

**1. Definitions**

- 1.1 **“Charges”** shall mean the Charges payable (plus any Goods and Services Tax (“GST”) where applicable) for the Services, as agreed between the Contractor and the Client, subject to clause 6 of this Contract.
- 1.2 **“Client”** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Contractor to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:  
(a) if there is more than one Client, is a reference to each Client jointly and severally; and  
(b) if the Client is a partnership, it shall bind each partner jointly and severally; and  
(c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and  
(d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.3 **“Consignee”** means the person to whom the Goods are to be delivered by way of the Services.
- 1.4 **“Contract”** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.5 **“Contractor”** means Agnew Transport Services Limited, its successors and assigns.
- 1.6 **“Cookies”** means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including personal information) specific to a particular client and website and can be accessed either by the web server or the client’s computer. **If the Client does not wish to allow Cookies to operate in the background when using the Contractor’s website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.7 **“Goods”** means all Goods or Services supplied by the Contractor to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other) and also includes any cargo, together with any container, packaging, or pallet(s), to be moved from one place to another by way of the Services.
- 1.8 **“Services”** means all services provided by the Contractor to the Client (including, but not limited to, anything done or to be done in relation to the Goods, or the provision of any services ancillary to the Goods such as moving, storing or leaving the Goods at any warehouse, yard, terminal, wharf or other place or area, loading or unloading the Goods from any vehicle, vessel or other conveyance, stowing or packing the Goods, or fumigating, transshipping, or otherwise handling the Goods, or anything else done in relation thereto, including the offering of any advice or recommendations.
- 1.9 **“Sub-Contractor”** means and includes:  
(a) railways or airways operated by the Commonwealth or any state or any other country or by any corporation; or  
(b) any other person or entity with whom the Contractor may arrange for the carriage or storage of any Goods the subject of the Contract; or  
(c) any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in sub-clauses (a) and (b).

**2. Acceptance**

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts, Services provided by the Contractor.
- 2.2 These terms and conditions are to be read in conjunction with the Contractor’s quotation, consignment note, agreement, airway bills, manifests, or any other forms as provided by the Contractor to the Client. If there are any inconsistencies between these documents, then the terms and conditions contained in this document shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Services on credit shall not take effect until the Client has completed a credit application with the Contractor and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Services request exceeds the Client’s credit limit and/or the account exceeds the payment terms, the Contractor reserves the right to refuse delivery.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

**3. Authorised Representatives**

- 3.1 The Client acknowledges that the Contractor shall (for the duration of the Services) liaise directly with one (1) authorised representative, and that once introduced as such to the Contractor, that person shall have the full authority of the Client to order any Services and/or to request any variation thereto on the Client’s behalf. The Client accepts that they will be solely liable to the Contractor for all additional costs incurred by the Contractor (including the Contractor’s profit margin) in providing any Services or variation/s requested thereto by the Client duly authorised representative.

**4. Errors and Omissions**

- 4.1 The Client acknowledges and accepts that the Contractor shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):  
(a) resulting from an inadvertent mistake made by the Contractor in the formation and/or administration of this Contract; and/or  
(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Contractor in respect of the Services.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of the Contractor; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

**5. Change in Control**

- 5.1 The Client shall give the Contractor not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client’s details (including but not limited to, changes in the Client’s name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by the Contractor as a result of the Client’s failure to comply with this clause.

**6. Charges and Payment**

- 6.1 At the Contractor's sole discretion the Charges shall be either;
- (a) as indicated on invoices provided by the Contractor to the Client in respect of Services provided; or
  - (b) the Contractor's quoted Charges (subject to clauses 6.2 and 6.3) which shall be binding upon the Contractor provided that the Client shall accept in writing the Contractor's quotation within thirty (30) days.
- 6.2 The Contractor reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
  - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
  - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, availability of machinery, safety considerations, prerequisite work by a third party not being completed, hard rock or other barriers below the surface, latent soil conditions, iron reinforcing rods in concrete, remedial work required due to existing workmanship being of a poor quality or underground services as per clause 10 etc.) which are only discovered on commencement of the Services; or
  - (d) as a result of an increase in the Contractor's costs due to changes in statutory, government, or local body charges, taxes, customs duties, Road User Charges (RUC's), insurance premiums, foreign exchange fluctuations, warehousing, levies etc which are outside the control of the Contractor; or
  - (e) in the event of increases to the Contractor in the cost of labour or Goods which are beyond the Contractor's control.
- 6.3 The Contractor may charge freight by weight, measurement or value, and may at any time re-weigh, or re-value or re-measure or require the Goods to be re-weighed, or re-valued or re-measured and charge proportional additional freight accordingly. At the discretion of the Contractor and with the agreement of the Client, the Contractor may provide the Services on a charge by the hour basis.
- 6.4 At the Contractor's sole discretion, a deposit may be required.
- 6.5 Time for payment for the Services being of the essence, the Charges will be payable by the Client on the date/s determined by the Contractor, which may be:
- (a) on delivery of the Goods;
  - (b) by way of instalments in accordance with the Contractor's payment schedule;
  - (c) twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Contractor.
- 6.6 Payment may be made by electronic/on-line banking, or by any other method as agreed to between the Client and the Contractor.
- 6.7 Receipt by the Contractor of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Contractor's ownership or rights in respect of the Services shall continue.
- 6.8 The Client acknowledges and agrees that the Client's obligations to the Contractor for the supply of Services shall not cease until:
- (a) the Client has paid the Contractor all amounts owing for the particular Services; and
  - (b) the Client has met all other obligations due by the Client to the Contractor in respect of all contracts between the Contractor and the Client.
- 6.9 The Contractor may in its discretion allocate any payment received from the Client towards any invoice that the Contractor determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Contractor may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Contractor, payment will be deemed to be allocated in such manner as preserves the maximum value of the Contractor's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.10 The Client shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to the Client by the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.11 Unless otherwise stated the Charges does not include GST. In addition to the Charges the Client must pay to the Contractor an amount equal to any GST the Contractor must pay for any provision of Services by the Contractor under this Contract or any other agreement. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Charges. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Charges except where they are expressly included in the Charges.

**7. Provision of the Services**

- 7.1 Subject to clause 7.2 it is the Contractor's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 7.2 The Services' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that the Contractor claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Contractor's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
  - (b) have the site ready for the Services; or
  - (c) notify the Contractor that the site is ready.
- 7.3 Delivery ("**Delivery**") of the Goods is taken to occur at the time that the Contractor (or the Contractor's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 7.4 At the Contractor's sole discretion the cost of Delivery is either included in the Price or is in addition to the Price.
- 7.5 Any time specified by the Contractor for Delivery of the Goods is an estimate only. The Client must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. The Contractor will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. In the event that the Client is unable to take Delivery of the Goods as arranged then the Contractor shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7.6 The Contractor may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.7 Any time specified by the Contractor for Delivery of the Goods is an estimate only and the Contractor will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that the Contractor is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then the Contractor shall be entitled to charge a reasonable fee for redelivery and/or storage.

**8. Dimensions, Plans and Specifications**

- 8.1 The Contractor shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, The Contractor accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.2 All customary building industry tolerances shall apply to the dimensions and measurements of the Services unless the Contractor and the Client agree otherwise in writing.
- 8.3 Where the Client is to supply the Contractor with any design specifications (including, but not limited to CAD drawings) the Client shall be responsible for providing accurate data. The Contractor shall not be liable whatsoever for any errors in the Services that are caused by incorrect or inaccurate data being supplied by the Client.
- 8.4 In the event the Client gives information relating to measurements and quantities of Goods required in completing the Services, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or the Contractor places an order based on these measurements and quantities. The Contractor accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.
- 8.5 Detailed drawings of any services that will be embedded in the concrete, asphalt or other materials are to be provided to the Contractor prior to commencement of any Services. Whilst all due care will be taken no liability will be accepted by the Contractor for damage to the Services or any other element embedded in the concrete, asphalt or other materials.

**9. Risk**

- 9.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 9.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, the Contractor is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Contractor is sufficient evidence of the Contractor's rights to receive the insurance proceeds without the need for any person dealing with the Contractor to make further enquiries.
- 9.3 If the Client requests the Contractor to leave Goods outside the Contractor's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 9.4 Any advice, recommendation, information, assistance or service provided by the Contractor in relation to Goods or Services supplied is given in good faith to the Client, or the Client's agent and is based on the Contractor's own knowledge and experience and shall be accepted without liability on the part of the Contractor. Where such advice or recommendations are not acted upon then the Contractor shall require the Client or their agent to authorise commencement of the Services in writing. The Contractor shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 9.5 The Client acknowledges and accepts that:
- (a) the Contractor shall have the sole right to deem works requested by the Client, as being either too dangerous and/or too difficult for the Contractor to undertake (such as, but not limited to, work on steep terrain, treacherous surfaces, the presence of large overhangs or rock outcrops etc). In such situations the Contractor shall notify the Client, as soon as is reasonably able of any works then not performed by the Contractor. Irrespective of whether the Contractor chooses to continue the supply of further Services or to cease the supply of any further Services, the Client shall remain liable to the Contractor for all Services completed by the Contractor and the Client shall not be entitled to treat the ceasing of Service as an event of default or a breach by the Contractor in respect of the performance of Services by the Contractor under this Contract; and
- (b) prior to the Contractor commencing the Services, the Client must advise the Contractor of the precise location of any geographical features on the site and clearly mark the same, including, but not limited to, sinkholes, irrigation ditches, fencing materials, irrigation lines, stumps and any other object that may cause damage to the equipment used in relation to the Services.
- 9.6 Furthermore, it is the responsibility of the Client to inform the Contractor prior to agri-chemical application, of any organic enterprises adjacent to the property or any streams, shallow aquifers or any other geological feature that could be harmed by the accidental introduction of agri-chemicals.
- 9.7 In the event that:
- (a) during the course of the Services the Contractor discovers any fossils, artefacts or any other remains of geological or archaeological interest are discovered the Contractor reserves the right to halt all Services, remove any of their equipment from the site and immediately notify the Client. Unless subject to clause 21.8, the Client accepts and agrees that all additional costs that may be incurred by the Contractor as a result of any such delays (including but not limited to in the event the Contractor is unable to remove their equipment from the site, etc.) shall be borne by the Client and shall be treated as a variation in accordance with clause 6.2; and/or
- (b) the Contractor discovers any undisclosed waste and/or hazardous materials then the Contractor reserves the right to halt all Services and immediately notify the Client. It shall be the responsibility of the Client to arrange the removal of all such materials. In the event that the Contractor agrees to remove such materials for the Client then this shall be treated as a variation in accordance with clause 6.2 and shall be in addition to the Price.

**10. Underground Locations / Hidden Services**

- 10.1 Prior to the Contractor commencing any work the Client must advise the Contractor of the precise location of all services on the site and clearly mark the same. The mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 10.2 Whilst the Contractor will take all care to avoid damage to any services the Client agrees to indemnify the Contractor in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 10.1.

**11. Access**

- 11.1 The Client shall ensure that the Contractor has clear and free access to the site at all times to enable them to undertake the Services. The Contractor shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Contractor.
- 11.2 It is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks, front end loaders or other earth moving equipment as may be deemed necessary by the Contractor.

**12. Compliance With Laws**

- 12.1 The Client and the Contractor shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Services.
- 12.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 12.3 Notwithstanding clause 12.1 and pursuant to the Health & Safety at Work Act 2015 (the "HSW Act") the Contractor agrees at all times to comply with sections 28 and 34 of the "HSW Act" with meeting their obligations for health and safety.
- 12.4 The Client shall advise the Contractor of the precise location of all known risks present at the site, and where applicable, induct the Contractor's workers (including any sub-contractors as required), on:
- (a) any WorkSafe management system;
  - (b) site safety expectations;
  - (c) emergency provisions;
  - (d) risks and their control measures; and
  - (e) incident reporting expectations.

**13. Consumer Guarantees Act 1993**

- 13.1 This Contract is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Client is contracting within the terms of a trade/business (which cases are specifically excluded).
- 13.2 The Contractor shall be under no liability whatsoever for loss or damage to Goods unless;
- (a) the Client provides written notice to the Contractor detailing the alleged damage, and that such written notice shall be received by the Contractor within thirty (30) days after the delivery of the Goods; or
  - (b) in the case where the Goods have been lost in transit then the Client shall be required to provide written notice detailing the alleged loss within thirty (30) days of the date of dispatch of the Goods.

**14. Personal Property Securities Act 1999 ("PPSA")**

- 14.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA, and creates a security interest in:
- (a) all Goods being transported, carried or handled by the Contractor, over which the Contractor invokes a lien; and
  - (b) all the Client's present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to the Contractor for Services – that have previously been provided and that will be provided in the future by the Contractor to the Client in invoices rendered from time to time.
- 14.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Contractor may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, the Contractor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby;
  - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Contractor.
- 14.3 The Contractor and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 14.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 14.5 Unless otherwise agreed to in writing by the Contractor, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 14.6 The Client shall unconditionally ratify any actions taken by the Contractor under clauses 14.2 to 14.5.
- 14.7 Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

**15. Security and Charge**

- 15.1 In consideration of the Contractor agreeing to supply Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, and the Client grants a security interest in all of its present and after-acquired property, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.
- 15.2 The Client indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.
- 15.3 The Client irrevocably appoints the Contractor and each director of the Contractor as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Client's behalf.

**16. Default and Consequences of Default**

- 16.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at the Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 If the Client owes the Contractor any money the Client shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Contractor's collection agency costs, and bank dishonour fees).

- 16.3 Further to any other rights or remedies the Contractor may have under this Contract, if the Client has made payment to the Contractor, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Contractor under this clause 16 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 16.4 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Client will be unable to meet its payments as they fall due; or
  - (b) the Client has exceeded any applicable credit limit provided by the Contractor;
  - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

## **17. Cancellation**

- 17.1 Without prejudice to any other remedies the Contractor may have, if at any time the Client is in breach of any obligation (including those relating to payment) the Contractor may suspend or terminate the provision of Services to the Client and any of its other obligations under the terms and conditions. The Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor exercised its rights under this clause.
- 17.2 The Contractor may cancel any contract to which these terms and conditions apply, or cancel delivery of Goods at any time before the Goods are delivered, by giving written notice to the Client. On giving such notice the Client shall repay to the Client any sums paid in respect of the Charges. The Contractor shall not be liable for any loss or damage whatever arising from such cancellation.
- 17.3 In the event that the Client cancels the delivery of Goods, or the provision of any Services, then the Client shall be liable for any loss incurred by the Contractor (including, but not limited to, any loss of profits) up to the time of cancellation, or as a direct result of the cancellation.

## **18. Privacy Policy**

- 18.1 All emails, documents, images or other recorded information held or used by the Contractor is "**Personal Information**" as defined and referred to in clause 18.3 and therefore considered confidential. The Contractor acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines as set out in the Act. The Contractor acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Contractor that may result in serious harm to the Client, the Contractor will notify the Client in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Client by written consent, unless subject to an operation of law.
- 18.2 Notwithstanding clause 18.1, privacy limitations will extend to the Contractor in respect of Cookies where the Client utilises the Contractor's website to make enquiries. The Contractor agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
  - (b) tracking website usage and traffic; and
  - (c) reports are available to the Contractor when the Contractor sends an email to the Client, so the Contractor may collect and review that information ("collectively Personal Information")
- If the Client consent to the Contractor's use of Cookies on the Contractor's website and later wish to withdraw that consent, the Client may manage and control the Contractor's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 18.3 The Client authorises the Contractor or the Contractor's agent to:
- (a) access, collect, retain and use any information about the Client;
    - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
    - (ii) for the purpose of marketing products and services to the Client.
  - (b) disclose information about the Client, whether collected by the Contractor from the Client directly or obtained by the Contractor from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 18.4 Where the Client is an individual the authorities under clause 18.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 18.5 The Contractor will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 18.6 The Client can make a privacy complaint by contacting the Contractor via e-mail. The Contractor will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.

## **19. Service of Notices**

- 19.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
  - (b) by leaving it at the address of the other party as stated in this Contract;
  - (c) by sending it by registered post to the address of the other party as stated in this Contract;
  - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;

(e) if sent by email to the other party's last known email address.

- 19.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

## **20. Trusts**

- 20.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Contractor may have notice of the Trust, the Client covenants with the Contractor as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
  - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
  - (c) the Client will not without consent in writing of the Contractor (the Contractor will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
    - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
    - (ii) any alteration to or variation of the terms of the Trust;
    - (iii) any advancement or distribution of capital of the Trust; or
    - (iv) any resettlement of the trust property.

## **21. General**

- 21.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Contractor's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of Hastings, New Zealand.
- 21.3 The Contractor shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Contractor of these terms and conditions (alternatively the Contractor's liability shall be limited to damages which under no circumstances shall exceed the Charges).
- 21.4 The Contractor may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 21.5 The Client cannot licence or assign without the written approval of the Contractor.
- 21.6 The Contractor may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Contractor's subcontractors without the authority of the Contractor.
- 21.7 The Client agrees that the Contractor may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Contractor to provide Goods to the Client.
- 21.8 Where the Contractor is unable, wholly or in part, by reason of any fact, circumstance, matter or thing beyond the reasonable control of the Contractor, including but not limited to, any act of God, war, terrorism, strike, civil commotion, lock-out, general or partial stoppage, restraint of labour, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc. ("**Force Majeure**") to carry out any obligation under this Contract and the Contractor gives the Client prompt notice of such Force Majeure with reasonably full particulars thereof and, insofar as is known, the probable extent to which it will be unable to perform or be delayed in performing that obligation and uses all reasonable diligence to negate or remove that Force Majeure as quickly as possible, that obligation is suspended, so far as it is affected by Force Majeure, during the continuance thereof. The requirement that any Force Majeure shall be negated or removed with all reasonable diligence shall not require the settlement of strikes, lockouts or other labour disputes, or claims or demands by any government on terms contrary to the wishes of the Contractor.
- 21.9 In the event that either party shall be rendered totally, or partially, unable to carry out their obligations under this Contract by reasons or causes beyond their reasonable control, that party shall be excused from performing their obligations during the continuance of any disability so caused, provided that the party concerned advises the other party in writing of its inability within seven (7) days after becoming aware of its inability to perform its obligations by reason of such cause.
- 21.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.

## **Freight Terms & Conditions**

### **22. Nomination of Sub-Contractor**

- 22.1 The Client hereby authorises the Contractor (if it should think fit to do so) to arrange with a Sub-Contractor for the carriage of any Goods that are the subject of the Contract. Any such arrangement shall be deemed to be ratified by the Client upon delivery of the said Goods to such Sub-Contractor, who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as the Contractor. In so far as it may be necessary to ensure that such Sub-Contractor shall be so entitled the Contractor shall be deemed to enter into this Contract for its own benefit and also as agent for the Sub-Contractor.

### **23. The Contractor's Servants or Agents**

- 23.1 The Client undertakes that no claim or allegation shall be made against any servant or agent of the Contractor which attempts to impose upon any of them any liability whatsoever in connection with the Goods and, if any such claim or allegation should nevertheless be made, to indemnify the Contractor and any such servant or agent against all consequences thereof.

**24. Method of Transport**

24.1 If the Client instructs the Contractor to use a particular method of carriage whether by road, rail, sea or air the Contractor will give priority to the method designated but if that method cannot conveniently be adopted by the Contractor the Client shall be deemed to authorise the Contractor to carry or have the Goods carried by another method or methods.

**25. Route Deviation**

25.1 The Client shall be deemed to authorise any deviation from the usual route or manner of carriage of Goods that may in the absolute discretion of the Contractor be deemed reasonable or necessary in the circumstances.

**26. Charges Earned**

26.1 The Contractor's charges shall be considered earned in the case of Goods for carriage as soon as the Goods are loaded and dispatched from the Client's premises.

**27. Demurrage**

27.1 The Client will be and shall remain responsible to the Contractor for all its proper charges incurred for any reason. A charge may be made by the Contractor in respect of any delay in excess of thirty (30) minutes in loading or unloading occurring other than from the default of the Contractor. Such permissible delay period shall commence upon the Contractor reporting for loading or unloading. Labour to load or unload the vehicle shall be the responsibility and expense of the Client or Consignee.

**28. Dangerous Goods**

28.1 Dangerous Goods are Goods which are or may become of a dangerous, noxious, explosive, inflammable, radio-active or damaging nature and include Goods likely to harbour or encourage vermin or other pests. Unless agreed in writing, the Client shall not deliver to the Contractor, or cause the Contractor to deal with or handle, Dangerous Goods.

28.2 If the Client is in breach of clause 28.1:

- (a) the Client, and any person delivering the Goods to the Contractor, or causing the Contractor to handle or deal with the Goods, shall be liable for any loss or damage caused to, or by the Goods, or by their nature, and shall indemnify and keep indemnified the Contractor against all loss, damages, claims and costs (howsoever arising) incurred by the Contractor in connection therewith; and
- (b) the Goods may be destroyed or otherwise dealt with as determined by the Contractor in its absolute discretion at the expense of the Client (or by any other person in whose custody they may be at the relevant time also at the expense of the Client), and neither the Contractor nor any such other person shall incur any liability whatsoever to the Client in relation to any action taken by them concerning the Goods.

28.3 Where the Contractor agrees to accept Dangerous Goods, if during the period of cartage, the Contractor, its Sub-Contractors (or any other suitably qualified person or authority) reasonably forms the view that those Goods pose any risk to other goods, property, life or health, then the provisions of clause 28.2 shall apply.

**29. Consignment Note**

29.1 It is agreed that the person delivering any Goods to the Contractor for carriage or forwarding is authorised to sign the consignment note for the Client.

**30. Client's Responsibility**

30.1 The Client expressly warrants, represents, confirms and/or acknowledges that:

- (a) the Contractor has relied upon the Client in its description of the Goods (including height, measure, standard, strength, quantity, quality, figures, dimensions and values). Accordingly, the Contractor accepts no liability for any discrepancy that may arise with the description; and
- (b) unless specified otherwise in writing, the Contractor has relied upon the Client's skill in properly packaging, labelling, marking, securing and preparing the Goods, and that the Client has complied with all applicable laws and regulations (including those applicable to Dangerous Goods) and shall furnish such information and provide such documents as may be necessary to comply with such laws and regulations;
- (c) the Client is either the owner or the authorised agent of the owner of any Goods or property that is the subject matter of this Contract of cartage and/or storage and by entering into this Contract the Client accepts these conditions of Contract for the Consignee as well as for all other persons on whose behalf the Client is acting;
- (d) the Goods are fit for carriage, having undertaken due and careful enquiry the Goods are not dangerous, illegal, hazardous and do not contain any substance resulting in risks not readily apparent from the Client's description of the Goods;
- (e) it is the Client's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery.

**31. Delivery**

31.1 The Contractor is authorised to deliver the Goods at the address given to the Contractor by the Client for that purpose and it is expressly agreed that the Contractor shall be taken to have delivered the Goods in accordance with this Contract if at that address the Contractor obtains from any person a receipt or a signed delivery docket for the Goods.

31.2 The Contractor may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this Contract.

31.3 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery for the purposes of this Contract.

31.4 Any time specified by the Contractor for the delivery of Goods is an estimate only and the Contractor will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that the Contractor is unable to deliver the Goods as agreed solely due to any action or inaction of the Client then the Contractor shall be entitled to charge the Client any additional costs incurred by the Contractor as a direct consequence of any resultant delay or rescheduling of the delivery.

**32. Conditions of Storage**

- 32.1 The Contractor will prepare an inventory of Goods received for storage and will ask the Client to sign that inventory. The Client will be provided with a copy of the inventory. If the Client signs the inventory or does not do so and fails to object to its accuracy within seven (7) days of receiving it from the Contractor, then the inventory will be conclusive evidence of the Goods received. The inventory will disclose only visible items and not any contents unless the Client ask for the contents to be listed, in which case the Contractor will be entitled to make a reasonable additional charge.
- 32.2 The Contractor is authorised to remove the Goods from one warehouse to another without cost to the Client. The Contractor will notify the Client of the removal and advise the address of the warehouse to which the Goods are being removed not less than five (5) days before removal (except in emergency, when such notice will be given as soon as possible).
- 32.3 The Client is entitled upon giving the Contractor reasonable notice to inspect the Goods in store, but a reasonable charge may be made by the Contractor for this service.
- 32.4 Subject to payment for the balance of any fixed or minimum period of storage agreed the Client may require the Goods to be removed from the store at any time on giving the Contractor not less than five (5) working days' notice. If the Client gives the Contractor less than the required notice the Contractor will still use their best endeavours to meet the Client's requirements but shall be entitled to make a reasonable additional charge for the short notice.
- 32.5 The Client agrees to remove the goods from storage within twenty-eight (28) days of a written notice of requirement from the Contractor to do so. In default, the Contractor shall provide the Client with written notice of the Contractor's intention to SELL ALL OR ANY OF THE GOODS by public auction or, if that is not reasonably practicable by private treaty within two (2) months of such notice being issued, apply the net proceeds in satisfaction of any amount owing by the Client to the Contractor in accordance with Section 288 of the Contract and Commercial Law Act 2017.

**33. Loss or Damage**

- 33.1 This Contract is "at limited carrier's risk". Subject to any statutory provisions imposing liability in respect of the loss of or damage to the Goods (including but not limited to, chilled, frozen, refrigerated or perishable goods):
- (a) the Contractor shall not be under any liability for any loss or damage suffered by the Contractor, Client (or any third party) as a result of:
- (i) the Client contravening clause 30;
  - (ii) any latent defect or inherent vice or natural deterioration or wastage of the Goods or packaging;
  - (iii) seizure under legal process; or
  - (iv) saving, or attempting to save, life or property in peril.
- (b) the Contractor shall not be under any liability for any consequential or indirect loss, loss of market or consequences of delay; and
- (c) the Client will indemnify the Contractor against all claims of any kind whatsoever, howsoever caused or arising brought by any person in connection with any matter or thing done, said or omitted by the Contractor in connection with the Goods.

**34. Insurance**

- 34.1 The Client acknowledges that:
- (a) the Goods are carried and stored at the Client's sole risk and not at the risk of the Contractor; and
- (b) the Contractor is under no obligation to arrange insurance of the Goods and it remains the Client's responsibility to ensure that the Goods are insured adequately or at all; and
- (c) under no circumstances will the Contractor be under any liability with respect to the arranging of any such insurance and no claim will be made against the Contractor for failure to arrange or ensure that the Goods are insured adequately or at all.

**35. Claims**

- 35.1 Notwithstanding clauses 33 and 34 in the event that the Client believes that they have any claim against the Contractor then they must lodge any notice of claim for consideration and determination by the Contractor within thirty (30) days (as set out in Section 274 of the of the Contract and Commercial Law Act 2017) from the actual date of delivery or the anticipated date of delivery in the event of non-delivery or the removal or destruction of the Goods. The Contractor will respond to that notice of claim within ten (10) days (as set out in Section 275 of the of the Contract and Commercial Law Act 2017) of receipt of the notice and will take all reasonable steps to resolve the matter. In the event that the Client is not satisfied with the resolution provided, the Client may commence court proceedings or arbitration proceedings to resolve the dispute.
- 35.2 The failure to notify a claim within the time limits under clause 35 is evidence of satisfactory performance by the Contractor of its obligations.

**36. Contractor's Lien**

- 36.1 The Contractor shall have a right to take a particular and general lien on any Goods the property of the Client or a third party owner which are in the possession or control of the Contractor (and any documents relating to those Goods) for all sums owed at any time by the Client or a third party owner to the Contractor (whether those sums are due from the Client on those Goods or documents, or on any other Goods or documents), and the Contractor shall have the right to sell such Goods or cargo by public auction or private treaty after giving seven (7) days' notice to the Client. The Contractor shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods or cargo, from the proceeds of sale and shall render any surplus to the entitled person.
- 36.2 Notwithstanding clause 36.1 nothing shall prejudice the Contractor's rights to use any of the Contractor's other rights and remedies contained in this Contract to recover any outstanding charges or fees payable in respect of the Goods that were not recovered out the sale of the Goods in accordance with clause 36.1 and no exception shall be taken upon the grounds that the Price realised is less than the full market value of the Goods.