

TERMS & CONDITIONS

1. PARTIES

This contract is made between Mainfreight Air & Ocean Limited (hereinafter called "The Company", which term shall, except where the context otherwise requires, include any servant or agent of the Company) and the consignor of the goods described on the face hereof (which party, together with the consignee, receiver of the goods, any person owning or entitled to the possession of or otherwise claiming any interest in the goods, and anyone acting on behalf of any of those persons, whether jointly or severally, are hereinafter individually and collectively included in the term "the Customer").

2. FREIGHT FORWARDING

Except to the extent that any of the services to be performed pursuant to this contract shall be actually performed by the Company, the Company shall act as a forwarding agent only. The Company shall be entitled, subject only to such limitations as may have been agreed in writing signed by the Company, to enter into contracts on behalf of and as agent for the Customer and without notice to the Customer, for the carriage of the goods by any route, means and carrier, for the storage, packing, trans-shipment, unloading, loading or handling of goods by any person at any place and for any length of time, and for such other matters as in the opinion of the Company may be necessary or desirable to the performance of the carriage provided for on the face hereof. The Customer hereby appoints the Company the agent of the Customer for the purpose of entering into any contract, upon such terms and conditions, as the Company may in its absolute discretion think fit. The Customer shall be bound by the terms of any consignment note, air waybill or other contractual document which the Company may receive for the goods, or for any package, unit or container in which the goods may be packed, whether by the Customer, the Company, or any other person.

3. INTERNATIONAL CARRIAGE

To the extent that the carriage to be arranged by the Company under this contract is international carriage as defined by the Convention, it is hereby agreed and declared, and the Customer hereby acknowledges, that the Company is not the carrier for the purposes of the Convention. The Company shall not be under any liability under the Convention. In this contract, the expression "Convention" means the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw, 12 October 1929, and where appropriate that Convention as amended by the Hague Protocol, 28 September 1955, and/or as supplemented by the Guadalajara Convention, 18 September 1961, and where appropriate that Convention amended by the Montreal Convention / Protocol.

4. DOMESTIC CARRIAGE

Where, and to the extent that, the provisions of the Carriage of Goods Act 1979 (hereinafter called "the Act") apply to the contract, the contract shall be deemed to be "at limited carrier's risk". The provisions of Sections 18 to 27 of the Act shall apply only to the extent that such provisions are not inconsistent with the terms hereof. The Company shall under no circumstances be liable under the Act for any damages consequential upon the loss of or damage to the goods, or for loss of market or delay.

5. LIABILITY OF THE COMPANY

Subject to Clause 4, the Company shall not be under any liability whatsoever for any loss of or damage to, or mis-delivery, delay in delivery, deterioration, contamination or non-delivery of goods or any consequential loss arising therefrom, howsoever caused and whether resulting from the negligence of the Company or not. The Company does not undertake that the goods shall arrive at the place of delivery at any particular time or meet any particular market or use and the Company shall in no circumstances whatsoever be liable for direct, indirect or consequential loss or damage caused by delay, not for any loss arising from loss of market or consequential upon the loss of or the damage to the goods, or otherwise howsoever. In respect of any claim pursuant to Clause 4 hereof, the Company shall be under no liability whatsoever unless written notice of the claim, giving reasonable particulars of the event giving rise to the claim and any alleged damage or loss is received by the Company within 10 days after delivery or, in the case of non-delivery, within 14 days after the date of despatch.

6. WARRANTY BY CUSTOMER

The Customer hereby warrants, and it shall be a term of this contract, that, except as may be notified by the Customer to the Company before the goods are accepted, the goods are fit to be carried and stored in the condition and packed in the manner in which they are tendered and that, except as so disclosed, the provisions of every enactment (if any) that the Customer is required to comply with relating to the consignment for carriage of the goods has been complied with. Without limiting the generality of the foregoing, it shall be the responsibility of the Customer prior to presenting the goods for carriage to ensure that the following requirements are fulfilled: (a) the goods must be distinctly, clearly and permanently marked so that they and their place of delivery are readily identifiable; (b) the goods must be accurately described and weighed or measured; (c) a declaration must be made to the Company of any goods or packages in respect of which a declaration as to the nature, contents or other properties of which is required to be made by the laws of any country which may be applicable.

7. DESCRIPTION OF GOODS

The Customer warrants to the Company that the particulars relating to the goods as set out on the face hereof have been checked by the Customer and that such particulars and any other particulars furnished by or on behalf of the Customer are correct, and the Customer shall indemnify the Company against all loss, damage, fines and expenses arising or resulting from inaccuracies in or inadequacies of such particulars or from any other cause in connection with the goods for which the Company is not responsible. The Company or any person with whom the Company has contracted for the carriage or any person authorised by the Company or such contractor shall be entitled, but under no obligation, to open any container, package or unit at any time and to inspect the goods.

8. GOODS TO COMPLY WITH RELEVANT LEGISLATION

The goods shall comply with the requirements of any applicable law relating to the nature, labelling and packaging and carriage of goods. The Expenses and charges of the Company in complying with the provisions of any such law or with any order or requirement thereunder or with the requirement of any airport, customs, revenue or other authority or Company or the expenses, charges, levies or fines arising out of the breach of any applicable law shall be paid by the Customer.

9. PAYMENT OF CHARGES

The Company's charges shall be deemed fully earned and shall be payable as soon as the goods are loaded and despatched from the consignor's premises or delivered to the Company, whichever shall first occur, and shall not be refundable in any circumstances whatsoever and the Company may refuse to accept any goods unless the charges have been so paid. Should payment in full not be made to the Company on the due date for payment, then the Customer shall pay all costs of collection and interest on the outstanding monies at a rate seven and one-half percent per annum greater than the base rate for lending charged by the Company's bank. Notwithstanding any direction herein as to whether the freight shall be payable by the consignor or the consignee, both the consignor and the consignee shall be and remain jointly and severally liable to the Company for all the Company's charges. Notwithstanding that the Customer may have any claim against the Company in respect of any matter whatsoever, the Customer shall pay all amounts payable hereunder on the due date for such payment without deduction or deferment on account of any claim, counter-claim or set-off.

10. DISBURSEMENTS AND EXPENSES

The Customer shall reimburse the Company upon demand for any duties, taxes or other charges, costs or disbursements paid, and any expenses incurred, by the Company, in the performance of its obligations hereunder. Notwithstanding that the Company is acting as agent of the Customer in arranging the carriage of the goods, it is hereby agreed and declared that, subject to the payment by the Customer of the Company's charges under Clause 9, and subject to clause 12, all freight and other charges payable to any carrier or other contractor for the performance of the carriage provided for on the face hereof shall be payable by the Company. Where in accordance with the provisions of this contract, the Company makes any arrangement or enters into any contract or incurs any liability for charges not known to or contemplated by the Customer at the time of entering into this contract then all costs, expenses or charges incurred by the Company in respect of such arrangement, contract or liability shall be recoverable by the Company from the Customer pursuant to this clause. The Company shall be entitled to retain and be paid, and the Customer hereby expressly consents to the receipt by the Company of all brokerages, commissions, discounts, rebates, bonuses, deductions, allowances and other remunerations customarily retained by or paid to forwarding agents. The Company shall not be bound to disclose to the Customer the amount of any such remuneration received by the Company. The Customer hereby acknowledges that the Company may have a pecuniary interest in any contract entered into by the Company as agent for the Customer pursuant to the provisions hereof.

11. CHARGING

The Company may fix its charges by weight, measurements or value, and may at any time reweigh or revalue or remeasure or require the goods to be reweighed, revalued or remeasured and may fix proportional additional charges accordingly.



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12. QUOTATIONS

Prices quoted are based on costs prevailing at the date thereof in respect of freight, clearing, landing, delivery, insurance, bank and other charges, rates of exchange or currency conversion, taxes and duties and on the latest available quotations from carriers utilised by the Company. Any increase in cost due to variations in any of the foregoing shall be to the Customer's account and the price payable by the Customer shall be increased accordingly.

13. LIEN

"The Company/Freight Forwarder shall have a right of detention of, and a particular and a general lien on, the goods and any other goods (and any documents relating thereto) of the owner in possession or control of the Company/ Freight Forwarder. The Company/ Freight Forwarder shall have a right of detention and a particular and general lien on, the goods and any other goods (and any documents relating thereto) of the Owner in the possession or control of the Freight Forwarder at any time FOR ALL SUMS PAYABLE TO THE FREIGHT FORWARDER IN RESPECT OF GOODS OR FOR ANY PARTICULAR TRANSACTION OR GENERAL BALANCE OR OTHER MONIES DUE FROM THE OWNER INCLUDING PAST FREIGHT CHARGES. If any monies due to the Company/Freight Forwarder are not paid forthwith after notice has been given to any person from whom the monies are due that the goods or any other goods of the owner are being detained, they may be sold by auction or otherwise at the sole discretion of the Company/ Freight Forwarder and at the expense of such persons, and the net proceeds of the sale applied in or towards satisfaction of such indebtedness. Failing the giving of any such notice, the Company/ Freight Forwarder shall have the right to sell any such goods by auction or otherwise after the Company/Freight Forwarder has informed or made reasonable endeavours to inform the Owner that it will dispose of the goods and apply the proceeds as mentioned. Any such sale or disposition shall not prejudice or affect the Company/Freight Forwarder's right to recover from such persons any balance due or payable past or present to the Company/Freight Forwarder hereunder in respect of services provided hereunder or the costs of any such detention and sale or disposition".

14. DISPOSAL OF UNCLAIMED GOODS

If delivery of the goods or any part thereof is not taken by the Customer at the time and place when and where the Company is entitled to call upon the Customer to take delivery thereof, the Company shall be entitled without notice to unstow the goods or any part thereof if stowed in containers and/or to store the goods or that part thereof in the open or under cover at the sole risk of the Customer. Such storage shall constitute due delivery hereunder, and thereupon the liability of the Company in respect of the goods or that part thereof stored as aforesaid (as the case may be) shall wholly cease and the cost of such storage (if paid or payable by the Company or any agent or subcontractor of the Company) shall forthwith upon demand be paid by the Customer to the Company. If the Customer fails to take delivery of the goods within 30 days after the Company is entitled to call upon the Customer to take delivery, or if in the opinion of the Company the goods are likely to deteriorate, decay, become worthless or incur charges whether for storage or otherwise which are excessive in relation to their value, the Company may, without prejudice to any other rights which it may have against the Customer, and without any responsibility whatsoever attaching to it, sell or dispose of the goods and apply the proceeds of sale in reduction of any sums due to the Company.

15. DISPOSAL OF PERISHABLE GOODS

If, at any time while any perishable goods are held by the Company whether pursuant to this contract or otherwise howsoever, the goods appear to be deteriorating or likely to become offensive, the Company may sell the goods on such terms as the Company in its absolute discretion may think fit, or if in the opinion of the Company sale is not reasonably practicable may destroy or otherwise dispose of the goods. The costs of such sale, destruction or disposal shall be recoverable from the Customer pursuant to Clause 10.

16. DANGEROUS AND HAZARDOUS GOODS

The Customer shall not tender or cause to be tendered for carriage any dangerous goods or any chemicals or similar substances which are likely to or could be a hazard to health or taint or contaminate the means of carriage or any plant or equipment or other goods without presenting a full declaration in writing in a form approved by the Company as to the contents of the package and potential danger, with details of the properties which make them dangerous or hazardous, and their chemical description (as opposed to trade name). Any package containing any such goods not accompanied by such a declaration may be destroyed by the Company. Any such goods, which are accompanied by a declaration, may, at any time while they are in the possession or control of the Company, be destroyed or otherwise disposed of forthwith if the Company believes that the goods are in or are about to enter a dangerous state and that the destruction or other disposal of the goods is necessary in order to avoid the threat of harm to any persons or properties. All costs of destruction or disposal, and any costs of averting, minimising or cleaning up any spillage or other contamination shall be recoverable from the Customer pursuant to Clause 10.

17. LIBERTIES

(a) The Company may, without notice to the Customer and in all respect at the Company's discretion; use any means of transport or storage whatsoever; transfer the goods from one conveyance to another including carrying the same by any means of transport whatsoever; unpack and remove goods which have been stowed into a container or other mode of unitisation and forward the same in any other container or means of unitisation or singly; stow goods into any container or other means of unitisation; load or unload the goods at any place and store the goods at any place; comply with any orders or recommendations given by the Government or authority or any person or body acting or purporting to act as or on behalf of such Government or authority or having the right to give orders or directions.

(b) The liberties set out in subclause (a) may be invoked by the Company for any purpose whatsoever whether or not connected with the carriage of the goods and whether or not the need for such action may have been in existence or contemplated by the Company or by the Customer at the time when this contract was entered into. Anything done in accordance with subclause (a) or any delay arising therefrom shall be deemed to be within the contract and shall not be a variation or breach.

18. WARRANTY OR OWNERSHIP

The Customer expressly warrants that he is either the owner or the authorised agent of the owner of the goods or property the subject matter of this contract, that the person signing this contract has the authority so to do, and by entering into this contract he accepts these conditions of contract as or for the Customer as well as for all other persons on whose behalf the Customer is acting.

19. DELIVERY

(1) The Company is authorised to deliver the goods at the address nominated to the Company by the sender for that purpose and without prejudice to the foregoing it is expressly agreed that the Company shall be conclusively presumed to have delivered the goods in accordance with this contract if at that address he obtains from any person a receipt or signed delivery docket for the goods.

(2) If the nominated place of delivery should be unattended or if delivery cannot otherwise be effected by the Company, the Company may at its option deposit the goods at that place (which shall be conclusively presumed to be due delivery hereunder) or store the goods and if the goods are stored by the Company, the Customer shall pay or indemnify the Company for all costs or expenses incurred in or about such storage. In the event that the goods are stored by the Company, the Company shall be at liberty to redeliver them to the sender from the place of storage at the sender's expense.

20. CARRIER WILL NOT COLLECT CASH ON DELIVERY

All goods received by the Company for carriage are so received subject to the condition that the Company will accept no responsibility for the collection of cash on delivery or any other payments on behalf of the sender or any other person. When goods are tendered by any person with instructions for the Company to collect any such payments, the Company shall not be bound by such instructions notwithstanding that the Company may accept the goods as tendered and perform other services of carriage forwarding or storage in relation to those goods.

21. ACCEPTANCE OF GOODS

Goods will be accepted for and delivered from storage on any day between Monday and Friday both inclusive (statutory holidays excepted) between the hours of 8.00am and 4.30pm and any goods to be delivered or uplifted outside those days or hours or on statutory holidays will require special arrangements to be made by the storer with the Company and will be subject to any additional charges to be imposed by the Company to cover overtime labour rates or any other costs incurred by the Company in relation thereto but in no case shall the Company be under any obligation to accept or deliver any goods outside normal hours.

22. BREACH NOT TO AFFECT WHOLE CONTRACT

All the rights, immunities and limitations of liability in the above terms shall continue to have their full force and effect in all circumstances and notwithstanding any breach of the contract or any of the conditions hereof by the Company or any other person entitled to the benefit of such provisions.



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23. UNENFORCEABILITY NOT TO AFFECT WHOLE CONTRACT

It is hereby agreed that if any provision or part of any provision of this contract is unenforceable it shall not affect any other part of such provision or any other provision hereof.

24. INSURANCE

In the event that a particular contract specifies a requirement for insurance the Company as the Customer's agent will at the cost of the Customer arrange insurance of the goods through a reputable insurance broker or Company. The limit of the cover provided by such insurance as arranged by the Company for the Customer shall be the amount specified on the face hereof and the following exclusions will apply:

(a) All claims resultant from wear, tear, moths, vermin, damp, mildew or loss of market or loss, damage or expense proximately caused by delay or inherent vice or nature of the subject matter insured.

(b) Gradual deterioration, rust and/or oxidation unless due to, or consequent upon, fire, collision, overturning or other accident to the conveyance.

The insurance shall otherwise be on the terms and conditions normally offered for such class of business by the underwriter by whom such insurance is effected PROVIDED HOWEVER that the said limit shall not be construed as an agreed value. The agreed value shall be the amount representing the value of the goods invoiced by the consignor with a limit in any event of the amount specified on the face hereof, PROVIDED FURTHER that any amount received by the Customer under such contract of insurance shall be applied in extinguishing any liability of the Company hereunder.

25. The goods shall be stored in and removed from the Company's cold store by the Company's employees. The Customer and its servants, agents and employees shall not enter into the cold store without the express approval on each occasion of the Company's management and then only on the conditions or terms nominated.

26. GOVERNING LAW

This contract shall be governed by and interpreted in accordance with the laws of New Zealand. No proceedings in respect of any matter or thing shall be instituted except in New Zealand.

27. HEADINGS AND MARGINAL NOTES

Headings and marginal notes are inserted for the sake of convenience of reference only and do not affect the interpretation of this contract.

28. CONSUMER GUARANTEES ACT

Where the provisions of the Consumer Guarantees Act 1993 apply, the provisions of these terms and conditions will be subject to the application of that Act and in the case of any conflict, the provisions of the Consumer Guarantees Act 1993 will apply. Where the Customer is a business (as "business" defined by the Consumer Guarantees Act 1993), it is agreed that the Customer is acquiring all goods and services from the Company for the purposes of a business and that the Consumer Guarantees Act 1993 does not apply.

29. The Customer will give the Company one months notice in writing of the Customers intention to discontinue using the Company's service.

Signature: _____ Date: _____

Name : _____ Position Held: _____



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