

Davies International Limited – Terms and Conditions

1. **Definitions**
- 1.1 **"Charges"** shall mean the Charges payable (plus any Goods and Services Tax ("GST") where applicable) for the Services, as agreed between the Company and the Consignor, subject to clause 5 of this Contract.
- 1.2 **"Company"** means Davies International Limited, its successors and assigns.
- 1.3 **"Consignee"** means the person to whom the Goods are to be delivered by way of the Services.
- 1.4 **"Consignor"** means the persons, entities or any person acting on behalf of and with the authority of the Consignor requesting the Company to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
 - (a) if there is more than one Consignor, is a reference to each Consignor jointly and severally; and
 - (b) if the Consignor is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Consignor is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Consignor's executors, administrators, successors and permitted assigns.
- 1.5 **"Contract"** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.6 **"Cookies"** means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including personal information) specific to a particular client and website and can be accessed either by the web server or the client's computer. **If the Consignor does not wish to allow Cookies to operate in the background when using the Company's website, then the Consignor shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.7 **"Dangerous Goods"** means Goods so classified in the Dangerous Goods Code or which are or may become noxious, dangerous, hazardous, inflammable, explosive or damaging (including waste, contaminated or radioactive material, or capable of causing death, injury, or damage to any person or property whatsoever, and include (for the purpose of this Contract) Goods likely to harbour or encourage vermin or other pests and all such Goods as fall within the definition of hazardous and dangerous Goods in legislation in New Zealand.
- 1.8 **"Goods"** means any cargo, together with any container, packaging, or pallet(s), to be moved from one place to another by way of the Services.
- 1.9 **"Services"** means all services provided by the Company to the Consignor (including, but not limited to, anything done or to be done in relation to the Goods, or the provision of any services ancillary to the Goods such as moving, storing or leaving the Goods at any warehouse, yard, terminal, 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, transhipping, or otherwise handling the Goods, or anything else done in relation thereto, including the offering of any advice or recommendations.
- 1.10 **"Sub-Contractor"** means and includes:
 - (a) railways or airways operated by the Commonwealth or any state or any other country or by any corporation; or
 - (b) any other person or entity with whom the Company may arrange for the carriage or storage of any Goods the subject of the Contract; or
 - (c) any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in sub-clauses (a) and (b).
2. **Acceptance**
- 2.1 The Consignor is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Consignor places an order for, or accepts, Services provided by the Company.
- 2.2 These terms and conditions are to be read in conjunction with the Company's quotation, consignment note, agreement, airway bills, manifests, or any other forms as provided by the Company to the Consignor. If there are any inconsistencies between these documents, then the terms and conditions contained in this document shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Consignor acknowledges that the supply of Services on credit shall not take effect until the Consignor has completed a credit application with the Company and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Services request exceeds the Consignor's credit limit and/or the account exceeds the payment terms, the Company reserves the right to refuse delivery.
- 2.6 None of the Company's agents, contractors or representatives are authorised to make any representations, statements, conditions, or agreements not expressed by the manager of the Company in writing nor is the Company bound by any such unauthorised statements.
- 2.7 These terms and conditions are to be read in conjunction with the Company's consignment note, agreement, airway bills, manifests, hire agreement or any other forms as provided by the Company to the Consignor.
- 2.8 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
3. **Errors and Omissions**
- 3.1 The Consignor acknowledges and accepts that the Company shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
 - (a) resulting from an inadvertent mistake made by the Company in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Company in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or willful misconduct of the Company, the Consignor shall not be entitled to treat this Contract as repudiated nor render it invalid.
4. **Change in Control**
- 4.1 The Consignor shall give the Company not less than fourteen (14) days prior written notice of any proposed change of ownership of the Consignor and/or any other change in the Consignor's details (including but not limited to, changes in the Consignor's name, address, contact phone or fax number, change of trustees, or business practice). The Consignor shall be liable for any loss incurred by the Company as a result of the Consignor's failure to comply with this clause.
5. **Charges and Payment**
- 5.1 At the Company's sole discretion, the Charges shall be either:
 - (a) as indicated on invoices provided by the Company to the Consignor in respect of Services provided; or
 - (b) the Charges as at the date of delivery of the Goods according to the Company's current price list; or
 - (c) the Company's quoted Charges (subject to clauses 5.2 and 5.3) which shall be binding upon the Company provided that the Consignor shall accept in writing the Company's quotation within twenty-eight (28) days.
- 5.2 The Company may, by giving notice to the Consignor, increase the Charges 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).
- 5.3 The Company may charge freight by weight, measurement, or value, and may at any time re-weigh, re-value or re-measure or require the Goods to be re-weighed, or re-valued or re-measured and charge proportional additional freight accordingly.
- 5.4 At the Company's sole discretion, a deposit may be required.
- 5.5 Time for payment for the Services being of the essence, the Charges will be payable by the Consignor on the date/s determined by the Company, which may be:
 - (a) before delivery of the Goods; or
 - (b) by way of instalments in accordance with the Company's payment schedule;
 - (c) twenty (20) days following the end of the month in which a statement is posted to the Consignor's address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Consignor by the Company.
- 5.6 Payment may be made by electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Consignor and the Company.
- 5.7 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, cleared, or recognised and until then the Company's ownership or rights in respect of the Services shall continue. The Consignor acknowledges and agrees that the Consignor's obligations to the Company for the supply of Services shall not cease until:
 - (a) the Consignor has paid the Company all amounts owing for the particular Services; and
 - (b) the Consignor has met all other obligations due by the Consignor to the Company in respect of all contracts between the Company and the Consignor.
- 5.8 The Company may in its discretion allocate any payment received from the Consignor towards any invoice that the Company determines and may do so at the time of receipt or at any time afterwards. On any default by the Consignor the Company may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Company, payment will be deemed to be allocated in such manner as preserves the maximum value of the Company's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 5.9 The Consignor shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to the Consignor by the Company nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.10 Unless otherwise stated the Charges does not include GST. In addition to the Charges the Consignor must pay to the Company an amount equal to any GST the Company must pay for any provision of Services by the Company under this Contract or any other agreement. The Consignor must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Consignor pays the Charges. In addition, the Consignor must pay any other taxes and duties that may be applicable in addition to the Charges except where they are expressly included in the Charges.
- 5.11
6. **Freight Forwarding**
- 6.1 Except to the extent that any of the Services shall be actually performed by the Company, the Company shall act as a forwarding agent only. The Company shall be entitled, to enter into contracts on behalf of and as agent for the Consignor and without notice to the Consignor, for the carriage of the Goods by any route, means and carrier, for the storage, packing, trans-shipment, unloading, loading or handling of the Goods by any person at any place and for any length of time, and for such other matters as in the opinion of the Company may be necessary or desirable to the performance of the Services. The Consignor hereby appoints the Company the agent of the Consignor for the purpose of entering into any contract, upon such terms and conditions, as the Company may in its absolute discretion think fit. The Consignor shall be bound by the terms of any consignment note, air waybill or other contractual document which the Company may receive for the Goods, or for any package, unit, or container in which the Goods may be packed, whether by the Consignor, the Company, or any other person.
7. **Custom Brokerage**
- 7.1 The Consignor agrees that, by signing acceptance of these terms and conditions the Consignor duly authorises the Company to act as their nominated customs broker, to act on the Consignor's/ Consignee's behalf, with the Company then becoming the Consignor's / Consignee's duly nominated agent or sub-agent as appointed, in all matters involving the New Zealand Customs Service. The Consignor acknowledges that the Company will, for the purposes of customs duty, classify the Goods, compile the Goods for customs purposes and calculate the customs duty payable on the Goods based on the information provided by the Consignor to the Company in relation to the Goods, and the Company shall not be liable for any mistake in classification, or compiling of the Goods or calculation of customs duty resulting from the failure of the part of the Consignor to provide sufficient information to the Company concerning the Goods so as to enable the Company properly to classify and compile the Goods and properly calculate the customs duty on the Goods. In the event that an examination of the Goods in required by any statutory authority, or other person authorised by the Consignor or entitled to examine the Goods, the Company shall not be responsible for failure to arrange, or delay in arranging such examination unless the Company shall have been given sufficient written notice by the Consignor to enable it to arrange such examination. The Company is entitled to be paid, and retain, all brokerages, commissions, allowances, and other remuneration's paid to, or retained by, ship forwarding agents (or freight forwarders) and/or insurance brokers.
8. **Consignor-Packed Containers**
- 8.1 If a container has not been stowed by or on behalf of the Company, the Company shall not be liable for loss of or damage to the Goods caused by:
 - (a) the manner in which the container has been stowed; or
 - (b) the unsuitability of the Goods for carriage or storage in containers; or
 - (c) the unsuitability or defective condition of the container.
9. **Nomination of Sub-Contractor**
- 9.1 The Consignor hereby authorises the Company (if it should think fit to do so) to arrange with a Sub-Contractor for the carriage of any Goods that are the subject of the Contract. Any such arrangement shall be deemed to be ratified by the Consignor upon delivery of the said Goods to such Sub-Contractor, who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as the Company. In so far as it may be necessary to ensure that such Sub-Contractor shall be so entitled the Company shall be deemed to enter into this Contract for its own benefit and also as agent for the Sub-Contractor.
10. **The Company's Servants or Agents**
- 10.1 The Consignor undertakes that no claim or allegation shall be made against any servant or agent of the Company which attempts to impose upon any of them any liability whatsoever in connection with the Goods and, if any such claim or allegation should nevertheless be made, to indemnify the Company and any such servant or agent against all consequences thereof.
11. **Method of Transport and Route Deviation**
- 11.1 If the Consignor instructs the Company to use a particular method of carriage whether by road, rail, sea, or air the Company will give priority to the method designated but if that method cannot conveniently be adopted by the Company the Consignor shall be deemed to authorise the Company to carry or have the Goods carried by another method or methods. The Consignor shall be deemed to authorise any deviation from the usual route or manner of carriage of Goods that may in the absolute discretion of the Company be deemed reasonable or necessary in the circumstances.
12. **Charges Earned and Demurrage**
- 12.1 The Company's Charges shall be considered earned in the case of Goods for carriage as soon as the Goods are loaded and dispatched from the Consignor's premises. The Consignor will be and shall remain responsible to the Company for all its proper Charges incurred for any reason. A charge may be made by the Company in respect of any delay in excess of thirty (30) minutes in loading or unloading occurring other than from the default of the Company. Such permissible delay period shall commence upon the Company reporting for loading or unloading. Labour to load or unload the vehicle shall be the responsibility and expense of the Consignor or Consignee.
13. **Dangerous Goods**
- 13.1 Dangerous Goods are Goods which are or may become of a dangerous, noxious, explosive, inflammable, radioactive or damaging nature and include Goods likely to harbour or encourage vermin or other pests. Unless agreed in writing, the Consignor shall not deliver to the Company, or cause the Company to deal with or handle, Dangerous Goods. If the Consignor is in breach of clause 13.1:
 - (a) the Consignor, and any person delivering the Goods to the Company, or causing the Company to handle or deal with the Goods, shall be liable for any loss or damage caused to, or by the Goods, or by their nature, and shall indemnify and keep indemnified the Company against all loss, damages, claims and costs (howsoever arising) incurred by the Company in connection therewith; and
- 13.2
- 13.3 Where the Company agrees to accept Dangerous Goods, if during the period of carriage, the Company, its Sub-Contractors (or any other suitably qualified person or contractor) reasonably forms the view that those Goods pose any risk to other goods, property, life or health, then the provisions of clause 13.2 shall apply.
14. **Consignment Note**
- 14.1 It is agreed that the person delivering any Goods to the Company for carriage or forwarding is authorised to sign the consignment note for the Consignor.
15. **Consignor's Responsibility**
- 15.1 The Consignor expressly warrants, represents, confirms and/or acknowledges that:
 - (a) the Company has relied upon the Consignor in its description of the Goods (including height, measure, standard, strength, quantity, quality, figures, dimensions, and values). Accordingly, the Company accepts no liability for any discrepancy that may arise with the description; and
 - (b) unless specified otherwise in writing, the Company has relied upon the Consignor's skill in properly packaging, labelling, marking, securing and preparing the Goods, and that the Consignor has complied with all applicable laws and regulations (including those applicable to Dangerous Goods) and shall furnish such information and provide such documents as may be necessary to comply with such laws and regulations;
 - (c) the Consignor is either the owner or the authorised agent of the owner of any Goods or property that is the subject matter of this Contract of carriage and/or storage and by entering into this Contract the Consignor accepts these conditions of Contract for the Consignee as well as for all other persons on whose behalf the Consignor is acting;
 - (d) the Goods are fit for carriage, having undertaken due and careful enquiry the Goods are not dangerous, illegal, hazardous and do not contain any substance resulting in risks not readily apparent from the Consignor's description of the Goods; and
 - (e) it is the Consignor's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery.
16. **Delivery**
- 16.1 The Company is authorised to deliver the Goods at the address given to the Company by the Consignor for that purpose and it is expressly agreed that the Company shall be taken to have delivered the Goods in accordance with this Contract if at that address the Company obtains from any person a receipt or a signed delivery docket for the Goods.
- 16.2 The Company may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this Contract.
- 16.3 Delivery of the Goods to a third party nominated by the Consignor is deemed to be delivery for the purposes of this Contract.
- 16.4 Any time specified by the Company for the delivery of Goods is an estimate only and the Company will not be liable for any loss or damage incurred by the Consignor as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that the Company is unable to deliver the Goods as agreed solely due to any action or inaction of the Consignor then the Company shall be entitled to charge the Consignor any additional costs incurred by the Company as a direct consequence of any resultant delay or rescheduling of the delivery.
17. **Conditions of Storage**
- 17.1 The Company will prepare an inventory of Goods received for storage and will ask the Consignor to sign that inventory. The Consignor will be provided with a copy of the inventory. If the Consignor signs the inventory or does not do so and fails to object to its accuracy within seven (7) days of receiving it from the Company, then the inventory will be conclusive evidence of the Goods received. The inventory will disclose only visible items and not any contents unless the Consignor ask for the contents to be listed, in which case the Company will be entitled to make a reasonable additional charge.
- 17.2 The Company is authorised to remove the Goods from one warehouse to another without cost to the Consignor. The Company will notify the Consignor of the removal and advise the address of the warehouse to which the Goods are being removed not less than five (5) days before removal (except in emergency, when such notice will be given as soon as possible).
- 17.3 The Consignor is entitled upon giving the Company reasonable notice to inspect the Goods in store, but a reasonable charge may be made by the Company for this service.
- 17.4 Subject to payment for the balance of any fixed or minimum period of storage agreed the Consignor may require the Goods to be removed from the store at any time on giving the Company not less than five (5) working days' notice. If the Consignor gives the Company less than the required notice the Company will still use their best endeavours to meet the Consignor's requirements but shall be entitled to make a reasonable additional charge for the short notice.
- 17.5 The Consignor agrees to remove the goods from storage within twenty-eight (28) days of a written notice of requirement from the Company to do so. In default, the

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- Company shall provide the Consignor with written notice of the Company's intention to SELL ALL OR ANY OF THE GOODS by public auction or, if that is not reasonably practicable by private treaty within two (2) months of such notice being issued, apply the net proceeds in satisfaction of any amount owing by the Consignor to the Company in accordance with Section 288 of the Contract and Commercial Law Act 2017.
- 18. Loss or Damage**
- 18.1 This Contract is "at limited carrier's risk". Subject to any statutory provisions imposing liability in respect of the loss of or damage to the Goods (including but not limited to, chilled, frozen, refrigerated, or perishable goods):
- (a) the Company shall not be under any liability for any loss or damage suffered by the Company, Consignor (or any third party) as a result of:
- (i) the Consignor contravening clause 15;
- (ii) any latent defect or inherent vice or natural deterioration or wastage of the Goods or packaging;
- (iii) seizure under legal process; or
- (iv) saving, or attempting to save, life or property in peril.
- (b) the Company shall not be under any liability for any consequential or indirect loss, loss of market or consequences of delay; and
- (c) the Consignor will indemnify the Company against all claims of any kind whatsoever, howsoever caused or arising brought by any person in connection with any matter or thing done, said or omitted by the Company in connection with the Goods.
- 19. Insurance**
- 19.1 The Consignor acknowledges that:
- (a) the Goods are carried and stored at the Consignor's sole risk and not at the risk of the Company; and
- (b) the Company is under no obligation to arrange insurance of the Goods and it remains the Consignor's responsibility to ensure that the Goods are insured adequately or at all; and
- (c) under no circumstances will the Company be under any liability with respect to the arranging of any such insurance and no claim will be made against the Company for failure to arrange or ensure that the Goods are insured adequately or at all.
- 20. Claims**
- 20.1 Notwithstanding clauses 18 and 19 in the event that the Consignor believes that they have any claim against the Company then they must lodge any notice of claim for consideration and determination by the Company within thirty (30) days (as set out in Section 274 of the Contract and Commercial Law Act 2017) from the actual date of delivery or the anticipated date of delivery in the event of non-delivery or the removal or destruction of the Goods. The Company will respond to that notice of claim within ten (10) days (as set out in Section 275 of the Contract and Commercial Law Act 2017) of receipt of the notice and will take all reasonable steps to resolve the matter. In the event that the Consignor is not satisfied with the resolution provided, the Consignor may commence court proceedings or arbitration proceedings to resolve the dispute.
- 20.2 The failure to notify a claim within the time limits under clause 20.1 is evidence of satisfactory performance by the Company of its obligations.
- 21. Company's Lien**
- 21.1 The Company shall have a right to take a particular and general lien on any Goods the property of the Consignor or a third party owner which are in the possession or control of the Company (and any documents relating to those Goods) for all sums owed at any time by the Consignor or a third party owner to the Company (whether those sums are due from the Consignor on those Goods or documents, or on any other Goods or documents), and the Company shall have the right to sell such Goods or cargo by public auction or private treaty after giving written notice to the Consignor. The Company shall be entitled to retain the sums due to it, in addition to the Charges incurred in detention and sale of such Goods or cargo, from the proceeds of sale and shall render any surplus to the entitled person.
- 21.2 Notwithstanding clause 21.1 nothing shall prejudice the Company's rights to use any of the Company's other rights and remedies contained in this Contract to recover any outstanding Charges or fees payable in respect of the Goods that were not recovered out of the sale of the Goods in accordance with clause 21.1 and no exception shall be taken upon the grounds that the Charges realised is less than the full market value of the Goods.
- 22. Consumer Guarantees Act 1993**
- 22.1 This Contract is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Consignor is contracting within the terms of a trade/business (which cases are specifically excluded).
- 22.2 The Company shall be under no liability whatsoever for loss or damage to Goods unless:
- (a) the Consignor provides written notice to the Company detailing the alleged damage, and that such written notice shall be received by the Company within thirty (30) days after the delivery of the Goods; or
- (b) in the case where the Goods have been lost in transit then the Consignor shall be required to provide written notice detailing the alleged loss within thirty (30) days of the date of dispatch of the Goods.
- 23. Personal Property Securities Act 1999 ("PPSA")**
- 23.1 Upon assenting to these terms and conditions in writing the Consignor acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA, and creates a security interest in:
- (a) all Goods being transported, carried or handled by the Company, over which the Company invokes a lien; and
- (b) all the Consignor's present and after acquired property being a charge, including anything in respect of which the Consignor has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Consignor to the Company for Services – that have previously been provided and that will be provided in the future by the Company to the Consignor in invoices rendered from time to time.
- 23.2 The Consignor 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 registration made thereby;
- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Company.
- 23.3 The Company and the Consignor agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 23.4 The Consignor waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 23.5 Unless otherwise agreed to in writing by the Company, the Consignor waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 23.6 The Consignor shall unconditionally ratify any actions taken by the Company under clauses 23.2 to 23.5.
- 23.7 Subject to any express provisions to the contrary (including those contained in this clause 23), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 24. Security and Charge**
- 24.1 In consideration of the Company agreeing to supply Services, the Consignor charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Consignor either now or in the future, and the Consignor grants a security interest in all of its present and after-acquired property, to secure the performance by the Consignor of its obligations under these terms and conditions (including, but not limited to, the payment of any money). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.
- 24.2 The Consignor indemnifies the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Company's rights under this clause.
- 24.3 The Consignor irrevocably appoints the Company and each director of the Company as the Consignor's true and lawful attorney/s, to perform all necessary acts to give effect to the provisions of this clause 24 including, but not limited to, signing any document on the Consignor's behalf.
- 25. Default and Consequences of Default**
- 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 judgment.
- 25.2 If the Consignor owes the Company any money the Consignor 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).
- 25.3 Further to any other rights or remedies the Company may have under this Contract, if the Consignor has made payment to the Company, and the transaction is subsequently reversed, the Consignor shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Company under this clause 25 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Consignor's obligations under this Contract.
- 25.4 Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Consignor which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Company shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Company becomes overdue, or in the Company's opinion the Consignor will be unable to meet its payments as they fall due; or
- (b) the Consignor has exceeded any applicable credit limit provided by the Company;
- (c) the Consignor becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Consignor or any asset of the Consignor.
- 26. Cancellation**
- 26.1 Without prejudice to any other remedies the Company may have, if at any time the Consignor is in breach of any obligation (including those relating to payment) the Company may suspend or terminate the provision of Services to the Consignor and any of its other obligations under the terms and conditions. The Company will not be liable to the Consignor for any loss or damage the Consignor suffers because the Company exercised its rights under this clause.
- 26.2 The Company may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered, by giving written notice to the Consignor. On giving such notice the Consignor shall repay to the Consignor any sums paid in respect of the Charges. The Company shall not be liable for any loss or damage whatever arising from such cancellation.
- 26.3 In the event that the Consignor cancels the delivery of Goods, or the provision of any Services, then the Consignor shall be liable for any loss incurred by the Company (including, but not limited to, any loss of profits) up to the time of cancellation, or as a direct result of the cancellation.
- 27. Privacy Policy**
- All emails, documents, images or other recorded information held or used by the Company is "Personal Information" as defined and referred to in clause 27.3 and therefore considered confidential. The Company acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines as set out in the Act. The Company acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Consignor's Personal Information, held by the Company that may result in serious harm to the Consignor, the Company will notify the Consignor in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Consignor by written consent, unless subject to an operation of law.
- 27.2 Notwithstanding clause 27.1, privacy limitations will extend to the Company in respect of Cookies where the Consignor utilises the Company's website to make enquiries. 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 of Personal Information such as the Consignor's:
- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage and traffic; and
- (c) reports are available to the Company when the Company sends an email to the Consignor, so the Company may collect and review that information ("collectively Personal Information")
- If the Consignor consent to the Company's use of Cookies on the Company's website and later wish to withdraw that consent, the Consignor may manage and control the Company's privacy controls via the Consignor's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 27.3 The Consignor authorises the Company or the Company's agent to:
- (a) access, collect, retain and use any information about the Consignor;
- (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Consignor's creditworthiness; or
- (ii) for the purpose of marketing products and services to the Consignor.
- (b) disclose information about the Consignor, whether collected by the Company from the Consignor 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 Consignor.
- 27.4 Where the Consignor is an individual the authorities under clause 27.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 27.5 The Company will destroy Personal Information upon the Consignor's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 27.6 The Consignor can make a privacy complaint by contacting the Company via e-mail. The Company will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Consignor is not satisfied with the resolution provided, the Consignor can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.
- 28. Service of Notices**
- 28.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this Contract;
- (c) by sending it by registered post to the address of the other party as stated in this Contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.
- 28.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 29. Trusts**
- If the Consignor at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Company may have notice of the Trust, the Consignor covenants with the Company as follows:
- (a) the Contract extends to all rights of indemnity which the Consignor now or subsequently may have against the Trust and the trust fund;
- (b) the Consignor has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Consignor against the Trust or the trust fund. The Consignor will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
- (c) the Consignor will not without consent in writing of the Company (the Company will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
- (i) the removal, replacement or retirement of the Consignor as trustee of the Trust;
- (ii) any alteration to or variation of the terms of the Trust;
- (iii) any advancement or distribution of capital of the Trust; or
- (iv) any resettlement of the trust property.
- 30. General**
- 30.1 The failure by either party 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. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality, and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 30.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of Auckland, New Zealand.
- 30.3 The Company shall be under no liability whatsoever to the Consignor for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Consignor arising out of a breach by the Company of these terms and conditions (alternatively the Company's liability shall be limited to damages which under no circumstances shall exceed the Charges).
- 30.4 The Company may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Consignor's consent.
- 30.5 The Consignor cannot licence or assign without the written approval of the Company.
- 30.6 The Company may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Consignor agrees and understands that they have no authority to give any instruction to any of the Company's sub-contractors without the authority of the Company.
- 30.7 The Consignor agrees that the Company may amend their general terms and conditions for subsequent future contracts with the Consignor by disclosing such to the Consignor in writing. These changes shall be deemed to take effect from the date on which the Consignor accepts such changes, or otherwise at such time as the Consignor makes a further request for the Company to provide Goods to the Consignor.
- 30.8 Where the Company is unable, wholly or in part, by reason of any fact, circumstance, matter or thing beyond the reasonable control of the Company, including but not limited to, any act of God, war, terrorism, strike, civil commotion, lock-out, general or partial stoppage, restraint of labour, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc. ("Force Majeure") to carry out any obligation under this Contract and the Company gives the Consignor prompt notice of such Force Majeure with reasonably full particulars thereof and, insofar as is known, the probable extent to which it will be unable to perform or be delayed in performing that obligation and uses all reasonable diligence to negate or remove that Force Majeure as quickly as possible, that obligation is suspended, so far as it is affected by Force Majeure, during the continuance thereof. The requirement that any Force Majeure shall be negated or removed with all reasonable diligence shall not require the settlement of strikes, lockouts or other labour disputes, or claims or demands by any government on terms contrary to the wishes of the Company.
- 30.9 In the event that either party shall be rendered totally, or partially, unable to carry out their obligations under this Contract by reasons or causes beyond their reasonable control, that party shall be excused from performing their obligations during the continuance of any disability so caused, provided that the party concerned advises the other party in writing of its inability within seven (7) days after becoming aware of its inability to perform its obligations by reason of such cause.
- 30.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.