

PART A: GENERAL TERMS AND CONDITIONS

1 Structure of these Terms and Conditions

1.1 These Terms and Conditions consist of a number of parts as follows:

(a) This **Part A “General Terms and Conditions”** applies to all Services provided by the Company to the Customer.

(b) **Part B “Special Terms: Transportation/line haul services”** contains additional conditions if and when the Company provides Carriage Services to the Customer (**Part B**).

1.2 In the event that Part B applies, and there is an inconsistency between the provisions contained in this Part A and the provisions contained in Part B, the provisions contained in Part B will prevail.

2 Definitions

Agreement means these Terms and Conditions, together with any Authority and Customer credit application.

Authority means the authority by which the Customer appointed the Company to act on its behalf.

Carriage Services means services provided by the Company in connection with the carriage of Goods, including carriage, storage, loading, unloading, packing, unpacking and all other incidental services in connection with the transportation of the Goods whether by air, sea, rail or road.

CGA means the *Consumer Guarantees Act 1993* (New Zealand).

Company means Stockwell International (NZ) Limited, NZCN 5896736 and its nominees, agents and employees.

Connected Party means in relation to the Goods the Owner, exporter, importer, supplier, purchaser, carrier or any agent of any of the aforementioned parties, other than the Company.

Consequential Loss means any loss or damage which:

(a) does not arise naturally or in the usual course of things; or

(b) constitutes, or arises from or in connection with, a loss in revenue, profit or opportunity or a loss of goodwill or business reputation, even if such loss or damage arises naturally or in the usual course of things.

Customer means:

(a) where there is an Authority, the customer named in the Authority, including its employees, officers, agents and contractors; or

(b) where there is no Authority, the person instructing the Company to provide the Services; and

for the avoidance of doubt, the Customer may also be the Owner.

Dangerous Goods means any Goods which are, or may become, hazardous, volatile, explosive, flammable, radioactive, likely to harbour or encourage vermin or pests, or capable of posing a risk or causing damage to any person or property.

FTA means the *Fair Trading Act 1986* (New Zealand).

Goods means the goods, including packaging, pallets or containers, the subject of the Services.

Government Authority means any government agency, authority, department or body, exercising jurisdiction in any nation, state, port or airport.

Law includes any law, regulation, rule, ordinance, code or international convention whether in New Zealand or internationally.

Loss means any loss, cost, damage, expense, claim, demand, action, proceeding or liability of any kind, (including legal costs on an indemnity basis) and whether actual, prospective or contingent and whether ascertained or unascertained.

Owner means the owner, importer or exporter of the Goods, or a person authorised to act on behalf of the owner, importer or exporter of the Goods.

Perishable Goods means any Goods liable to waste, deterioration or spoilage, and includes without limitation fruit, vegetables, dairy products, meat, and animals.

PPSA means the *Personal Property Securities Act 1999* (New Zealand).

Services means the work performed by the Company:

(a) in relation to the Goods under or in connection with these Terms and Conditions, including facilitating the import, export, transport, or storage of the Goods; and any ancillary acts for those purposes, including preparing any documentation or providing any information to a Government Authority; and

(b) if applicable, in connection with the Carriage Services in which case **Part B** of these Terms and Conditions also apply.

SBC contract means a contract that is either:

- (a) a "small trade contract" as defined in section 26C(2) of the FTA; or
- (b) a "consumer contract" as defined in section 2(1) of the FTA).

Subcontractor means a third party (and their employees, agents and contractors) engaged to provide all or part of the Services.

Terms and Conditions means these terms and conditions.

Transport Document includes a bill of lading, waybill, consignment note, or similar carriage document.

A reference to the Company's fees includes any taxes, including goods and services tax, payable in respect of the Services.

3.8 If a condition or part of a condition of this Agreement is unenforceable, it must be severed from and does not affect the rest of the Agreement.

3.9 The Company is not bound by any waiver, discharge or release of a condition or any agreement which purports to change this Agreement, unless it is in writing and signed by or for the Company.

3.10 A reference in this Agreement to any law includes any statutory modification, substitution or reenactment of it.

- 3.11 If the Customer is a trustee of a trust, the Customer:
- (a) will provide the Company with a copy of the trust deed and any documents amending that trust deed;
 - (b) notify the Company of any change in trustee of the trust; and
 - (c) agrees that these Terms and Conditions apply to, and all requests for Services placed by the Customer with the Company are placed by, the Customer in its personal capacity and as trustee of the trust.

3.12 Any party that enters this Agreement as a disclosed or undisclosed agent agrees to be joint and severally liable for the debts, liabilities and obligations of the principal under this Agreement.

3 General

- 3.1 These Terms and Conditions take priority over and will prevail to the extent of any inconsistency with the Authority, any credit application made by the Customer, the Customer's terms and conditions or other document issued by the Customer, and any terms and conditions set out in any Transport Document, except a Transport Document issued by the Company.
- 3.2 The Agreement is governed by the laws of New Zealand. The Company and the Customer submit to the jurisdiction of the courts of New Zealand.
- 3.3 A variation of these Terms and Conditions will only be valid if in writing and signed by each party or signed by a person with the authority to bind each party.
- 3.4 The Company may assign its rights and obligations under the Agreement without the Customer's consent. The Customer must not assign its rights and obligations under the Agreement without the Company's written consent.
- 3.5 Any notices under these Terms and Conditions must be in in English and in writing.
- 3.6 Subject to clause 19, all rights, indemnities and limitations of liability contained in these Terms and Conditions will have their full force and effect, despite:
 - (a) any breach of term or condition of these Terms and Conditions, the Agreement, or any collateral agreement by the Company;
 - (b) the performance of the Services;
 - (c) the delivery of the Goods; or
 - (d) the expiry or termination of the Authority.
- 3.7 Without limiting the effect of clause 3.6, clauses 3.4, 4.14, 5.2, 7.11, 8.4, 8.5, 8.6, 10, 12, 13, 14, 19.2(f), 19.2(h) to 19.2(k) (inclusive) and 19.3 to 19.6 (inclusive) of these Terms and Conditions will survive termination.

4 Services

- 4.1 Services are provided by the Company subject to these Terms and Conditions.
- 4.2 Without limitation to other methods of acceptance, by instructing the Company to provide the Services the Customer agrees to be bound by the Terms and Conditions.
- 4.3 The Goods are at the risk of the Customer.
- 4.4 The Company may agree or refuse to provide Services at its discretion.
- 4.5 The Company is authorised by the Customer to choose the method for performance of the Services at the Company's complete discretion.
- 4.6 The Customer authorises the Company to open any package containing Goods, and do any other thing in order to inspect or weigh the Goods.
- 4.7 The Customer agrees that:
 - (a) the value of the Goods will not be declared or inserted into a Transport Document or contract for the purpose of extending a carrier's liability unless the Customer provides express written instructions to the Company to do so, and if required, the carrier agrees;
 - (b) where a Subcontractor's or carrier's charges may be determined by the extent of liability assumed by the Subcontractor or carrier, no

declaration of value will be made for the purpose of extending the liability of the Subcontractor or carrier, and the Goods will be dealt with at the Customer's risk for minimum charges, unless the Customer provides written instructions to the contrary to the Company; and

(c) the Company reserves the right to not make any declaration or take any action in respect of the Customer's Goods unless the Customer has provided the Company with sufficient notice, written instructions and the documents necessary to take that action in relation to those Goods.

4.8 At any time, the Company may, acting reasonably, deem that certain Goods are Dangerous Goods.

4.9 The Company at its reasonable discretion may destroy or otherwise deal with any Goods the Company considers are Dangerous Goods, without notice or compensation to the Customer.

4.10 The Company's delivery obligations are satisfied if the Company delivers the Goods to the delivery address instructed by the Customer, and a person at that address provides a receipt or signs a delivery docket, or if authorised by the Customer, the Goods are left at the delivery address without obtaining a receipt or signed delivery docket.

4.11 If a person at the delivery address cannot or refuses to take delivery of the Goods, or the Goods cannot be delivered for any other reason, the Customer authorises the Company to deal with the Goods at the Company's reasonable discretion, including storing, disposing of, or returning the Goods.

4.12 The Goods may be stored at any place at the absolute discretion of the Company at the Customers' expense.

4.13 If the Company stores the Goods, the Company may require that the Customer remove the Goods from storage by giving notice delivered to an address provided by the Customer to the Company.

4.14 If the Customer, Owner or consignee of the Goods is insolvent, placed under external administration, bankrupt or deceased, the Company is authorised to return any Goods to the Shipper, exporter or supplier of those Goods, where the Company has not received authority from the Shipper, exporter or Supplier of the Goods to release the Goods to the Customer, Owner or consignee.

4.15 The Customer irrevocably appoints the Company with the power and authority to take any action and execute any document in the name of and on behalf of the Customer as required by the Company to provide the Services.

4.16 The Customer agrees that the Company may receive and retain for its own account allowances, brokerages and commissions from shipping and forwarding agents, shipping lines, insurance brokers, airlines and any other person with whom the Company deals and that the Company is not required to disclose the receipt

and retention of such amounts to the Customer, even, without limitation, if acting as agent for the Customer.

5 Customer Obligations

5.1 The Customer will provide the Company with all assistance, information and documentation necessary to enable the Company to provide the Services, and punctually comply with any Law or request from a Government Authority.

5.2 The Customer is under a continuing obligation to provide any information which may materially affect the capacity of the Customer to perform its obligations under the Agreement.

5.3 The Customer will keep confidential the Company's fees or charges and any waiver, discount, release or indulgence provided by the Company in relation to the provision of the Services.

6 Instructions

6.1 Any instructions given by the Customer must be in writing in English and be legible.

6.2 The Company has the discretion to refuse to accept the Customer's instructions.

6.3 Sufficient notice of instructions must be given by the Customer to the Company to enable the Company to follow those instructions. If insufficient notice is given and the Company attempts to adopt the Customer's instructions, the Company is not deemed to have accepted the instructions.

6.4 If the Company accepts the Customer's instructions on one occasion, the Company will not be bound by those instructions when providing Services in the future.

6.5 If the Company accepts the Customer's instructions to perform the Services in a particular way, it will give priority to that method, but may depart from that method at its reasonable discretion.

7 Fees

7.1 The Company's fees are earned on the earlier of the commencement of the performance of the Services (or part thereof), or when the Goods are delivered to the Company or its subcontractors.

7.2 The Company's fees may include any disbursements and other amounts that the Company is required to pay third parties including any fees or levies in any jurisdiction, in connection with the Services. This includes but is not limited to charges imposed by carriers or subcontractors for freight, port and terminal handling, demurrage, detention, storage, container cleaning or repair, inspection, and charges imposed under any applicable tariff. The Company at its discretion may vary its fees if the amount of any such disbursements changes.

7.3 The Customer must immediately on demand provide cleared funds to the Company in advance or reimburse the Company for any disbursements or other amounts that the Company is required to pay or

has paid to third parties in connection with the Services or any bond, guarantee or other security the Company is required to provide or has provided to a carrier, port authority or other third party to obtain the release of any Goods, container or equipment notwithstanding any other payment terms under this Agreement.

7.4 The Company's fees must be paid within 7 days of an invoice or as otherwise agreed in writing (the **Due Date**).

7.5 The Company at its discretion may determine its fees, including by weight, measurement or value, including without limitation, by volumetric conversion.

7.6 The Company may re-weigh, re-measure or re-value the Goods at any time, and amend its fees at its reasonable discretion.

7.7 Any information contained in a quotation provided by the Company in relation to the fees applies to the specific item, weight and volume quoted, designated Services and standard of Services, and is only valid until the earlier of 14 days after being provided, the quote being withdrawn or the quote expiring.

7.8 A quotation is not an offer and is not binding on the Company. A quotation may change based on changes to freight, insurance, warehousing, fees, and any other charges, with or without notice to the Customer.

7.9 Unless otherwise stated, the Company's fees are exclusive of goods and services tax.

7.10 The Customer remains responsible for the payment of fees:

- (a) even where an arrangement is made for the fees to be paid by another person; and/or
- (b) whether or not the Goods are delivered or damaged or the Services performed as instructed.

7.11 If the fees are not paid in full within 7 days of the Due Date then, without limitation to its rights, the Company may charge interest on the late payment at the published business overdraft rate of the Commonwealth Bank of Australia.

7.12 The Customer will not defer, set-off or withhold payment of any amount payable to the Company by reason of any claim the Customer has, or claims it has, against the Company.

7.13 Any credit terms provided by the Company may be terminated at any time by the Company.

8 Subcontractors

8.1 The Customer authorises the Company to:

- (a) subcontract all or part of the Services to a Subcontractor; and / or
- (b) as the agent of the Customer, contract with a third party service provider on behalf of the Customer on any terms whatsoever,

including terms that limit or exclude the liability of the third party service provider.

8.2 Any reference to the Company as consignee, receiver or similar in a Transport Document is for operational convenience only and does not constitute assumption by the Company of any liabilities as a principal, carrier or merchant for the carriage of Goods. The Customer indemnifies the Company from and against all Loss arising from any claim to the contrary.

8.3 The Customer authorises a Subcontractor to subcontract all or part of the Services.

8.4 All exclusions or limitations on the liability of the Company in these Terms and Conditions extend to protect:

- (a) all Subcontractors;
- (b) the agents, employees and servants of any Subcontractor or the Company; and
- (c) any person engaged to provide all or part of the Services.

8.5 The Customer undertakes that it will not make any claim against, or impose any liability upon, any Subcontractor in connection with the provision of the Services or the Goods.

8.6 The Customer undertakes that it will indemnify any Subcontractor from and against any Loss if a claim is made against a Subcontractor by any party (including the Customer) in connection with the provision of the Services or the Goods as a result of a breach of contract by the Customer, or a negligent, unlawful, reckless or wilful act or omission by the Customer or its employees, agents and contractors.

8.7 For the purpose of clauses 8.4 and 8.6, the Company acts as trustee on behalf of and for the benefit of any Subcontractor, and to this extent each Subcontractor is deemed to be a party to this Agreement.

9 Intellectual Property

The Customer agrees that the Company retains all copyright and intellectual property subsisting in all documents and things created by, or for, the Company in connection with the performance of the Services, including copyright and intellectual property that now exists or that later comes into existence.

10 Warranties, liability and indemnity

10.1 The Customer (on behalf of itself, the Owner, and any Connected Parties) warrants to the Company that:

- (a) it is the owner of the Goods, or is the authorised agent of the owner of the Goods and is authorised to complete and sign documentation related to the Goods and the Services;
- (b) it enters into the Agreement on its own behalf, or in its capacity as the authorised agent of the owner of the Goods;

- (c) it and all Connected Parties have complied with all Laws relating to the Goods, including the nature, condition, packaging, handling, storage and carriage of the Goods;
 - (d) in engaging the Services from the Company, it will not procure the Company to perform any act in breach of any Laws;
 - (e) it and all Connected Parties will observe all Laws and requirements of Government Authorities;
 - (f) all information and documentation provided by the Customer and Connected Parties to the Company is accurate and complete, and neither it nor a Connected Party has omitted to provide any requested or material information;
 - (g) the Goods are packed to endure the ordinary risks of handling, storage and the Services, having regard to the nature of the Goods;
 - (h) the Goods are not Dangerous Goods, unless the Company has agreed in writing to provide the Services in respect of those particular Dangerous Goods, and in which case, warrants that it has made full disclosure of Dangerous Goods and such Goods are distinctly marked; and
 - (i) all Goods are adequately and accurately marked, labelled or branded.
- 10.2 To the extent permitted by Law, the Company excludes all liability in respect of any claim made against the Company, its employees, agents and Subcontractors except to the extent that such liability was incurred as a direct result of a fundamental breach of this Agreement by the Company, or a negligent, unlawful, reckless or fraudulent act or omission of the Company.
- 10.3 For the purposes of section 5D of the FTA 1986 and section 43 of the CGA the parties agree that:
- (a) the parties are in trade (within the definition under the FTA and CGA);
 - (b) the Services supplied under or in connection with this Agreement are supplied and acquired in trade (within the definition under FTA and CGA);
 - (c) the provisions of the CGA and sections 9, 12A and 13 of the FTA do not apply; and
 - (d) it is fair and reasonable for the parties to be bound by this clause.
- 10.4 The Company excludes from this Agreement all conditions, warranties, terms and consumer guarantees implied by Laws, general law or custom except any the exclusion of which would contravene any Laws or cause this condition to be void (**Non-Excludable Condition**).
- 10.5 The Company's liability for any breach of a Non-Excludable Condition is limited, at the Company's option, to supplying the Services again, or the cost of supplying the Services again.
- 10.6 The Company will not be liable for omitting to inspect or take any other action in respect of Goods where Goods have been damaged or pillaged, unless the Customer provides the Company with written instructions to take that action in relation to those Goods and the Company accepts those instructions.
- 10.7 Where the liability of the Company is not excluded by the Agreement, Law or otherwise, the liability of the Company is limited to the lesser of the invoiced value of the particular Services provided by the Company relating to the Goods or the value of the Goods which related to the failure of the Company to comply with the Terms and Conditions.
- 10.8 The Company will not be in breach of any of its obligations to the Customer or liable for any Loss (including Consequential Loss) suffered by the Customer arising from or connected with the Company's compliance with any Law, including without limitation disclosing confidential information to a Government Authority.
- 10.9 Without limitation to any other clause of the Agreement, the Company will be discharged from all liability in connection with the performance of the Services or the Goods unless:
- (a) notice of any claim is received by the Company within 7 days of the earlier of the delivery of Goods, the date the Goods should have been delivered, or where the claim does not relate to loss or damage to Goods, the event giving rise to the claim; and
 - (b) suit is brought and written notice is received by the Company within 9 months of the earlier of the delivery of the Goods, the date the Goods should have been delivered, or where the claim does not relate to loss or damage to Goods, the event giving rise to the claim.
- 10.10 The Company will not be liable for any delay or failure to perform an obligation under the Agreement caused by an event beyond the control of the Company (**Event**).
- 10.11 If an Event causes a delay in the performance of a Company's obligation exceeding 10 days, the Company may terminate the provision of the Services by notice to the Customer.
- 10.12 To the maximum extent not prohibited by Law, the Customer indemnifies the Company from and against (and must pay on demand for) all Loss arising directly or indirectly from or in connection with the Goods or the performance of the Services (including Consequential Loss), including any Loss resulting from the Company being identified, pursued or held responsible by a carrier, port authority, terminal authority or any third party. This includes Loss in connection with a breach of contract, or a negligent, unlawful, reckless or wilful act or omission by the Customer or its employees, agents and contractors

except to the extent that any such Loss was incurred as a direct result of a fundamental breach of this Agreement by the Company, or a negligent, unlawful, reckless or fraudulent act or omission of the Company.

10.13 Without limitation to clause 10.12 the Customer, to the maximum extent not prohibited by Law, indemnifies the Company from and against (and must pay on demand for) any Loss arising from

- (a) the Customer's or Owner's failure to return any container or transport equipment involved in the performance of the Services by the date required under any Contract between the Company and the supplier of that container or transport equipment;
- (b) any claim against the Company by a person who claims to have an interest in the Goods;
- (c) breach of this Agreement, including any warranty provided by the Customer;
- (d) any Loss, cost or liability incurred or suffered by the Company as a result of releasing or delivering the Goods to the Customer or at the direction of the Customer;
- (e) any claim for general average and will provide any security requested by the Company for the release of any Goods that are the subject of a claim for general average.

10.14 The Customer, to the maximum extent not prohibited by Law, indemnifies the Company from and against (and must pay on demand the amount of) all duty, GST, and any other fees and taxes incurred in connection with the Goods or the Services payable to a Government Authority.

10.15 The Customer, to the maximum extent not prohibited by Law, indemnifies the Company from and against (and must pay on demand for) all costs payable to third parties in relation to the carriage, storage, treatment or entry of the Goods.

10.16 The indemnities in clauses 10.12 and 10.16 (inclusive) continue whether or not the Goods are pillaged, stolen, lost or destroyed.

10.17 The Company is not liable for Consequential Loss suffered by the Customer, regardless of whether or not the Company had knowledge that such damage may be incurred.

11 Insurance

11.1 On request by the Customer, the Company at its complete discretion may arrange insurance in respect of the Goods.

11.2 Without limitation to clause 10.1, the Company will not arrange insurance in respect of the Goods, unless the Customer provides:

- (a) written instructions to the Company to arrange insurance; and

- (b) a written declaration of the value of the Goods; before the Goods are delivered to the Company.

11.3 Any insurance will be at the expense of the Customer and the Company may charge the Customer a fee for arranging the insurance.

11.4 Any insurance arranged by the Company is subject to the exceptions and conditions of the insurer or underwriter taking the risk.

11.5 When arranging insurance in respect of the Goods, the Company has the discretion to name the Customer as the insured.

11.6 If a dispute arises relating to liability under an insurance policy arranged by the Company, the Customer will have recourse against the insurer or underwriter only.

11.7 The Company will not be liable for any insurance arranged in relation to the Goods.

12 Lien

12.1 The Company has:

- (a) a particular and general lien on all Goods and documents relating to the Goods; and
- (b) a right to sell those Goods and documents by public auction or private sale (at the Company's discretion) without notice and apply the proceeds of sale;

in respect of all sums due and owing from the Customer.

12.2 The lien will also cover the Company's costs and expenses relating to the exercise of its lien and right of sale, including the Company's reasonable legal fees.

12.3 For the purposes of the lien, the Company will retain constructive possession of the Goods and the lien and rights granted by this clause will survive delivery of the Goods. The Company is entitled to retain the proceeds of sale of the Goods in respect of all sums due and owing from the Customer.

13 PPSA

13.1 Terms used in clause 13 that are defined in the PPSA have the same meaning as in the PPSA.

13.2 Without limitation to other rights of the Company, from the time the Goods are in the possession of the Company or a Subcontractor, the Goods are subject to a continuing security interest in favour of the Company for the payment of all amounts due and owing by the Customer under the Agreement. The security interest granted to the Company under this Agreement constitutes a purchase money security interest to the extent permitted by the PPSA and extends to any proceeds in connection with the Goods.

13.3 The Customer acknowledges and consents to the Company's registration and perfection of the

Company's security interest under the Agreement for the purposes of the PPSA.

13.4 The Customer will not grant a security interest to another person, or allow any encumbrance to arise, in respect of the Goods.

13.5 To the extent permitted by law, the Customer irrevocably waives any right:

- (a) to receive a notice under section 114(1)(a);
- (b) listed in section 17(2)(a) to (i); and
- (c) to reinstate this Agreement under section 133 of the PPSA; and
- (d) to receive a copy of any verification statement under the PPSA.

13.6 The Customer acknowledges that the Company may charge for complying with a demand under section 162 of the PPSA.

13.7 The Customer will do all things and execute all documents reasonably necessary to give effect to the security interest created under this Agreement or comply with any reasonable request by the Company in connection with the PPSA.

14 Uncollected goods

14.1 The Company may at its discretion sell or otherwise dispose of Perishable Goods without notice to the Customer where the Goods are not collected immediately upon arrival, are insufficiently or incorrectly addressed or are not identifiable.

14.2 Without limitation to clause 14.1, the Company may at its discretion sell or return Goods that cannot be delivered because they are insufficiently or incorrectly addressed, are not identifiable, are uncollected or not accepted after 21 days' notice to the Customer or where the Customer fails to pay any cost or do any action reasonably necessary for the Company to deliver the Goods.

14.3 Where the Company sells Goods under clauses 12, 14.1 or 14.2:

- (a) it does so as principal, not as agent, and is not the trustee of the power of sale;
- (b) the Customer must pay all costs, charges and expenses incurred by the Company in connection with the storage, sale or return of the Goods, which may be deducted from the proceeds of the sale of the Goods;
- (c) the Company is entitled to recover any deficit from the Customer where the proceeds of sale of the Goods do not satisfy the amounts payable to the Company.

15 Force majeure and other events

To the full extent permitted by law, the Company will not be responsible for any claims or Losses relating to:

- (a) the loss, misdelivery, deterioration, non-delivery, contamination, evaporation or damage to the Goods;
- (b) any loss or depreciation of market value attributable to delay in forwarding the Goods or failure to carry out instructions of the Customer;
- (c) loss, damage, expense or additional cost arising from or in any way connected with marks or brands on, weight, numbers, content, quality, description of the Goods;
- (d) loss or damage resulting from fire, water, explosion or theft;
- (e) loss, damage or delay occasioned by:
 - (i) examination or treatment of the Goods by any Governmental Authority;
 - (ii) carriage of the Goods or handling or storage of the Goods in the course of the carriage of the Goods; and/or
- (f) any other cause arising beyond the control of the Company including, without limitation, perils, dangers and accidents of the sea or other navigable waters; act of God; act of war; act of terrorism; act of public enemies; strikes or lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general; riots and civil commotions; epidemics, pandemics, government orders, introduction of new laws, container shortages, shortage or limited supply of wharf or carrier slots; delays by its Subcontractors or saving or attempting to save life or property at sea.

16 Privacy Act

16.1 The Customer agrees and consents for the Company to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by the Company. The Customer agrees that the Company may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:

- (a) to assess an application by the Customer;
- (b) to notify other credit providers of a default by the Customer; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers and/or to assess the creditworthiness of the Customer.

16.2 The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or

credit capacity that credit providers are allowed to exchange under the *Privacy Act 2020* (New Zealand) and the Credit Reporting Privacy Code 2020.

16.3 The Customer consents to the Company being given a consumer credit report to collect overdue payment on commercial credit. The Customer agrees that personal credit information provided may be used and retained by the Company for the following purposes (and for other purposes as agreed between the Customer and the Company or required by law from time to time):

- (a) the provision of the Services;
- (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Services; processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
- (c) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Services.
- (d) the Company may give information about the Customer to a credit reporting agency for the following purposes:
 - (i) to obtain a consumer credit report about the Customer; and/or
 - (ii) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

16.4 The information given to the credit reporting agency may include:

- (a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number; details concerning the Customer's application for credit or commercial credit and the amount requested;
- (b) advice that the Company is a current credit provider to the Customer; advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
- (c) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed; and/or
- (d) information that, in the opinion of the Company, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customers credit obligations) and advice that a cheque drawn by the have been dishonoured more than once and/or that credit provided to the Customer by the

Company has been paid or otherwise discharged.

17 Personal guarantee

17.1 This clause 17 only applies where the Company has agreed to provide the Services to the Customer on credit terms, and there are persons described as the "Guarantors" in the credit application .

17.2 In consideration of the Company agreeing to provide the Customer with the Services on credit, the Guarantors:

- (a) agree that they are jointly and severally obliged to pay all monies due to the Company pursuant to these Terms and Conditions;
- (b) agree that they will pay such monies on demand by the Company or its solicitors or agents;
- (c) agree that their obligations under paragraphs (a) and (b) continue until the Company releases them in writing and without limiting the generality of the foregoing, such obligations shall not cease or be altered in any way by;
 - (i) the Company granting to the Customer any extension, indulgence or concession;
 - (ii) the Company ceasing to supply the Services to the Customer on credit;
 - (iii) the Company being placed in liquidation or voluntary administration under the *Companies Act 1993* (New Zealand), or receivership under the *Receiverships Act 1993* (New Zealand); the balance of the Customer's account being reduced to nil at any given time; and
- (d) hereby, to the maximum extent not prohibited by law, indemnify and agree to keep the Company indemnified against any failure by the Customer in the performance of its obligations pursuant to these Terms and Conditions to the same extent as if they were the Customer.

17.3 For the purposes of assessing their credit worthiness, the Guarantors irrevocably authorise the Company, its servants and agents to make such enquiries as they deem necessary including, but not limited to, those referred to in clause 16.

17.4 The Guarantors have been advised by the Company to obtain legal advice regarding their guarantee and indemnity prior to signing it and they have either obtained that advice or elected to proceed without obtaining legal advice.

18 Restriction on soliciting

The Customer agrees that it shall not employ or engage any of the Company's employees, contractors or agents during the term of these Terms and Conditions and for a period of 12 months after the termination of these Terms and Conditions.

19 SBC Contracts

19.1 The Company does not exclude or limit the application of any applicable Laws, including the FTA where to do so would contravene those Laws or cause any part of this Agreement to be void.

19.2 If the Agreement is a SBC Contract, then:

- (a) The definition of "Loss" is amended to mean any actual or ascertainable loss, cost, damage, expense, claim, demand, action, proceeding or liability of any kind (including legal costs on an indemnity basis).
- (b) Clause 3.4 is modified, so that neither party may assign its rights or obligations under the Agreement without the written consent of the other party, which consent must not be unreasonably withheld.
- (c) Clause 4.12 is amended so that "absolute" is replaced with "reasonable".
- (d) Clause 7.1 is modified, so that the fees are earned when the corresponding Service is performed or attempted to be performed, or where applicable, the corresponding disbursement is incurred.
- (e) If a variation to a quote or fee under clauses 7.5 or 7.6 is material, where it is reasonably practical, the Company shall give notice to the Customer of that variation.
- (f) If the Customer objects to a variation to a quote or fee under clauses 7.5 or 7.6, but does not provide the Company with acceptable alternative directions in respect of the goods, the Company in its discretion may, deliver, return, store or otherwise deal with the Goods, and the Customer shall be liable for all fees earned and costs incurred by the Company in doing so.
- (g) Clauses 8.5 and 8.6 are modified, so that the Customer:
 - (i) may make a claim against or impose liability upon any Subcontractor; and
 - (ii) is not required to indemnify any Subcontractor from and against any Loss,

to the extent that the claim, liability or Loss was directly caused by, or in connection with, a grossly negligent, unlawful, or wilful act or omission by the Subcontractor.

(h) Clauses 10.2 and 10.4 are modified so that the Company's liability is not excluded to the extent that it was directly caused by or in connection with a grossly negligent, unlawful, or wilful act or omission by the Company or its employees, agents and contractors.

(i) Clause 10.7 is modified so that the Company's liability is limited to the lesser of the actual loss suffered by the Customer or the value of the Goods at the time the Goods were received by the Company.

(j) Clause 10.9 does not apply, and, without limitation to any other clause of the Agreement, the Company will be discharged from liability in relation to any claim:

- (i) where the loss to the Customer results from the act of a Subcontractor; and
- (ii) the Company's right to make a claim against that Subcontractor is subject to time limitations; and
- (iii) the Customer does not make its claim against the Company within a period reasonably sufficient to allow the Company to make a corresponding claim against the Subcontractor within any applicable time limitation period, or

(k) in all other cases, where the Customer does not make its claim within 2 years from the earlier of the delivery of the Goods, if the Goods are not delivered, the date the Goods should have been delivered or where the claim does not relate to loss or damage to Goods, the time of the event giving rise to the claim.

19.3 The Customer is not required to indemnify the Company under clause 10.12 or 10.13(b), unless the Loss was caused by or in connection with a breach of contract, or a negligent, unlawful reckless or wilful act or omission by the Customer or its employees, agents and contractors or due to the Company following a specific direction provided by the Customer.

19.4 Clause 10.17 is modified so that the Company will not be liable for Consequential Loss or indirect Loss, unless the Company had actual knowledge that such loss might be incurred.

19.5 Clause 12.1(b) is modified so that the Company may only exercise its right of sale under a lien over Goods after the Company has given 21 days' notice in writing to the Customer of its intention to do so.

19.6 Clause 25.4 is amended so that "absolute" is replaced with "reasonable".

**PART B: SPECIAL TERMS -
TRANSPORTATION / LINE HAUL SERVICES**

20 Application

The provisions of this **Part B** only apply where the Customer has engaged the Company to provide the Carriage Services.

21 Compliant Goods and Customer warranties

The Customer warrants that:

- (a) it will pay for all expenses and charges incurred by the Company in complying with the provisions of any applicable law or with any order or requirement thereunder or with the requirement of any harbor, dock, railway, shipping, customs, warehouse or other Governmental Authority;
- (b) if any of the Goods are subject to the control of Customs then the Customer hereby agrees to hold the Company harmless and indemnified in respect of all customs duty, excise duty and costs which the Company becomes liable to pay and shall pay in respect of such goods pursuant to any law relating to customs or excise;
- (c) it will comply with all laws and regulations relating to the nature, packaging, labelling, storage or carriage of the Goods and the Goods will be packed in a manner adequate to withstand the ordinary risks attendant on the Carriage Services to be provided having regard to their nature;
- (d) it will provide to the Company all such assistance, information, descriptions, valuations and documents as may be necessary or prudent to comply with any laws, customs, conventions, codes and regulations in a timely manner;
- (e) it will notify the Company immediately upon becoming aware that any information that the Customer has provided to the Company or any Governmental Authority is false, misleading or incomplete; and
- (f) all Goods it instructs the Company to collect and deliver will be free from any and all contamination or, subject to clause 10.1(h), other dangerous or hazardous substances.

22 Packing

If the Customer has requested the Company to pack the Goods, and the Company has accepted the provision of that service, the Company shall not be liable for any damage or loss whatsoever whether in the course of packing or in transit or otherwise and howsoever occasioned to the said goods or any of them.

23 Insurance

- 23.1 The Company will not effect insurance in connection with the Goods except with the express instruction in writing of the Customer and then only at the Customer's expense and on lodgement of a declaration as to value prior to collection of the Goods by the Company.
- 23.2 It is the Customer's sole responsibility to effect any necessary insurances in relation to, or in connection with, the Goods (including the Carriage of the same).

24 Review of fees for Carriage Services

- 24.1 The fees and rates for Carriage Services performed by the Company may be reviewed by the Company from time to time (including, without limitation):
 - (a) for any increase in the cost of labour, fuel surcharge, length surcharge, bunker adjustment factor surcharges, disposal costs, or consumables used in the performance of the Carriage Services;
 - (b) due to any change in any charge, tax or other impost or scheme that increases the cost of performing the Carriage Services for the Customer or third party charges; and/or
 - (c) for any changes to this contract including changes in the nature, type, weight, measurement, quantity or value of the Goods.
- 24.2 The Company will notify the Customer in writing of any increase in the fees/rates, and which must be paid by the Customer upon notification.

25 Delivery

- 25.1 It is agreed that the person delivering any goods to the Company is authorised to sign the consignment note for the Customer.
- 25.2 Should the Consignee of the goods described not be in attendance at the address given during normal trading hours, when delivery is attempted, an additional charge (including storage fees) may be made at ruling rates for each call until delivery is accomplished.
- 25.3 The Company is hereby authorised to arrange for the carriage of the Goods by any independent contractor, agent or employee of the Company.
- 25.4 The Company may and is hereby expressly authorised by the Customer to carry all Goods or to have them carried by any method which the Company in its absolute discretion deems fit notwithstanding any instructions verbal or otherwise of the Customer that the goods be carried by another method.
- 25.5 The Company reserves the right, at its absolute discretion, to provide the Carriage Services by any means, route or procedure.

25.6 The Company may without liability open any package or other container which the Goods are placed or carried to inspect the Goods either to determine their nature or condition or to determine their ownership or destination.

26 Terms of Carriage

26.1 For the purpose of this clause 26:

- (a) **“Airfreight Convention”** means either:
- (i) the Convention for the Unification of Certain Rules for International Carriage by Air signed at Montreal on 28 May 1999; or
 - (ii) the Convention for the Unification of Certain Rules relating to International Carriage by Air, signed at Warsaw on 12 October 1929; either unamended or amended by the Hague Protocol 1955; at Guatemala City 1971, by the additional Protocol No 3 of Montreal 1975 and/or by the additional Protocol No. 4 of Montreal 1975,

whichever may be applicable; and

- (b) **“Hague Rules”** means the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924, or those rules as amended by the Protocol signed at Brussels on 23 February 1968 (the Hague Visby Rules) and the SDR Protocol (1979).

26.2 The Customer acknowledges and agrees that with respect to the Carriage Services, Goods moving by:

- (1) air freight are subject to the applicable Airfreight Convention. The Customer's recovery of loss or damage, if any, is against the airline carrier and is limited in accordance with the Airfreight Convention or any other Conventions that may be applicable. In the event of any loss or damage suffered by the Customer whilst the Goods are in the possession of the airline carrier, the Company will seek to recover on behalf of the Customer from the principal airline carrier amounts payable under the aforementioned Conventions as they are applicable. The Customer will indemnify, defend and hold the Company harmless against any claims for loss or damage to their Goods incurred whilst they were in the possession of the airline carrier; and
- (2) seafreight are subject to the applicable international treaties including the Hague Rules. The Customer's right to recovery of loss or damage, if any, is against the seafreight carrier and is limited in accordance with the Hague Rules or any other Conventions that may be applicable. In the event of any loss or damage suffered by the

Customer whilst the Goods are in the possession of the seafreight Carrier, the Company will seek to recover on behalf of the Customer from the carrier amounts payable by the Hague Rules as they are applicable. The Customer will indemnify, defend and hold the Company harmless against any claim for loss or damage to their goods incurred whilst they were in the possession of the seafreight carrier.

27 Customer liabilities

27.1 Without limiting the effect of any other provision of these Terms and Conditions, the Customer agrees, to the maximum extent not prohibited by law, to indemnify and keep indemnified the Company for:

- (a) any Loss directly or indirectly caused by the Goods or by breach of this contract by the Customer;
- (b) amounts of taxes and other payments made to Government Authorities on behalf of the Customer (including any interest or penalties);
- (c) providing information that is false, incorrect or misleading or omitting to provide material information relating to the Goods or the Carriage Services;
- (d) damages payable by the Company from the failure of the Customer to return any container or transport equipment involved in the Carriage Services in the time stipulated by the Company;
- (e) demurrage or other charge for detention or failure to return items provided by the Company pursuant to contracts with other parties;
- (f) any charges levied by Government Authorities for examination and treatment of the Goods; and
- (g) any costs or charges incurred in recovering any amounts payable to the Company (including, without limitation, costs of legal proceedings).

27.2 The Customer agrees to pay any amounts claimed pursuant to the indemnity in this clause 27 immediately on demand being made by the Company. The Company does not need to incur a cost or Loss before making a claim against the Customer under this clause.