

STANDARD TRADING CONDITIONS

1. All and any business undertaken by a. hartrodt New Zealand Limited ("Company") is transacted subject to the conditions hereinafter set out and each and every condition hereinafter set out shall be deemed to be a condition of any agreement between the Company and the customer and shall prevail over any conditions purported to be included by any form or contract used by the customer.
2. This contract including these conditions shall constitute the whole agreement between the parties and can only be varied in writing signed by each party.
3. Customers entering into transactions of any kind with the Company expressly warrant that they are either the owners or the authorised agents of the owners of any goods or property the subject matter of the transactions, and by entering into the transaction they accept these conditions for themselves as well as for all other parties on whose behalf they are acting.
4. The Company is not a common carrier and may refuse the transport of any goods for any person or corporation as it sees fit.
5. Whenever the Company is instructed to undertake or arrange transport, storage or any other service it may entrust the goods or arrangements to such shipping lines, stevedores, warehouses and other agents and contractors and on such terms as the Company sees fit and the Company may enter into contractual arrangements with any such persons or corporations on behalf of the customer and the customer will be bound by and subject to all exclusions and other terms and conditions thereof without recourse to or any claim against the Company by reason of the Company entering into any such arrangements.
6. Subject to express instructions in writing given by the customer the Company reserves to itself complete freedom in respect of means, route and procedure to be followed in the transportation, handling and storage of goods.
7. The Company is entitled to retain and be paid all brokerages, commissions, allowances and other remunerations retained by or paid to Shipping and Forwarding Agents and Insurance Brokers except to the extent otherwise expressly stipulated herein.
8. Quotations given, unless previously withdrawn, can only be accepted within seven days thereof and thereafter must be confirmed by the Company prior to acceptance.
9. The customer shall bear and pay all duties, taxes, fines, penalties, port storage and transport charges, insurance costs and all other imposts, costs, expenses, losses or damages incurred relating to the goods other than those specifically included in the agreed price.
10. Where the price quoted is based upon freight rates, insurance rates, transport and packing costs, exchange rates, inspection fees, customs and import duties, landing charges, wages and other costs and charges relating to the goods or the services to be provided by the Company, the Company may pass on and charge to the customer any extra cost as a result of any increase therein.
11. The Customer is deemed to have accepted the charges of the Company as set out in any invoice of the Company to the customer unless the customer advises the Company in writing of any object to those charges within 21 days of that invoice.
12. The Company's charges shall be paid in cash immediately prior to delivery of the goods and without deduction, and payment shall not be withheld or deferred on account of any claim, counterclaim or set-off. If at any time payment from the customer to the Company is in arrears, any existing obligations of the Company will be suspended and the Company will not be under any liability to the customer during such period.
13. 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 days of delivery or attempted delivery of the Goods, then the customer shall pay those charges to the Company within seven days of being notified of that person's failure to pay.
14. Should payment of the Company's charges not be made in full within seven days of the due date, the customer shall pay penalty interest on all monies outstanding at a rate equal to four percent above the Company's Bank's indicator lending rate from time to time calculated on a daily basis from the due date for payment until the date payment is received by the Company but without prejudice to the Company's other rights and remedies in respect of the customer's default in failing to make payment on the due date. The customer shall and does hereby indemnify the Company for all costs and expenses (including solicitor/client expenses) arising from any breach of this Agreement or the enforcement by the Company of its rights in respect of any such breach.
15. No insurance will be effected except upon express instructions given in writing by the customer including declaration of value and the Company may charge the customer for arranging such insurance. All insurances effected by the Company are subject to the usual exceptions and conditions of the policies of the insurance company or underwriters taking the risk. The Company shall not be under any obligation to effect a separate insurance on each consignment but may declare it on any open or general policy. Should the insurers dispute their liability for any reason the insured will have recourse against the insurers only and the Company shall not be under any responsibility or liability in relation thereto, notwithstanding that the premium upon the policy may not be at the same rate as that charged by the Company or paid to the Company by its customers.
16. The customer warrants the accuracy of all descriptions values, marks, weights, numbers, brands and other particulars furnished to the Company for customs, consular and other purposes appearing on the goods or on any containers, packing material or shipping or other documents relating thereto and that the goods are properly and adequately packed and comply with the provisions of all relevant laws and requirements of any port dock, railway, shipping, customs, warehouse or any other relevant authority or corporation and the customer shall release and indemnify the Company from and against all losses, damages, expenses and costs arising from any inaccuracy or omission therein even if such inaccuracy or omission is not due to any negligence of the customer and notwithstanding that the inaccuracy or omission may or should be apparent or is known to any one or more employee or servant of the Company or its agents.
17. The Company shall not be liable in contract or in tort for:
 - (a) Any loss of, damage to, deterioration in or contamination of the goods whilst the goods are in the possession or custody or under the control of a third party as referred to in clause 5 above but the customer shall be entitled to the benefit of any right or claim which may exist against such third party. In the event that it is necessary for the customer to use the name of the Company in order to enforce the customer's rights against a third party as referred to in clause 5 above the Company will, on the written request of the customer and the receipt from the customer of a sufficient indemnity as to costs, expenses and other liabilities which may arise, allow the customer to enforce such rights in the Company's name.
 - (b) Any loss of, damage to, deterioration in or contamination of the goods caused by fire, explosion, theft or water damage (whether or not any of the foregoing are caused by or contributed to by the negligence of any servant or employee of the Company), storm, flood, the inherent nature of the goods, insufficient or inadequate packing, accident or any cause beyond the reasonable control of the Company.
 - (c) Any costs, damages losses or expenses arising from loss of market or bargain or other consequential loss attributed to delay in forwarding in transit or making delivery or available for delivery.
 - (d) Any loss of, damages to, deterioration in or contamination of the goods whatsoever or any costs, damages, losses or expenses resulting in any way from the Company failing to perform or arrange the performance of the instructions of the customer or to perform its obligations under the contract if at the time any claim arises the customer has failed to pay any moneys due to the Company in respect of the contract and in any event exceeding an amount of \$100.00 in respect of all goods covered by the contract unless a greater amount is stipulated in writing by the Company and notwithstanding any declaration by the customer for any purpose that the goods have a greater value.
 - (e) Any loss, penalty, costs, claim, action or proceedings arising out of or in connection with a failure by the Company to pass on or to provide the customer with any documents relating to the goods, the valuation or the assessment of liability for duty of the goods or any penalty imposed on the customer.
18. Any claim for loss or damage must be notified in writing to the Company within seven days of delivery of the goods or of the date upon which the goods should have been delivered. In any event the Company shall be discharged from all liability whatsoever in connection with the provision of services or carriage of goods by the Company unless suit is brought and notice given within nine months of the provision of such services or delivery of the goods or when the services should have been provided or the goods should have been delivered.
19. Unless expressly instructed in writing by the customer:
 - (a) The Company will not make any declaration of value or insert the same in any bill of lading or other document on behalf of the customer for the purpose of extending or preserving the liability of any shipper or carrier as may be provided by any relevant statute; and
 - (b) Where there is a choice of tariff rates according to the extent of the liability assumed by carriers, warehousemen or others, no declaration or value (where optional) will be made for the purpose of extending liability and goods will be forwarded or dealt with at the lowest cost.
20. Perishable goods, which are not taken up immediately upon arrival or which are insufficiently addressed or marked or otherwise not identifiable may be sold or otherwise disposed of without any notice to the customer or consignee and payment or tender of net proceeds of any sale after deduction of charges shall be equivalent to delivery.
21. Non-perishable goods which cannot be delivered either because they are insufficiently or incorrectly addressed or because they are not collected or accepted by the consignee or the customer may be sold or returned at the Company's option at any time after the expiration of 21 days from a notice in writing sent to the consignor. All charges and expenses arising in connection with the sale or return of the goods shall be paid by the customer. A communication from any agent or correspondent of the Company to the effect that the goods cannot be delivered for any reason shall be conclusive evidence of that fact.
22. Except under special arrangements previously made in writing the Company will not accept or deal with any noxious, dangerous, hazardous or inflammable or explosive goods or any goods likely either inherently, or due to their manner of packing, to cause injury or damage. Any person delivering such goods to the Company or causing the Company to handle or deal with any such goods (except under special arrangements previously made in writing) shall be liable for all loss or damage caused thereby and shall indemnify the Company against all penalties, claims, damages, costs, and expenses arising in connection therewith and the goods 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, without any liability on the part of the Company. If such goods are accepted under arrangements previously made in writing they may nevertheless be so destroyed or otherwise dealt with without any liability on the part of the Company if circumstances arise creating a risk of damage or injury over and above the inherent propensities of such goods. The expression 'goods likely to cause damage' includes goods likely to harbour or encourage vermin or other pests.
23. The Company accepts all goods for shipping or storage on the basis that no refrigeration or other special or unusual arrangements for storage or handling will be made unless stipulated and agreed in writing by the Company notwithstanding that the Company may or should be aware from the nature of the goods or their packaging that some arrangements should be or are in the usual course made for such goods.
24. All goods (and documents relating to goods) shall be subject to a particular and general lien for moneys due either in respect of such goods or for any particular or general balance or other moneys due to the Company. Without prejudice to any power given by the statute, if any moneys due to the Company are not paid within one calendar month after notice has been given that such goods are detained, they may be sold by auction or otherwise at the sole discretion of the Company and at the expense of the customer, and the proceeds applied in or towards satisfaction of such particular and general lien.
25. Where the Company is entitled to sell or dispose of goods pursuant to these conditions, any such sale shall not prejudice or affect the Company's right to recover from any person any balance due or payable to the Company in respect of any services provided by it or the cost of the detention and sale of the goods.
26. Notwithstanding any stipulated period for storage, any goods stored for the customer shall be removed and any relative store warrant surrendered, upon the expiration of 21 days notice in writing to remove goods given by the Company and the customer shall pay all storage and other charges to the date of such removal.
27. In the event of a store warrant being issued by the Company in respect of any goods stored with it the Company shall not be bound to deliver the goods, except upon production of the store warrant, although the Company may dispense with the production of the store warrant upon the customer furnishing such evidence as to ownership of the goods and the loss of the store warrant as the Company may require and upon the customer entering into or procuring such bond, guarantee or other security as the Company may require.
28. The Company shall not under any circumstances be liable for loss or damage resulting from or attributable to any quotation, statement representation or information whether oral or in writing, howsoever, wheresoever or to whomsoever made or given by or on behalf of the Company or by any servant, employee or agent of the Company as to the classification of or the liability for amount, scale or rate of customs duty, excise duty or other impost or tax applicable to any goods or property whatsoever.
29. Any provision herein limiting the liability of the Company shall be deemed to have been entered into by the Company on behalf of itself and its servants, employees and agents so that no claim can be made by the customer against any of them in tort.
30. If any legislation is compulsorily applicable to any business undertaken by the Company, these conditions shall be read as subject to such legislation and nothing in these conditions will be construed as a surrender by the Company of any of its rights or immunities or as an increase of any of its responsibilities of liabilities under such legislation. If any part of these conditions is repugnant to any binding law from time to time such part will as regards such business be void to that extent but no further.
31. All agreements between the Company and the customer will be governed by New Zealand law and will be within the exclusive jurisdiction of the New Zealand courts.
32. Subject to clause 30, in respect of a contract between the customer and the Company for the carriage of goods within New Zealand this clause 32 shall apply, and in the event of any conflict between this clause 32 and any other conditions, this clause will prevail.
 - (a) Sections 10, and 18 to 27 of the Carriage of Goods Act 1979 will apply to the contract only to the extent that they extend or enlarge the company's rights and powers in terms of the contract.
 - (b) The contract will be "at declared value risk" and the limitation in clause 17(d) of these conditions shall apply unless:
 - (i) the customer or its agent has signed on the face hereof or any other documents relating to the carriage of goods, a statement in the terms that: "These goods are to be carried at "owners risk". This means that the carrier will pay no compensation for the goods lost or damaged unless it intentionally loses or damages them"; or
 - (ii) there is a contract in writing expressed to be "at owners risk" signed by the parties or their agents relating, but not necessarily exclusively, to the carriage of goods; or
 - (iii) the customer is a carrier as defined in the Act in which case the contract will be "at owners risk".