

1. WHERE THESE TERMS APPLY

- 1.1 The following general terms (**Terms**) are the terms on which the Company will supply Services to the Customer.
- 1.2 The Company recommends that the Customer seek legal advice about the Terms before engaging the Company and accepting them.
- 1.3 Purchase or use of any of the Company's services by the Customer constitutes acceptance of these Terms.

2. INTERPRETATION

- 2.1 In these Terms the following terms have the meanings specified:

Company means Hawk Ellery Freight Services Limited

Container means all forms of shipping container, including tank containers, flat racks and bulk containers.

Customer means the person or entity with whom the Services are provided in accordance with these Terms, whether as principal or as agent (disclosed or undisclosed) for another party and includes any person who has or obtains an interest in the Goods.

Dangerous Goods means cargo which is volatile or explosive or which is or may become dangerous, inflammable or offensive (including radioactive materials) or which has the potential to damage any person or property whatsoever.

Force Majeure includes any delay in acceptance of any goods by an addressee; the Company's inability to gain access to a delivery address; seizure or destruction of any goods by customs or any other regulatory or government authority; an act of God; earthquake, volcanic activity, flood, fire, storm or adverse weather condition; sabotage, riot, civil disturbance, epidemic, national emergency or act of war; governmental action; strike, lock-out, work stoppage or other industrial problem; traffic congestion; or delay in aircraft or other transport.

Goods means the cargo accepted by the Company and includes any container, packaging or pallet(s) supplied by or on behalf of the Customer.

GST means the goods and services tax imposed by or under the Goods and Services Tax Act 1985 or any similar or replacement legislation.

Price and Services Schedule means a schedule or other document, including any sales maker proposal provided to the Customer, containing price and/or services information which is stated to be subject to these general terms and which the Company has provided to the Customer.

Services means the whole of the operations undertaken by the Company in respect of the Goods.

Subcontractor includes any person who pursuant to a contract or arrangement with any other person (including the Company) provides or agrees to provide the Services or any part of the Services.

VGM means the Verified Gross Mass of Goods, calculated in accordance with one of the methods specified in Chapter VI, Regulation 2 of the Safety of Life at Sea Convention and guidelines issued by Maritime New Zealand.

3. PRIORITY OF TERMS

- 3.1 All Services are provided to the Customer subject only to these Terms which prevail at all times over the conditions of contract of the Customer. In the event of and to the extent of any inconsistency between these Terms and the conditions which are incorporated into any bill of

lading, waybill, consignment note or other transport document issued by the Company, these Terms prevail.

- 3.2 The Company is not a common carrier and accepts no liability as such. The Company reserves the right to accept or refuse the provision of Services in respect of the Goods at its sole discretion.

4. CUSTOMER THE OWNER OF GOODS

- 4.1 The Customer warrants that it is either the owner or the authorised agent of the person or persons owning or having any interest in the Goods or any part of the Goods and enters into this Contract on its own behalf or as authorised agent of any such persons. The Customer shall indemnify the Company in respect of all liability whatsoever and howsoever arising in connection with the provision of the Services and/or the Goods to any person (other than the Customer) who claims to have, who has or may in the future have any interest in the Goods or any part of the Goods.

5. PAYMENT OBLIGATIONS

- 5.1 The Customer must pay for the Services in accordance with the Price and Services Schedule and any invoice issued by the Company. The Company charges a fee for its Services, including the arranging of insurance and the payment on the Customer's behalf of disbursements such as insurance premiums, airline fuel surcharges, shipping company CAF and BAF charges and port services charges.
- 5.2 The Customer must pay all goods and services tax and all other taxes payable in relation to the purchase or use of the Services.
- 5.3 If the Customer disputes an invoice, the Customer must notify the Company within 7 days of receipt of the relevant invoice (**Dispute Period**), wherein both the Customer and the Company will seek to resolve the dispute within 10 days. On expiry of the Dispute Period, unless notice of the dispute has been received by the Company, each invoice will be deemed due and payable.
- 5.4 Every special instruction to the effect that charges shall be paid by a person other than the Customer shall be deemed to include a stipulation that if that nominated person does not pay those charges within seven (7) days of delivery or attempted delivery of the Goods, then the Customer shall pay those charges to the Company within seven (7) days of being notified of that person's failure to pay.

6. CUSTOMER COMPLIANCE

- 6.1 The Customer warrants that it has complied with all laws and regulations relating to the nature, condition, packaging, handling, storage and carriage of the Goods and that the Goods are packed to withstand the ordinary risks of handling, storage and carriage, having regard to their nature. The Customer indemnifies the Company against all liability and all costs incurred as a result of or arising out of a breach of this warranty. Further the Customer shall provide to the Company all such assistance, information and documentation that may be necessary to enable the Company to comply with its own obligations under any laws and regulations.

7. DUTIES AND COSTS

- 7.1 All customs and/or excise duties, taxes, costs, fines or penalties which the Company becomes liable to pay for any reason whatsoever in respect of the Goods and any documentation relating to the Goods pursuant to any applicable laws or regulations (whether resulting from the negligence of the Company or otherwise) shall be paid by the Customer. The Customer will pay such amounts on request by the Company and the Company reserves the right to require such amounts are paid to it in advance of the Company agreeing to provide the Services.

8. DANGEROUS GOODS

- 8.1 The Customer shall not tender for the provision of Services by the Company any Dangerous Goods without first presenting to the Company a full description disclosing their nature and securing the Company's agreement to provide Services in respect of the same and in any event the Customer shall be liable for all death, bodily injury, loss and/or damage thereby caused and shall indemnify the Company for such liability.
- 8.2 Any Dangerous Goods that have been presented to the Company in breach of this clause may at any time be destroyed, disposed of or abandoned or rendered harmless by the Company without compensation to and at the cost of the Customer. The Customer shall indemnify the Company against all cost, liability and expense of whatever nature caused by or arising from the breach of this clause.

9. LIABILITY

- 9.1 To the maximum extent permitted by law the Goods are at the risk of the Customer and not of the Company. Except where the law provides otherwise the Company shall not be responsible in tort or contract or bailment or otherwise for any, and the consequences of any, loss of or damage to or deterioration of the Goods or misdelivery or failure to deliver or delay in delivery of the Goods including chilled, frozen, refrigerated or perishable Goods either in transit or in storage or failure to provide or delay in providing the Services for any reason whatsoever including without limiting the foregoing the negligence or breach of contract or wilful act or default of the Company or others or the conversion or misappropriation of the Goods by the Company's servants, agents or Subcontractors. This clause shall apply to all, and the consequences of all, such loss of or damage to or deterioration of the Goods or misdelivery or failure to deliver or delay in delivery of the Goods or failure to provide or delay in providing the Services whether or not the same occurs in the course of performance by or on behalf of the Company of the Services or in events which are in the contemplation of the Company and/or the Customer or in events which are foreseeable by them or either of them or in events which could constitute a fundamental breach or a breach of a fundamental term of the Terms.
- 9.2 Where any handling, installation, removal, assembly or erection of any kind whatsoever is required to be undertaken by the Company, the Company shall not be liable for any death, injury, loss or damage which may result from or arise out of what the Company undertakes. Further the Customer shall indemnify the Company in respect of any such liability whether or not that liability arises from negligence or breach of contract or wilful act or default of the Company or the Company's servants, agents or Subcontractors.
- 9.3 Without limiting the generality of any other clause, and to the maximum extent permitted by law, the Company has no direct or indirect liability whatsoever (whether in contract, tort or otherwise) for any direct or indirect losses, penalties, damages, costs or expenses of any kind (including indirect or consequential loss) brought, claimed, suffered or incurred by the Customer or any third party in connection with the carriage of goods however caused or arising and (without limiting the generality of the foregoing) whether caused intentionally or arising as a result of the Company's negligence or otherwise.
- 9.4 In all cases where liability of the Company has not been excluded or limited, whether by these Terms, by statute or by international convention or otherwise, all liability of the Company whatsoever and howsoever arising is limited to limited carriers risk, being:
- (a) New Zealand \$100 or the value of the Goods the subject of the Contract at the time the Goods were received by the Company, whichever is the lesser; or
 - (b) in the case of a proven breach of an implied warranty provided by the Consumer Guarantees Act 1993, the payment of the cost of having the Services supplied again.
- 9.5 Where the Services are compulsorily subject to Part 5, Subpart 1 of the Contract & Commercial Law Act 2017, any liability of the Company shall be limited to the statutory limitation sum then applicable to contracts at limited carrier's risk.
- 9.6 The Company shall not be responsible in negligence or contract or otherwise for loss, damage, costs, fines or penalties incurred by the Customer or any other person resulting from or arising out of or in connection with any quotation, advice, statement, representation or information

given or made by or on behalf of the Company to the Customer or others as to the classification of or any matter material to the valuation of or the liability for or the amount, scale or rate of customs and/or excise duty or other impost, tax or rate charged in respect of the Goods or any cargo whatsoever. In giving or making any quotation, advice, statement, representation or information the Company relies solely on the particulars provided by the Customer which warrants that those particulars accurately and completely describe all aspects of the Goods or cargo and the transaction(s) relating to the Goods or cargo.

- 9.7 The Company shall not be responsible in negligence or contract or otherwise for loss, damage, costs, fines or penalties incurred by the Customer or any other person resulting from or arising out of or in connection with any quotation, advice, statement, representation or information given or made by or on behalf of the Company to the Customer or others as to the classification of or any matter material to the valuation of or the liability for or the amount, scale or rate of customs and/or excise duty or other impost, tax or rate charged in respect of the Goods or any cargo whatsoever. In giving or making any quotation, advice, statement, representation or information the Company relies solely on the particulars provided by the Customer which warrants that those particulars accurately and completely describe all aspects of the Goods or cargo and the transaction(s) relating to the Goods or cargo.

10. INDEMNITY

- 10.1 The Customer indemnifies the Company and agrees to hold the Company harmless against all losses, claims, damages, costs, and expenses of any kind whatsoever (including legal costs on a solicitor/own client basis), howsoever caused or arising and without limiting the generality of the foregoing, whether caused or arising:

- (a) out of the Customer's breach of any obligation, warranty or other provision in these Terms, including a failure to pay any amount owing;
- (b) out of the Company's provision of services in respect of, or in relation to or connection with, Dangerous Goods as defined in these Terms;
- (c) the Customer's default or negligence; and
- (d) out of any claim or allegation made against it by any person in connection with any liability, arising out of or relating to the provision of the Services and/or the Goods,

and/or suffered or incurred by the Company in connection with or resulting from the Company's provision of Services.

11. ENDING THE COMPANY'S SERVICES

- 11.1 Either the Customer or the Company may terminate any obligation the Company has to purchase or provide Services under these Terms (as the case may be) by giving each other 30 days' notice in writing. The Company may at any time, by giving the Customer notice in writing, end any obligation the Company has to provide Services and terminate these Terms if the Customer does not comply with any obligations to the Company under these Terms or fails to, or is unable to, pay its debts when due, or it becomes insolvent or being a partnership, dissolves the partnership or being a natural person dies.

12. PRIVACY

- 12.1 The Customer consents to the Company collecting, using and holding information about the Customer and its personnel for the Company's business purposes including contacting the Customer about products and services by email or using other contact details. The Customer consents to the Company collecting, using and holding general credit information about the Customer and to collecting such information from, and/or disclosing it to, any third party (including a credit or reporting agency) in connection with credit management and enforcement purposes (including making decisions regarding the provision of credit to the Customer). The Company may credit check the Customer and may collect information from any person for this purpose.

13. INSURANCE

- 13.1 The Company shall arrange insurance in respect of the Services or Goods upon receipt of instructions given in writing, an insurance proposal form properly completed, and payment of the Company's insurance charge. The insurance will be on the terms and conditions of the marine open cargo policy that the Company holds. The full policy wording is available on request. The Company makes no representations and gives no advice regarding any aspect of the policy, including as to the suitability or appropriateness of the policy for the Customer's requirements, the policy's terms, conditions or exclusions, or as to the competitiveness of the cost of the insurance. The Customer warrants that it relies entirely on its own skill and judgment in accepting the policy on the terms offered
- 13.2 In event of a claim the Customer shall have recourse solely against the insurer and the Company shall not be under any responsibility or residual liability in relation to the Customer for the loss of or damage to any of the Goods or the failure of the policy to meet a claim in respect of the same.
- 13.3 The Customer acknowledges and agrees that the Company pays its insurer an annual or declaration premium for its marine open policy, the effect of this being that the sum charged to the Customer is (a) not directly payable to the insurer and is therefore not held in trust by the Company for either the insurer or the Customer and (b) includes a fee component for the service the Company provides in securing insurance for the Customer. The Customer further acknowledges and agrees that the Company is under no obligation to separately identify the fee component even if requested to do so.

14. CUSTOMER AUTHORISES SUBCONTRACTING

- 14.1 The Company may transfer, subcontract or assign to a third party any of the Company's rights and/or obligations under these Terms without the Customer's consent. The Customer must not transfer, subcontract or assign their rights or obligations under these Terms.
- 14.2 The Customer undertakes that no claim or allegation shall be made, whether by the Customer or any other person who is or who may subsequently be interested in the provision of the Services and/or thin the Goods, against any person (other than the Company) by whom the Services or any part of the Services are provided which imposes or attempts to impose upon such person any liability whatsoever and howsoever arising (including from negligence or breach of contract or wilful act or default of the Company or others) in connection with the provision of the Services and/or the Goods and if such claim or allegation should nevertheless be made to indemnify the Company and the person against whom such claim or allegation is made against the consequences of such claim or allegation. For the purpose of this clause, the Company is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons who shall be deemed to be parties to these Terms.

15. EXTENSION OF RIGHTS AND EXEMPTIONS IN TERMS TO SERVICE PROVIDERS

- 15.1 Every exemption, limitation, condition and liberty in these Terms and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Company or to which the Company is entitled in accordance with these Terms shall also be available and shall extend to protect:
- (a) all subcontractors;
 - (b) every servant or agent of the Company or of a Subcontractor;
 - (c) every other person (other than the Company) by whom the Services or any part of the Services are provided; and
 - (d) all persons who are or may be vicariously liable for the acts or omissions of any persons falling within paragraphs (a), (b), or (c) of this clause:

and, for the purpose of this Clause 11, the Company is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of such persons and each of them and all such persons and each of them shall to this extent be or be deemed to be parties to this Contract.

16. DEVIATION FROM STANDARD PROVISION OF SERVICES

16.1 The Customer authorises any deviation from the usual manner in which the Services are provided which the Company considers to be reasonable or necessary in the circumstances. If the Customer expressly instructs the Company to use a particular method or route when providing the Services the Company will give priority to that method but its adoption remains at the sole discretion of the Company and the Customer authorises the Company to provide the Services by another method or route.

17. CHARGES EARNED ON DELIVERY

17.1 The charges of the Company shall be considered earned as soon as the Goods are delivered to or collected by the Company and under no circumstances shall any of those charges be refunded. The Company may charge by weight, measurement or value and may at any time reweigh, remeasure or revalue or require the Goods to be reweighed, remeasured or revalued and charge proportional additional charges accordingly. The Customer is responsible to the Company for all its proper charges whether or not the Goods are delivered and/or the Services are provided as instructed and whether or not they are damaged.

18. COMPANY LIEN

18.1 The Company shall have a general and particular lien on the Goods and any documents relating to the Goods and/or any other Goods or cargo of the Customer which are or come into the possession or control of the Company and any documents relating to those other Goods or cargo for all sums payable by the Customer, whether or not overdue for payment and whether such Goods, cargo or documents are those to which the sums owed relate or not, and shall have the right to sell such Goods or cargo by public auction or private treaty without notice to the Customer. The Company 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. The Company's lien is in addition to and not in substitution for any other lien or charge that may be available to the Company by law or by statute.

19. TEMPERATURE DATA

19.1 Where Goods have been carried in a temperature controlled container or cargo space, the Customer may request copies of such temperature data as has been electronically, automatically or mechanically recorded by recording equipment contained in, attached to or integral in such container or cargo space. Upon such request, and upon the Customer paying or agreeing to pay the Company's actual and reasonable costs in relation thereto, the Company agrees that such data as is in its possession or power shall, as soon as practicable, be made available to the Customer. Such data shall be prima facie evidence of the matters stated in it.

20. VARIATION OF TERMS

20.1 The Company shall not be bound by any agreement purporting to waive or vary these Terms unless such agreement to so waive or vary is in writing and signed by an executive officer of the Company.

21. CLAIMS

21.1 Any claim for loss or damage must be notified in writing to the Company within seven (7) days of delivery of the Goods or of the date upon which the Goods should have been delivered. Failure to give notice within the time stated shall discharge the Company from any liability in relation to the alleged loss or damage.

21.2 In any event the Company shall be discharged from all liability whatsoever in connection with the provision of the Services and/or the Goods unless suit is brought and served within nine (9)

months of the provision of the Services or delivery of the Goods or when the Services should have been provided or the Goods should have been delivered. The Company expressly contracts out of the operation of sections 274 to 280 of the Contract & Commercial Law Act 2017.

22. CONTINUING ENFORCEABILITY OF TERMS

22.1 All the rights, immunities and limitations of liability in these Terms shall continue to have their full force and effect in all circumstances and notwithstanding any breach of Contract or of these Terms by the Company or any other person entitled to the benefit of such provisions.

22.2 It is agreed that if any provision or any part of any provision of these Terms is unenforceable such unenforceability shall not affect any other provision or any other part of such provision.

23. CONSUMER GUARANTEES ACT 1993

23.1 The Customer acknowledges and agrees that if the Customer is in trade and the services provided by the Company are acquired by the Customer in trade, the provisions of the Consumer Guarantees Act 1993 together with any other conditions or warranties implied in these Terms by law are expressly excluded to the maximum extent permitted by law.

24. GOVERNING LAW

24.1 These Terms shall be governed by and construed in accordance with the laws of New Zealand.

25. GST

25.1 Unless otherwise stated, all charges quoted are exclusive of GST and where GST is applicable to any such charges, it will be payable by the Customer in addition to those charges.

25.2 The Customer is solely responsible for the payment of any applicable GST amount at the prevailing rate as per the applicable statutory requirements. The Customer agrees to comply with all relevant GST laws and regulations, including providing any necessary information or documentation as required by tax authorities. By agreeing to these Terms the Customer acknowledges their responsibility for paying any applicable GST associated with the Goods or Services and agreed to adhere to the relevant tax laws and regulations. The Company is not responsible for the payment of GST on the Customer's behalf unless explicitly agreed otherwise.

26. PERSONAL PROPERTY SECURITIES ACT 1999

26.1 Without limiting anything else in these Terms, the Customer acknowledges that:

- (a) these Terms create, in favour of the Company, a security interest (**Security Interest**) in all present and after acquired Goods (being, for the avoidance of doubt, all the Customer's present personal property and after-acquired property except for any item of personal property which has not or which is exclusively the proceeds of any item of personal property which has not) been supplied by the Company to (or for the account of) the Customer) to secure the payment by the Customer to the Company of any amount owing to the Company by the Customer (**Amount Owing**); and
- (b) these Terms will apply notwithstanding anything, express or implied, to the contrary contained in any purchase order (or its equivalent, whatever called) of the Customer; and
- (c) the Security Interest shall continue until the Company gives the Customer a final release.

26.2 The Customer undertakes to:

- (a) promptly do all things, sign any further documents and/or provide any information which the Company may reasonably require to enable the Company to perfect and maintain the perfection of its Security Interest (including by registration of a financing statement);
 - (b) give the Company (addressed to the Financial Controller or equivalent) not less than 14 days' prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including, but not limited to, changes in the Customer's address, facsimile number, trading name or business practice).
- 26.3 The Customer waives its right to receive a verification statement in respect of any financing statement relating to the Security interest.
- 26.4 To the extent permitted by law, the Customer and the Company contract out of:
 - (a) section 114(1)(a) of the PPSA; and
 - (b) the Customer's rights referred to in sections 107(2)(c), (d), (h) and (i) of the PPSA.
- 26.5 The Customer agrees that the Security Interest has the same priority in relation to all amounts forming part of the Amount Owing, including future advances.

27. VGM REQUIREMENTS

- 27.1 Where the Goods are shipped in a Container that has been packed by or on behalf of the Customer (other than by the Company) the Customer or shipper shall declare the VGM to the Company in such a manner and within such period prior to shipment as is specified by the Company. The gross mass provided must clearly state that it is the VGM and the declaration must be signed by a person duly authorised by the Customer to sign it.
- 27.2 The Customer warrants that it has correctly and accurately calculated the VGM and that:
 - (a) The weight has not simply been estimated; and
 - (b) The Customer has not relied on a VGM that has been provided by a third party, except where the cargo has been previously weighed and that weight is clearly and permanently marked on the surface of the Goods.
- 27.3 In the event that the VGM is not declared to the Company, or is not declared within such time frame prior to shipment as has been specified by the Company, or in any case where the Company believes that verification of the declared VGM is required, the Company may at its sole option:
 - (a) Refuse to deliver the container to the port. The Customer acknowledges that containers unaccompanied by a VGM are not entitled to entry to any port in New Zealand;
 - (b) Require the Customer to remove the container from any property occupied or used by the Company, after first paying any of the Company's charges that have accrued to the time of removal;
 - (c) Weigh the container and calculate or verify its VGM, or arrange to have the container weighed and its VGM calculated or verified. All costs of such weighing, calculation and / or verification shall be met by the Customer.
- 27.4 The Customer indemnifies and holds harmless the Company against any and all consequences of whatsoever nature arising from or caused by the Customer's breach of any of its obligations at law or under these Terms, in relation to the VGM.
- 27.5 The Company shall have no liability to the Customer or any other person or entity of any nature, whether direct, indirect or consequential and whether reasonably foreseeable or otherwise, for any loss, damage or expense arising from or caused by the Customer's failure to provide a VGM (either on time or at all) or for the inaccuracy of any VGM provided by or on behalf of the Customer.