



HILTON HAULAGE LIMITED PARTNERSHIP STANDARD TERMS AND CONDITIONS OF TRADE

PART 1: GENERAL TERMS

1 APPLICATION

- 1.1 These are the Terms on which the Company agrees to provide Services:
- (a) The provisions of Part 1 shall apply to all Services;0
 - (b) The provisions of Part 2 shall apply only to domestic (i.e. within New Zealand) carriage and storage services to the extent that such Services are provided by the Company as principal (including where such domestic carriage and storage is undertaken as part of other Services);
 - (c) The provisions of Part 3 shall apply only to international freight forwarding (including customs clearance) and logistics services (including where such international freight forwarding or logistics services are undertaken as part of other Services), and:
 - (i) Part 3A shall apply to the extent that such Services are provided by the Company as agents; and
 - (ii) Part 3B shall apply to the extent that such Services are provided by the Company as principal.
- 1.2 Issuing Instructions or providing Goods for Services will be deemed to be acceptance of these Terms, despite anything the Customer (or any other person) may state to the contrary, unless the Company has agreed in writing to contract with the Customer on a different basis than as set out in these Terms (including under clause 1.4).
- 1.3 The receipt by the Company of Instructions from the Customer will also constitute authorisation for the Company to act on behalf of the Customer in accordance with these Terms.
- 1.4 Where a document is issued by or on behalf of the Company and bears the title of, or includes the words, "bill of lading" (whether or not negotiable), or sea or air "waybill" and provides that the Company contracts as carrier, the provisions set out in that document, if inconsistent with these Terms, shall prevail over these Terms to the extent of such inconsistency (but no further).

2 AGENT OR PRINCIPAL

- 2.1 All Services are provided by the Company as agents only, except in the following circumstances where the Company acts as principal:
- (a) where the Company performs any carriage, handling or storage of Goods, but only to the extent that the carriage is performed by the Company itself or its employees and the Goods are in the actual custody and control of the Company; or
 - (c) to the extent that the Company expressly agrees in writing to act as a principal, or
 - (d) to the extent that the Company is held by a court of law to have acted as a principal.
- 2.2 Without prejudice to the generality of clause 2.1:
- (a) the imposition of charges by the Company for any Services whatsoever shall not in itself determine or be evidence that the Company is acting as an agent or a principal in respect of those Services;
 - (b) the supplying by the Company of its own or leased equipment shall not in itself determine or be evidence that the Company is acting as agent or a principal in respect of any Services;
 - (c) the Company acts as an agent where the Company procures a bill of lading, sea or air waybill or other document evidencing a contract of carriage between a person (other than the Company) and the Customer or Owner;
 - (d) the Company acts as an agent and never as a principal when providing Services as a customs broker in respect of or relating to customs requirements, taxes, licences, consular documents, certificates of origin, inspection, certificates and other similar services for or on behalf of the Customer.

3 CHARGES

- 3.1 The Company's charges for the Services shall be the prevailing rates for such Services from time to time or as otherwise set out in a Quotation.
- 3.2 The Company may withdraw a Quotation before it is accepted and, in any event, a Quotation will lapse, without notice, 30 days after it is given (or as otherwise stated on the Quotation).
- 3.3 Unless otherwise agreed in writing, the Company's charges are exclusive of GST, which will be charged to the Customer at the prevailing rate.
- 3.4 The Company may (but is not obliged to) check-weigh and check-measure the Customer's Goods and alter any consignment note (or other applicable documentation) and any charges calculated based on weight or measurement accordingly. The Company does not accept responsibility for, or guarantee, such weighing or measurement.
- 3.5 The Company's charges shall be considered fully earned for the requested Services as soon as the Company receives the relevant Goods.
- 3.6 Where any amount charged by the Company is described as a disbursement (or similar expression), such amount will include the forwarder's handling and administration fee in respect of the same and the fee is not required to be separately disclosed.
- 3.7 The Customer acknowledges that the Company may have a pecuniary interest in contracts entered into pursuant to these Terms and agrees that the Company shall be entitled to, without notice to the Customer, retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by forwarders in addition to the charges and expenses invoiced to the Customer.

4 PAYMENT

- 4.1 The Customer shall remain liable for any amount owing to the Company even where the Customer has directed that the amount owing is to be paid by another person.
- 4.2 The Customer must pay all amounts set out in each invoice issued by the Company in full, without deduction or set off, by the due date specified on the invoice. The Company may require payment in full of all charges prior to commencement of Services. The Customer's payment is made only when funds have fully cleared through the bank's system into the Company's bank account.
- 4.3 If full payment is not made by the due date, then without prejudice to any other rights or remedies available to the Company:
- (a) the Company may charge interest on overdue monies on a daily basis at 5% per annum above the current overdraft rate charged by the Company's bankers at that time, and interest shall continue to accrue both before and after judgment;
 - (b) the Customer will be responsible for all costs (including legal costs on a solicitor/client basis) incurred by the Company in recovering such monies; and
 - (c) the Company may discontinue or suspend any Services.
- 4.4 When the Company is instructed to collect freight, duties, charges or other expenses from any person other than the Customer, the Customer shall:
- (a) remain responsible for these amounts; and
 - (b) pay these amounts to the Company on demand where these amounts have become due and have not been paid by such other person.
- 4.5 The Company may accept and apply payments from the Customer in respect of any indebtedness as the Company sees fit, and the Company will not be bound by any conditions or qualifications attaching to the payments.
- 4.6 The Customer and the Owner shall be jointly and severally liable for all amounts payable by the Customer under these Terms and the Company shall have the right to recover from the Owner any amount unpaid by the Customer.

5 RISK AND INSURANCE

- 5.1 Subject to clause 5.2, risk in the Customer's Goods shall remain with the Customer at all times during performance of



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the Services, and it shall be the Customer's sole responsibility and cost to arrange appropriate insurance cover for such Goods.

- 5.2 If the Company expressly agrees in writing to effect insurance, the Company does so as the Customer's agent (other than where the Company is deemed at law to be an agent of the insurer) and not as an insurer, insurance broker or other form of intermediary.

6 WARRANTIES AND INDEMNITY

- 6.1 The Customer warrants to the Company that:
- (a) the Customer will, on request, supply the Company with accurate and complete details about the Customer's Goods and any other information the Company may request;
 - (b) the Customer shall give sufficient and executable Instructions in relation to the Goods and the Services to be carried out;
 - (c) the Customer will comply with the requirements of any instruction or direction the Company issues and with any applicable law relating to the Goods (and their carriage, storage and handling) and so as to enable the Company to lawfully provide the Services in relation to the Goods;
 - (d) the Customer has title to and ownership of, or a valid right of possession to, the Goods and is authorised to accept these Terms, not only for itself, but, if relevant, also as agent for and on behalf of the Owner;
 - (e) the Customer's Goods are properly packaged and labelled (except where the Services include packaging and/or labelling) and in a fit and proper condition to be safely stored, carried and otherwise handled as part of the Services; and
 - (f) the Customer's Goods are and will remain free from any perishable or objectionable matter or odour, and are not of an offensive nature or illegal.
- 6.2 The Customer will indemnify the Company, on demand, against all liabilities, losses, damages, costs and expenses of any nature whatsoever suffered or incurred by the Company, directly or indirectly, as a result of or in connection with:
- (a) any breach of these Terms, including (without limitation) any of the warranties given by the Customer in clause 6.1 above;
 - (b) the nature of the Goods; or
 - (c) the Company acting in accordance with the Customer's or Owner's Instructions,
- except to the extent caused by the Company's negligence.

- 6.3 Without limiting clause 6.2:

- (a) all expenses and charges the Company incurs in complying with the provisions of any law referred to in clause 6.1(c) or with any order or requirement under such law or of any competent authority or otherwise in connection with the performance of the Services (including pursuant to clause 8); or
 - (b) all duties, taxes, imposts, levies, deposits and outlays whatsoever levied by any competent authority and for all payments, fines, costs, expenses, loss and damage whatsoever incurred or sustained by the Company,
- shall be paid by the Customer.

7 ACCEPTANCE OF GOODS FOR SERVICES

- 7.1 The Company is not a common carrier and will accept no liability as such. The Company (and/or its contractors) may, at its discretion and without any liability to the Customer, accept or refuse any Goods for Services.
- 7.2 Unless agreed in writing, the Customer shall not deliver to the Company, or cause the Company to deal with or handle, Dangerous Goods, bullion, coin, precious stone, jewellery, antiques, works of art or other valuable Goods.
- 7.3 If the Customer is in breach of clause 7.2:
- (a) the Customer shall be liable for all loss or damage whatsoever caused by or to or in connection with the Goods;

- (b) the Customer will indemnify the Company, on demand, against all liabilities, losses, damages, costs and expenses of any nature whatsoever suffered or incurred by the Company, directly or indirectly, as a result of or in connection with the Goods; and

- (c) the Company (or any other person in whose custody the Goods may be in at the relevant time) may, at the Company's sole discretion, have the Goods destroyed or otherwise dealt with (without compensation to the Customer or liability on the Company). For the purposes of this sub-clause, notice is not required to be given to any person of the intention to destroy or otherwise deal with the Goods.

- 7.4 If the Company agrees in writing to accept Dangerous Goods and then it (or any other person) reasonably forms the view that those Goods constitute a risk to other goods, property, life or health, clause 7.3 will apply.

- 7.5 The Customer undertakes not to tender for transportation any Goods which require temperature control without previously giving written notice of their nature and the particular temperature range to be maintained and, in the case of a temperature controlled Container packed or stuffed by or on behalf of the Customer, the Customer further undertakes that:

- (a) the Container has been properly pre-cooled or pre-heated as appropriate;
- (b) the Goods have been properly packed or stuffed in the Container; and
- (c) the Container's thermostatic controls have been properly set by the Customer.

If the Customer does not comply with this clause the Company shall not be liable for any loss of or damage to such Goods however arising.

- 7.6 Unless agreed in writing, the Company shall not be obliged to make any declaration for the purposes of any statute, convention or contract as to the nature or value of any Goods or as to any special interest in delivery or to make any declaration as to specific stowage requirements of any Goods.

- 7.7 Instructions relating to the delivery or release of Goods against payment (in cash or otherwise) or surrender of a particular document shall be in writing and are accepted by the Company on the condition that the Company will be responsible to exercise reasonable diligence and care only. In no circumstances shall the Company's liability exceed that provided for in respect of mis-delivery of Goods. Unless express written instructions are received that the Goods are not to be delivered without payment, the Company accepts no liability if, upon delivery of the goods, payment is not made.

- 7.8 Unless agreed in writing that the Goods shall depart by or arrive by a particular date, the Company accepts no responsibility for departure or arrival dates of Goods. Where the Company has expressly agreed in writing, the Company will endeavour to deliver Goods that are correctly addressed within the agreed target delivery timeframe but does not guarantee that delivery will occur within such timeframe.

- 7.9 Where the Company is Instructed to provide a Container, unless agreed otherwise in writing, the Company is not under an obligation to provide a Container of any particular type or quality.

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

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



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- (i) arose without any negligence on the part of the Company; or
 - (ii) would have been apparent upon reasonable inspection by the Customer or Owner or person acting on behalf of either of them.
- (d) the fact that the Container is not sealed at the commencement of the carriage, except where the Company has agreed in writing to seal the Container.

- (a) if the Customer fails to comply with any of the provisions of these Terms (or any other agreement with the Company);
- (b) if the Company consider that the Customer's creditworthiness, or ability or willingness to comply with its obligations under these Terms, may be at risk for any reason whatsoever;
- (c) if the Customer (or any guarantor of the Customer's obligations under these Terms) become insolvent or commits any act of bankruptcy; a receiver, liquidator, administrator or statutory manager is appointed over any of the Customer's assets or undertaking; the Customer makes or attempts to make an arrangement or composition with its creditors; or the Customer is unable (or deemed unable) to pay its debts as they fall due; or
- (d) if the Company believes that the Customer's Goods are, or are likely to become, unfit to store or transport, or are likely to cause damage to the Company's storage facility, vehicles or other goods, or injury to people; or
- (e) in the circumstances contemplated by clauses 8.3 or 8.6.

8 COMPANY RIGHTS

- 8.1 Unless otherwise agreed in writing, the Company shall be entitled to enter into contracts on behalf of itself or the Customer or Owner and without notice to the Customer, for:
- (a) the carriage of Goods by any route, means or person;
 - (b) the carriage of Goods of any description, whether Containerised or not, on or under the deck of any vessel;
 - (c) the storage, packing, transshipment, loading, unloading or handling of Goods by any person at any place whether on shore or afloat and for any length of time;
 - (d) the carriage or storage of Goods in Containers or with other goods of whatever nature;
 - (e) the performance of its own obligations, and to do such acts as the Company reasonably considers may be necessary or incidental to the performance of the Company's obligations.
- 8.2 The Company shall be entitled (without incurring any additional liability), but shall be under no obligation, to depart from the Customer's Instructions in any respect if the Company considers there is good reason to do so in the Customer's interest.
- 8.3 The Company may, at any time, comply with the orders or recommendations given by any competent authority. The responsibility and liability of the Company in respect of the Goods shall cease on the delivery or other disposition of the Goods in accordance with such orders or recommendations.
- 8.4 The Company shall be entitled (but under no obligation) at any time and from time to time to inspect the Goods and for this purpose to open or remove any Containers.
- 8.5 If at any time the Company reasonably considers that the carriage of the Goods should not be undertaken or continued without effecting any necessary incidental Services or incurring additional expense or risk, the Company shall be entitled to:
- (a) to effect such additional incidental Services and incur such additional expense, as may be reasonably necessary in order to enable the carriage to be effected or further effected; and
 - (b) to be reimbursed by the Customer for the cost of all such additional incidental Services and all such additional expense incurred (together with any administrative fees).
- 8.6 If the Company (or any person whose services the Company makes use of) considers:
- (a) the performance of the Company's obligations are likely to be effected by any hindrance, risk, delay, difficulty or disadvantage whatsoever; and
 - (b) the hindrance, risk, delay, difficulty or disadvantage cannot be avoided by reasonable endeavours of the Company or such other person,
- the Company may (upon giving notice in writing to the Customer or Owner where reasonably possible to do so) treat the performance of its obligations as terminated and may, at the Customer's expense, place the Goods or any part of them at the Customer's or Owner's disposal at any place which the Company deems safe and convenient at which point responsibility and liability of the Company in respect of the Goods shall cease absolutely.

9 RIGHT TO SUSPEND OR DISCONTINUE SERVICES

- 9.1 The Company may, at its discretion and without any liability to the Customer, by written notice to the Customer, suspend or discontinue the Services (or any of them) at any time:

- 9.2 Where the Company exercises its discretion to suspend or discontinue Services under these Terms, all Charges shall become immediately due and payable and the Customer must collect its Goods by the time and from the location the Company requires in its notice to the Customer (provided that if the Goods are perishable, the Company may dispose of the Goods without liability to the Customer).
- 9.3 If:
- (a) the Customer does not pay, in full, any amounts owing to the Company on or before their due date; or
 - (b) the Customer or any other person fails to collect the Goods when required to do so under these Terms; or
 - (c) the Company is unable (due to circumstances beyond the Company's control) to deliver the Goods as required by the Instructions and the Company notifies the Customer accordingly;
- the Company may exercise all or any of the following rights and remedies without liability or notice to the Customer:
- (d) remove such Goods or part thereof and store them in such place and manner as the Company thinks proper and at the Customer's risk and expense;
 - (e) dispose or sell the Goods, either at one time or from time to time, individually or in such lots as the Company may think fit, by private sale or public auction, and on such terms and conditions and at such price(s) as the Company thinks fit; and
 - (f) apply the proceeds of sale of the Goods towards the satisfaction of all charges, debts and liabilities owed by the Customer to the Company (including under clause 10.3).

10 LIEN

- 10.1 Where the Services are subject to a common law or statutory lien, that lien shall take precedence over the provisions of clause 10.2, which shall have no effect.
- 10.2 Subject to clause 10.1, the Company shall have a first and paramount lien over the Goods, any documents relating to the Goods and any other property of the Customer in the possession or control of the Company for all amounts owing by the Customer to the Company pursuant to these Terms however arising, including all charges, debts and liabilities in connection with the Services, together with charges, debts and liabilities owing by the Customer to the Company in respect of any other goods or services.
- 10.3 The Customer shall be liable to the Company for, and shall indemnify the Company against, all costs and expenses (whether direct or indirect) of removal, storage, disposal, sale or attempted sale of the Customer's Goods under clause 9.3 above. Storage charges at the Company's prevailing rates will continue to accrue to the Customer's account for so long as the Goods are held and stored pursuant to the Company's rights under these Terms.



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11 SECURITY INTEREST

- 11.1 The Customer acknowledges that the lien in clause 10.2 above is a security interest for the purposes of the PPSA.
- 11.2 The Customer undertakes to:
- (a) do all acts and provide us on request all information the Company requires to register a financing statement or financing change statement on the Personal Property Securities Register; and
 - (b) advise us immediately in writing of any proposed change in the Customer's name or other details on the Personal Property Securities Register.
- 11.3 The Customer:
- (a) waives its right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interests created under these Terms;
 - (b) agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms and, with the Company's agreement, contract out of such sections; and
 - (c) waives its rights and, with the Company's agreement, contracts out of the Customer's rights under sections 116, 120(2), 121, 125, 129 and 131 of the PPSA.
- 11.4 Unless the context otherwise requires, the terms and expressions used in this clause 11 have the meanings given to them in, or by virtue of, the PPSA.

12 LIMITATION OF LIABILITY

- 12.1 Subject to clauses 22 and 24 of Part 3 of these Terms, the Company's liability under these Terms shall be limited as follows:
- (a) if and to the extent that the Carriage Act applies to the Services, the Services are undertaken on the basis of "at limited carrier's risk" as defined in the Carriage Act and, in calculating the Company's liability under the Carriage Act, Unit shall have the meaning given to that term in clause 18.1;
 - (b) if and to the extent that the Carriage Act applies to any Services incidental to the carriage of Goods (including storage under clause 9.3(d) or Part 2) those services are undertaken on the basis of "at owner's risk" for the purposes of the Carriage Act;
 - (c) all other liability of any kind (whether arising in contract, tort (including negligence), statute or otherwise) to the Customer, Owner or any other person is excluded to the maximum extent permitted by applicable law.
- 12.2 The Customer acknowledges and agrees that where the Goods are to be carried and/or held at "owner's risk", this means that the Company will pay no compensation if the Goods are lost or damaged, unless the Company intentionally loses or damages them.
- 12.3 If the Company is found to be liable notwithstanding any limitation or exclusion in these Terms, except where expressly stated otherwise in these Terms, and subject to any mandatorily applicable law to the contrary, the liability of the Company, howsoever arising, shall never exceed the lesser of:
- (a) the value of the Goods the subject of the relevant claim (at the time the Goods were received by the Company); or
 - (b) US\$2.00 per gross kilogram in the currency of the loss or damage (the exchange rate to apply being the rate as at the date of the delivery of the Goods) of the Goods lost, damaged, misdirected, mis-delivered or in respect of which a claim arises.
- 12.4 To the maximum extent permitted by applicable law, the Company shall not be liable at all (whether in contract, tort (including negligence) or otherwise) for:
- (a) deterioration, misdelivery, delay in delivery or non-delivery of the Goods (whether the Goods are or have been in the Company's possession or not);

- (b) any instructions, advice or other information given or provided by the Company to any person, whether in respect of the Goods or any other thing or matter;
- (c) any loss or damage or any failure to perform any Services which arises directly or indirectly from, or is contributed to by:
 - (i) incorrect or incomplete information provided by the Customer;
 - (ii) the Customer's failure to comply with these Terms;
 - (iii) any act or omission by or on behalf of the Customer or the Owner;
 - (iv) or any circumstances beyond the Company's reasonable control;
 - (v) compliance with the Instructions given to the Company by the Customer, Owner or any other person entitled to give them
 - (vi) inherent vice of the Goods,
 - (vii) riots, civil commotions, strikes, lockouts, stoppage or restraint of labour from whatsoever cause; and
- (d) any loss (whether direct or indirect) of profits, business, anticipated savings or other economic loss or for any indirect, special or consequential loss, regardless of whether such loss or damage was reasonably foreseeable or the Company was or should have been aware of the likelihood of such loss.

- 12.5 The Company shall not be liable in respect of a claim against it under these Terms unless:

- (a) the Customer provides in writing full details of the claim and the alleged damage or loss, within seven days after the earlier of the Company's delivery or the Customer's collection of the Goods (or in the case of non-delivery, within fourteen days of the date of despatch) or the date the Services end; and
- (b) (if a claim is not settled) an action is commenced by the Customer in a Court of competent jurisdiction within six months of the date on which the Company accepted the relevant Goods for Services.

The parties acknowledge that the provisions of this clause 12.4 are in substitution for sections 274 to 281 of the Carriage Act, which shall not apply.

- 12.6 If the Consumer Guarantees Act 1993 applies, these Terms shall be read subject to the Customer's rights under that Act. Where the Customer is in trade and the Services are supplied and acquired in trade the Customer agrees that none of the rights and remedies under that Act will apply.
- 12.7 If any other legislation is compulsorily applicable to any business undertaken, these Terms shall, as regards such business, be read as subject to such legislation and nothing in these Terms shall be construed as a surrender by the Company of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation and if any part of these Terms is held to be repugnant to such legislation to any extent such part shall as regards such business be over-ridden to that extent and no further
- 12.8 The Customer will use its reasonable endeavours to avoid or mitigate any loss, damage or liability that might give rise to any claim under these Terms, including by fully exercising any liability limitation or exclusion to which the Customer is entitled by contract or applicable law against any third party. The Company will not be liable for any loss or damage that could have been avoided by the Customer.
- 12.9 The Customer shall defend, indemnify and hold harmless the Company from and against all claims, costs and demands whatsoever and by whomsoever made or preferred, in excess of the liability of the Company under these Terms.
- 12.10 The Customer shall defend, indemnify and hold harmless the Company in respect of any claims of a "General Average" nature, including any claims or demands for General Average security which may be made on the Company, and the Customer shall forthwith provide such security as may be required by the Company in this connection. General Average means the



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maritime principal of that name, as contemplated by the York Antwerp Rules (whether or not such rules are applicable).

- 12.11 The exclusions and limitations of liability set out in these Terms and the indemnities in the Company's favour in these Terms also apply to, and are for the benefit of, the Company's employees, contractors, representatives and agents together with any other person by whom any services are performed and their employees, contracts, representatives and agents. The aggregate amount recoverable from the Company and any of the people referred to in this clause will not exceed the maximum amount of liability expressed in this clause 12.

13 ASSIGNMENT AND SUBCONTRACTING

- 13.1 The Company may perform any of its obligations, and exercise any of the rights granted to it, under these Terms through any agents or sub-contractors appointed by the Company in its absolute discretion for that purpose.
- 13.2 The Customer undertakes that no claim will be made against any servant, sub-contractor or agent of the Company which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods. If any such claim should nevertheless be made, the Customer undertakes to indemnify the Company against all consequences thereof.
- 13.3 None of the Customer's rights or obligations under these Terms may be assigned or transferred without the Company's prior written consent. No assignment or transfer of title in the Customer's Goods shall relieve the Customer of its obligations under these Terms.

14 ACCESS TO COMPANY PROPERTY

Where, for the purposes of these Terms, the Customer or any of its employees, agents or contractors enters upon any premises owned or used by the Company in relation to the Services, whether to inspect or collect Goods, the Customer shall:

- comply with all directions given by the Company (including all policies and codes of practice supplied to the Customer);
- consult, cooperate and coordinate activities with the Company and other persons conducting a business or undertaking (as defined in the Health and Safety at Work Act 2015) who are accessing the Company's premises; and
- indemnify the Company, on demand, against liabilities, losses, damages, costs and expenses suffered or incurred by the Company, directly or indirectly, from any breach or non-observance by the Customer of its obligations under paragraph (a) of this clause 14 or any act or omission of any of the Customer's employees, agents or contractors while on the Company's premises.

15 PRIVACY ACT 1993

- 15.1 The Company may use any personal information that the Customer gives to it for credit, administration, service and marketing purposes. If the Customer does not give this information, the Company may not be able to provide the Services.
- 15.2 The Customer authorises any person or company to give the Company such information as it may require in response to the Company's credit and other enquiries.
- 15.3 The Customer understands that the Company may use a credit reporting agency to credit check the Customer. In such case:
- the agency will give the Company information about the Customer for that purpose;
 - the Company will give the Customer's personal information to the agency, and the agency will hold the information on its systems and use it to provide their credit reporting service;
 - when other customers use the service, the agency may give the information to those customers; and
 - if the Customer defaults in its payment obligations to the Company, information about the default may be given to

the agency, and the agency may give the information to other customers.

- 15.4 The Customer has a right of access to, and may request correction of, its personal information.
- 15.5 If the Customer is a company, the word "Customer", where used in this clause 15, includes its directors and shareholders.

16 NOTICES

- 16.1 Every notice given or required to be given under these Terms ("**Notice**") shall be in writing. A Notice shall be served on a party at that party's last known place of abode or business in New Zealand.
- 16.2 Every Notice shall be sent by courier, by fastpost, by facsimile transmission or by electronic mail.
- 16.3 A Notice shall be deemed to be served if by courier, at the time of delivery and, if posted, at 10.00 am on the third day after the day it was put in the post. If sent by facsimile transmission or electronic mail, it shall be deemed to be served at the expiration of two hours after the time of despatch, if despatched before 3.00 pm and in any other case at 10.00 am on the first day after the date of despatch.

17 GENERAL TERMS

- 17.1 **Amendments:** The Company may amend these Terms from time to time by notice to the Customer in writing.
- 17.2 **Entire Agreement:** These Terms (together with any Quotation and any agreement between the Customer and the Company which incorporates these Terms) constitutes the entire agreement between the Customer and the Company for the Services and excludes any other representations, understandings, terms, agreements and arrangements, including those in any proposal, document or terms provided by the Customer.
- 17.3 **Waiver:** No delay or failure by the Company to exercise its rights under these Terms operates as a waiver of those rights. A partial exercise of those rights does not prevent their further exercise in the future.
- 17.4 **Severability:** If a court decides that part of these Terms is unenforceable, the part concerned shall be deleted from the rest of these Terms, which will then continue in force.
- 17.5 **Law:** These Terms will be interpreted in accordance with and governed by the laws of New Zealand, and the New Zealand courts will have non-exclusive jurisdiction in respect of all matters between the Customer and Company.
- 17.6 **No lease or implied licence:** These Terms constitute a contract of bailment only in respect of storage services and the Customer acknowledge that it has no entitlement to claim any interest in the premises at which the Goods are stored, whether as a lessee, licensee or otherwise.

18 DEFINED TERMS AND INTERPRETATION

- 18.1 In these Terms, the following words have the following special meanings:
- "**Carriage Act**" means Part 5, Subpart 1 (*carriage of goods*) Contract and Commercial Law Act 2017 (NZ);
- "**Company**" means Hilton Haulage Limited Partnership and any of its related entities;
- "**Container**" includes any container, flexitank, ULD, trailer, transportable tank, flat, pallet or any article of transport used to carry or consolidate goods and any equipment of or connected to such container;
- "**Customer**" means any person at whose request or on whose behalf the Company provides a service;
- "**Dangerous Goods**" includes goods which are or may become of a dangerous, inflammable, radio-active or damaging nature and goods likely to harbour or encourage vermin or other pests;
- "**Goods**" means goods presented to the Company by the Customer at any time for the purposes of the Services;
- "**Hague-Visby Rules**" means the provisions of the International Convention for the Unification of certain rules Relating to Bills of Lading signed at Brussels on 25th August 1924 as amended by



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the Visby Protocol signed at Brussels on 23rd February 1968 and the SDR Protocol signed at Brussels on 21st December 1979, as applied by the Maritime Transport Act 1994;

"**Instructions**" means a statement of the Customer's specific requirements recorded in writing and delivered to the Company, including but not limited to email transmission;

"**Montreal Convention**" means the Convention for the Unification of Certain Rules relating to International Carriage by Air, signed in Montreal in 1999 (Montreal Convention) as applied by the Civil Aviation Act 1990;

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

"**PPSA**" means the Personal Property Securities Act 1999 (NZ);

"**Quotation**" means a quotation for the supply of the Services on the terms set out in the quotation and these Terms;

"**Services**" means all services provided by the Company to the Customer and all matters necessarily related to the provision of the services or ancillary to the provision of the services;

"**Terms**" means these terms of trade (as amended from time to time);

"**Unit**" means, for the purpose of these Conditions, the unit of Goods accepted by the Company for Services.

- 18.2 For convenience, these Conditions have been grouped under different headings, but the headings do not affect the meanings of these Conditions.
- 18.3 Where the provisions in these Conditions differ from the provisions in the Carriage Act then, to the extent permitted by law, the provisions in these Conditions are in substitution for, and prevail over, the statutory provisions, and the parties agree that they have contracted out of the relevant provisions in the Carriage Act.

PART 2: DOMESTIC CARRIAGE AND STORAGE SERVICES

The provisions of this Part 2 shall apply only to domestic (i.e. within New Zealand) carriage and storage services to the extent that such Services are provided by the Company as principal (including where such domestic carriage and storage is undertaken as part of other Services)

19 CARRIAGE SERVICES

- 19.1 Subject to the limitations and other provisions of these Conditions the Company's responsibility to the Customer for carriage Services starts at the time the Company accepts the Goods for carriage and ceases at the earlier of:
- the time the Company delivers the Goods to the Customer's nominated delivery address (or, if the Company is unable to do so, the time the Company gives the Customer notice under clause 8.9(a));
 - the time the Customer collects the Goods; and
 - the date that is five days after the Company notifies the Customer that the Goods are ready for collection.

20 STORAGE SERVICES

- 20.1 The Company may, at its discretion, move the Customer's Goods to and from different storerooms in the Company's premises, and the Company may store the Customer's Goods at such locations for such periods as the Company considers expedient. Additional charges may apply for any such movements as a result of a breach by the Customer of these Conditions.
- 20.2 The Customer may, at reasonable times during the Company's business hours and upon at least 48 hours' prior written notice to the Company, inspect the Customer's Goods while they are in the Company's possession. The Customer must reimburse the Company on demand for any costs incurred by the Company in relation to the Customer's inspection.
- 20.3 The Company gives the Customer no warranty or undertaking of any kind in relation to any of the following matters:

- the method of stacking, or the height or size of any stacks;
 - the use of dunnage in the creation of any stacks;
 - the distance of the Customer's Goods from any ceilings, walls or doors of the relevant premises; or
 - the segregation of the Customer's Goods from any other goods.
- 20.4 The storage Services will end and the Customer must collect its Goods, at its cost, from the location where the Customer's Goods are stored:
- on the date agreed between the Customer and the Company;
 - upon not less than two months' written notice by one party to the other; or
 - upon notice to the Customer under clause 9.
- 20.5 The Company shall use reasonable efforts to ensure the Customer's Goods are ready for collection on their date for collection under clause 20.4 above, but the Company shall have no liability if, for any reason, they are not ready.

21 LIABILITY

The Company's liability for domestic carriage and storage Services is limited in accordance with clause 12 of these Conditions.

PART 3: INTERNATIONAL FREIGHT FORWARDING AND LOGISTICS SERVICES

The provisions of this Part 3 shall apply only to international freight forwarding (including customs clearance) and logistics services (including where such international freight forwarding or logistics services are undertaken as part of other Services).

PART 3A: Company as Agent

22 SPECIAL LIABILITY AND INDEMNITY CONDITIONS

- 22.1 The Company provides international Services (including freight forwarding, customs clearance and logistics services) as agent of the Customer. The Company does not make or purport to make any contract with the Customer for the carriage, storage or handling of the Goods nor for any other Service in relation to them and acts solely on behalf of the Customer in securing such Services by establishing contracts with third parties. Any such contract arranged by the Company on behalf of the Customer will be:
- subject to the terms, conditions and limitations of that third party; and
 - a direct contract between that third party and the Customer.
- 22.2 Where the Company is providing Services as an agent of the Customer it shall have no liability whatsoever to the Customer or any other person for any loss however caused or arising, except as a direct result of any negligent act or omission by the Company.
- 22.3 In particular, the Company shall not be liable for the acts and omissions of third parties referred to in Clause 22.1.

23 CHOICE OF RATES

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

PART 3B: Company as Principal

24 SPECIAL LIABILITY CONDITIONS

- 24.1 Where the Company contracts as principal for the performance of the Customer's Instructions, the Company undertakes to perform, or in its own name to procure, the performance of the Customer's Instructions and, subject to the provisions of these Conditions, shall be liable for the loss of or damage to the Goods occurring from the time that the Goods accepted until the earlier of:
- the time the Company delivers or procures the delivery of the Goods to the Customer's nominated delivery address (or, if the Company is unable to do so, the time the



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Company gives the Customer notice under clauses 8.6 or 9);

- (b) the time the Customer (or relevant consignee) collects the Goods; and
- (c) the date the Company notifies the Customer that the Goods are ready for collection.

24.2 Where:

- (a) the Company contracts as a principal and sub-contracts the performance of the Company's Services; and
- (b) it can be proved that the loss of or damage to or in respect of the Goods arose or was caused whilst the Goods were in the care or custody of the sub-contractor,

the Company shall have the full benefit of all rights, limitations and exclusions of liability available to the sub-contractor in the contract between the Company and the sub-contractor and in any law, statute or regulation and the liability of the Company shall not exceed the amount recovered, if any, by the Company from the sub-contractor.

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

- (a) cannot be departed from by private contract, to the detriment of the claimant; and
- (b) would have applied if the claimant had made a separate and direct contract with the actual provider of the particular service in respect of that service or stage of carriage where the loss or damage occurred and received as evidence thereof any particular document which must be issued if such international convention or national law shall apply.

24.4 Notwithstanding other provisions in these Conditions, if it can be proved that the loss of or damage to the Goods occurred at sea or on inland waterways and the provisions of Clause 24.2 do not apply, the Company's liability shall be determined by the Hague-Visby Rules. Reference in the Hague-Visby Rules to carriage by sea shall be deemed to include reference to carriage by inland waterways and the Hague-Visby Rules shall be construed accordingly.

24.5 Notwithstanding other provisions in these Conditions (including clauses 24.2 to 24.4) but subject to clause 1.4 if the loss of or damage to the Goods occurred at sea or on inland waterways, and the Owner, Charterer or operator of the carrying vessel is entitled to limit its liability at law and establishes a limited fund, the liability of the Company shall be limited to the proportion of such limitation fund as is allocated to the Goods.

24.6 Notwithstanding any other provision of these Conditions but subject to clause 1.4, where the Company acts as a principal in respect of a carriage of Goods by air, the Company's liability in respect of loss of or damage to such Goods shall be determined in accordance with the Montreal Convention (or such other international convention or natural law which is mandatorily applicable to the relevant carriage).

25 BOTH-TO-BLAME COLLISION CLAUSE

The "Both-to-Blame" Collision Clause as recommended by the Baltic and International Maritime Council (BIMCO) as at the time of the provision of Services is incorporated into and forms part of these Conditions.

26 USA AND/OR CANADA AND ADDITIONAL RESPONSIBILITY CLAUSE

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

26.2 If and to the extent that the provisions of the Harter Act of the USA 1893 would otherwise be compulsorily applicable to regulate the Company's responsibility for the Goods during any period prior to loading on or after discharge from the vessel on which the Goods are to be or have been carried, the Company's responsibility shall instead be determined by

these Terms. If such provisions are found to be invalid such responsibility shall be determined by the provisions in the United States Carriage of Goods by Sea Act.