

Conditions of Contract

Cavalier Sales Limited trading as Cavalier Transport (**Company**) provides Services solely in accordance with the following terms and conditions, which shall prevail over any terms and conditions in any document used by the Customer and purporting to have contractual effect.

In these terms:

“Customer” means the person or entity which requests Services from the Company, 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 any goods which are volatile or explosive or which are or may become dangerous, inflammable or offensive or which have the potential to damage any person or property.

“Goods” means the goods accepted by the Company and includes any container, packaging or pallet supplied by or on behalf of the Customer.

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

1. The Customer warrants that it is either the owner or the authorised agent of the person owning or having any interest in the Goods and requests Services on its own behalf or as authorised agent of such person. The Customer shall indemnify the Company in respect of all 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 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.
2. 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.
3. All customs and/or excise duties, 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 or not resulting from or arising out of the negligence of the Company) shall be paid by the Customer.
4. 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. Any Dangerous Goods that are 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.

5. 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 contract.
6. 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.
7. (i) The Customer authorises the Company and any subcontractor to subcontract on any terms the whole or part of the Services.

(ii) The Customer undertakes: (a) 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 in 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 this Contract; and (b) to indemnify the Company against 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.
8. Every exemption, limitation, condition and liberty in these Conditions 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 Conditions shall also be available and shall extend to protect: (i) all subcontractors; (ii) every servant or agent of the Company or of a subcontractor; (iii) every other person (other than the Company) by whom the Services or any part of the Services are or is provided; and (iv) all persons who are or may be vicariously liable for the acts or omissions of any persons falling within the foregoing parts of this clause 8. For the purpose of this clause 8, 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.

9. (i) The Customer authorises any deviation from the usual manner in which the Services are provided which the Company in its absolute discretion considers to be reasonable or necessary in the circumstances.

(ii) 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.
10. The Company does not insure goods which come into its possession. The Customer must take out its own insurance.
11. 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 and 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. In the event that payment in full is not made to the Company by the 20th of the month following carriage, the Customer shall pay interest on outstanding monies at the rate of 1.5% per month or part thereof from the date on which the payment becomes overdue.
12. 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.
13. 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.
14. 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.

15. In all cases where liability of the Company has not been excluded or limited all liability of the Company whatsoever and howsoever arising is limited to: 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.
16. 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.
17. The Company shall not be bound by any agreement purporting to waive or vary these Conditions unless such agreement to so waive or vary is in writing and signed by an executive officer of the Company.
18. (i) 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.

(ii) 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 three (3) 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.
19. (i) All the rights, immunities and limitations of liability in these Conditions shall continue to have their full force and effect in all circumstances and notwithstanding any breach of this Contract or of these Conditions by the Company or any other person entitled to the benefit of such provisions.

(ii) It is agreed that if any provision or any part of any provision of these Conditions is unenforceable such unenforceability shall not affect any other provision or any other part of such provision.
20. Notwithstanding anything herein contained the Company shall continue to be subject to any implied guarantee provided by the Consumer Guarantees Act 1993 if and to the extent that that Act is applicable to this Contract and prevents the exclusion, restriction and modification of such warranty. The Act shall not apply to any transaction which has been entered into by the Company for business purposes.
21. (i) 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.

(ii) The Company charges a fee for each service that it provides, including the arranging of insurance and the payment on the Customer's behalf of disbursements. Such fees will be included in the amounts shown on the Company's invoices as disbursements and will not be separately identified.

(iii) The terms of the Company's Credit Account Agreement, where credit has been granted to the Customer, are deemed to be incorporated into and to form part of these Standard Trading Conditions.

22. 22.1 Without limiting anything else in these terms and conditions, the Customer acknowledges that: (a) these terms and conditions create, in favour of the Company, a 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 the Amount Owing; and (b) these terms and conditions 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.

22.2 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).

22.3 The Customer waives its right to receive a verification statement in respect of any financing statement relating to the Security interest.

22.4 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. 2