

## STANDARD TRADING CONDITIONS

### 1 Defined Terms and Application

#### 1.1 In these Conditions:

"**Carriage Act**" means Part 5, Subpart 1 (carriage of goods) Contract and Commercial Law Act 2017 (NZ).

"**Company**" means Supply Chain International Limited.

"**Conditions**" means these standard trading conditions of contract (as amended from time to time).

"**Container**" means all forms of shipping container, including tank containers, flat racks and bulk containers.

"**Customer**" means the person with whom this Contract is made.

"**Dangerous Goods**" means cargo which is volatile or explosive or which is or may become dangerous (to person or property), inflammable or offensive (including radioactive materials) or harbour or encourage vermin, borer or other pests, or which is considered to be dangerous or hazardous by any applicable law, convention or regulatory authority.

"**Force Majeure**" means war, riots, civil commotions, terrorism, piracy, sabotage, blockade, cyberattack, hacking or other unauthorised interference with electronic communications or systems, strikes or other industrial action, fire, explosion, flood, drought, earthquake, adverse weather conditions, epidemic or pandemic, equipment malfunction or breakdown, acts or omissions by governmental, regulatory or other competent authorities or any other event or circumstance beyond the control of the Company (or any third party carrier or service provider).

"**Goods**" means the cargo accepted by the Company together with any Container, packaging or pallet(s) supplied by or on behalf of the Customer.

"**GST**" means the goods and services tax imposed by or under the Goods and Services Tax Act 1985 or any similar or replacement legislation.

"**Services**" means the whole of the operations, activities and services undertaken by the Company in respect of the Goods or the Customer's instructions.

"**VGM**" means the Verified Gross Mass of Goods, calculated in accordance with one of the methods specified in Chapter VI, Regulation 2 of the Safety of Life at Sea Convention and guidelines issued by Maritime New Zealand.

1.2 The Company is not a common carrier and accepts no liability as such. The Company reserves the right to accept or refuse the provision of Services in respect of the Goods at its sole discretion. All Services are provided to the Company subject only to these Conditions (together with the terms and conditions of any written quotation issued by the Company and the terms and conditions of any applicable transportation document issued by or on behalf of the Company) which prevail at all times over and to the exclusion of anything contained in any purchase order or other terms issued by the Customer. In the event of and to the extent of any inconsistency between these Conditions and the conditions which are incorporated into the bill of lading, waybill, consignment note or other transport document issued by the Company, these Conditions prevail.

1.3 Issuing Instructions, acceptance of quotation terms provided by or on behalf of the Company or providing Goods for Services will be deemed to be acceptance of these Conditions, unless the Company has agreed in writing to contract with the Customer on a different basis than as set out in these Conditions.

### 2 Agency

2.1 The Company carries on business as a customs and forwarding agent and is not the actual carrier of the Goods, except where the Company acts as principal in performing any carriage, handling or storage of goods, but only to the extent that the carriage is performed by the Company itself or its employees or subcontractors and the Goods are in the actual custody and control of the Company (or its employees or subcontractors).

2.2 The Company arranges contracts with third party carriers as the Customer's agent. 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. 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.

### 3 Warranties and Indemnity

3.1 The Customer warrants that it is either the owner or the authorised agent of the person or persons owning or having any interest in the Goods or any part of the Goods and enters into this Contract on its own behalf or as authorised agent of that person or those persons.

3.2 The Customer warrants that: (a) it has complied with all laws and regulations relating to the nature, condition, packaging, handling, storage and carriage of the Goods; (b) the Goods are packed to withstand the ordinary risks of handling, storage and carriage, having regard to their nature; and (c) it has supplied the Company with accurate and complete details about the Goods. Further the Customer shall provide to the Company all such assistance, information and documentation that may be necessary to enable the Company to comply with applicable laws and regulations.

3.3 The Customer indemnifies the Company from and against all liabilities, losses, damages, claims, costs and expenses of any nature whatsoever suffered or incurred by the Company as a result of or in connection with: (a) any breach of these Conditions by the Customer, including any warranty given by the Customer in this clause 3; (b) the nature of the Goods; (c) the proper performance of the Services and acting in accordance with the Customer's instructions, including any claim by any person (other than the Customer) who claims to have, who has or may hereafter have any interest in the Goods or any part of the Goods; (d) any Force Majeure affecting the Services.

### 4 Charges and Payment

4.1 Unless otherwise stated, all charges quoted are exclusive of GST and where GST is applicable to any such charges, it will be payable by the Customer in addition to those charges.

4.2 All customs and/or excise duties, taxes, costs, imposts, levies, fines, penalties, surcharges, detention, demurrage charges, fees (including misdeclaration fees) or outlays whatsoever which the Company becomes liable to pay for any reason whatsoever in respect of the Goods, Services or any documentation relating to the Goods (whether or not resulting from or arising out of the negligence of the Company) shall be paid by the Customer.

4.3 The charges of the Company shall be considered earned as soon as the Goods are delivered to the Company and under no circumstances shall any of those charges be refunded. The Company may charge by weight, measurement or value and may at any time reweigh, remeasure or revalue or require the Goods to be reweighed, remeasured or revalued and charge proportional additional charges accordingly. The Customer is and remains responsible to the Company for all its proper charges whether or not the Goods are delivered and/or the Services are provided as instructed and whether or not they are damaged.

4.4 Every special instruction to the effect that charges shall be paid by a person other than the Customer shall be deemed to include a stipulation that if that nominated person does not pay those charges within seven (7) days of delivery or attempted delivery of the Goods, then the Customer shall pay those charges to the Company within seven (7) days of being notified of that person's failure to pay.

4.5 The Company shall not be responsible in negligence or contract or otherwise for loss, damage, costs, fines or penalties incurred by the Customer or any other person resulting from or arising out of or in connection with any quotation, advice, statement, representation or information given or made by or on behalf of the Company to the Customer or others as to the classification of or any matter material to the valuation of or the liability for or the amount, scale or rate of customs and/or excise duty or other impost, tax or rate charged in respect of the Goods or any cargo whatsoever. In giving or making any such quotation, advice, statement, representation or information the Company relies solely on the particulars provided by the Customer which warrants that those particulars accurately and completely describe all aspects of the Goods or cargo and the transaction(s) relating to the Goods or cargo.

4.6 The Customer must pay all amounts set out in each invoice issued by the Company in full, without deduction or set out, by the due date specified on the invoice. The Company may require payment in full of all charges prior to the commencement of Services.

4.7 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.

## 5 Acceptance of Goods for Services

5.1 Unless expressly agreed in writing, the Customer shall not tender for the provision of Services by the Company any Dangerous Goods; Goods which require temperature control or special handling; live animals or plants; precious metals, precious stones, genuine pearls, money, valuables, documents, certificates, works of art and antiques. Dangerous Goods may at any time be destroyed, disposed of or abandoned or rendered harmless by the Company without compensation to and at the cost of the Customer.

5.2 If the Company agrees to carry any Goods as outlined in clause 5.1:

- (a) the Customer must provide all necessary information and documentation to the Company a minimum of 48 hours prior to the commencement of the Services;
- (b) in the case of a temperature-controlled Container:
  - (i) If packed or stuffed by or on behalf of the Customer, the Customer further undertakes that the Container has been properly pre-cooled or pre-heated as appropriate and the Container's thermostatic controls have been properly set by the Customer.
  - (ii) The Customer may request copies of such temperature data as has been electronically, automatically or mechanically recorded by recording equipment contained in, attached to or integral in such Container or cargo space. Upon such request, and upon the Customer paying or agreeing to pay the Company's actual and reasonable costs in relation thereto, the Company agrees that such data as is in its possession or power shall, as soon as practicable, be made available to the Customer. Such data, whether or not obtained after a request by the Customer shall, in the event of court proceedings between the parties, be deemed to be admissible in evidence by either of them, without the need for compliance with the usual rules of evidence. Upon being admitted into evidence the data shall be deemed to be prima facie evidence of the temperature conditions within the Container or cargo space during the period of time covered by the data.

5.3 If the Services require empty Containers for loading, these must be inspected by the Customer upon receipt for external integrity and suitability for loading, specifically for a lack of odour contamination. The Company must receive complaints in writing/electronically without delay. If no notice is given, the Container(s) will be considered to be undamaged and suitable for shipment. The Company is not liable for any damage to cargo which arises as a result of defects in the Container which existed during loading. Unloaded Containers must be swept clean and returned by the Customer in the same condition as provided at the start of transport by any applicable due date, with any and all costs for cleaning, repair or detention being borne by the Customer.

5.4 If the Company (or any third party carrier or service provider) considers the Services (or the performance of any other obligations) are, or are likely to be, effected by any hindrance, risk, delay, difficulty or disadvantage whatsoever caused by Force Majeure: (a) the Company will endeavour to promptly notify the Customer; and (b) the Company will not be liable for any failure to perform the Services and may suspend and/or terminate the Services and place the Goods at the Customer's disposal at any place notified by the Company, at which point responsibility and liability of the Company in respect of the Goods shall cease absolutely.

## 6 Limitation of liability

6.1 Except as provided by the Carriage Act, the Maritime Transport Act 1994 and any other legislation compulsorily applicable by New Zealand law to the carriage of goods, the Goods are at the risk of the Customer and not of the Company. The Company shall not, except as compulsorily required by statute as noted above, be responsible in tort or contract or bailment or otherwise for any, and the consequences of any, loss of or damage to or deterioration of the Goods or misdelivery or failure to deliver or delay in delivery of the Goods including chilled, frozen, refrigerated or perishable Goods either in transit or in storage or failure to provide or delay in providing the Services for any reason whatsoever including without limiting the foregoing the negligence or breach of contract or wilful act or default of the Company or others or the conversion or misappropriation of the Goods by the Company's servants, agents or Subcontractors. This Clause shall apply to all, and

the consequences of all, such loss of or damage to or deterioration of the Goods or misdelivery or failure to deliver or delay in delivery of the Goods or failure to provide or delay in providing the Services whether or not the same occurs in the course of performance by or on behalf of the Company of the Contract or in events which are in the contemplation of the Company and/or the Customer or in events which are foreseeable by them or either of them or in events which could constitute a fundamental breach or a breach of a fundamental term of the Contract.

- 6.2 In all cases where liability of the Company has not been excluded or limited, whether by these Conditions, by statute or by international convention or otherwise, the liability of the Company whatsoever and howsoever arising is limited to New Zealand \$100 or the value of the Goods the subject of the Contract at the time the Goods were received by the Company, whichever is the lesser.
- 6.3 Where the Services are compulsorily subject to the Carriage Act, the relevant Services are undertaken "at limited carrier's risk" as defined in the Carriage Act and, in calculating the Company's liability per unit of Goods lost or damaged under the Carriage Act, "unit" shall mean the unit of Goods accepted by the Company for Services.
- 6.4 If the Consumer Guarantees Act 1993 applies, these Conditions 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.
- 6.5 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) 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 Conditions or any act or omission by or on behalf of the Customer; (iii) Force Majeure; compliance with the Customer's instructions; (iv) inherent vice of the Goods;
  - (b) any loss (whether direct or indirect) of profits, business, anticipated savings or other economic loss or for any indirect, special or consequential loss.
- 6.6 Any claim for loss or damage must be notified in writing to the Company within seven (7) days of delivery of the Goods or of the date upon which the Goods should have been delivered.
- 6.7 In any event the Company shall be discharged from all liability whatsoever in connection with the provision of the Services and/or the Goods unless suit is brought and served within nine (9) months of the provision of the Services or delivery of the Goods or when the Services should have been provided or the Goods should have been delivered. The parties acknowledge that the provisions of this clause 6.7 are in substitution for sections 274 to 281 of the Carriage Act, which shall not apply.
- 6.8 All the rights, immunities and limitations of liability in these Conditions shall continue to have their full force and effect in all circumstances and notwithstanding any breach of this Contract or of these Conditions by the Company or any other person entitled to the benefit of such provisions.
- 6.9 The Customer undertakes where the Company is liable as principal and not as agent, that no claim or allegation shall be made, whether by the Customer or any other person who is or who may subsequently be interested in the provision of the Services and/or in the Goods, against any person (other than the Company) by whom (whether it is a subcontractor, principal, employer, servant, agent or otherwise) the Services or any part of the Services are or is provided which imposes or attempts to impose upon such person any liability whatsoever and howsoever arising (including without limiting the foregoing from negligence or breach of contract or wilful act or default of the Company or others) in connection with the provision of the Services and/or the Goods and if such claim or allegation should nevertheless be made to indemnify the Company and the person against whom such claim or allegation is made against the consequences of such claim or allegation. For the purpose of this clause, the Company is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and each of them and all such persons and each of them shall to this extent be or be deemed to be parties to this contract.
- 6.10 Every exemption, limitation, condition and liberty in these Conditions and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Company or to which the Company is entitled in accordance with these Conditions shall also be available and shall extend to protect:
  - (a) all subcontractors;

- (b) every servant or agent of the Company or of a subcontractor;
- (c) every other person (other than the Company) by whom the Services or any part of the Services are or is provided; and
- (d) all persons who are or may be vicariously liable for the acts or omissions of any persons falling within paragraphs (a), (b) or (c) of this clause,

and, for the purpose of this clause, the Company is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of such persons and each of them and all such persons and each of them shall to this extent be or be deemed to be parties to this contract.

## **7 Company Rights**

- 7.1 The Customer authorises any deviation from the Customer's instructions or the usual manner in which the Services are provided, or the performance of any incidental services, which may in the absolute discretion of the Company be deemed reasonable or necessary in the circumstances.
- 7.2 If the Customer expressly or impliedly instructs the Company to use or it is expressly or impliedly agreed that the Company will use a particular method of providing the Services the Company will give priority to that method but its adoption remains at the sole discretion of the Company and the Customer authorises the Company to provide the Services by another method.
- 7.3 In the case of the issuance of a bill of lading, the Customer agrees that the issued original(s) shall be handed over to the shipper as indicated in such bill of lading. If the Customer does not agree to this, they shall expressly notify the Company when placing an order with the Company.
- 7.4 The Company may, at its discretion and without liability to the Customer, by written notice to the Customer, suspend or terminate the Services (or any of them) at any time:
  - (a) if the Customer fails to comply with any of the provisions of these Conditions (or any other agreement with the Company);
  - (b) if the Company considers that the Customer's creditworthiness, or ability or willingness to comply with its obligations under these Conditions, may be at risk for any reason whatsoever;
  - (c) if the Customer (or any guarantor of the Customer's obligations under these Conditions) becomes 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.
- 7.5 Where the Company exercises its discretion to suspend or terminate the Services under these Conditions, 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). If the Customer or any other person fails to collect the Goods when required to do so under these Conditions, the Company may store, sell or otherwise dispose of such Goods in such place and manner as the Company thinks proper and at the Customer's risk and expense. 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 Conditions.

## **8 Insurance**

- 8.1 Insurance will not be arranged by the Company except with the express written instructions of the Customer and then only at the Customer's expense and on lodgement of a declaration as to value prior to acceptance of the Goods by the Company. The Company may charge the Customer for arranging such insurance.
- 8.2 If the Company expressly agrees in writing to effect insurance, the Company does so as the Customer's agent. Any such insurance will be subject to the exemptions and conditions of the policies of the insurer or underwriter accepting the risk.

## **9 Lien**

- 9.1 Where the Services are subject to a common law or statutory lien, that lien shall take precedence over the provisions of this clause 9, which shall have no effect. The Company shall otherwise have a lien on the Goods and any documents relating to the Goods and/or any other Goods or cargo of the Customer in the possession or control of the Company and any documents relating to those other Goods or cargo for all sums payable by the Customer to the Company on any account

whatsoever. The Company shall have the right to sell such Goods or cargo by public auction or private treaty on notice to the Customer. 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.

## **9.2 The Customer:**

- (a) waives its right to receive a verification statement in respect of any financing statement or financing charge statement relating to the security interest created under these Conditions;
- (b) agrees that nothing in section 114(1)(a), 133 and 134 of the Personal Property Securities Act (PPSA) shall apply to these Conditions 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.

## **10 Verified Gross Mass**

- 10.1 Where the Goods are shipped in a Container that has been packed by or on behalf of the Customer (other than by the Company) the Customer or shipper shall declare the VGM to the Company in such a manner and within such period prior to shipment as is specified by the Company. The gross mass provided must clearly state that it is the VGM and the declaration must be signed by a person duly authorized by the Customer to sign it.
- 10.2 The Customer warrants that it has correctly and accurately calculated the VGM and that:
  - (a) the weight has not simply been estimated; and
  - (b) the Customer has not relied on a VGM that has been provided by a third party, except where the cargo has been previously weighed and that weight is clearly and permanently marked on the surface of the Goods.
- 10.3 In the event that the VGM is not declared to the Company, or is not declared within such time frame prior to shipment as has been specified by the Company, or in any case where the Company believes that verification of the declared VGM is required, the Company may, but is not obliged to, at its sole option:
  - (a) refuse to deliver the Container to the port. **The Customer acknowledges that Containers unaccompanied by a VGM are not entitled to entry to any port in New Zealand;**
  - (b) require the Customer to remove the Container from any property occupied or used by the Company, after first paying any of the Company's charges that have accrued to the time of removal;
  - (c) weigh the Container and calculate or verify its VGM, or arrange to have the Container weighed and its VGM calculated or verified. All costs of such weighing, calculation and / or verification shall be met by the Customer.

- 10.4 The Customer indemnifies and holds harmless the Company against any and all consequences of whatsoever nature arising from or caused by the Customer's breach of any of its obligations at law or under these Standard Trading Conditions, in relation to the VGM.

- 10.5 The Company shall have no liability to the Customer or any other person or entity of any nature, whether direct, indirect or consequential and whether reasonably foreseeable or otherwise, for any loss, damage or expense arising from or caused by the Customer's failure to provide a VGM (either on time or at all) or for the inaccuracy of any VGM provided by or on behalf of the Customer.

## **11 General Terms**

- 11.1 The Company may amend these Conditions from time to time by notice to the Customer in writing.
- 11.2 These Conditions shall be governed by and construed in accordance with the laws of New Zealand, and the New Zealand courts will have non-exclusive jurisdiction in respect of all matters between the Customer and the Company.
- 11.3 The Company shall not be bound by any agreement purporting to waive or vary these Conditions unless such agreement to so waive or vary shall be in writing and signed by an executive officer of the Company. No delay or failure by the Company to exercise its rights under these Conditions operates as a waiver of those rights.
- 11.4 The Customer authorises the Company and any carrier to subcontract on any terms the whole or part of the provision of the Services.
- 11.5 It is agreed that if any provision or any part of any provision of these Conditions is unenforceable such unenforceability shall not affect any other provision or any other part of such provision.