

# Revised Standard Trading Conditions

Applicable from May 2012

These contractual conditions apply to all services provided by VISA Global Logistics Ltd.

These Trading Conditions may entirely change, reduce or exclude rights that you ("the Customer") might otherwise have.

You should read these Trading Conditions carefully.

## DEFINITIONS AND INTERPRETATION

### 1. DEFINITIONS:

- (1) **Administration Costs** means all expenses and disbursements incurred by the Company with both the Company's officer and employee time calculated at a rate of NZ\$175.00 per hour.
- (2) **Assets** means all assets, goods, documents and records of the Customer held in the custody of possession of the Company as part of the contractual terms and trading conditions for the appointment of the Company, and includes, without limitation, the Goods
- (3) **Authorisation** means the appointment and authorisation of the Company to act on behalf of the Customer on the terms and conditions of this Agreement
- (4) **Carriage** means vehicles and conveyances of all kind including acts in furtherance of an act of carriage by another or a specific means, whether by air, sea or land transport, or any combination of such transport modes
- (5) **Carrier** means any party involved in the carriage of Goods whether by airfreight, seafreight or land transport
- (6) **Company** means VISA Global Logistics Ltd and the nominees, agents, sub-agents, assigns and employees of the Company
- (7) **Customer** means the person at whose request the Services are performed and will include all employees, officers, agents, principals, contractors, administrators, receiver managers and liquidators of the Customer, any other person acting on the Customer's behalf; and includes also the consignee, owner of the Goods, the holder of any document of title in respect of the same and any other person referred to in paragraph 4(b) hereof.
- (8) **Dangerous Goods** means cargo which is noxious, hazardous, inflammable, explosive or offensive (including radioactive materials) or may become noxious, hazardous, inflammable, explosive or offensive or radioactive and may become liable to cause damage, loss or injury to any person or property whatsoever or howsoever caused
- (9) **Debts** means all amounts owing by the Customer to the Company on any account whatsoever
- (10) **Force Majeure Event** means any cause or causes beyond the control of the party whose performance is directly affected by it, including but not limited to war (declared or undeclared), rebellion, revolution, tumults, political disturbance, accident to wharf, accidents at works or wharf, at receivers' works or wharf, breakdown or stoppage of

slurry pipeline, transfer vessels, motor vehicles or any part of the works from which the Goods are supplied or to which the Goods are destined, including loading and/or discharging facilities, installations and/or equipment at or en route, partial or total stoppage of roads, rivers or channels, riot, insurrection, civil commotion, epidemics, quarantine, strike, lockout, blockade, industrial disturbance, labour/industrial disputes or stoppages of miners, workmen, lightermen, tugboatmen or other hands essential to the working, carriage, delivery, shipment or discharge of the said Goods whether partial or general, interference of trade unions, act of God, fire, floods, storm, tempest, volcanic eruption, earthquake, landslips, frost or snow, bad weather, intervention of sanitary, customs, and/or other constituted authorities, act of government (whether de-facto or de-jure) and supervening illegality, or any other cause beyond the control of the Company. Act of government shall include, but is not limited to, the refusal to grant any necessary import or export licence.

- (11) **Goods** are any goods or items which are the subject of tServices provided by the Company to the Customer under this or any other Agreement
- (12) **Government Authority** means, without limitation, all Government Departments with responsibility for the import and export of goods, the collection of revenue on the import and export of goods and the transport of those goods.
- (13) **"Insolvency Event"** means if any (or more than one) of the following occur with respect to a Customer:
- (a) the Customer becomes insolvent or is otherwise unable to pay its debts as and when they fall due;
  - (b) the Customer (or any third party) institutes any insolvency, receivership or bankruptcy proceedings with respect to the Customer, for the settlement of the Customer's debts;
  - (c) the Customer makes a general assignment for the benefit of creditors; or
  - (d) the Customer ceases to conduct business.
- (14) **Laws** means any laws or regulations of New Zealand.
- (15) **Legal Fees** means any amounts that the Company has been or may be charged by, or is or may become liable to pay to, a law practice or debt collection company for the provision of legal services including disbursements
- (16) **Person** means any legal entity.
- (17) **PPSA means the** Personal Property Securities Act 1999.
- (18) **Related Company** has the same meaning as under the Companies Act 1993.
- (19) **Services** are the rights, benefits, privileges or facilities that are to be provided, granted or conferred under a contract in relation to the performance of work by the Company for the Customer, to include, without limitation:
- (a) to make any Reports, Entries and Declarations required by any Government Authority;
  - (b) to provide all necessary information and complete all necessary documentation and reports for the purposes of any Government Authority;

- (c) to perform and/or arrange for the transportation of goods locally or internationally, , to warehouse goods, to assemble goods, and
  - (d) to enter into contracts with Sub-contractors on behalf of the Customer to enable the carriage, storage, import, export or transportation of the Goods.
- (20) **Shipping Container** includes any type of container, trailer, transportable rack, pallet, flat or unit load device or any similar item used to consolidate and/or carry goods
- (21) **Sub-contractor** means any third party appointed by the Company to assist in the provision of the Services
- (22) **Vessel** means any vessel, vehicle or aircraft used to effect Carriage of the Goods, whether by sea, land or air.

## 2. INTERPRETATION

- (1) These Trading Conditions and any collateral agreements made by the Company with the Customer are subject to the laws of New Zealand and the exclusive jurisdiction of the Courts of New Zealand.
- (2) If these Trading Conditions are held to be subject to the laws of any other legislature then these conditions shall continue to apply and shall be void only to the extent that they are inconsistent with or repugnant to those laws and no further. Nothing in these Trading Conditions is intended to have the effect of contracting out of any applicable provisions of the Consumer Guarantees Act 1993 or the Carriage of Goods Act 1979, except to the extent permitted by those Acts. If any legislation is compulsorily applicable to any Services, these Trading Conditions shall, as regards such Services, be read as subject to such legislation, and nothing in these Trading Conditions shall be construed as a surrender by the Company of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation, and if any part of these Trading Conditions be repugnant to such legislation to any extent, such part shall as regards such Services be overridden to that extent and no further.
- (3) All the rights, immunities and limitations of liability contained herein shall continue to have their full force and effect in all circumstances notwithstanding any breach of any term or condition hereof or any collateral agreement by the Company and notwithstanding that the Services have been provided, the Goods delivered as directed by the Customer or the Authorisation having expired or been terminated.
- (4) Unless written notification to the contrary is given by the Customer to the Company at or prior to entering into these Trading Conditions the Customer expressly warrants and represents that all Services to be supplied by the Company and acquired by the Customer pursuant to this agreement are so supplied and acquired for the purposes of a business, trade, profession or occupation carried on or engaged in by the Customer.
- (5) In the interpretation of these Trading Conditions the singular includes the plural and vice versa; words importing one gender mean and include each other gender; and words importing corporations mean and include natural persons and vice versa.
- (6) No agent or employee of the Company has the authority to waive or vary these Trading Conditions unless the Company approves such waiver or variation in writing.
- (7) Where any provision (or part thereof) of these Trading Conditions is held by a Court to be unenforceable, it shall in no way affect or prejudice the enforceability of any other term or condition herein.
- (8) References to clauses are references to clauses in the Trading Conditions.

- (9) Headings have no effect on interpretation of the Trading Conditions.

## **TRADING CONDITIONS**

### **Nature of Services**

1. The Company carries on business, including that of an international and domestic freight forwarder, road transport and warehouse operator, customs broker., and any other business ancillary to such business. All services are provided by the Company strictly as agents only, except in the following circumstances where the Company acts as principal:
  - (1) where the Company performs any Carriage, handling or storage of the Goods, but only to the extent that the Carriage is performed by the Company itself or its servants and the Goods are in the actual custody and control of the Company, or
  - (2) to the extent that the Company expressly agrees in writing to act as a principal.
2. All Services provided by the Company are governed solely by these Trading Conditions which, shall prevail over the Customer's terms and conditions and any terms and conditions contained in any transport document including any bill of lading, waybill or consignment note except to the extent provided for in these Trading Conditions or as provided for by any mandatorily applicable law.
3. No modification, amendment or other variation of the Trading Conditions shall be valid and binding on the Company unless made in writing and duly executed by and on behalf of the Company. The Company is not a common carrier and will accept no liability as such. The Company may refuse at its sole and absolute discretion to accept any Goods for carriage without assigning any reason.

### **Acceptance of Trading Conditions**

4. (a) Any instructions received by the Company from the Customer for the supply of Services shall constitute acknowledgement by the Customer that it has received, understands and agrees to be bound by the Trading Conditions and will be bound by the Trading Conditions. Such instructions received by the Company from the Customer for the supply of Services and/or any supply of Goods shall also constitute Authorisation for the Company to act on behalf of the Customer in accordance with the Trading Conditions.  
  
(b) Any other party receiving delivery of goods or other Services from the Company, including but not limited to receivers of goods, acknowledges and agrees to be bound by the Trading Conditions and will be bound by the Trading Conditions from the time it has received delivery of goods or other services from the Company. Such party shall be deemed a "Customer" for the purposes of the Trading Conditions and shall have the same obligations as the Customer as set out in the Trading Conditions.

### **Communications with the Company**

5. Wherever it is necessary, for the purpose of these Trading Conditions or any other purpose whatever, for instructions to be given to the Company, such instruction will be valid only if given in writing, acknowledged by the Company in writing and given in sufficient time in all the circumstances for the Company reasonably to be able to adopt the instructions. Standing or general instructions, or instructions given late, even if received by the Company without comment, shall not be binding upon the Company. If the Company adopts standing or general instructions, or instructions given late, for one or more transaction for the Customer or any other party, that does not in any way affect the validity of those instructions in relation to any past and future transaction.

No attempt by the Company to adopt late instructions will constitute an acceptance by the Company or affect the validity of those instructions.

6. Notwithstanding any prior dealings between the Company and the Customer or any rule of law or equity or provision of any statute or regulation to the contrary, any contracts, documents and other matter (including cash, cheques, bank drafts and other remittances) sent to the Company through the post shall be deemed not to have been received by the Company unless and until they are actually delivered to the Company at its office address or placed in the Company's post office box, if so addressed.

#### **Ability to Appoint Agents, Sub-contractors and Third Parties**

7. The Company reserves complete freedom to decide the manner or procedure to be adopted for any or all of the various acts that will be necessary for the completion of the Services. That discretion will be varied only by instructions delivered by the Customer to the Company in writing and acknowledged by the Company in writing in sufficient time before the performance of any service to reasonably allow the Company to adopt the manner of performing the service required by the special instructions. The Company shall have no liability or responsibility by virtue of the fact that there may be a change in the rates of duty, wharfage, freight, railage or cartage, or any other tariff before or after the performance by the Company or any act involving a less favourable rate or tariff, or by virtue of the fact that a saving may have been effected in some other way had any act been performed at a different time and whether its performance of any of the acts aforesaid is delayed or precipitated through the negligence of the Company or its servants or agents or however caused.
8. Subject to and in accordance with these Trading Conditions, the Company agrees and the Customer hereby employs and authorises the Company in its discretion as agent for the Customer to contract with any person for the carriage, movement, transport or storage of the Goods or for the performance of all or any part of the Services pursuant to or ancillary to these Trading Conditions. Any such contract may be made upon the terms of contract used by the person with whom the Company may contract for the Services and may be made upon the terms and subject to the conditions of any special contract which the Sub-contractor may in any particular case require, including in every case any term that the Sub-contractor may employ any person, firm or company for performance of the Services so contracted for.

#### **Payment, Recovery of Fees and GST**

9. The Customer acknowledges that the Company has a pecuniary interest in all contracts entered into by the Forwarder as its agent in terms of these Trading Conditions and agrees that the Company may receive and retain all brokerages, commissions, allowances and other remunerations paid by the other party to the contract and customarily retained by or paid to forwarding agents, in addition to the charges and expenses invoiced to the Customer, and need not disclose to the Customer the nature or amount thereof. The Company may charge by weight, measurement or value and may at any time reweigh, remeasure or revalue the Goods (or request same) and charge additional fees accordingly.
10. Quotations are given on the basis of immediate acceptance and are subject to the right of withdrawal or revision by the Company. Quotations are valid only for the specified weight and volume ranges quoted and for the designated services and standard of services quoted. If any changes occur in the rates of freight, warehousing, statutory fees or any other charges applicable to the Goods, quotations and charges are subject to revision accordingly with or without notice to the Customer.
11. The charging by the Company of a fixed price for any Services whatsoever shall not in itself determine or be evidence that the Company is acting as an agent or a principal in respect of those services. The Company shall under no circumstances be precluded from raising a debit in respect

of any fee or disbursements lawfully due to it, notwithstanding that a previous debit or debits (whether excluding or partly including the items now sought to be charged) had been raised and whether or not any notice was given that further debits were to follow. 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.

12. Unless otherwise stated, all charges quoted are exclusive of goods and services tax.
13. All amounts due to the Company are payable in the currency which they were invoiced in. The Company is entitled to charge a currency conversion premium when converting receivables that are different to the currency they were invoiced in.
14. If any amounts payable under any agreement between the Company and the Customer (including, without limitation, amounts payable pursuant to **subclause 18(1)** or fees payable for Services provided by the Company) are not paid within seven days of the due date, the Customer will be in default and without limiting any other rights of the Company, the Customer shall pay to the Company, by way of liquidated damages, **interest at the rate of 2 per cent per month** on the amount outstanding calculated from the due date until payment is made in full. The Company may take any legal proceedings or take any action permitted under these Trading Conditions to recover amounts owing pursuant to these Trading Conditions and the Company may recover all Legal Costs and Administration Costs incurred in doing so.
15.
  - (1) The Company reserves the right to offset any amounts receivable from the Customer against any amounts payable to that Customer or any company affiliated with the Customer or any Related Company of the Customer. This right exists irrespective of the date the liability has been created or debt incurred with the Company.
  - (2) The Customer must pay any amount or amounts owing by providing the Company (or, if the right to receive the Debts has been assigned, the assignee of the Company) with cleared funds without any set-off, abatement, counter-claim, deduction or withholding whatsoever. The Customer must not claim against the Company or any such assignee any right of set-off, abatement, counterclaim or other similar rights. At the request of the Company or the assignee the Customer must sign and deliver to Company or the assignee any document which the Company or the assignee reasonably requires for this purpose.
  - (3) The Company reserves the right at its sole discretion to alter at any time its payment terms with the Customer.
  - (4) Where any amounts payable under any agreement between the Company and the Customer (including, without limitation, amounts payable pursuant to **sub clause 18(1)** or fees payable for Services provided by the Company) are not paid within 7 days of the due date, all amounts due to the Company by the Customer shall immediately and without further notice, become due and payable.

### Security Interests

16.
  - (1) **Special and General Lien:** From the time the Company, or its servants or agents, receive the Assets and Goods into its custody, the Company, its servants or agents shall have a special and general lien on the Assets and Goods and a right to sell the Assets and Goods whether by public or private sale or auction without notice, for any unpaid amounts for freight, demurrage, container detention charges, duty, fines, penalties, salvage, average of any kind whatsoever and without limitation and for any and all debts, charges, expenses or any other sums due and owing by the Customer or the Customer's

principals, servants or agents. In addition, the lien shall cover the all costs and expenses of exercising the lien, including the costs of a public or private sale or auction, including Legal Costs and Administration Costs. The lien and rights granted by this **subclause 16(1)** shall survive delivery of the Assets and Goods and the Company shall be entitled to retain the proceeds of sale of the Assets and Goods in respect of any outstanding amounts whatsoever referred to in this clause. The Customer accepts that any sums due and owing by the Customer are secured debts and that any payment made to the Company in discharge of the Company's lien does not amount to a preference, priority or advantage in any manner or turn.

- (2) The Company sells or otherwise disposes of such Assets and Goods pursuant to **subclause 16(1)** as principal and not as agent and is not the trustee of the power of sale.
- (3) Without limiting anything else in these terms and conditions, the Customer acknowledges that:
  - (a) From the time the Company, or its servants or agents, receive the Assets and Goods into its custody, the Assets and Goods, and all of the Customer's present and future rights in relation to the Assets and Goods, are subject to a continuing security interest in favour of Company for the payment of all amounts for freight, demurrage, container detention charges, duty, fines, penalties, salvage, average of any kind whatsoever and without limitation and for any and all debts, charges, expenses or any other sums due and owing by the Customer or the Customer's principals, servants or agents. In addition, the continuing security interest shall cover the all costs and expenses of exercising the lien, including the costs of a public or private sale or auction, including Legal Costs and Administration Costs.
  - (b) these terms and conditions will apply notwithstanding anything, express or implied, to the contrary contained in any purchase order (or Its equivalent, whatever called) of the Customer; and
  - (c) the Security Interest shall continue until the Company gives the Customer a final release.
- (4) The Customer undertakes to:
  - (a) promptly do all things, sign any further documents and/or provide any information which the Company may reasonably require to enable the Company to perfect and maintain the perfection of its Security Interest (including by registration of a financing statement);
  - (b) give the Company (addressed to the Financial Controller or equivalent) not less than 14 days' prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including, but not limited to, changes in the Customer's address, facsimile number, trading name or business practice).
- (5) The Customer waives its right to receive a verification statement in respect of any financing statement relating to the Security interest.
- (6) To the extent permitted by law, the Customer and the Company contract out of:
  - (a) section 114(1)a of the PPSA; and
  - (b) the Customer's rights referred to in sections 107(2)c), (d), (h) and (i) of the PPSA.
- (7) The Customer agrees that the Security Interest has the same priority in relation to all amounts forming part of the Amount Owing, including future advances.

- (8) If an Event of Default occurs:
- (a) the Company may suspend or terminate any contract;
  - (b) the Amount Owing shall immediately become due and payable notwithstanding that the due date has not arisen;
  - (c) the Company may enforce the Security Interest; and
  - (d) the Company may (without the consent of the Customer) appoint a receiver in respect of any Goods and any receiver is authorised to do anything referred to in these terms and conditions and otherwise to exercise all rights and powers conferred on a receiver by law.
- (9) The Customer agrees that, at any time after an Event of Default has occurred and is continuing or at any time if any Goods are at risk, the Company may:
- (a) take possession of any Goods; and/or
  - (b) sell or otherwise dispose of any Goods,
- in each case in such manner and generally on such terms and conditions and conditions as it thinks fit, and, in each case, otherwise do anything the Customer could do in relation to those Goods. The Company and the Customer agree that section 109(1) of the PPSA is contracted out of in respect of particular Goods if, and only for so long as, the Company is not the secured party with priority over all other secured parties in respect of those Goods. As the Customer's agent, the Company (and its employees and agents) may, without prior notice, enter any land or premises where the Goods are kept in order to take possession of and/or remove them, without being responsible for any damage caused in doing so. The Customer agrees to procure all other rights (including consents) necessary to enable, and to indemnify the Company (and its employees and agents) against any liability incurred in connection with, such entry, taking of possession and removal. The Company may resell any of the Goods and apply the proceeds of sale in reduction of the Amount Owing.
- (10) **Custody and Possession:** For the purposes of these Trading Conditions, and in particular **subclauses 16(1) and 16(3)**, the Company shall be deemed to have custody and possession of the Assets and Goods whether the Assets and Goods are in the actual physical custody and possession of the Company or of any subcontractors, servants or agents, and whether or not the Company is in possession of any documents of title relating to the Assets and Goods. The Customer and the Company agree that the Company has possession of the Assets and Goods within the meaning of section 18 of the PPSA, even if the Assets and Goods are in the possession of the Company's subcontractors, servants or agents.
- (11) **Confidentiality:** The Customer and the Company agree not to disclose information of the kind mentioned in Section 177(1) of the PPSA. Nothing in this **subclause 16(11)** will prevent any disclosure by the Company that it believes is necessary to comply with its other obligations under the PPSA or any other law.

### Warranties and Indemnities by the Customer

17. (1) The Customer (on behalf of itself, the consignor and the consignee) warrants to the Company that:

- (a) it will provide all documents, information and assistance required by the Company to comply with the requirements of the Government Authorities in an accurate and timely fashion as required by those Government Authorities;
- (b) it will retain all documents or records in the manner required by the Government Authorities;
- (c) it will observe all provisions of any Government Authority;
- (d) it will keep all and any information provided by the Company or any person acting on its behalf confidential save as where, the Company grants its permission to the customer to disclose such information or where, the disclosure of such information is required by law;
- (e) it has complied with all laws and regulations of any Government Authority relating to the nature, condition, packaging, handling, storage and carriage of the Goods;
- (f) the Goods are packed to withstand ordinary risks of handling storage and carriage, having regard to their nature;
- (g) the Goods are not Dangerous;
- (h) the Goods will not damage or cause loss to the Shipping Containers, other goods, or other equipment;
- (i) the Goods and their carriage do not contravene any Laws;
- (j) the Customer is the legal owner of the Goods or legally entitled to authorise their carriage;
- (k) if the Customer acts for or on behalf of another party, that:
  1. no claim will be made against the Company by any third party; and
  2. in the event that a claim is made against the Company by an entity other than the Customer, that these Trading Conditions are enforceable against that party.

(2) The Customer acknowledges that a breach or failure to observe all or any of the warranties in **subclause 17(1)** could lead to penalties or damages to the Customer and also to the Company and the Customer agrees to provide the indemnity to the Company on account of such penalties or damages pursuant to **clause 18**.

18. (1) Without limiting the effect of these Trading Conditions, the Customer agrees to indemnify and keep indemnified the Company for:
- (a) amounts of Customs Duty, GST and other payments made to Government Authorities by the Company on behalf of the Customer;
  - (b) any penalties payable by the Company (pursuant to a Court order or pursuant to an Infringement Notice) due to the Customer:
    - (i) providing information that is incorrect or misleading;
    - (ii) omitting to provide material information required to the Government Authorities;

- (iii) providing information in a manner which does not enable the Company to comply with the requirements of the Government Authorities for reporting in prescribed periods; and
  - (iv) failing to provide information or documentation requested by the Company;
- (c) penalties associated with the failure by the Customer to maintain or provide its documents or records in the manner and at the time contemplated by the Government Authorities;
  - (d) penalties associated with providing misleading or deceptive information regarding the status of Goods, whether pursuant to the Fair Trading Act 1999, the Consumer Guarantees Act 1993 or other legislation;
  - (e) all costs and liabilities, including charges payable by the Company for the use of Shipping Containers or transport equipment involved in Carriage as set out in the contract between the Company and the owner, lessee or operator of that Shipping Container or other transport equipment;
  - (f) all hire and other charges for the Customer's use of Shipping Containers or other transport equipment provided by the Company pursuant to the Company's contracts with the owner, lessee or operator of that Shipping Container or other transport equipment;
  - (g) liabilities or costs incurred by the Company on behalf of the Customer associated with the transport of Goods including, without limitation, amounts payable pursuant to the Company's contracts with other parties, for damage to or cleaning of Shipping Containers and other transport equipment (whether Sub-Contractors or otherwise and amounts incurred by the Company in exercising its rights pursuant to these Trading Conditions);
  - (h) damages payable by the Company arising from or contributed to by errors or misrepresentations by the Customer;
  - (i) losses and liabilities, including damages payable by the Company due to a breach of any of the warranties in this **subclause 18(1)**;
  - (j) all expenses directly or indirectly incurred arising out of or in connection with the entry of an officer of any Government Authority or other authorised person on the premises of the Company for the purpose of exercising any powers pursuant to the requirements of any Government Authority and/or inspecting, examining, making copies of, taking extracts of documents on the premises;
  - (k) any Customs Duty, GST or other charge assessed against the Company in relation to the Goods or Services;
  - (l) any charges levied by Government Authorities for examination and treatment of the Goods; and
  - (m) any Legal Fees and Administration Costs incurred by the Company (calculated on a solicitor/client basis).
- (2) The Customer agrees to pay any amounts claimed pursuant to the indemnity in **subclause 18(1)** within 7 days of demand by the Company.
  - (3) The nature of the indemnity provided pursuant to **subclause 18(1)** will include, without limitation, all penalties, liabilities and damages assessed against the Company and its officers and employees, together with all Legal Costs and Administration Costs incurred

by the Company (calculated on a solicitor/client basis). The indemnity shall continue in force and effect whether or not the Goods have been pillaged, stolen, lost, damaged or destroyed and shall not be affected in any way if such pillaging, stealing, loss, damage or destruction has occurred or been brought about wholly or in part by the negligence or the alleged negligence or any default, omission, neglect or default or any breach of duty of obligation of the Company, its servants or agents.

- (4) The Company may execute all or any of its rights pursuant to **clause 16** to recover any amounts owing pursuant to this **clause 18**.
- (5) Without limiting the effect of sub clauses 18(1)(e) and 18(1)(f), and notwithstanding any agreement, contract or understanding the Company may have with the owner, lessee or operator of any Shipping Container, the Customer agrees and acknowledges that the Customer is liable to pay all hire and other charges to the Company at the prevailing Company day rates, as set out in the Company's Day Rate Schedule.
- (6) The Company, at its absolute discretion may elect to unpack the goods from any Shipping Container and make any goods (in whole or in part), available for collection by the person entitled to collect the goods in lieu of releasing the Shipping Container to any such person. The Company may undertake such election if it has grounds to believe Shipping Container charges may be incurred for any reason, or in circumstances where a person has refused to sign the Company's equipment release agreement. The Customer will be liable for all costs and liabilities incurred by the Company in unpacking the goods from the Shipping Containers.

### **Customer's Responsibility**

19. (1) The Customer shall be liable for and shall indemnify the Company against all loss, damage, delay, fines, Legal Fees and Administration Costs and/or expenses arising from any breach of any of the Customer's warranties in these Terms and Conditions or from any other cause whatsoever in connection with the Goods for which the Company is not responsible, including (but not limited to) any penalties or losses caused by any mis-description, overloading, inadequate packing, lashing or securing of Goods.
- (2) If Shipping Containers or other equipment are supplied by or on behalf of the Company are unpacked by or for the Customer, the Customer is responsible for returning the empty Shipping Containers or other equipment, with interiors clean, odour free and in the same condition as received, to the point or place designated by the Company, within the time prescribed by the Company. Should a Shipping Container or other equipment not be returned in the condition required, the Customer shall be liable for any loss or expense incurred as a result thereof. In addition the Customer is also liable for any charges set out in the Company's Day Rate Schedule relating to the use of the equipment as prescribed in the Company's Day Rate Schedule.
- (3) Shipping Containers, transport equipment and other equipment released into the care of the Customer for carriage, packing, unpacking, storage or any other purpose whatsoever are at the sole risk of the Customer until redelivered to the Company. The Customer shall be responsible for and indemnifies the Company for all loss of and/or damage to such Shipping Containers and other equipment.

### **Insurance**

20. (a) Insurance of the Goods is the responsibility of the Customer.
- (b) The Company will arrange insurance as the agent of the Customer, but only if there is an express written agreement to do so between the Customer and Company. The insurance will

be on the terms and conditions of the Company's marine open cargo policy. The full policy wording is available on request and will in any event be provided to the Customer once the insurance has been placed. The Company makes no representations and gives no advice regarding any aspect of the policy, including as to the suitability or appropriateness of the policy for the Customer's requirements, the policy's terms, conditions and exclusions, or as to the competitiveness of the premium. The Customer warrants that it relies entirely on its own skill and judgment in accepting the policy on the terms offered.

(c) In the event of a claim the Customer shall have recourse solely against the insurer and the Company shall not be under any responsibility or residual liability to or in relation to the Customer for the loss of or damage to any of the Goods or the failure of the policy to meet a claim in respect of the same.

(d) The Customer acknowledges and agrees that the premium invoiced by the Company will include a fee component for the service the Company provides in securing insurance for the Customer, and that the Company is under no obligation to separately identify the fee component.

### **Storage and Transport**

21. Subject to express instructions in writing given by the Customer and accepted by the Company in writing (and without limiting the generality of **clauses 7 and 8**), the Company reserves to itself complete freedom to decide upon the means, route and procedure to be followed in the handling, storage and transportation of the Goods and is entitled and authorised to engage Sub-contractors to perform all or any of the functions required of the Company upon such terms and conditions as the Company in its absolute discretion deems appropriate.
- (1) The Customer agrees that the value of the Goods shall not be declared or inserted in a Bill of Lading or a sea carriage document for the purpose of extending a ship or carrier's liability under the Maritime Transport Act 1994 except upon express instructions given by the Customer and acknowledged in writing by the Company.
  - (2) In the case of carriage by air, no option or declaration of value to increase air-carrier's liability under Article 22(2) of the First Schedule to the Civil Aviation Act 1990 will be made except on express instruction given in writing by the Customer.
  - (3) In the case of carriage by land, or any carriage ancillary to the carriage mentioned above, the Company's liability will be at limited carrier's risk in accordance with the Carriage of Goods Act 1979.
  - (4) The Company shall have no obligation to take any action in respect of any Goods that may be recognisable as belonging to the Customer unless it has received suitable instructions relating to such Goods together with all necessary documents. In particular, the Company shall not be obliged to notify the Customer of the existence or whereabouts of the Goods or to examine them or to take any other steps for their identification, protection or preservation or for the preservation of any claim by the Customer or any other party against the carrier, insurer or any third party.
  - (5) All freight moved by air is subject to volumetric conversion on the basis of one kilo being the equivalent of six thousand cubic centimetres. Freight moved by other means is subject to volumetric conversion on the basis of relevant industry standards or as modified by the carrier's standard trading conditions.
22. To the extent that the Company acts as an agent, the Company does not make or purport to make any contract with the Customer for the carriage, storage or handling of the Goods nor for any other Service in relation to them and acts solely on behalf of the Customer in securing such services by establishing contracts with third parties so that direct contractual relationships are established between the Customer and such third parties, and not the Company.

23. The Company shall not be liable for the acts and omissions of the third parties referred to above.

**Perishable, Non-deliverable, Hazardous and Damaged Goods**

24. Where the Goods are perishable and are not taken up immediately upon arrival or are insufficiently or incorrectly addressed or marked or otherwise not identifiable, they may be sold or otherwise disposed of with or without notice to the Customer, consignor, owner or consignee of the Goods and payment or tender of the net proceeds of any sale after deduction of all costs, expenses and charges incurred by the Company in effecting such sale or disposal shall be equivalent to delivery.
25. Where the Goods are non-perishable and cannot be delivered either because they are insufficiently or incorrectly addressed or marked or otherwise not identifiable or because they are not collected or accepted by the consignee or where they cannot be delivered due to the non-surrender of the original bill of lading or failure to make any required payment, they may be sold or returned at the Company's option at any time after the expiration of 7 days from a notice in writing sent to the Customer at the address which the Customer gave to the Company on delivery of the Goods. All costs, charges and expenses incurred by the Company and arising in connection with the sale or return of the Goods shall be paid by the Customer and may be deducted from the proceeds of the sale of the Goods. A communication from the Company or its agent to the effect that the Goods cannot be delivered for any reason shall be conclusive evidence of that fact.
26. In respect of **clauses 24 and 25** above, the Company sells or otherwise disposes of such Goods as principal and not as agent and is not trustee of the power of sale.
27. In the event that any sale of Goods pursuant to **clauses 24 and 25** does not provide sufficient proceeds to discharge all liability of the Customer to the Company, the Customer acknowledges that it is not released from the remainder of the liability to the Company merely by sale of the Goods.
28. In the event that the Goods are found to be Dangerous or are Goods likely to cause damage they may be destroyed or otherwise dealt with at the sole discretion of the Company or any other person in whose custody they may be at the relevant time. If such Goods are accepted under arrangements previously made in writing they may nevertheless be destroyed or otherwise dealt with if they become dangerous to other goods or property. The expression "Goods likely to cause damage" includes Goods likely to harbour or encourage vermin or other pests.
29. Deliberately omitted.
30. If the Goods are landed from any vessel in a damaged or pillaged condition and an examination might be held or other action taken by the Company in respect thereof no responsibility attaches to the Company for any failure to hold such examination or take such other action unless the Company has been given sufficient notice to enable it to arrange for such examination or for the taking of such other action as the case may be.

**Storage of Goods pending delivery**

31. Without limiting the effect of **clause 21**, pending forwarding and delivery, the Goods may be warehoused or otherwise held at any place or places at the sole discretion of the Company at the Customer's risk and expense.

**Collect on Delivery Goods**

32. The Company may in its absolute discretion refuse instructions to collect on delivery (COD) in cash or otherwise. Where the Company does accept such instructions its only obligation to the Customer is to use reasonable diligence and care in such collection. The Company is not liable for any loss or damage arising from such instructions or such collection whether caused by negligence or otherwise.

### Limitation of Liability, Force Majeure and Indemnity from Liability to Third Parties

33. Without limiting the effect of **clause 18**, to the full extent permitted by law, the Company its servants and agents shall not be responsible for loss or damage of any kind whatsoever or howsoever arising out of the provision of its Services to the Customer (whether caused by negligence or wilful default by the Company its servants, agents or any third party). The Customer further agrees to indemnify the Company in respect of any claims made by any party, including but not limited to any sub-contractor or third party concerning the provision of Services by the Company. The following matters are expressly covered by this limitation of liability and indemnity:
- (1) any liability to pay amounts to Government Authorities (including, without limitation, Customs Duty or GST) that would not have otherwise been payable including any penalties (including penalties imposed directly on the Company, its servants or agents as a result of their reliance on incorrect information provided by the Customer, consignor or consignee of the Goods, or their respective agents whether imposed by Court or Infringement Notice);
  - (2) any liability concerning the making of any statement, forecast, information or giving advice in relation to the liability of the Customer to pay any amounts owing to any Government Authorities;
  - (3) any liability in respect of the loss, misdelivery, deterioration, non-delivery, contamination, evaporation or damage to the Goods or consequential loss arising therefrom however caused;
  - (4) any loss or depreciation of market value attributable to delay in forwarding the Goods or failure to carry out instructions of the Customer;
  - (5) loss, damage, expense or additional cost arising from or in any way connected with marks or brands on, weight, numbers, content, quality, description of the Goods;
  - (6) loss or damage resulting from fire, water, explosion or theft;
  - (7) loss, damage or delay occasioned by examination of the Goods by any of the Government Authorities;
  - (8) loss, damage or delay occasioned by treatment of the Goods by any of the Government Authorities (including without limitation, any fumigation or decontamination or other treatment);
  - (9) any costs incurred by the Company on behalf of the Customer to any other person in relation to the carriage of the Goods;
  - (10) loss, damage or delay occasioned by delay in the carriage of the Goods or handling of the Goods in the course of the carriage of the Goods; and
  - (11) any loss, damage or any amount due in respect of any Shipping Containers, any other transport equipment, Goods or other equipment.
34. The Customer undertakes and warrants that neither it, nor any other party that has an interest in the Goods or Services, shall bring any claims against any party that has provided all or any part of the Services (including any Sub-contractor, principal, employer, employee or agent of the Company) and where any such claims are made by the Customer or any other interested party, the Customer undertakes to indemnify all parties against whom the claims are made (including the Company) against any loss and damage that may be suffered as a result of such claims. In the event that the Company in its absolute discretion pays a claim made by a third party in relation to the Goods or the Service, the Customer shall indemnify the Company on demand in full and the Company may recover all Legal Costs and Administration Costs incurred in doing so from the Customer.

35. The Company shall not be liable in any event for any special, incidental, or consequential damages, including, but not limited to, loss of profits, income, utility, interest, or loss of market, whether or not the Company had knowledge that such damage might be incurred.
36. (1) No liability by the Company will arise to the Customer or third parties, including those persons with an interest in the Goods, in respect of the release by the Company of a delivery order (or the delivery of the Goods by the Company) to any person who is entitled to that delivery order or delivery, whether or not a duly executed original bill of lading has been presented to the Company. The Customer agrees to indemnify and keep the Company indemnified for all damages payable by the Company in relation to the said release by the Company of a delivery order (or the delivery of the Goods by the Company).
- (2) Where the Company for whatever reason releases any Shipping Container or goods to the customer where the Company has not been presented with a duly executed and endorsed original bill of lading for those goods, the customer agrees to indemnify and keep the Company indemnified for all and any loss or damage whatsoever and howsoever arising that may be payable by the Company in relation to the release of such goods. Payment by the Company upon demand from the consignor arising out of the release shall be sufficient for the Company to recover from the Customer. Further, the Customer shall not be entitled to any offset for any money owed to it by the consignor. If any proceedings are commenced against the Company by a third party, the customer will forthwith agree to take over and defend any such action on the Company's behalf.
37. The Company and Customer acknowledge that Goods moving by airfreight are subject to the applicable international treaties including the Convention for the Unification of Certain Rules relating to International Carriage by Air, signed in Montreal in 1999 (Montreal Convention). If Goods are lost or damaged while in the possession of the airline carrier, the airline carrier's liability is limited to the maximum amounts of liability applicable at any time, as set out in the Montreal Convention with subsequent increases.. However, if any mandatory applicable laws provide for different limits of liability, those different limits will apply. The Customer's recovery of any loss or damage is against the airline carrier and is limited in accordance with these or any other conventions that may be applicable. In the event of any loss or damage suffered by the Customer whilst the Goods are in the possession of the airline carrier, the Company will seek to recover on behalf of the Customer from the principal airline carrier amounts payable by these conventions as they are applicable. The Customer will indemnify, defend and hold the Company harmless against any claims for loss or damage to their Goods incurred whilst they were in the possession of the airline carrier.
38. The Company and Customer acknowledge that Goods moving by seafreight are subject to the applicable international treaties including the International Convention for the Unification of Certain Rules relating to Bill of Lading signed at Brussels on August 25, 1924 (the Hague Rules), or those rules as amended by the Protocol signed at Brussels on February 23, 1968 (the Hague Visby Rules) and the SDR Protocol (1979). However, if any mandatory applicable laws provide compulsorily for different limits of liability, those different limits will apply. The Customer's recovery of any loss or damage is against the seafreight carrier and is limited in accordance with these or any other conventions that may be applicable. In the event of any loss or damage suffered by the Customer whilst the Goods are in the possession of the seafreight carrier, the Company will seek to recover on behalf of the Customer from the carrier amounts payable by these conventions as they are applicable. The Customer will indemnify, defend and hold the Company harmless against any claims for loss or damage to their goods incurred whilst they were in the possession of the seafreight carrier.
39. The Company and Customer acknowledge that Goods moving by airfreight or seafreight may necessary involve a part of transport undertaken by other means in order to comply with the terms of carriage under this or any contract between the parties. Where this is so, and no international treaty is applicable which covers the additional transport, the Customer's recovery

of any loss or damage is against the carrier and is limited in accordance with the convention applicable for the majority of the transport, even where that convention does not envisage liability of the kind of transport concerned. In the event of any loss or damage suffered by the Customer whilst the Goods are in the possession of a third party carrier, the Company will seek to recover on behalf of the Customer from the carrier amounts payable by these conventions as they are applicable. The Customer will indemnify, defend and hold the Company harmless against any claims for loss or damage to their Goods incurred whilst they were in the possession of the third party carrier, where such carriage was necessary in order to comply with the terms of the contract.

40. The Company shall not be liable to the Customer for any breach or failure to perform its obligations under these Trading Conditions or any damage or loss to Goods resulting from one of the following:
- (1) perils, dangers and accidents of the sea or other navigable waters;
  - (2) act of God;
  - (3) act of war;
  - (4) act of public enemies;
  - (5) arrest or restraint of princes, rulers or people, or seizure under legal process;
  - (6) strikes or lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general;
  - (7) riots and civil commotions;
  - (8) saving or attempting to save life or property at sea;
  - (9) any other Force Majeure Event; or
  - (10) any other cause arising beyond the reasonable control of the Company, without the actual fault or privity of the Company and without the actual fault or privity of the agents or servants of the Company.

If the occurrence of any event contemplated in this **clause 40** causes a delay of over 21 days in any obligation of the Company, then the provision of Services may be terminated by notice in writing by either party to the other party.

41. Any claim made against the Company, its servants or sub-agents is limited to the full extent permitted by law, where that liability has not been expressly excluded or limited by any convention, statute, law or contract. To the extent that the liability of the Company is limited by any convention, statute, law or contract, and that limitation exceeds the limitation of liability pursuant to these Trading Conditions then the liability pursuant to that convention, statute, law or contract shall apply.
42. (1) In all cases where these Trading Conditions, statute, international convention or otherwise do not exclude the liability of the Company, the liability of the Company whatsoever and howsoever caused shall be limited to whichever is the lesser between the value of the Goods the subject of the Agreement at the time the Goods were delivered to the Customer or NZ\$500.
- (2) The liability of the Company arising out of any one incident not occurring during, and is not ancillary to, transport or storage, whether or not there has been any declaration of value of the Goods, for breach of any guarantees implied into these Conditions by the Consumer Guarantees Act 1993 or howsoever arising, is limited to any of the following as determined by the Company:
- a) the supplying of the Services again; or
  - b) the payment of the cost of having the Services supplied again; or

- c) or the value of the Goods the subject of these Trading Conditions at the time the Goods were received by the Company.

#### **Notification of Damage and Time Bar**

43. Any claim for loss or damage must be notified in writing by registered mail to the Company's registered address within seven days of delivery of the Goods or within seven days from when the Goods should have been delivered, failing which the Goods shall be deemed to have been delivered in good order and condition. In any event, the Company shall be discharged from all liability whatsoever and howsoever incurred in connection with the Services and/or the Goods unless proceedings are served within nine months from delivery of the Goods (or within 9 months from when the Goods should have been delivered). The Company wholly contracts out of section 19(2) of the Carriage of Goods Act 1979.

#### **Guarantee by Directors and Shareholders**

44. (1) If the Customer is a company, the directors and shareholders of that company will guarantee the Debts and indemnify and keep indemnified the company against the Debts.
- (2) For the purposes of **subclause 44(1)**, the Customer will ensure that its directors and shareholders will sign any other documents required by the Company to evidence and confirm any guarantee and indemnity.