

TERMS AND CONDITIONS OF TRADE

1.0 DEFINITIONS

- 1.1 **"Agreement"** shall mean these Terms and Conditions of Trade, together with the Account Application Form (completed by you). These documents will govern all of the Services we carry out for you (modified as necessary by the relevant Quotation in respect of particular Services).
- 1.2 **"Business Hours"** shall mean between 08:30 and 17:30 on a Working Day.
- 1.3 **"Stellar"** shall mean Stellar International Limited, or any agents or employees thereof.
- 1.4 **"Client"** shall mean the Client, any person acting on behalf of and with the authority of the Client, or any person purchasing products and services from Stellar.
- 1.5 **"Force Majeure Event"** shall mean an event, series of related events, that is outside the reasonable control of the party affected (including power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars).
- 1.6 **"Guarantor" or "Guarantors"** shall mean that person (or persons) who agrees to be personally liable for the Clients debts to Stellar on a principal debtor basis.
- 1.7 **"Party" and "Parties"** shall mean the Client and/or Stellar separately or together as the context indicates.
- 1.8 **"Price"** shall mean the cost of the Services as agreed between Stellar and the Client and includes all disbursements e.g. charges Stellar pay to others on the Client's behalf subject to clause 4 of this contract. This information will be found on the relevant Quotation.
- 1.9 **"Quotation"** shall mean the invoice rendered to the Client for any particular provision of Services and which forms part of the Agreement in respect of those Services.
- 1.10 **"Services"** shall mean all freight forwarding and custom brokerage services arranged by Stellar for the Client and shall include without limitation all freight, storage and distribution services, custom brokerage and all charges for time and attendances, hire charges, insurance charges, or any fee or charge associated with the supply of Services by Stellar to the Client.
- 1.11 **"Terms and Conditions of Trade"** shall mean the terms and conditions contained in this document.
- 1.12 **"Working Day"** shall mean any weekday, other than a bank or public holiday in Auckland.

2.0 ACCEPTANCE

- 2.1 Any instructions received by Stellar from the Client for the supply of Services shall constitute a binding contract and acceptance of the terms and conditions contained herein.
- 2.2 The Terms and Conditions of Trade become irrevocable upon your acceptance. Once accepted, these Terms and Conditions of Trade can only be rescinded or amended in accordance with the Agreement (or with our express written consent).
- 2.3 This Agreement replaces all earlier agreements, terms of and conditions of trade and any conditions contained in any document used by you and
- 2.4 These Terms and Conditions of Trade are to be read alongside the Account Application Form and any Quotation for Services. These Terms and Conditions of Trade will prevail in the event of any material inconsistency between the Agreement documents or the relevant Quotation.
- 2.5 We may change the Terms and Conditions of Trade from time to time in relation to the provision of the Services to you. We will provide you with a copy of any replacement terms and conditions of trade which will apply to all

Services provided to you that we carry out from the date that these terms are supplied to you.

3.0 COLLECTION AND USE OF INFORMATION

- 3.1 The Client authorises Stellar to collect, retain and use any information about the Client, for the purpose of assessing the Client's credit worthiness, enforcing any rights under this contract, or marketing any Services provided by Stellar to any other party.
- 3.2 The Client authorises Stellar to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the Client is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

4.0 PRICE

- 4.1 Where no Quotation is prepared in respect of any Services, the relevant price for such provision of Services will be as otherwise stated in writing or agreed to orally. Such a price will, separately stated, include Stellar's disbursements.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Services that is beyond the control of Stellar between the date of the contract and delivery of the Services.

5.0 PAYMENT

- 5.1 Payment for Services and all disbursements (including storage) shall be made in full on or before the 20th day of the month following the date of the invoice ("the due date").
- 5.2 Stellar reserves the right to require the payment of a deposit before agreeing to provide Services on behalf of a Client. Such a deposit will be recorded on the Quotation and the amount paid deducted from the total balance owing.
- 5.3 All disbursements (including duty, taxes, freight, carriage and agency fees) must be paid prior to release of import cargo, or prior to consignment of export cargo.
- 5.4 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.5 Any expenses, disbursements and legal costs incurred by Stellar in the enforcement of any rights contained in this contract shall be paid by the Client, including any reasonable solicitor's fees or debt collection agency fees.
- 5.6 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 5.7 In certain circumstances a deposit or payment in advance may be required.

6.0 PRIVACY ACT 1993

- 6.1 The Client and the Guarantors (if separate to the Client) authorises Stellar to collect, retain and use any information about the Client, for the purpose of assessing the Clients creditworthiness or marketing any Goods and Services provided by Stellar to any other party.
- 6.2 The Client authorises Stellar to disclose any information obtained to any person for the purpose set out in clause 6.1.
- 6.3 Where the Client is a natural person the authorities under (clauses 6.1 and 6.2) are authorities or consents for the purpose of the Privacy Act 1993

7.0 QUOTATION

- 7.1 Where a Quotation is given by Stellar for Services:
- 7.1.1 Unless otherwise agreed the Quotation shall be valid for fourteen (14) days from the date of issue; and
- 7.1.2 The Quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;

7.1.3 Stellar reserve the right to alter the Quotation because of circumstances beyond its control such as varying freight costs and fuel charges.

7.2 Where Services are required in addition to the Quotation the Client agrees to pay for the additional cost of such Services.

8.0 AGENCY

8.1 The Client authorises Stellar to contract either as principal or agent for the provision of Services that are the subject of this contract.

8.2 Where Stellar enters into a contract of the type referred to in clause 7.1 it shall be read with and form part of this agreement and the Client agrees to pay any amounts due under that contract.

9.0 GENERAL LIEN

9.1 The Client agrees that Stellar may exercise a general lien against any Services or property belonging to the Client that is in the possession of Stellar for all sums outstanding under this contract and any other contract to which the Client and Stellar are parties.

9.2 If the lien is not satisfied within seven (7) days of the due date Stellar may, having given notice of the lien at its option either:

9.2.1 Remove such Services and store them in such a place and in such a manner as Stellar shall think fit and proper and at the risk and expense of the Client; or

9.2.2 Sell such Services or part thereof upon such terms as it shall think fit and apply the proceeds in or towards discharge of the lien and costs of sale without being liable to any person for damage caused.

10.0 PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)

10.1 Upon assenting to these Terms and Conditions in writing the Client acknowledges and agrees that:

10.1.1 Any given Agreement constitutes a security agreement for the purpose of the PPSA; and

10.1.2 A security interest is taken in all property belonging to the Client that is in the possession of Stellar pursuant to its supply of Services to the Client (including any future property) during the continuance of the Parties' relationship.

10.2 The Client undertakes to:

10.2.1 Sign any further documents and/or provide any information. Such information to be complete and accurate and up to date in all respects which Stellar may reasonably require to register a financing statement or financing charge statement on the Personal Properties Security Register.

10.2.2 Not registering a financing charge statement or a charge demand without the prior written consent of Stellar.

10.2.3 Give Stellar not less than fourteen (14) days prior written notice of any proposed change in the Clients name and/or any other changes in the Clients details (including but not limited to change to the Clients address contact numbers or business practice); and

10.2.4 Not registering a financing charge statement or a charge demand without the prior written consent of Stellar.

10.3 The Client will immediately give advice to Stellar of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

10.4 Stellar and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms and Conditions.

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

10.6 Unless otherwise agreed to in writing by Stellar the Client

waives its rights to receive a verification statement in accordance with section 148 of the PPSA.

11. CLAIMS

11.1 Claims must be received within seven (7) days of the date of notification of availability of freight for collection or the date of delivery or the date of release of freight, whichever date is the earlier.

12. DESCRIPTION AND PACKAGING

12.1 The Client warrants the description and particulars of the freight is true, correct and adequate and agrees to indemnify Stellar against all losses arising or resulting from any inaccuracies or inadequacy in that information.

12.2 The Client warrants that the freight is properly packed and labelled for carriage except where Stellar have accepted written instructions in respect of such services.

13. DANGEROUS GOODS

13.1 Stellar may at any time (without compensation or notice to the Client and without prejudice to its right to freight and charges) destroy, dispose of, abandon, render harmless or otherwise deal with any freight, whether originally dangerous or not, that in the opinion of Stellar or any other person constitutes a risk or becomes dangerous or of damaging nature to other freight, property, life or health.

13.2 Whether or not the client was aware of the nature of the freight, the Client shall indemnify and hold harmless Stellar against all claims, losses, penalties, damages, or expenses arising in consequence of any breach of the provisions of this clause.

14. STORAGE, RISK AND DELIVERY

14.1 At any time the freight may be warehoused or otherwise held at any place at Stellar's sole discretion at the Client's expense.

14.2 The freight is carried at the Client's risk and that risk shall remain with the Client throughout this agreement. Subject to clause 12.1 the Client is responsible for arranging insurance.

14.3 Delivery shall be deemed complete at the time and place when and where Stellar is entitled to call upon the client to take delivery. Upon notice of delivery being given to the Client, Stellar shall be entitled without notice to unstow or store the freight at the expense of the Client and such storage shall be deemed delivery.

14.4 Stellar shall not be liable for any loss or damage whether due to failure by Stellar to deliver the freight (or any of it) promptly or at all. Stellar reserves the right to deliver the freight by instalments and each instalment shall be deemed to be a separate contract subject to the same conditions as the main contract. Failure by Stellar to deliver one or more instalments shall not entitle the Client to repudiate the main contract.

15.0 INSURANCE

15.1 Insurance will not be arranged by Stellar except with the express written instructions of the Client and then only at the Client's expense and on lodgment of a declaration as to value prior to receipt of freight by Stellar.

15.2 Stellar accepts no liability for any insurance arrangements and the Client agrees to indemnify Stellar for any loss or damage it may suffer in relation to or arising out of the insurance of the freight.

16.0 LIABILITY

16.1 Stellar carries on business as a customs and forwarding agent, warehouse storage and distribution and is not the actual carrier of goods. Stellar's obligations are restricted to arranging carriage of the goods by a reputable carrier and are performed subject only to these terms and conditions and when applicable the conditions printed on any transport document issued by Stellar itself or as agent for the carrier. Stellar accepts no liability as a carrier and all

Services are arranged "at owners risk".

16.2 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Stellar which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on Stellar, Stellar's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.

16.3 Except as otherwise provided by clause 14.2 Stellar shall not be liable for:

16.3.1 Any loss or damage of any kind whatsoever, arising from the supply of Services by Stellar to the Client, including consequential loss whether suffered or incurred by the Client or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Services provided by Stellar to the Client; and

16.3.2 If, contrary to Stellar's disclaimer of liability contained in these terms and conditions of trade, Stellar is deemed to be liable then such liability is limited in its aggregate to \$1,500.00;

16.3.3 The Client shall defend and indemnify Stellar against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Stellar or otherwise, brought by any person in connection with any matter, act, omission, or error by Stellar its agents or employees in connection with the Services.

17.0 CONSUMER GUARANTEES ACT

17.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Client acquires Services from Stellar for the purposes of a business in terms of section 2 and 43 of that Act.

18.0 GUARANTEE AND INDEMNITY

18.1 The Guarantors agree to guarantee and indemnify Stellar against all losses damages or expenses that Stellar may suffer as a result, either directly or indirectly, of any failure by the Client to make due payment of any money owing to Stellar whether for goods sold, services provided or otherwise or to observe the terms of any agreement between the Client and Stellar, including costs on an indemnity basis of any attempt or attempts to recover from the Client or any Guarantor and whether successful or not or whether frustrated by the Client or Guarantor or by operation of law and including costs ordered by a court to be paid by Stellar to the Client or to any Guarantor including the costs of lodging and withdrawing caveats and/or obtaining injunctions and enforcing any security over real and personal property given to Stellar.

18.2 This guarantee and indemnity will be a continuing guarantee and indemnity and will not be considered as wholly or partially satisfied or discharged by any money which may at any time or times in the future be received or applied by Stellar to the credit of any account of the Client or the Guarantors, or deemed to be held on trust by the Client for Stellar, and will be available as a Guarantee and Indemnity for the whole of any sums that are owed by the Client to Stellar pursuant to this Agreement.

18.3 Where two or more persons execute this guarantee and indemnity, the guarantees, covenants and obligations in this guarantee and indemnity given or undertaken by the Guarantors will be deemed to bind the Guarantors jointly and each of the Guarantors severally and Stellar will be entitled to seek payment in full from any one or more of the Guarantors without seeking payment from the other Guarantors.

18.4 Stellar will have the right to enforce this guarantee and indemnity, irrespective of whether Stellar has sought to recover the amounts guaranteed from the Client and with or without notice to the Client, as if the primary liability for any money owing was the Guarantors' own. Further, Stellar may proceed against the Guarantors (or any one of them) notwithstanding any other rights it may have in relation to the recovery of the amounts hereby guaranteed.

18.5 This guarantee and indemnity will continue in force until such time as Stellar releases all of the Guarantors in writing, and notwithstanding the fact that the Guarantors are no longer directors, shareholders or owners of the Client.

18.6 This guarantee and indemnity are made without prejudice to and will not be affected by nor will the rights or remedies of Stellar against the Guarantors or any of the Guarantors be in any way prejudiced or affected by:

18.7 any other security taken by Stellar from the Client or from any other person;

18.8 any waiver or indulgence, whether as to time or otherwise, given to the Client or to the Guarantors or any one or more of the Guarantors;

18.9 by any other act, matter or thing which under the law relating to sureties would or might but for this provision release the Guarantors or any of the Guarantors from all or any part of the Guarantors obligations contained in this guarantee and indemnity; or

18.10 any person named in this guarantee and indemnity as Guarantor failing to execute this guarantee and indemnity or failing or ceasing to be bound by the terms of this guarantee and indemnity.

19.0 MISCELLANEOUS

19.1 Stellar shall not be liable for delay or failure to perform its obligations.

19.2 Failure by Stellar to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations Stellar has under this contract.

19.3 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

19.4 Stellar and the Client agree that any additional conditions of carriage and trade issued by Stellar at the time any contract of carriage is entered into, shall also form part of these terms and conditions of trade.

19.5 For the avoidance of any doubt, this Agreement shall be governed and construed in accordance with the laws of New Zealand. The Parties expressly acknowledge the exclusive jurisdiction of the Courts of New Zealand.

19.6 This Agreement shall not be construed in any way as to constitute a partnership between the Parties.

19.7 Upon the signing of this Agreement, the parties assume full understanding of the text, terms and conditions of this Agreement and agreed to be bound by the Agreement.

19.8 This Agreement shall inure solely to the benefit of, and shall be binding upon the Parties and their respective successors and assigns, provided however, that no Party may assign its rights or obligations hereunder unless it shall have first received the written consent of the other Party/Parties, which consent may be withheld at such Party's/Parties' sole discretion.