

**WAREHOUSING & DISTRIBUTION TERMS AND CONDITIONS**

**1. Definitions**

"Company" means a. hartrodt New Zealand Limited (New Zealand company #4159139), being the supplier of the Services.  
 "Customer" means any person or entity at whose request or on whose behalf the Company provides the Services.  
 "Dangerous Goods" means any goods classified or described as dangerous by legislation or international agreement codes from time to time, and any goods which may present or be likely to present any hazard in the performance of the Services to other goods or property or to any person. The expression "likely to present any hazard" includes Goods likely to harbour or encourage vermin or other pests and Goods which are liable to taint or affect other Goods.  
 "Goods" means any item including cargo and any relevant container, packaging or pallets in respect of which the Company provides Services.  
 "Services" means the warehousing of goods at the premises of the Company or a third party premises whether under bond or otherwise.

**2. Terms and Conditions cannot be Varied**

No agent or employee of the Company except a Director of the Company has the Company's authority to waive or vary these Terms & Conditions. To the extent that these Terms & Conditions are waived or varied the variations must be in writing and signed by a Director of the Company.

**3. Provision of Services**

The Customer agrees that all Services provided by the Company shall be governed by these Terms and Conditions which, subject to the application of any relevant Legislation or Regulations, shall exclusively prevail over any other terms and conditions of the Customer or any third party which might otherwise apply to the provision of the Services.

These Terms and Conditions are separate from and in addition to the Company's Standard Trading Terms for freight forwarding services. Where there is any overlap in the coverage of these terms, the Company may elect to rely upon either terms at its sole discretion.

**4. Warehousing**

When carrying out Services, the Company's scope of Services shall be limited to following the Customer's reasonable requests to store in normal warehouse conditions or remove such Goods in normal warehouse conditions and it is not the Company's responsibility to advise the Customer about any matters concerning the Goods including the age or condition of the Goods or the duration of storage. The Company makes no warranties concerning the temperature of storage. The Company reserves the right to refuse to store Goods for any or no reason. If at any stage the Company reasonably considers there is good reason to depart from the Customer's instructions, the Company shall be permitted to do so without any liability to the Customer.

**5. Dangerous Goods**

Where any Goods are or are likely to be Dangerous Goods (whether or not stipulated to be Dangerous Goods) and in the opinion of the Company are or are likely to cause harm, loss or damage to persons or property then they may, at any time, be destroyed, disposed of, abandoned or rendered harmless without compensation to and at the cost of the Customer.

**6. Unclaimed and Perishable Goods**

The Company shall be entitled at the expense of the Customer or the owner to arrange for the sale or disposal of the Goods without notice where:

- a. the Customer cannot be located after reasonable efforts have been made to contact parties who may have an interest in the Goods;
- b. Goods have perished or deteriorated or altered or are in immediate prospect of doing so.

**7. Customer Warranties**

The Customer warrants that:

- a. it is either the owner of the Goods or an authorised agent of the owner;
- b. it is accepting these Terms and Conditions not only for itself but also as agent for and on behalf of the owner of the Goods and with the owner's consent;
- c. it will indemnify the Company in respect of any liability whatsoever and howsoever arising (including, without limiting the foregoing for negligent or wilful misconduct) to any person other than the Customer who has or claims to have an interest in the Goods;
- d. all Goods have been properly and sufficiently prepared, packed, stowed, labelled and/or marked in accordance with all applicable laws and regulations and in a manner sufficient to enable the Goods to withstand ordinary risks reasonable expected during the provision of the Services;
- e. all descriptions, values and other particulars furnished to the Company for all or any purposes are accurate and pursuant to the performance of the service are complete and accurate;
- f. it will comply with all occupational health and safety laws in relation to these Terms and Conditions, the Goods and the Services at all times, and will notify the Company of any issues or requirements under such laws in relation to these Terms and Conditions or the Services of which the Customer should be aware, or which may affect the Company's ability to comply with occupational health and safety laws.
- g. it shall indemnify the Company against all liability whether to the Customer or to any third party for any loss, damage, costs and expenses whatsoever arising out of the Company acting in accordance with the Customer's instructions or arising from any breach by the Customer of any warranty or undertaking contained in these Terms and Conditions or from the negligence or wilful misconduct of the Customer.
- h. it will indemnify the Company against any liability, claims, loss, damage, costs or expenses arising out of any other person relying upon advice or information given by the Company including advice and information which is not related to specific instructions accepted by the Company.

**8. Subcontracting and Contractual Status**

The Company shall be entitled to subcontract all or any part of the Services and shall be entitled to enter into arrangements to fulfil the Services either as principal or agent on behalf of the Customer.

**9. Where the Company Acts as an Agent**

- a. The Company shall be entitled and the Customer hereby expressly authorises the Company to enter into contracts on behalf of the Customer:
  - i. for the carriage of the Goods by any route or means or person;

- ii. for the storage, packing, transhipment, loading, unloading or handling of the Goods by any person at any place whether on shore or afloat and for any length of time;
  - iii. for the carriage or storage of the Goods in or on transport unit load devices or with other goods of whatever nature; and
  - iv. for the provision of insurance in respect of the Goods;
  - v. to do such acts as may in the opinion of the Company be reasonably necessary in the performance of its obligations in the interests of the Customer.
- b. The Company will not make any declaration of value of the Goods except under special arrangement previously agreed in writing by the Company;
  - c. The Company shall not be under any liability to the Customer by reason of having entered into any contract on behalf of the Customer whereby the extent or degree of the liability assumed by such carrier, warehouseman or other party is in any respect excluded or limited save where such contract is entered into contrary to specific instructions given by the Customer and accepted by the Company.
  - d. Except under special arrangement previously agreed by the Company in writing or under the terms of a printed document signed by the Company, any instructions relating to the delivery or release of Goods in specified circumstances only, such as (but without prejudice to the generality of this Clause) against payment or against surrender or a particular document, are accepted by the Company only as agents for the Customer where third parties are engaged to effect compliance with the instructions.
  - e. In any event, the Company's liability in respect of the performance or arranging the performance of such instructions shall not exceed that provided for in Clause 13 of these Terms and Conditions.

**10. Where the Company Acts as a Principal Contractor**

- a. The Company reserves to itself a reasonable liberty, as to the means, route and procedure to be followed in the handling, storage and transportation of the Goods.
- b. Whilst the Company agrees to use its endeavours to carry out Services within a reasonable time no date for completion is fixed and in particular but without prejudice to the generality of the foregoing the Company accepts no responsibility for departure or arrival dates of the Good except under special arrangement previously made in writing by a Director of the Company.
- c. Except insofar as may be required to comply with the Customer's instructions as regards documentation, or except under the special arrangement previously made in writing by a Director of the Company, the Company shall not be obliged to carry, store or handle the goods separately from other goods.
- d. The Company will not accept or deal with any Dangerous Goods except under a special arrangement previously made in writing by a Director of the Company.
- e. Should any Customer nevertheless deliver any Dangerous Goods to the Company or cause the Company to handle or deal with any such Goods otherwise than under special arrangement previously made in writing, the Customer shall be liable for all loss or damage whatsoever cause by or to or in connection with the Goods howsoever arising and shall indemnify the Company against all penalties, claims, damages, costs and expenses whatsoever 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.
- f. If Dangerous Goods are accepted under an arrangement previously made in writing, they may nevertheless be destroyed or otherwise dealt with on account of risk to other goods, property, life or health though the Company shall where reasonably practicable first contact the Customer.
- g. The Company will not accept or deal with bullion, coin, precious stones, jewellery, valuable, antiques, pictures, human remains, livestock or plants. Should any Customer nevertheless deliver any such Goods to the Company or cause the Company to handle or deal with any such Goods otherwise than under special arrangement previously agreed in writing by the Company the Company shall be under no liability whatsoever for or in connection with such Goods howsoever arising.

**11. Risk and Insurance**

At all times risk in the goods shall remain with the Customer to the maximum extent permitted by law. It is the obligation of the Customer to arrange any insurance for the Goods whilst the Goods are in the care and control of the Company during the course of the provision of the Services. The Customer shall upon request by the Company provide a copy of the relevant insurance policy. The Company will not insure the Goods which are the subject of the Services.

**12. Lien and PPSR Security Interests**

The Company, its servants or agents shall have a special and general lien over all or any Goods and documents for all fees, charges, expenses, interest, detention charges, duty, payments being equivalent to duty, fines, penalties and any other sums owing by the Customer to the Company or the Company's principals, servants, agents or sub-contractors. The Company shall have the right to open or access and sell all or any Goods or documents, whether by public auction or private sale, without notice to the Customer in order to recover all outstanding amounts referred to in this clause. The lien shall, in addition, cover the costs and expenses of exercising the lien, including advertising, auctioneer's fees and legal fees. The lien created in this clause does not limit or exclude any other liens which arise by operation of law or pursuant to statute.

In addition, and in so far as the Company's rights under this clause create an interest required to be registered under the Personal Property Securities Act 1999 (as amended), the Customer:

- (a) consents to such registration and will provide any assistance required and will sign any documentation required for such registration to register a financing statement or financing change statement on the Personal Property Securities Register for such registration;
- (b) will indemnify the Company for all expenses incurred in registering a financing statement or financing change request on the Personal Property Securities Register or releasing any item charged thereby;
- (c) will not register a financing change statement or a charge demand on the Personal Property Securities Register without the company's prior written consent;
- (d) will give the Company not less than 14 days' prior written notice of any proposed change in its name or any of its contact details; and
- (e) waives its right to receive a verification statement in accordance with section 148 of the Personal Property Securities Act 1999.

**13. Limitation of Liability**

To the full extent permitted by law, the Company, its servants or agents shall not be responsible for loss or damage of any kind whatsoever arising out of or in connection with the provision of its Services (unless caused by wilful action of the Company, its servants or agents) and the Customer agrees to indemnify the Company in respect of any claims made by sub-contractors or third parties including any government authority concerning the provision of the Services, including but not limited to the following:

- a. Customs Duty, payments equal to the amount of the applicable duty, GST, penalties or other fees and charges imposed by government authorities;
- b. any liability for loss, profit, loss of sales, loss of market, loss of goodwill or reputation, third party claims, destruction, misdelivery, deterioration, non-delivery, contamination, evaporation or damage to the Goods or consequential loss arising therefrom howsoever caused;
- c. any loss or depreciation of market value attributable to delay in discharging the Goods;
- d. loss or damage resulting from fire, water, explosion or theft;
- e. loss, damage or delay caused by treatment or examination of the Goods by government authorities;
- f. any costs incurred by the Company on behalf of the Customer to any other person in relation to the carriage, handling or storage of the Goods;
- g. any loss, damage or delay occasioned by delay in the receipt or discharge of the Goods or handling of the Goods in the course of the receipt or handling of the Goods;
- h. any liability to any other person or entity who has or claims to have an interest in the Goods.

**14. Delivery**

- a. If delivery of the Goods, or any part thereof, is not taken by the Customer, consignee or Owner, at the agreed place where the Company is entitled to call upon such person to take delivery thereof, the Company shall be entitled to store the goods or any part thereof at the sole risk and expense of the Customer, and the cost of such storage if paid for or payable by the Company or any agent or Subcontractor or the Company shall forthwith upon demand be paid by the Customer to the Company.
- b. The Company shall be entitled at the expense of the Customer or Owner to arrange the disposal of (by sale or otherwise as may be reasonable in all circumstances):
  - i. on twenty-eight (28) days' notice in writing to the Customer or, where the Customer cannot be traced and reasonable efforts have been made to contact any parties who may reasonably be supposed by the Company to have any interest in the Goods, any Goods which have been held by the Company for ninety (90) days and which cannot be delivered as instructed; and
  - ii. without prior notice, Goods which have perished, deteriorated or altered or are in immediate prospect of doing so in a manner which has caused or may reasonably be expected to cause loss or damage to third parties or present a health risk or to contravene any applicable laws or regulations.
- c. The Company shall give appropriate credit to the Customer for any balance arising out of the proceeds of sale of the Goods after deduction of the costs of sale and any accrued charges applicable to the Goods.

**15. Interest and No Set-Off**

The Company shall be entitled to charge interest on all amounts due for the Services at a rate equivalent to the Company's bank's base lending rate at the time plus 5% per annum, with such interest payable on the amount overdue during the period from the due date until payment is made in full of both the principal and all interest thereon. All sums due to the Company are payable on demand by invoice or otherwise and the Customer shall not be permitted to set-off or counterclaim any amounts against invoices.

**16. Termination**

- a. The Company may terminate the Services at any time and with immediate effect. The Customer shall terminate the Services after having first given to the Company six months' notice in writing of its intention to do so.
- b. Upon termination, the Customer shall pay all reasonable costs of relocation of the Goods.
- c. Where the Customer terminates the Services pursuant to clause 15(a) it shall pay to the Company the undepreciated dedicated fixed assets investment costs, and any redundancy benefits paid/payable as a result of such termination.

**17. Notice of Claims**

The Customer must provide the Company with particulars of any claims within 7 days of the Customer being first made aware of the facts or circumstances giving rise to the claim or if Goods are delivered to the Customer or as directed by the Customer within 7 days of such delivery. The Company's liability to the Customer shall be discharged unless legal action is brought within 6 months of any cause of action arising.

**18. Compulsory Liability**

In all cases where liability of the Company has not been excluded, whether by these Terms and Conditions or by statute or by international convention or otherwise, the liability of the Company shall be limited to either:

- a. NZ\$200 or the value of the Goods at the time they were received by the Company, whichever is the lesser; or
- b. In the case of a proven breach of an implied warranty under the Fair Trading Act 1986, at the Company's discretion supplying the Services again or payment of the cost of having the Services supplied again.

**19. Non Waiver**

The failure of the Company to, at any time, require performance by the Customer of any provision of this Agreement shall not be deemed to be a waiver of any of the Company's rights unless it is expressly agreed to by the Company in writing and it shall not affect the right of the Company to require such performance by the Customer at any time thereafter.

**20. Severance**

If any provision of these Terms and Conditions is found by a Court of competent jurisdiction to be invalid or unenforceable in whole or in part, the validity of other provisions of these Terms and Conditions shall not be affected and shall continue to be valid and enforceable to the fullest extent permitted by law or equity.

**21. Entire Agreement**

These Terms and Conditions shall constitute the entire agreement between the parties regarding its subject matter and all representations, negotiations or understandings are excluded to the fullest extent permitted by law and any advice or information provided by the Company are undertaken subject to these Terms and Conditions and shall not be relied upon by the Customer.

**22. Governing Law & Jurisdiction**

These terms and conditions shall be deemed to be made in New Zealand (where the Company has provided the Services) and shall be governed by the laws of New Zealand and the parties agree to submit to the exclusive jurisdiction of the Courts of New Zealand.

