

## TERMS AND CONDITIONS OF TRADE

The following terms and conditions alone shall apply to and shall govern all contracts entered into by Charter for the provision of Services by Charter, provided however that:

- a) If there is any inconsistency between these Terms and Conditions and the terms and conditions contained in any other document issued by or on behalf of Charter in connection with the particular Services (which terms and conditions are hereby incorporated in these Terms and Conditions for the purposes of that particular contract), then these Terms and Conditions will prevail; and
- b) If any such other document referred to in paragraph (a) above deals with any matter not dealt with in these Terms and Conditions, the provisions of that other document dealing with those matters not dealt with in these Terms and Conditions shall apply to the Services provided by Charter.

These Terms and Conditions are subject only to any mandatory contrary provision of law and shall be read and construed as valid and enforceable except to the extent of such mandatory contrary provision. Sections 6-10 Contractual Remedies Act 1979 are hereby excluded.

### Definitions

**Carriage** means the carriage, storage, dispatch, forwarding, packing, unpacking or handling of Goods, the provision of any container packing or unpacking service, and any Service related or ancillary to any of the foregoing.

**Charter** means Charter Trucks (2008) Limited (trading as Charter Transport and Charter Rentals) and includes any related, associated or subsidiary companies of Charter Trucks (2008) Limited.

**Charges** mean Charter's charges for providing the Services.

**Customer** means the person, company or entity who contracts with Charter for the provision of Services.

**Goods** means all goods or products held by Charter for the Customer for the purpose of performing any of the Services, or which are the subject of Services provided by Charter.

**Premises** means any warehouse or other building or storage area which Charter may use from time to time

**Services** includes without limitation, all services and activities carried out by Charter on the Customer's behalf, and includes all incidental or indirect services and activities.

### Interpretation

- (a) Headings are for convenience only and shall not affect the interpretation of this agreement
- (b) The singular includes the plural and vice versa
- (c) A gender includes all genders

- (d) Any reference to a natural person includes bodies corporate and unincorporate, partnerships, trusts, local or public authorities and any other entities or combinations thereof
- (f) References to 'dollars' and '\$' are references to New Zealand currency
- (g) References to any statute or regulation will with all necessary modifications apply to any modification or re-enactment of that statute or regulation
- (h) References to the Customer and Charter or either of them include their respective successors and permitted assigns

### **Services**

- 1 Charter agrees to carry out such Services for the Customer as Charter and the Customer have mutually agreed. All such Services shall be carried out solely on the Terms and Conditions herein.
- 2 Charter carries on business as a provider of warehousing, distribution, freight forwarding, domestic carriage and vehicle hire services (vehicle hire services may also include the hire of the vehicle driver). In providing such Services Charter is an agent only for the Customer and/or the owner of Goods. Services may include the Carriage of Goods, it is acknowledged that Charter is not a common carrier and reserves the right in its absolute discretion to refuse the Carriage of Goods or any class of Goods for any person. Further, Charter is an agent only for the Customer and/or the owner of the Goods. Charter is not the actual carrier unless the Goods are carried on a conveyance owned or operated by Charter, and the obligations of Charter are limited to arranging Carriage of the Goods by a reputable carrier. The Goods are carried at the Customer's risk and the Customer authorises Charter to act as its agent to arrange on any terms the Carriage of Goods by any subcontractor and to enter into the terms and conditions in a transport document on behalf of the Customer.
- 3 Notwithstanding the provisions of clause 2 above, where a vehicle (whether or not with a driver employed by Charter) is hired by a Customer from Charter, Charter is neither the contracting carrier nor the actual carrier in respect of any goods carried by that vehicle. Such vehicle, while on hire to the Customer, shall operate at the Customer's direction and for such purposes any driver shall (if an employee of Charter) shall be deemed to be an agent of the Customer. All the Terms and Conditions herein shall be read consistently with this clause 3 where a vehicle hire is involved.
- 4 Unless otherwise instructed, Charter may adopt any means, mode, route or procedure whatsoever for the Carriage of Goods. Charter will give priority to any instructions of the Customer in relation to the means, mode, route or procedure but if such cannot in Charter's reasonable opinion be conveniently adopted the Customer shall be deemed to authorise Charter to carry or have the Goods carried by such other means, mode, route or procedure as Charter determines in its discretion.
- 5 The Customer expressly warrants to Charter that it is either the owner or authorised agent of the owner of the Goods and by entering into this contract the Customer accepts these Terms and Conditions for and on behalf of itself and all other persons having an interest in the Goods and expressly indemnifies Charter against any delay in delivery, failure to produce, misdelivery or non delivery arising out of or incidental to the Carriage of the Goods or any consequential or indirect loss arising in connection therewith.

- 6 The Customer agrees to indemnify Charter against any claim or allegation made against it by any person in connection with any liability arising out of or relating to the Goods or the provision of Services in respect of the Goods.
- 7 Goods belonging to the Customer may at any time and from time to time be held at any Premises and may at any time and from time to time be removed from any Premises at which they are being held to any other Premises at Charter's sole discretion and in every case at the Customer's risk and expense.
- 8 All Services will be invoiced to the Customer in accordance with Charter's tariff and charges in force from time to time or as agreed. Payment shall be made by the Customer within such period of time as has been agreed between Charter and the Customer; and shall be made in full, without any deduction or set-off whatsoever. The Customer acknowledges that any third party charge incurred by Charter on the Customer's behalf will, even if described as a disbursement or similar, be invoiced to the Customer with Charter's handling fee included. The Customer agrees that the handling fee need not be separately identified.
- 9 If any amount invoiced to the Customer has not been paid within seven days of the due date for payment the Customer will be in default and, whether or not any demand has been made by Charter the Customer shall pay interest on the amount outstanding at the rate of 5% above Charter's bank overdraft rate from time to time, calculated daily from the due date of the payment until payment has been made in full, whether or not Charter is at any material time in overdraft.
- 10 Notwithstanding any indication that any Services are to be paid for by another person, the Customer shall remain responsible for all payments and charges whatsoever which be or become ascertained and payable in connection with the Services including, without limitation, any applicable costs of freight, insurance, salvage, storage and the like, and any costs of collection incurred by Charter .
- 11 Charter shall have a general possessory lien upon all Goods (which in this Clause shall include any documents relating to those Goods) of the Customer whatsoever that are in the possession or under the control of Charter until all accounts due to Charter by the Customer, consignee or owner of such Goods are paid in full (including, without limitation, all costs and expenses incurred by Charter in recovery or enforcing payment thereof). Where such payment is not made before such Goods (whether or not they are the subject of an overdue account) would be delivered or otherwise dealt with in the ordinary course then such Goods may be detained by Charter and Charter shall have the right to sell all or any of the Goods by public auction or private treaty without notice to the Customer and to apply such part of the proceeds of the sale as are necessary to satisfy the unpaid accounts (including all costs of detaining and selling the Goods).
- 12 In relation to Carriage of Goods, when Goods have been loaded and carried any distance, freight shall be deemed to have been earned whether or not the Goods are delivered to the addressee and whether damaged in any way or otherwise. Under no circumstances will any freight be refunded.
- 13 Any dates or times specified for departure or arrival at the point of delivery or collection, or for the performance of any Services by Charter are estimates only and shall not be binding on Charter.
- 14 Any claim for loss or damage must be notified to Charter in writing within seven days (time being of the essence) of delivery of the Goods or the date upon which the Goods should have been delivered or the date on which the Goods are or

should have been collected by the Customer, as the case may be, failing which Charter shall be discharged from all liability howsoever arising.

- 15 Charter shall in any event be discharged from all liability unless suit is filed and served on it within nine months after completion of the Services, delivery of the Goods or the date when the Goods should have been delivered, or the date when the Goods are or should have been collected by the Customer, whichever occurs first. Charter hereby expressly contracts out of the operation of section 19 of the Carriage of Goods Act 1979 including, without limitation, section 19(4) of that Act.
- 16 To the maximum extent permitted by law:
- (a) Charter shall not be liable whether in negligence, any other tort or in contract or on any other basis whatsoever for:
- (i) Any loss or destruction of or damage to the Goods (including, without limitation, any deterioration, contamination or evaporation of any chilled, frozen, refrigerated or perishable Goods either in transit or in storage); or
  - (ii) Any non-delivery, mis-delivery, delay in delivery of, or failure to produce the Goods; or
  - (iii) Any advice, representation, information (not being a quotation, advice, etc to which paragraph (c) of this clause applies), any assistance, or any Service of any kind provided in any form by or on behalf of Charter in the course of or in connection with the Goods; or
  - (iv) Any consequential or indirect loss whatsoever arising from or in connection with any of the matters or things referred to in 16(i), (ii) or (iii) above (including, without limitation, loss of profit or loss of market), in any circumstances and for any reason whatsoever and whether or not occurring in the course of events which are at any time in the contemplation of or foreseeable by the Customer and/or Charter, and whether or not caused by the negligence, default or misconduct of Charter or by any other cause (whether known or unknown) whatsoever.
- (b) Charter shall not under any circumstances be liable in any way for any loss, damage, cost or penalty sustained or incurred by the Customer, the owner of the Goods or any other person resulting from or in connection with any quotation, advice, prediction, forecast, statement, representation or information given or made by or on behalf of Charter (whether negligently or otherwise and whether verbally or otherwise and howsoever, wheresoever and to whomsoever) as to liability of the Goods for customs duty, excise duty or any other impost or tax or as to the particular tariff or classification applicable thereto under any legislation imposing or concerning customs duties, excise duties, tariffs or any other impost or tax. In giving or making any such quotation, advice, prediction, forecast, statement, representation or information, Charter relies solely on the information provided by the Customer who warrants that the information provided by it to Charter accurately and completely describes all aspects of the Goods and the transaction or transactions relating to the acquisition, sale, importation and/or export of the Goods.
- (c) In all cases where liability has not been effectively excluded, whether by this agreement or by statute, Convention or otherwise, the total liability of Charter to the Customer or to any other person shall be limited to the lesser of:
- (i) \$100;

- (ii) the value of the Goods at the time the Goods were received by Charter ;
  - (iii) a resupply of the Goods or payment of the cost of resupplying the Goods;
  - (iv) in any case to which the Carriage of Goods Act 1979 applies, Charter 's liability shall at "limited carrier's risk" and the amount of such liability shall be calculated accordingly.
- 17 All customs duty, excise duty, costs, expenses and penalties which Charter becomes liable to pay for any reason whatsoever in respect of or in connection with the Goods and any documents relating to the Goods pursuant to any legislation governing customs and/or excise or the importation, export or Carriage of Goods shall be paid by the Customer (whether or not such customs duty, excise duty costs, expenses or penalties arise directly or indirectly from or in connection with the negligence of Charter or otherwise). If it is necessary to make customs entry of Goods at any place, the Goods shall be deemed to be consigned at that place to the Customer, Charter or any person Charter designates as Customs Consignee.
- 18 None of Charter, its subcontractors or the officers, employees and agents of Charter and its subcontractors shall be liable for any accident, injury, death, damage or loss to any Goods, machinery, persons or property arising from the use of any vehicle, cargo handling appliances or other equipment and will use such vehicle, appliances and equipment at the sole risk of the Customer. The Customer shall indemnify each entity and person identified in the preceding sentence against all claims, loss, damages and expenses arising from or in connection with the use of such vehicle, appliances and equipment whether due to the negligence, misconduct or wilful default of or by any officer, employee, agent or subcontractor of Charter or otherwise. This indemnity shall not however apply in respect of any claim, loss, damage or expense of or by any officer, employee, agent or subcontractor of Charter where such claim, loss, damage or expense arises from the negligence, misconduct or wilful default of or by that officer, employee, agent or subcontractor of Charter .
- 19 The Customer warrants that it has complied with and undertakes that it will continue to comply with all laws, customs, conventions, codes and other regulations relating to the nature, condition, packaging, handling, storage and Carriage of the Goods and that the Goods are packed to withstand the ordinary risks of handling, storage and Carriage, having regard to their nature and indemnifies Charter for all liability and for all costs incurred as a result of or arising out of a breach of this warranty. Further, the Customer shall provide to Charter all such assistance, information, descriptions, valuations and documents as may be necessary or prudent to enable Charter to comply with such laws, customs, conventions, codes and regulations in a timely manner. The expenses and charges of Charter in complying therewith and with the requirements of any harbour, dock, airport, railway, shipping, customs, warehouse or other authority shall be paid by the Customer.
- 20 Charter shall not insure the Goods for the benefit of the Customer or the owner of the Goods except upon receipt of express written instructions from the Customer or the owner of the goods (including a signed declaration as to the value and nature of the Goods) and at the expense of the Customer or owner and any such insurance effected by Charter may be subject to such exceptions and conditions as may be required by the insurance company or underwriter accepting the risk. Charter may make an additional charge for arranging such insurance but shall have no liability or responsibility whatsoever (whether in negligence, contract or otherwise) in respect of any insurance policy. Charter is not the insurer and no deduction or set-off may be made from any charges or

other moneys due to Charter on any account pending settlement by the insurance company.

- 21 The Customer shall not tender for Carriage any Dangerous Goods without first presenting a full written description of the Goods and the nature and degree of their volatility so as to enable the Goods to be properly classified, described, packaged and labelled for Carriage in accordance with the provisions of all relevant laws, regulations, codes, customs and conventions. In default of so doing, the Customer shall be liable for any loss or damage caused thereby or in connection therewith and shall indemnify Charter against all claims, liability, loss, damage, penalties and expense which Charter may suffer or incur thereby or in connection with herewith. In the event that the Goods are found to be explosive, flammable, noxious or otherwise dangerous, hazardous or likely to cause damage without having been so described to Charter (as hereby required), then the Goods may be destroyed or otherwise dealt with by, and at the sole discretion of, Charter or any other person in whose custody they may be at the relevant time without compensation to the Customer and without prejudice to Charter ' right to freight and charges. If such Goods are accepted under the arrangements previously made in writing, they may nevertheless be destroyed or otherwise dealt with if they become dangerous to any person, other goods or property.
- 22 Neither party shall assign or attempt to assign any of its rights and interests or obligations under this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld.
- 23 Failure or omission by a party at any time to enforce or require strict or timely compliance with any provision of this Agreement shall not affect or impair the provision in any way or the rights of that party to avail itself of the remedies it may have in respect of any breach of that provision.
- 24 The invalidity or unenforceability of any clause or any part of any clause in this Agreement shall not affect the enforceability of the remaining clauses or remaining parts of clauses.
- 25 The terms and conditions of this Agreement may be modified only by the agreement of both parties in writing.
- 26 This Agreement shall be construed and interpreted according to the laws of New Zealand. The parties submit to the exclusive jurisdiction of the Courts of New Zealand.