

# Terms and Conditions of Trade

## PART I: General Conditions

### 1. Application

1.1 Subject to clause 1.2, all Services of the Company whether gratuitous or not are undertaken subject to these Conditions and not otherwise and:

- (a) The provisions of Part I shall apply to all such Services.
- (b) The provisions of Part II shall only apply to the extent that such Services are provided by the Company as agents.
- (c) The provisions of Part III shall only apply to the extent that such Services are provided by the Company as principals.

1.2 Where a document is issued by or on behalf of the Company and bears the title of, or includes the words, "bill of lading" (whether or not negotiable), or sea or air "waybill" and provides that the Company contracts as carrier, the provisions set out in that document, if inconsistent with these Conditions, shall be paramount and prevail over these Conditions to the extent that such provisions are inconsistent but no further.

1.3 Any variation, cancellation or waiver of these Conditions (or any of them) must be in writing signed by a Director of the Company. No other person has or will be given any authority whatsoever to agree to any variation, cancellation or waiver of these Conditions.

### 1.4 Acceptance of terms and conditions

By giving its shipment to the Company the Customer accepts the terms and conditions set out herein and in any bill of lading, air waybill or sea waybill relating to the carriage of goods on behalf of the Customer or anyone else who has an interest in the shipment whether or not the customer has signed this or any other document relating to the carriage of the goods. These Conditions also apply to and for the benefit of, and may be enforced by, any person used by the Company to collect, transport or deliver the shipment or otherwise in respect of Services provided to the Customer or by any director, employee or agent of the Company (including under the Contract and Commercial Law Act 2017).

### 2. Provision of Services

2.1 All Services are provided by the Company as agents only, except in the following circumstances where the Company acts as principal:

- (a) where the Company performs any carriage, handling or storage of Goods, but only to the extent that the carriage is performed by the Company itself or its servants and the Goods are in the actual custody and control of the Company; or
- (b) where, prior to the commencement of the carriage of Goods, the Customer in writing demands from the Company particulars of the identity, services or charges of persons instructed by the Company to perform part or all of the carriage, and the Company fails to give the particulars demanded within 28 days. However, for the purposes of this subclause, the Company shall only be deemed to be contracting as a principal in respect of that part of the carriage which the Company fails to give the particulars demanded; or
- (c) to the extent that the Company expressly agrees in writing to act as a principal; or
- (d) to the extent that the Company is held by a court of law to have acted as a principal.

2.2 Without prejudice to the generality of clause 2.1, (a) the charging by the Company of a fixed price for any Services whatsoever shall not in itself determine or be evidence that the Company is acting as an agent or a principal in respect of those Services.

(b) the supplying by the Company of its own or leased equipment shall not in itself determine or be evidence that the Company is acting as agent or a principal in respect of any carriage, handling or storage of Goods;

(c) the Company acts as an agent where the Company procures a bill of lading, sea or air waybill or other document evidencing a contract of carriage between a person, other than the Company, and the Customer or Owner;

(d) the Company acts as an agent and never as a principal when providing Services as a customs broker in respect of or relating to customs requirements, taxes, licenses, consular documents, certificates of origin, inspection, certificates and other similar services or when obtaining insurances for or on behalf of the Customer or relating to the Goods (other than where by law the Company is deemed to be an agent of the insurer) or when providing any other services whatsoever for or on behalf of the Customer.

2.3 The Company is not a common carrier and will accept no liability as such and it reserves the right to accept or refuse the carriage of any Goods or any other Service at its discretion. All Services are

performed subject only to these Conditions (and when applicable but subject to clause 1.2, the conditions on any bill of lading or air waybill issued by the Company as principal).

2.4 The Customer will may any request for Services in writing, including all instructions and other details as may be required by the Company. There will be no binding contract between the parties in respect of those Services unless and until the Company accepts the request for Services in writing (which it may do in its discretion). The Company may terminate the agreement to provide the Services at any time before the Services are provided by giving written notice to the Customer.

### 3. Definitions

In these Conditions:

- (a) "Authority" means a duly constituted legal or administrative person, acting within its legal powers and exercising jurisdiction within any nation, state, municipality, port or airport;
- (b) "Company" is Method Logistics Limited;
- (c) Conditions means these terms and conditions as may be amended from time to time;
- (d) "Container" includes any container, flexitank, trailer, transportable tank, flat, pallet or any article of transport used to carry or consolidate goods and any equipment of or connected thereto;
- (e) "Customer" means any person at whose request or on whose behalf the Company provides a Service;
- (f) "Dangerous Goods" includes goods which are or may become of a dangerous, inflammable, radio-active or damaging nature and goods likely to harbour or encourage vermin or other pests;
- (g) "Goods" includes the cargo and any Container not supplied by or on behalf of the Company, in respect of which the Company provides a Service;
- (h) "Hague-Visby-Rules" means the provisions of the International Convention for the Unification of certain rules Relating to Bills of Lading signed at Brussels on 25th August 1924 as amended by the Visby Protocol of 23rd February 1968 and the SDR Protocol of 21st December 1979;
- (i) "Incidental matters" means anything done or to be done in relation to the Goods or the provision of any services ancillary to the Goods including but not limited to moving, storing or leaving the Goods at any warehouse, terminal, yard, 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, transhipping, inspecting or otherwise handling the Goods or anything done in relation thereto.
- (j) "instructions" means a statement of the Customers specific requirements as accepted by the Company.
- (k) "Insurance" means marine cargo insurance only.
- (l) "Owner" includes the owner, shipper and consignee of the Goods and any other person who is or may become interested in the Goods and anyone acting on their behalf
- (m) "person" includes persons or any body or bodies corporate;
- (n) "PPSA" means the Personal Property Securities Act 1999;
- (o) "PPSR" means the Personal Property Securities Register as defined in the PPSA;
- (p) "Services" means any and all of the services provided by the Company to the Customer and all matters necessarily related to the provision of the services or ancillary to the provision of the services, including any incidental matters.
- (q) "Warsaw Convention" means the Convention for the Unification of Certain Rules Relating to International Carriage by Air dated 12 October 1929 as amended at the Hague, 1955 and supplemented by the Guadalajara Convention dated 18 September 1961 as applied respectively by the legislation of the Commonwealth of Australia and of New Zealand.

### 4. Obligations of Customer

4.1 The Customer warrants that it is either the legal and beneficial owner or the authorised agent of the legal and beneficial owner of the Goods and that it is authorised to accept and accepts these Conditions, not only for itself, but also as agent for and on behalf of the Owner.

4.2 The Customer warrants that it has reasonable knowledge of matters affecting the conduct of its business, including, but not limited to, the terms of sale and purchase of the Goods and all other matters relating thereto.

4.3 The Customer shall give sufficient and executable instructions.

4.4 The Customer warrants that the description and particulars of the Goods are complete and correct (including nature, weight and measurement).

4.5 The Customer warrants that the Goods are properly packed and labelled, except where the Company has accepted instructions in respect of

packaging and/or labeling.

4.5 The Customer warrants that it has complied with all laws and regulations relating to the nature, condition, packaging, labelling, handling, weight, dimensions, storage and carriage of the Goods and all other requirements of any government authority.

4.6 The Customer will promptly return all Company property (including Containers) after completion of the Services, in a clean and undamaged condition.

### 5. Special Instructions, Goods and Services

5.1 Unless agreed in writing, the Customer shall not deliver to the Company, or cause the Company to deal with or handle, Dangerous Goods.

5.2 If the Customer is in breach of clause 5.1:

- (a) the Customer shall be liable for all loss or damage whatsoever caused by or to or in connection with the Goods whatsoever arising;
- (b) the Customer shall defend, indemnify and hold harmless the Company against all penalties, claims, damages, costs and expenses whatsoever arising in connection therewith; and
- (c) the Company (or any other person in whose custody the Goods may be in at the relevant time) may, at the Company's sole discretion, have the Goods destroyed or otherwise dealt with. For the purposes of this sub-clause, notice is not required to be given to any person of the intention to destroy or otherwise deal with the Goods.

5.3 If the Customer agrees to accept Dangerous Goods and then it (or any other person) reasonably forms the view that those Goods constitute a risk to other goods, property, life or health, it may (without notice and without liability) have the Goods destroyed or otherwise dealt with at the expense of the Customer.

5.4 The Customer undertakes not to tender for or engage the Company for the transportation of any Goods which require temperature control without previously giving written notice of their nature and the particular temperature range to be maintained and, in the case of a temperature controlled Container provided and packed by or on behalf of the Customer, the Customer further undertakes that-

- (a) the Container has been properly pre-cooled or pre-heated as appropriate;
- (b) the Goods have been properly packed in the Container; and
- (c) the Container's thermostatic controls have been properly set by the Customer.

5.5 If the requirements of clause 5.4 are not complied with the Company shall not be liable for any loss of or damage to the Goods caused by such non-compliance.

5.6 Unless agreed in writing, the Company shall not be obliged to make any declaration for the purposes of any statute, convention or contract as to the nature or value of any Goods or as to any special interest in delivery or to make any declaration as to specific storage requirements of any Goods.

5.7 Unless expressly agreed in writing or otherwise provided for under the provisions of a document signed by the Company, instructions relating to the delivery or release of Goods against payment or against surrender of a particular document shall be in writing and the Company's liability shall not exceed that provided for in respect of misdelivery of Goods.

5.8 Unless agreed in writing that the Goods shall depart by or arrive by a particular date, the Company accepts no responsibility for departure or arrival dates of Goods. Where the Company does agree in writing as to the departure or arrival date, the Company will use reasonable endeavours to ensure such dates are met, but will not be liable for any late departure or delivery where such lateness was outside of its reasonable control.

### 6. Insurance

6.1 No insurance will be effected on the Goods unless an express written request from the Customer to the Company has been made, and the Company has agreed to such request. The Customer may request insurance for the full value of Goods (excluding Dangerous Goods) and any additional matters requested by the Customer (eg. freight costs) by completing the relevant insurance application and paying the required premium and paying any other charges relating to the provision of insurance.

6.2 Insurance does NOT cover losses of a consequential nature (including but not limited to any loss of income, loss of profit, loss of business, loss of reputation, loss of customers, loss of use, loss of opportunity) or losses of the matters set out in clause 13.1 or clause 13.2 hereof or the exceptions set out in the policy of insurance.

6.3 All insurance effected by the Company or its subcontractors shall be subject to the exclusions and conditions (including but not limited to any maximum amount of any claim) of the policies of the insurance

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company and/or underwriters taking the risk.

6.4 Insurance may not be available for all Goods.  
 6.5 The Company is under no obligation to arrange separate insurance for the Goods but may declare the Goods on any open or general policy.

6.6 The Company is not under any responsibility or liability whatsoever for not arranging any insurance and is not liable if its insurer refuses to grant insurance on the terms requested by the Company and/or the Customer.

6.7 With regard to any claim whether or not the insurer disputes liability for any reason the insured (the Customer) shall have recourse against the insurer only and the Company will not be under any responsibility or liability whatsoever in relation to the claim notwithstanding that the premium upon the policy may not be the same as that charged by the Company or the subcontractor.

6.8 Any excess on any claim is payable by the Customer only.

## 7. General Indemnities and Liabilities of the Customer

7.1 The Customer shall defend, indemnify and hold harmless the Company against all liability, loss, damage, costs (including but not limited to legal costs/collection costs) and expenses howsoever arising:

- (a) from the nature of the Goods, other than to the extent caused by the Company's negligence;
- (b) out of the Company acting in accordance with the Customer's or Owner's instructions;
- (c) from a breach of warranty or obligation by the Customer;
- (d) from the negligence of the Customer or Owner; or
- (e) as a result of the Company relying upon the description and particulars provided by the Customer or by reason of any illegal, incorrect or insufficient marking, numbering or addressing of the Goods.

7.2 Except to the extent caused by the Company's negligence, the Customer shall be liable for and shall defend, indemnify and hold harmless the Company in respect of all duties, taxes, imposts, levies, deposits and outlays whatsoever levied by any Authority and for all payments, fines, costs, expenses, loss and damage whatsoever incurred or sustained by the Company in connection with the performance of the Services or in otherwise complying with the these Conditions.

7.3 Advice and information, in whatever form it may be given, is provided by the Company for the Customer only and the Customer shall defend, indemnify and hold harmless the Company for all liability, loss, damage, costs and expenses arising out of any other person relying on such advice or information.

7.4 The Customer shall be liable for, and indemnifies the Company against, all costs, losses, liabilities and claims (including but not limited to legal costs/collection costs) associated with any loss, damage, contamination, soiling, detention or demurrage before, during and after the carriage of property of:

- (a) the Company (including, but not limited to, Containers);
- (b) the Company's servants, sub-contractors or agents;
- (c) independent contractors engaged by the Company for performance of part or all of the Services;
- (d) any person; or
- (e) any vessel,

caused by the Customer or Owner or any person acting on behalf of either of them or for which the Customer is otherwise responsible.

7.5 Instructions to collect payment on delivery in cash or otherwise are accepted by the Company on the condition that the Company in the matter of such collection will be liable for the exercise of reasonable diligence and care only. Unless express written instructions are received that the Goods are not to be delivered without payment, the Company accepts no liability if, upon delivery of the Goods, payment is not made.

## 8. Subcontractors

8.1 The Customer undertakes that no claim will be made against any servant, sub-contractor or agent of the Company which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods. If any such claim should nevertheless be made, the Customer undertakes to indemnify the Company against all consequences thereof.

8.2 Without prejudice to clause 8.1, every servant, sub-contractor or agent of the Company shall have the benefit of all provisions herein as if such provisions were expressly for their benefit. In entering into this contract, the Company, to the extent of those provisions, does so not only on its behalf, but as agent and trustee for such servants, sub-contractors and agents.

8.3 The Customer shall defend, indemnify and hold harmless the Company from and against all claims, costs and demands whatsoever and by whomsoever made against the Company in connection with the provision of the Services and/or the carriage of the Goods, where such matter did not arise from the intentional breach of these Conditions, by the Company and for which the Company is not otherwise expressly liable as set out in these Conditions.

8.4 In this clause, "sub-contractors" includes direct and indirect sub-contractors and their respective employees, servants and agents.

## 9. Charges etc.

9.1 The Customer shall pay to the Company, all fees for Services and other sums immediately when due without deduction or deferment on account of any claim, counterclaim or set-off. The Company may issue an invoice to the Customer for fees and other sums due under these Conditions on a monthly basis, upon completion or in advance of a Service or as otherwise determined by the Company. The fees and sums payable will be (as determined solely by the Company) either as advised by the Company to the Customer from time to time, as indicated on invoices in respect of the Services or in accordance with any accepted quote, and as otherwise set out in these Conditions.

9.2 When the Company is instructed to collect freight, duties, charges or other expenses from any person other than the Customer, the Customer:

- (a) shall remain responsible for these amounts; and
- (b) shall pay these amounts to the Company on demand where these amounts have become due and have not been paid by such other person.

9.3 On all accounts overdue to the Company, the Company shall be entitled to default interest, such default interest to be calculated on a daily basis at 4 per cent above the base interest rate of the Company's bank applicable during the periods that such amounts are overdue.

9.4 The Company may by notice to the Customer increase any charges for the Services to reflect any increase in costs to the Company beyond the reasonable control of the Company or to reflect any variation to the requested Services.

9.5 The Company, at its sole discretion, may require a deposit or payment in full prior to the commencement of the Services.

9.6 GST and other taxes and duties that may be applicable shall be added to the charges (and will be payable by the Customer) except when they are expressly included in the charge.

## 10. Liberties and Rights of the Company

10.1 Unless otherwise agreed in writing, in connection with the performance of the Services the Company shall be entitled to enter into contracts on behalf of itself or the Customer and without notice to the Customer:

- (a) for the carriage of Goods by any route, means or person;
- (b) for the carriage of Goods of any description, whether containerised or not, on or under the deck of any vessel;
- (c) for the storage, packing, transhipment, loading, unloading or handling of Goods by any person at any place whether on shore or afloat and for any length of time;
- (d) for the carriage or storage of Goods in containers or with other goods of whatever nature; and
- (e) for the performance of its own obligations, and to do such acts as the Company reasonably considers may be necessary or incidental to the performance of the Company's obligations.

10.2 The Company shall be entitled (without incurring any additional liability), but shall be under no obligation, to depart from the Customer's instructions in any respect if the Company considers there is good reason to do so in the Customer's interest.

10.3 The Company may at any time comply with the orders or recommendations given by any Authority. The responsibility and liability of the Company in respect of the Goods shall cease on the delivery or other disposition of the Goods in accordance with

such orders or recommendations.

10.4 The Company shall be entitled (but under no obligation) at any time and from time to time to inspect the Goods and for this purpose to open or remove any Containers.

10.5 If at any time the Company reasonably considers that the carriage of the Goods should not be undertaken or continued or only continued after effecting any necessary incidental matters or incurring additional expense or risk, the Company shall be entitled to:

- (a) abandon the carriage of such cargo or to effect such additional incidental matters and incur such additional expense, as may be reasonably necessary in order to enable the carriage to be effected or further effected; and
- (b) be reimbursed by the Customer for the cost of all such additional incidental matters and all such additional expense incurred.

10.6 If the Company (or any person whose services the Company makes use of) considers:

- (a) the performance of the Company's obligations are likely to be effected by any hindrance, risk, delay, difficulty or disadvantage whatsoever; and
- (b) the hindrance, risk, delay, difficulty or disadvantage cannot be avoided by reasonable endeavours of the Company or such other person, the Company may (upon giving notice in writing to the Customer or Owner) treat the performance of its obligations as terminated and may, at the Customer's expense, place the Goods or any part of them at the Customer's or Owner's disposal at any place which the Company deems safe and convenient.

10.7 The notice in writing referred to in clause 10.6 is not required where it is not reasonably possible to give such notice.

10.8 Where the Company exercises its rights and obligations under clause 10.6, responsibility and liability of the Company in respect of the Goods shall thereupon cease absolutely.

10.9 Where the Company (or any person whose services the Company makes use of) is entitled to call upon the Customer or Owner to take delivery of the Goods at a designated time and place and delivery of the Goods, or any part thereof, is not taken by the Customer or Owner at the designated time and place the Company (or such other person) shall be entitled to store the Goods in the open or under cover at the sole risk and expense of the Customer.

10.10 Notwithstanding clauses 10.6 to 10.9, the Company shall be entitled (but under no obligation) without any responsibility or liability to the Customer and Owner, to sell or dispose of:

- (a) all Goods which the Company considers cannot be delivered as instructed, but only upon giving 21 days notice in writing to the Customer; and
- (b) without notice, Goods which have perished, deteriorated or altered, or are in immediate prospect of doing so in a manner which has caused (or may be reasonably expected to cause) loss or damage to any person or property or to contravene applicable regulations.

10.11 Where the Company sells or disposes of Goods pursuant to clause 10.10 the Customer shall be responsible for any costs and expenses of the sale or disposal and all sums due to the Company, but where the sale proceeds exceed the aggregate of these amounts, the Customer be entitled to receive the balance amount.

10.12 The Company shall be entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by or paid to freight forwarders without notice to the Customer.

10.13 The Company shall have the right to enforce against the guarantor (if applicable) and the Customer jointly and severally any liability of the Customer under these Conditions or to recover from them any sums to be paid by the Customer which upon demand have not been paid, including in accordance with the terms of the guarantee on the customer information form.

## 11. Lien

11.1 The Company shall have a particular and general lien on all Goods or documents relating to Goods in its possession for all sums due at any time from the Customer (whether those sums are due from the Customer on those Goods or documents or on any other Goods or documents).

11.2 Where any sum due to the Company from the Customer or Owner remains unpaid, the Company, on giving 28 days notice in writing to the Customer,

Method Logistics Limited

PO Box 14080, CHRISTCHURCH 8544 • Ph (03) 348 5515

Email [melissa@methodglobal.co.nz](mailto:melissa@methodglobal.co.nz) • Web [www.methodglobal.co.nz](http://www.methodglobal.co.nz)

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shall be entitled (without liability to the Customer and Owner) to sell or dispose of such Goods or documents by public auction or by private treaty at the risk and expense of the Customer and to apply the proceeds of any such sale or disposal in or towards the payment of such costs and the sums due.

## 12. Containers

12.1 If a Container has not been packed or stuffed by the Company, the Company shall not be liable for (and in accordance with clause 12.2, indemnifies the Company against) loss of or damage to the contents if caused by:

- (a) the manner in which the Container has been packed or stuffed;
- (b) the unsuitability of the contents for carriage in Containers, unless the Company has approved the suitability;
- (c) the unsuitability or defective condition of the Container, provided that where the Container has been supplied by or on behalf of the Company this paragraph (c) shall only apply if the unsuitability or defective condition arose:
  - (i) without any negligence on the part of the Company; or
  - (ii) would have been apparent upon reasonable inspection by the Customer or Owner or person acting on behalf of either of them.
- (d) the fact that the Container is not sealed at the commencement of the Carriage, except where the Company has agreed to seal the Container.

12.2 The Customer shall defend, indemnify and hold harmless the Company against all liability, loss, damage, costs and expenses arising from any of the circumstances described in clause 12.1.

12.3 Where the Company is instructed to provide a Container, in the absence of a written agreement between the parties to the contrary, the Company is not under an obligation to provide a Container of any particular type or quality.

## 13. General Liability

13.1 Except where otherwise expressly provided in these Conditions, the Company shall not be liable for any loss or damage whatsoever arising from:

- (a) the act or omission of the Customer or Owner or any person acting on their behalf;
- (b) compliance with the instructions given to the Company by the Customer, Owner or any other person entitled to give them;
- (c) insufficiency of the packing or labelling of the Goods, except where such service has been provided by the Company;
- (d) handling, loading, stowage or unloading of the Goods by the Customer or Owner or any person acting on their behalf;
- (e) inherent vice of the Goods;
- (f) riots, civil commotions, strikes, lockouts, stoppage or restraint of labour from whatsoever cause;
- (g) fire, flood, storm, explosion or theft; or
- (h) any cause which the Company could not avoid and the consequences whereof it could not prevent by the exercise of reasonable diligence.

13.2 Subject to clause 5.7, the Company shall not be liable for loss or damage howsoever caused (whether or not indirect or consequential) to property other than the Goods themselves and shall not be liable for any pure economic loss or loss of profit, delay or deviation howsoever arising.

## 14. Amount of Compensation

14.1 Except in so far as otherwise expressly provided by these Conditions, the liability of the Company, howsoever arising, shall not exceed the following:

- (a) in respect of all claims other than those subject to the provisions of clause 14.3 whichever is the lesser of:
  - (i) the value of, or
  - (ii) the equivalent of US\$2.00 per gross kilogram, in the currency of the place of delivery (the exchange rate to apply being the rate as at the date of the delivery of the Goods), of the Goods lost, damaged, misdirected, misdelivered or in respect of which a claim arises.
- (b) in respect of claims for delay where not excluded by the provisions of these Conditions, the amount of the Company's charges in respect of the Goods delayed.

14.2 The limitation of liability referred to in clause

14.1 shall apply notwithstanding that the cause of the loss, delay or damage is unexplained.

14.3 If agreed in writing prior to receipt of the Goods, the Company may accept liability in excess of the

limits set out in these Conditions upon the Customer agreeing to pay the Company's additional charges for accepting such increased liability. Details of the Company's additional charges will be provided upon request.

14.4 Compensation shall be calculated by reference to the invoice value of the Goods plus freight and insurance if paid by the Customer.

14.5 If there be no invoice value for the Goods, the compensation shall be calculated by reference to the value of such Goods at the place and time when they were delivered to the Customer or Owner or should have been so delivered. The value of the Goods shall be fixed according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

14.6 Unless agreed in writing prior to receipt, the Company will not accept or deal with bullion, coin, precious stone, jewelry, antiques, works of art or other valuable Goods. Should any Customer nevertheless deliver any such Goods to the Company or cause the Company to handle or deal with any such Goods other than in accordance with prior written agreement, the Company shall be under no liability whatsoever for or in connection with such Goods howsoever arising.

## 15. Notice of Loss, Timebar

15.1 The Company shall be discharged of all liability unless:

- (a) notice of any claim is received by the Company or its agent in writing within 14 days after the date specified in clause 15.2, or within a reasonable time after that date if the Customer proves that it was impossible to so notify; and
- (b) suit is brought in the proper forum and written notice thereof received by the Company within 9 months after the date specified in clause 15.2.

15.2 For the purposes of clause 15.1, the applicable dates are:

- (a) in the case of loss or damage to Goods, the date of delivery of the Goods;
- (b) in the case of delay or non-delivery of the Goods, the date that the Goods should have been delivered; and
- (c) in any other case, the event giving rise to the claim.

## 16. General Average

16.1 The Customer shall defend, indemnify and hold harmless the Company in respect of any claims of a general average nature, including any claims or demands for general average security which may be made on the Company, and the Customer shall forthwith provide such security as may be required by the Company in this connection.

## 17. Miscellaneous

### 17.1 Notice

Any notice served by post shall be deemed to have been given on the third day following the day on which it was posted to the address last known to the Company to be the address of the recipient of the notice.

### 17.2 Defences and Limits of Liability

The defences and limits of liability provided in these Conditions shall apply in any action against the Company whether founded in contract or in tort or howsoever otherwise founded.

### 17.3 Legislation

If any legislation is compulsorily applicable to any business undertaken, these Conditions shall, as regards such business, be read as subject to such legislation and nothing in these Conditions shall be construed as a surrender by the Company of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation and if any part of these Conditions is held to be repugnant to such legislation to any extent such part shall as regards such business be overridden to that extent and no further.

### 17.4 Headings

Headings of clauses or groups of clauses in these Conditions are for indicative purposes only.

### 17.5 Right to refuse Carriage

The Company reserves the complete right to refuse to carry any Goods and shall not be under any responsibility or liability whatsoever if it so refuses to carry any Goods.

### 17.6 These Conditions paramount

Subject to clause 1.2 hereof these Conditions will prevail over the terms and conditions set out in any other document used by the Customer, the Company or any other person claiming an interest in the

Goods.

## 17.7 Severance

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

## 18. Governing Law and Jurisdiction

18.1 These Conditions and any claim or dispute arising out of or in connection with the Services of the Company are to be governed by, and construed in accordance with, the law of New Zealand, and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.

## 19. Personal Property Securities Act

19.1 The Customer acknowledges and agrees that: (a) these Conditions constitute a security agreement for the purposes of the PPSA; and (b) security interest is taken in all Goods and/or collateral (account) that have previously been carried, are being carried and that will be carried in the future by Company for the Customer, to secure all monetary obligations of the Customer to the Company for Services.

19.2 The Customer 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 Company may reasonably require to register a financing statement or financing change statement on the PPSR;
- (b) indemnify, and upon demand reimburse, the Company for all expenses incurred in registering a financing statement or financing change statement on the PPSR or releasing any Goods charged thereby;
- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Company.

19.3 The Company and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Conditions.

19.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

19.5 Unless otherwise agreed to in writing by the Company, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

19.6 In addition to any rights that the Company has under the PPSA, the Company shall have the right at any time while any amount owing by the Customer to the Company remains outstanding, to enter into the premises where the Goods are stored and remove them without being responsible for any damage caused in exercising this right. The Customer shall indemnify the Company for all such monies and all such costs, charges and expenses in repossessing the Goods.

19.7 If Goods that the Company has a security interest in are processed, included or dealt with in any way causing them to become accessions, processed or commingled goods, the Company's security interest will continue in the whole in which they are included. The Customer shall not grant any other security interest in either the Goods or in the whole.

19.8 The Customer shall unconditionally ratify any actions taken by Company under clauses 19.1 to 19.7.

## 20. Privacy

20.1 The Customer agrees that the Company may collect, hold, use and disclose personal information in respect to the Customer, its staff or its customers, for the purposes of carrying out its obligations under these Conditions. This includes disclosure to third parties for the purpose of arranging the carriage, storage, packing, transshipment, loading, unloading or handling of goods on behalf of the Customer. The Company may also collect, hold, use and disclose personal information for any purpose advised to the Customer at the time of collection, or as otherwise permitted under the Privacy Act 1993. Where the Customer provides information relating to any individual, the Customer will ensure it has all relevant consents required for such purposes.

20.2 Where personal information is held by the Company, the individual shall have the right to

Method Logistics Limited

PO Box 14080, CHRISTCHURCH 8544 • Ph (03) 348 5515

Email [melissa@methodglobal.co.nz](mailto:melissa@methodglobal.co.nz) • Web [www.methodglobal.co.nz](http://www.methodglobal.co.nz)

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request access to, and correction of, such personal information.

## **21. Consumers Guarantees Act 1993**

20.1 Where the provisions of the Consumer Guarantees Act 1993 apply, the provisions of these Conditions will be subject to that Act and in the case of any inconsistency, the provisions of the Consumer Guarantees Act 1993 will apply.

20.2 Where the Customer is a business (as "business" defined by the Consumer Guarantees Act 1993), the Customer agrees that it 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.

## **PART II: Company As Agent**

### **22. Special Liability and Indemnity Conditions**

22.1 To the extent that the Company acts as an agent, the Company does not make or purport to make any contract with the Customer for the carriage, storage or handling of the Goods nor for any other physical service in relation to them and acts solely on behalf of the Customer in securing such services by establishing contracts with third parties so that direct contractual relationships are established between the Customer and such third parties.

22.2 The Company shall not be liable for the acts and omissions of third parties referred to in clause 22.1.

22.3 The Company, when acting as an agent, has the authority of the Customer to enter into contracts on the Customer's behalf and to do acts which bind the Customer in all respects notwithstanding any departure from the Customer's instructions or from the terms set out in these Conditions.

22.4 Except to the extent caused by the Company's negligence, the Customer shall defend, indemnify and hold harmless the Company in respect of all liability, loss, damage, costs or expenses arising out of any contracts made in the procurement of the Customer's requirements in accordance with clause 22.1.

### **23. Choice of Rates**

23.1 Where there is a choice of rates according to the extent or degree of liability assumed by persons carrying, storing, or handling the Goods, no declaration of value (where available) will be made by the Company unless previously agreed in writing between the Customer and the Company.

## **PART III: Company as Principal**

Where the Company contracts as principal, all Services provided by the Company as a carrier (within the meaning of Part 5 of the Contract and Commercial Law Act 2017 (as amended)) are provided at 'limited carrier's risk' in accordance with these Conditions. To the extent permitted by law, the parties agree that the Contract and Commercial Law Act 2017 applies only to the extent it is not inconsistent with these Conditions and as such the terms of these Conditions prevail.

### **24. Special Liability Conditions**

24.1 Where the Company contracts as principal for the performance of the Customer's instructions, the Company undertakes to perform, or in its own name to procure, the performance of the Customer's instructions and, subject to the provisions of these Conditions, shall be liable for the loss of or damage to the Goods occurring from the time that the Goods are taken into its charge until the time of delivery.

24.2 Where:

- (a) the Company contracts as a principal and sub-contracts the performance of the Company's services; and
- (b) it can be proved that the loss of or damage to or in respect of the Goods arose or was caused whilst the Goods were in the care or custody of the sub-contractor; the Company shall have the full benefit (as against the Customer) of all rights, limitations and exclusions of liability available to the sub-contractor in the contract between the Company and the sub-contractor and in any law, statute or regulation and the liability of the Company to the Customer shall not exceed the amount recovered, if any, by the Company from the subcontractor.

24.3 Notwithstanding other provisions in these Conditions, if it can be proved where the loss of or damage to the Goods occurred, the Company's liability shall be determined by the provisions contained in any international convention or national law, the provisions of which:

- (a) cannot be departed from by private contract, to

the detriment of the claimant, and (b) would have applied if the claimant had made a separate and direct contract with the actual provider of the particular service in respect of that service or stage of carriage where the loss or damage occurred and received as evidence thereof any particular document which must be issued if such international convention or national law shall apply.

24.4 Notwithstanding other provisions in these Conditions, if it can be proved that the loss of or damage to the Goods occurred at sea or on inland waterways and the provisions of clause 24.3 do not apply, the Company's liability shall be determined by the Hague-Visby Rules. Reference in the Hague-Visby Rules to carriage by sea shall be deemed to include reference to carriage by inland waterways and the Hague-Visby Rules shall be construed accordingly.

24.5 Notwithstanding the provisions of clauses 24.2, 24.3 and 24.4, if the loss of or damage to the Goods occurred at sea or on inland waterways, and the Owner, charterer or operator of the carrying vessel is entitled to limit its liability at law and establishes a limited fund, the liability of the Company shall be limited to the proportion of such limitation fund as is allocated to the Goods.

21.6 In the event of any inconsistency between these Conditions and the conditions of any Bill of Lading or Air Waybill issued by or on behalf of the Company as Principal, the conditions of any such Bill of Lading or Air Waybill shall prevail to the extent of such inconsistency but no further.

### **25 Both-to-Blame Collision Clause**

25.1. The Both-to-Blame Collision Clause as recommended by BIMCO as at the same of the provision of Services is incorporated into and forms part of these Conditions.

### **26. USA and/or Canada and Additional Responsibility Clause**

26.1 With respect to transportation within the USA or Canada, the responsibility of the Company shall be to procure transportation by carriers (one or more) and such transportation shall be subject to such carrier's contracts and tariffs and any law compulsorily applicable. The Company guarantees the fulfillment of such carrier's obligations under their contracts and tariffs.

26.2 If and to the extent that the provisions of the Harter Act of the USA 1893 would otherwise be compulsorily applicable to regulate the Company's responsibility for the Goods during any period prior to loading on or after discharge from the vessel on which the Goods are to be or have been carried, the Company's responsibility shall instead be determined by these Conditions. If such provisions are found to be invalid such responsibility shall be determined by the provisions in the Carriage of Goods by Sea Act of the USA Approved 1936.

26.3 If the Hamburg Rules should be held to be compulsorily applicable to any carriage of goods by sea undertaken by the Company as principal, these Conditions shall be read subject to the provisions of the Hamburg Rules and any term of these Conditions that is repugnant to the Hamburg Rules shall be void to the extent of such repugnancy but no further.

### **27. Air Carriage**

27.1 Where the Company acts as a principal in respect of a carriage of Goods by air, the following notice is hereby given:

If the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to Goods. Agreed stopping places are those places (other than the places of departure and destination) shown under requested routing and/or those places shown in carrier's timetables as scheduled stopping places for the route. The address of the first carrier is the airport of departure.

27.2 Notwithstanding any other provision of these Conditions, where the Company acts as a principal in respect of a carriage of Goods by air, the Company's liability in respect of loss of or damage to such Goods shall be determined in accordance with the Warsaw Convention.

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