

1. PARTIES

1.1 The parties to each Contract are the Customer and the Company.

1.2 The Customer agrees that the Company may fulfil all or any part of any work accepted by it by engaging or entrusting the Goods to any subcontractor of the Company on terms agreed between the subcontractor and the Company, and that such terms will bind the Customer. Every agent, servant or subcontractor, including direct and indirect subcontractors, shall have the benefit of all provisions of these conditions of contract and the other terms of the Contract as if the provisions and terms were expressly for their benefit.

1.3 The Customer warrants that it is either the owner or authorised agent of the owner of the Goods and is authorised to accept and does accept these conditions of contract and the other terms of the Contract on behalf of all persons who are or may become interested in any Goods in relation to which it requests any services from the Company.

2. APPLICATION OF CONTRACT

2.1 Subject to paragraph 3.1 and the succeeding provisions of this paragraph 2, the Contract terms govern all dealings between the Company and the Customer including, without limitation, the provision of any advice or information.

2.2 The Contract terms shall prevail over any terms and conditions in any document used by the Customer, the owner or any other person having an interest in the Goods and purporting to have contractual effect.

2.3 Where the Company uses a third party actual carrier, the Customer's Goods are carried subject to the actual carrier's conditions of carriage. In the event of conflict between the actual carrier's conditions of carriage and the Contract terms, then the Contract terms shall prevail.

2.4 Where the Consumer Guarantees Act governs the dealings between the Company and the Customer, the Contract terms shall apply only so far as permitted by the Consumer Guarantees Act. Where the Customer carries on a "business" as defined in the Consumer Guarantees Act it agrees that it is acquiring the services of the Company for the purposes of that business and nothing in the Consumer Guarantees Act shall apply.

3. APPLICATION OF THE ACT

3.1 The Contract is subject to and governed by the Act **provided however** where the Contract terms conflict with the provisions of the Act then, to the extent permitted by law, the terms of the Contract shall prevail and the parties shall be deemed to have contracted out of the provisions of the Act.

3.2 Without limiting the generality of paragraph 3.1, sections 274-281 (inclusive) and 283 of the Act shall not apply to the Contract.

3.3 For the purpose of the Act each container load, including the container shall be deemed to be one unit.

3.4 The Customer agrees to indemnify the Company from and against any liability incurred by the Company arising from a breach by the

Customer of any warranty of the Customer implied by the Act.

4. PACKING AND DESCRIPTION

4.1 The Customer warrants that:

4.1.1 A full and correct description of the Goods has been provided to the Company;

4.1.2 The Goods, having regard to their nature, are properly and sufficiently packed and labelled for the purpose for which the Company is to receive them;

4.1.3 The Goods are packed and labelled in compliance with any applicable laws and regulations.

4.1.4 Any container owned, leased, used or operated by the Customer shall be carriage worthy and have a valid and up to date CSC plate and shall have been inspected and comply with the International Convention for Safe Containers 1972 (CSC) as implemented in New Zealand and as may be amended or replaced from time to time.

4.2 The Customer shall provide the Company sufficiently in advance of shipment, with a declaration of the Verified Gross Mass (VGM) of each container to be carried whether domestically or internationally, duly signed by the Customer's authorised signatory, in accordance with Part 24B.4 of the Maritime Rules. The Customer authorises the Company to sign, by the Company's dedicated person(s) and as the Customer's agent, any required shipping documents verifying each container VGM (as provided by the Customer to the Company) in accordance with Rule 24B.4 of the Maritime Rules.

4.3 The Customer shall be liable for all loss or damage whatsoever caused by, resulting from or in connection with the insufficient or incorrect description, packing or labelling of the Goods or failure to comply with the CSC and/or the VGM requirements as contemplated in this paragraph 4 and shall indemnify the Company against all penalties, claims, damages, costs and expenses whatsoever arising as a result.

4.4 The Company may, at the risk and expense of the Customer, for any reason and at any time, open and inspect any cargo either before or after accepting it for carriage. The Customer shall provide the Company with reasonable assistance in its inspection. The Company shall properly seal all cargo after any such inspection. The Company shall not incur any liability or affect any warranty given by the Customer in respect of any cargo for either having inspected or having failed to inspect any cargo.

5. PROHIBITED AND DANGEROUS GOODS

5.1 Without prior notification and agreement in writing, the Company will not accept or deal with:

5.1.1 Goods which it is unlawful to carry or otherwise handle, or can only be carried or handled with a permit;

5.1.2 Any noxious, dangerous or inflammable goods or goods likely to cause damage;

5.1.3 Any perishable goods or goods which require special handling or packaging;

5.1.4 Bullion, cash, coins, negotiable instruments, securities of any kind, precious

stones, jewellery, antiques, works or art or other valuables; or

5.1.5. Thoroughbred horses.

5.2 Where the Company agrees to accept or deal with any of the Goods referred to in paragraph 5.1, the Customer shall provide all documents, directions and information relating to the Goods (including any relevant permits) necessary to enable the Company to:

5.2.1 Comply with the law; and

5.2.2 Handle the goods safely and in a manner which is likely to minimise loss.

5.3 The Customer shall further ensure in the case of Goods described in paragraph 5.1.3 that the container or other covering in which the Goods are to be packed, as well as the Goods themselves, are distinctly marked on the outside so as to indicate the character of any such goods and so as to comply with any applicable laws, regulations or requirements.

5.4 If the Customer delivers any Goods referred to in paragraph 5.1 to or causes them to be handled or dealt with by, the Company without prior notification and written agreement:

5.4.1 The Company shall not be liable for any loss or damage whatsoever arising out of its dealings with the Goods;

5.4.2 The Customer shall be liable for all loss or damage whatsoever caused by, to or in connection with the Goods howsoever caused or arising;

5.4.3 The Customer shall indemnify the Company against all penalties, claims, damages, costs and expenses whatsoever arising as a result; and

5.4.4 In the case of Goods referred to in paragraph 5.1.1, 5.1.2 and 5.1.3 above, the Goods may be destroyed or otherwise dealt with at the sole discretion of the Company or any other person in whose custody they may be at the expense of the Customer without the Company, or such other person being responsible or accountable in any way.

6. DELIVERY

6.1 The Goods shall be deemed to have been delivered when they are delivered to the address given to the Company by the Customer or consignee for that purpose.

6.2 Any time for delivery given by the Company to the Customer or consignee is approximate only and is not deemed to be of the essence.

6.3 If the consignee fails to take delivery or to collect the Goods by the time when the responsibility of the Company (as the contracting carrier) for the Goods ends under the Act, the Company will hold them at the risk and expense of the consignee and will not be responsible for any loss of or damage to them, no matter how it was caused, during that period.

6.4 The Company is authorised to release the Goods to anyone holding the relevant consignment note (whether in conventional or electronic or any other customary form) entitling it to uplift the Goods. The Company shall not be responsible for verifying any consignment note, and excludes all liability for any loss suffered by the Customer or consignee in the event that a consignment note is subsequently found to be incorrect or fraudulent.

7. PAYMENT OF FREIGHT AND CHARGES

7.1 The Customer agrees to pay all freight and charges levied by the Company in terms of the Contract or any separate agreement relating to the services provided or, if there is no such agreement, the Company's standard charges, and any other costs reasonably incurred by the Company in connection with the Goods or the services provided by the Company including (without limitation) any third party actual carrier cancellation or no show fees or similar charges.

7.2 Freight and charges will be considered fully earned and due upon receipt of the Goods by the Company, whether lost or not lost, and all freight and charges shall be paid, without any deduction whether by way of set-off or counterclaim or otherwise, by the seventh day following receipt of invoice. If not so paid, without prejudice to any of its other rights and remedies, the Customer agrees to pay to the Company interest calculated on a daily basis at 5% per annum above the Reference Interest Rate on the unpaid balance until payment is made in full. The Customer shall also pay to the Company all reasonable fees and charges incurred by the Company in enforcing the Customer's obligations of payment under the Contract (including legal costs).

7.3 The Company may at its discretion impose special charges or vary existing charges for the services it provides. If the Customer's goods or its packaging are such that the Company incurs additional costs in handling them, the Customer shall pay those additional costs including, without limitation, any costs incurred as a result of the packaging not conforming to the Company's requirements or those of any of its third party actual carriers.

7.4 If at any time, payment from the Customer to the Company is in arrears, any subsisting obligations of the Company to the Customer shall be suspended and the Company may without limiting any other rights available to it:

7.4.1 demand payment of all outstanding amounts;

7.4.2 require security for such obligations to its satisfaction before any further services are rendered; or

7.4.3 withhold deliveries or services ordered by the Customer without notice.

7.5 The Customer acknowledges that (unless otherwise stated) all carriage rates are quoted exclusive of GST. GST is payable in addition to the Company's charges, and any other tax or similar charge imposed by government or any regional or other authority in relation to the Customer's use of the Company's services is payable by the Customer.

7.6 If the carriage includes carriage by sea, General Average is to be adjusted according to the York-Antwerp Rules 1994 covering all goods carried on or below deck. General average on a vessel not operated by the Company shall be adjusted according to the requirements of the operator of that vessel.

7.7 If the Company accepted the Goods for carriage on the condition that freight and other charges would be paid by the consignee, and payment has not been made, the Customer agrees to pay to the Company all sums which remain due and owing in respect of the carriage without deduction or set-off and regardless of whether there is any dispute.

7.8 Freight may be charged by weight or measurement and the Company may at any time re-weigh or re-measure the Goods or require them to be re-weighed or re-measured. If there has been an incorrect declaration of either, proportional additional freight may be charged accordingly.

8. LIEN

8.1 Immediately they come into the possession of the Company or any subcontractor, all Goods and documents relating to Goods shall be subject to a particular and general lien securing payment of all moneys due to the Company by the Customer or the consignee, consignor or owner, whether in respect of such Goods or otherwise. This contractual lien is expressly without prejudice to, and the Company does not abandon, any lien the Company may have by operation of law, under the Act or under any other statute.

8.2 If any moneys due to the Company are not paid within 14 days after notice to the debtor that the lien is being exercised, the Goods may be sold by auction or otherwise at the debtor's expense and the net proceeds applied in reduction of the indebtedness. No such sale shall prejudice or affect the Company's rights to recover any balance owing to the Company for its services or the costs of the retention and sale. For the purposes of the PPSA the Customer grants the Company a security interest in the Goods and any proceeds of Goods as security for all amounts owing and the performance of all obligations of the Customer under the Contract. Notwithstanding this provision, the Company expressly reserves its right to rely on any lien rights arising by operation of law or under the Act or any other statute.

9. INSURANCE: Insurance of the Goods is the sole responsibility of the Customer.

10. LIMITATION OF LIABILITY

10.1 All carriage subject to the Act is undertaken at "limited carriers risk" whereby the liability of the Company is limited in amount to the sum specified in section 259 of the Act for each unit of Goods lost or damaged.

10.2 Any other service (including carriage which is not subject to the Act or any other compulsorily applicable carriage regime) is provided on the basis that the Company shall be liable in negligence only and only for physical loss and damage to Goods and not otherwise, whereby the liability of the Company is limited in amount to the sum specified in section 259 of the Act for each unit of Goods lost or damaged.

10.3 Subject to provisions of paragraphs 10.1 and 10.2:

10.3.1 The Company shall not be under any liability, howsoever caused or arising and (without limiting the generality of the foregoing) whether resulting from the negligence of the Company or otherwise, for any damage to, loss, deterioration, misdelivery, delay in delivery or non delivery of, or failure to consolidate the Goods (whether the Goods are, or have been in the possession of the Company or not) nor for any instructions, advice, information or service provided to anyone, whether in respect of any loss or other thing or matter, nor for any consequential, special or indirect loss,

expense, damage or other such cost or liability (including loss of profits or revenue) suffered by the Customer (or any consignee or other person whatsoever) through any cause whatsoever (whether in contract, tort or otherwise); and

10.3.2 The Customer shall indemnify the Company against any claims of any kind whatsoever, howsoever caused or arising and (without limiting the generality of the foregoing) whether caused or arising as a result of the negligence of the Company or otherwise, brought by any person in connection with any matter or thing done, said or permitted by the Company in connection with its dealings with the Customer or the Goods.

10.4 Notwithstanding the foregoing provisions of this paragraph 10, the Customer is liable for all loss or damage to the Goods in the possession of the Company or a third party actual carrier or its employees, representatives or agents, where such loss or damage is caused directly or indirectly by any failure to comply with the Contract terms or any act or omission of the Customer, regardless of whether the Customer is negligent or at fault.

10.5 Where the service provided by the Company is international carriage for which a bill of lading, sea waybill, air waybill, consignment note, or other document of carriage having contractual effect has been issued, in addition to and without limiting the exclusions and limitations of liability available to the Company under the Contract, the Company shall be entitled to the benefit of any restrictions on its liability contained in such documents.

11. ACTIONS AGAINST THE COMPANY

The Company shall be under no liability unless:

11.1 Written notice of any claim, giving full particulars of any alleged loss or damage, is received by the Company within seven days after delivery of the Goods or, in the case of loss or destruction of the Goods, within 14 days of the date of despatch; and

11.2 If proceedings are brought in respect of such a claim, the proceedings have been commenced by the Customer in a court of competent jurisdiction within six months from the date of despatch of the goods.

12. MISCELLANEOUS:

12.1 Entire Agreement and Waiver: The provisions of the Contract constitute the entire agreement between the parties in relation to the Goods and no earlier representation, warranty or agreement (whether written, oral or otherwise) in relation to any matter dealt with in the Contract has any force or effect. The Company shall not be bound by any waiver or variation of the Contract unless such waiver or variation is in writing and signed by a duly authorised person on behalf of the Company. The referral of business to the Company and the acceptance of services provided by the Company will be deemed to be acceptance of these Conditions of Contract and the other Contract terms. The parties may be alerted to the existence of these conditions of contract by a reminder printed on Company stationery and dockets including letterhead,

releases of freight, proofs of delivery and on the account application form. These conditions of contract are also available on the Company's website www.cubic.co.nz.

12.2 Right to Refuse or Suspend Carriage: The Company may in its sole discretion and without prejudice to any of its other rights and remedies:

12.2.1 Refuse carriage or storage for any person or for any class of goods;

12.2.2 Only accept goods for carriage under special conditions or arrangements;

12.2.3 Suspend any carriage services.

12.3 Credit Assessment: The Customer authorises and directs the Company to seek and obtain or supply, any information concerning the credit or business standing of the Customer, from or to any other person whether trader, merchant, firm, organisation, company or any agency or source whatsoever including any credit agency or association or the like, and directs any such person to supply or receive and record such information to and from the Company.

12.4 Joint and Several: Where the Customer comprises more than one person, the Contract shall bind them both jointly and severally.

12.5 Invalidity: The illegality, invalidity or unenforceability of any provision of the Contract shall not affect the legality, validity or enforceability of any other provision.

12.6 Waiver of Breach: No failure or delay by the Company in insisting upon the strict performance of the Contract terms or exercising any right under the Contract will operate as a waiver of those matters. No waiver of any breach shall be deemed to be a waiver of any subsequent breach.

12.7 Governing Law: Each Contract is governed by the laws of New Zealand. New Zealand courts shall have non-exclusive jurisdiction.

12.8 Assignment: The Customer shall not assign or transfer any of its rights or obligations under the Contract without the Company's written consent. The Company may at any time assign or transfer any of its rights or obligations under the Contract.

12.9 Force Majeure: The Company is not liable for failure or delay to carry out the agreed carriage services where such failure or delay is a result of any event or circumstance outside the Company's reasonable control. The Company shall however use reasonable endeavours to remedy the consequences of any such event or circumstance, and to resume performance of its obligations. The Company shall not however be required to use or arrange any alternative form of carriage on behalf of the Customer.

12.10 Definitions: Terms and expressions not defined below shall have the meanings set out in the Act. In these conditions:

"Act" means subpart 1 [relating to Carriage of Goods] of Part 5 of the Contract and Commercial Law Act 2017, as may be amended or replaced from time to time;

"actual carrier", "contract of carriage", "contracting party", "goods" and "unit" have the meaning ascribed to them in the Act;

"Company" means Cubic Transport Services Limited, including its employees, agents, subcontractors and any actual carrier as the case may be;

"Consumer Guarantees Act" means the Consumer Guarantees Act 1993, as may be amended or replaced from time to time;

"Contract" means a contract of carriage between the Customer and the Company, the terms and conditions of which are comprised in:

- (a) For domestic carriage, a booking confirmation issued by the Company to the Customer; For international carriage, a bill of lading, sea waybill, air waybill, consignment note or other document of carriage;
- (b) These conditions of contract; and
- (c) Any other document issued by the Company relating to the contract of carriage including (but not limited to) quotations and other pricing details;

"Customer" includes any contracting party as that term is defined in the Act;

"Goods" means the goods delivered to the Company for carriage, storage or handling in

accordance with the provisions of the Contract and includes any container provided, owned, leased or operated by the Customer.

"GST" means goods and services tax under the Goods and Service Tax Act 1985;

"Maritime Rules" means the then current New Zealand Maritime Rules as made by the Minister of Transport under the Maritime Transport Act 1994, as may be amended or replaced from time to time;

"PPSA" means the Personal Property Securities Act 1999, as may be amended or replaced from time to time;

"security interest" and "proceeds" have the meanings given to them in the PPSA.

"Reference Interest Rate" means the 90 day bank bill rate (as published on the Reserve Bank of New Zealand's website or, if such rate ceases to be so published, a rate calculated on a substantially similar basis) on the first date on which interest accrues on the due payment.

12.11 Variation of Conditions of Contract: These conditions of contract may be varied by the Company from time to time. Such variations will be deemed effective upon posting of the conditions of contract on the Company's website or otherwise notified to the Customer **provided however** the varied conditions of contract shall not affect any existing Contract unless the Customer has agreed to the variations.

12.12 Customer Acknowledgement: The Customer acknowledges that it has read and accepts these Conditions of Contract:

Signed:.....

Date:.....