forum and written notice thereof received by the Company within nine (9) months after the date specified in Clause 17.2, unless a longer period is specified by relevant legislation in which case the suit must be brought within the period specified.

17.2 For the purposes of Clause 17.1, the applicable dates are:

- (a) in the case of loss or damage to Goods, the date of delivery of the Goods,
- (b) in the case of delay or non-delivery of the Goods, the date that the Goods should have been delivered,
- (c) in any other case, the event giving rise to the claim.

18. General Average

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

19. Miscellaneous

19.1 Notice

Any notice served by post shall be deemed to have been given on the third day following the day on which it was posted to the address last known to the Company to be the address of the recipient of the notice.

19.2 Defences and Limits of Liability

The defences and limits of liability provided in these Conditions shall apply in any action against the Company whether founded in contract or in tort or howsoever otherwise founded.

19.3 Legislation

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 is held to be repugnant to such legislation to any extent such part shall as regards such business be over-ridden to that extent and no further.

19.4 Headings

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

20. Governing Law and Jurisdiction

20.1 These Conditions and any claim or dispute arising out of or in connection with the Services of the Company shall be subject to the laws of New Zealand and to the exclusive jurisdiction of the courts of New Zealand.

20.2 All Services provided by the Company which are subject to the Contract and Commercial Law Act 2017 (as amended) of New Zealand are provided at limited carrier's risk and the provisions of that Act shall prevail over any inconsistency in these Conditions to the extent of such inconsistency but no further.

PART II: Company as Agent

21. Special Liability and Indemnity Conditions

21.1 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.

21.2 The Company shall not be liable for the acts and omissions of third parties referred to in Clause 21.1.

21.3 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 acts which bind the Customer in all respects notwithstanding any departure from the Customer's instructions.

21.4 Except to the extent caused by the Company's negligence, the Customer shall defend, indemnify and hold

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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 21.1.

22. Choice of Rates

- 22.1 Where there is a choice of rates according to the extent or degree of liability assumed by persons carrying, storing, or handling the Goods, no declaration of value (where available) will be made by the Company unless previously agreed in writing between the Customer and the Company.

PART III: Company as Principal

23. Special Liability Conditions

- 23.1 Where 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 performance 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.
- 23.2 Where:
- (a) the Company contracts as a principal and sub-contracts the performance of the Company's Services; and
 - (b) 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 the sub-contractor in the contract between the Company and the sub-contractor 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 the sub-contractor.
- 23.3 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.
- 23.4 Notwithstanding other provisions in these Conditions, if it can be proved that the loss of or damage to the Goods occurred at sea or on inland waterways and the provisions of Clause 23.2 do not apply, the Company's liability shall be determined by the Hague-Visby Rules. Reference in the Hague-Visby Rules to carriage by sea shall be deemed to include reference to carriage by inland waterways and the Hague-Visby Rules shall be construed accordingly.
- 23.5 Notwithstanding the provisions of Clauses 23.2, 23.3 and 23.4, if the loss of or damage to the Goods occurred at sea or on inland waterways, and the Owner, Charterer or operator of the carrying vessel is entitled to limit its liability at law and establishes a limited fund, the liability of the Company shall be limited to the proportion of such limitation fund as is allocated to the Goods.
- 23.6 In the event of any inconsistency between these Conditions and the conditions of any Bill of Lading or Air Waybill issued by or on behalf of the Company as Principal, the conditions of any such Bill of Lading or Air Waybill shall prevail to the extent of such inconsistency but no further.

24. Both-to-Blame Collision Clause

- 24.1 The Both-to-Blame Collision Clause as recommended by BIMCO as at the same time of the provision of Services is incorporated into and forms part of these Conditions.

25. Australia, USA and/or Canada and Additional Responsibility Clause

- 25.1 With respect to transportation within Australia, the USA or Canada, the responsibility of the Company shall be to procure transportation by carriers (one or more) and such transportation shall be subject to such carrier's contracts and tariffs and any law compulsorily applicable.
- 25.2 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 these Conditions. 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.

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- 25.3 If and to the extent that the provisions of the Carriage of Goods by Sea Act 1991 of the Commonwealth of Australia 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 be determined by these Conditions. If such provisions are found to be invalid such responsibility shall be determined by the provisions in the Carriage of Goods by Sea Act 1991.
- 25.4 If the Hamburg Rules should be held to be compulsorily applicable to any carriage of goods by sea undertaken by the Company as principal, these Conditions shall be read subject to the provisions of the Hamburg Rules and any term of these Conditions that is repugnant to the Hamburg Rules shall be void to the extent of such repugnancy but no further.