

Nautica Shipping and Logistics Ltd
Terms and Conditions

1 Services as an Agent

- 1.1 The Company is a freight forwarder, and provides the Services to the Company as its agent, by arranging freight and attending to customs clearance. The Company is not the actual carrier and attracts no liability attaching to such.
- 1.2 The Company has the sole discretion to accept or refuse the provision of Services to any person or for any class of goods for any reason despite any prior dealings or repeated custom.
- 1.3 All Services are provided subject to these Terms, which prevail in the case of any inconsistency between these Terms and any other terms in a bill of lading, waybill, consignment note or other transport document issued by the Company.

2 Third Party Providers

- 2.1 The Customer acknowledges that the Company will use subcontractors and other third parties to provide the Services (**Third Party Providers**), and authorises the Company to select such Third Party Providers in its absolute discretion.
- 2.2 The Customer authorises the Company, as its agent, to enter into agreements with carriers and other third parties on behalf of the Customer in connection with the Services.
- 2.3 The Customer agrees that all work performed by Third Party Providers shall be subject to, and that the Customer shall be bound by, the terms of any agreement entered into by the Company as its agent (**Third Party Agreement**).
- 2.4 The Company shall not be liable for any act or omission of a Third Party Provider, or a breach by any Third Party Provider of any Third Party Agreement. Without limiting any rights or remedies of the parties, the Customer indemnifies the Company against all Losses of the Company arising directly or indirectly out of, or in connection with, a Third Party Agreement.

3 Method

- 3.1 The Company has a complete discretion as to the means, route and procedure to be followed in the provision of its Services. However, the Company shall endeavour to use any specific means, route or procedure requested by the Customer in writing, but reserves the right to adopt any other means, route or method without obtaining the Customer's consent, giving notice or incurring any liability whatsoever to the Customer, if it in its sole opinion, considers it necessary or desirable to do so.

4 Customer's warranties

- 4.1 The Customer warrants and represents on a continuing basis:
- (a) that the Customer is either the owner or the authorised agent of the owner of the Goods, and is authorised by any person who has or may acquire an interest in the Goods to enter into these terms;
 - (b) the accuracy and completeness of all descriptions, values and other particulars of the Goods;

- (c) that the Goods have been properly and sufficiently packed and prepared for transport, except where the Customer has instructed the Company to arrange for the packing of the Goods;
- (d) that the Goods comply with the requirements of any applicable law relating to the nature, labelling and packaging and carriage of goods; and
- (e) that the Goods are not of a kind referred to in clause 5 of these Terms.

5 **Prohibited Goods**

- 5.1 Unless special prior arrangements have been agreed to in writing, the Company will not accept or provide Services in respect of:
- (a) any noxious, dangerous or inflammable goods or any goods likely to cause damage or which it is unlawful to carry. Goods likely to cause damage include goods likely to harbour or encourage vermin or other pests, harmful bacteria or diseases;
 - (b) valuable and fragile goods such as bullion, currency, bearer securities or other negotiable instruments or similar items, passports, jewellery, antiques, paintings or works of art, glassware, china or lighting products, livestock or animals; or
 - (c) any items of a perishable nature, plants and produce, flowers, chilled and refrigerated items or any item that needs to be delivered within a limited time span in order to preserve its nature and quality.

6 **Payment**

- 6.1 The Customer agrees to pay the Company's standard charges and those of any Third Party Providers and to reimburse the Company for any other costs incurred or money expended by the Company as agent for the Customer in connection with the Services.
- 6.2 Additional charges may apply, such as storage and freight charges, and other costs resulting from any excessive delays outside the Company's control.
- 6.3 All quotations given by the Company are based on costs for freight, insurance and other charges, rates of exchange, taxes, duties and other imposts, prevailing at the date of quotation and on the latest available quotations from Third Party Providers used by the Company. If such costs increase at any time, the charges payable by the Customer shall increase accordingly.
- 6.4 The Customer shall pay all charges in full without deduction or set off.
- 6.5 Except where the Company has agreed in writing to extend credit to the Customer on the terms set out in clause 7, all payments are due upon receipt of an invoice, and for the avoidance of doubt, the Customer must make full payment prior to release or delivery of the Goods unless prior arrangement has been made in writing.
- 6.6 The Customer shall remain liable to the Company for all its charges notwithstanding any direction that the whole or any part of them shall be payable by some other person.
- 6.7 If the Company's invoices are not paid on the due date, the Company may charge interest on any overdue amounts until payment at the rate of 5% per month above the Company's bank's standard interest rate prevailing at the time.

- 6.8 If at any time any payment due by the Customer is in arrears, the Company reserves the right to suspend any further services to that Customer. Any incidental charges arising from this suspension, such as storage, are also payable by the Customer.
- 6.9 The Company reserves the right to offset any amounts receivable from the Customer against any amounts payable to the Customer or any company affiliated with the Customer. This right exists irrespective of the date the liability has been created or debt incurred with the Company.
- 6.10 As the Customer's agent, the Company may require funds in advance to pay costs and fees arising in the course of the Services, such as shipping costs, port fees, taxes and duties. Except where the Company has agreed in writing to extend credit to the Customer on the terms set out in clause 7, the Customer acknowledges and agrees that:
- (a) the Company is under no obligation to pay any costs to a third party on the Customer's behalf without first having received cleared funds from the Customer to cover such costs; and
 - (b) the Company is not liable or responsible in any way for any costs or Losses arising directly or indirectly from any refusal or delay in the Company paying the costs of a third party due to the Customer not first providing adequate cleared funds.
- 6.11 Unless otherwise stated, all charges 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.
- 6.12 All charges invoiced and due to the Company are payable in New Zealand dollars. The Company is entitled to charge a currency conversion premium when converting charges levied in foreign currencies into New Zealand dollars.
- 6.13 Any costs incurred such as levies, charges, billable items, excise, GST, fines or ancillary charges however incurred are to be paid by the consignee. These may also include storage, demurrage, detention, fumigation, destruction, additional handling and administration costs. where the Company is facilitating any of these movements and/or acting on behalf of the Customer then a margin is added for the managing, funding and administering of such services.
- 6.14 The Company's preferred method of payment is by direct credit of cleared funds to the Company's nominated bank account. If the Customer makes payment by credit card, the Company reserves the right to pass on to the Customer any costs reasonably incurred by the Company in accepting such payments.
- 6.15 Any expenses, disbursements and legal costs incurred by the Company in the enforcement of any rights contained in these terms shall be paid by the Customer including any reasonable solicitor's fees on a solicitor/own client basis.

7 Extension of Credit

- 7.1 On the completion by the Customer of a Credit Application Form and the satisfactory completion of background credit checks on the Customer by the Company, the Company may agree in writing to extend credit to the Customer for the purpose of deferred payment of any applicable New Zealand Customs duty, GST and transaction charges that may be payable by the Customer in respect of the Goods.
- 7.2 Where the Company has agreed in writing to extend credit to the Customer, the Customer must pay in full, without deduction or set off, the Company's invoice in respect of any

applicable New Zealand Customs duty, GST and transaction charges payable by the Customer by the date specified in the Credit Application Form completed by the Customer unless otherwise agreed in writing. All other provisions set out in clause 6 apply.

- 7.3 A fee is payable by the Customer for the extension of credit by the Company, as specified in the Credit Application Form. The fee payable will be included in the Company's invoice and is payable in accordance with clause 7.2.
- 7.4 Notwithstanding clause 7.2, all amounts payable by the Customer shall immediately become due to the Company if the Company reasonably believes that the information provided in the Credit Application Form is not correct or is no longer correct and the Customer has failed to provide correct information within 5 days of a request by the Company, if the Customer becomes insolvent or if a receiver, administrator, liquidator or statutory manager is appointed over any assets of the Customer, if the Customer fails to comply with any of the provisions of clause 8, or if the Customer makes or attempts to make an arrangement or composition with creditors.
- 7.5 The extension of credit for the purpose of deferred payment of any applicable New Zealand Customs duty, GST and transaction charges is at the sole discretion of the Company and approval to extend credit may be revoked at any time by the Company by notifying the Customer in writing.

8 Security Interests

- 8.1 Where the Company has agreed to provide credit in writing to the Customer in accordance with clause 7, the Customer agrees to grant a security interest in the Goods together with proceeds of all kinds to the value of the Services that the Company has supplied to the Customer, whether or not those Goods have become accessions to other goods or processed or commingled into or mixed with other goods. The Goods and Services subject to the security interest will be described on the Company's invoices.
- 8.2 The Customer agrees to do all acts necessary and provide the Company on request with all information required to register a financing statement over the Goods and their proceeds of all kinds. The Customer waives the right to receive a copy of any verification statement of a financing statement.
- 8.3 The Customer must advise the Company immediately in writing of any changes to information it has provided to the Company, and at least 10 working days before changing the Customer's name or trading name.
- 8.4 The Customer agrees to supply the Company, within 2 working days of the Company's written request, with copies of all security interested registered over the Customer's personal property, and authorises the Company to act as its agent to request information from any secured party relating to any security interest which is held in any personal property which is or has been in the Customer's possession or control.
- 8.5 The Customer must reimburse the Company its reasonable costs, including legal costs on a solicitor/own client basis, associated with the discharge or amendment of any financing statement registered by the Company, whether or no the change was initiated by the Customer.
- 8.6 If the Company repossesses goods under this agreement, it may retain those goods or dispose of them without notice to the Customer or any other person, and, after deducting reasonable costs of sale, the Company will credit any surplus by way of set off against any sum owing by the Customer to the Company. The Company shall not be obliged to provide

the Customer with a statement of account or to pay any person other than the Customer or its receiver or liquidator any sum in excess of the total amount owed to the Company at the time the Customer's account with the Company is credited.

- 8.7 The Customer authorises the Company to search the Personal Property Securities Register at any time for any information about the Customer or its parent company or associated companies.

9 **Delivery of Goods**

- 9.1 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.

10 **Limitation of Liability**

- 10.1 If the Carriage of Goods Act 1979 applies to the Company's provision of any Services, any contract of carriage is at limited carrier's risk as that term is defined, unless the Customer signs a statement prior to, or at the time, the Goods are accepted for carriage, that the Goods are to be carried at owner's risk, meaning the Company will have no liability whatsoever if the Goods are lost or damaged, other than in the case of intentional loss or damage by the Company. If such a statement is included in the consignment note or any other document relating to the carriage, the statement shall be conspicuous and shall be separately signed by the Customer.

- 10.2 If the Civil Aviation Act 1991 or the Maritime Transport Act 1994 apply to the Company's provision of any Services, the Company's liability for loss of or damage to the Goods shall be limited in the manner prescribed in the relevant Act.

- 10.3 The Company shall be subject to any implied guarantee provided by the Consumer Guarantees Act 1993 if and to the extent that the Act is applicable to any contract between the Company and the Customer and prevents the exclusion, restriction and modification of such warranty.

- 10.4 Subject to any of the provisions of the above Acts imposing liability in respect of the loss of or damage to Goods, the Company shall not be under any liability for any indirect or consequential Loss or damages suffered by the Customer or any other party (including any loss of revenue or profit, or any other economic loss, or any loss of reputation or opportunity) in connection with the provision of the Services, or arising from any act, omission, error, default or delay in respect of the performance or non-performance by either party of their respective obligations under these terms or otherwise.

- 10.5 In any case where liability has not been effectively limited or excluded, the Company's liability shall be the lesser of:

- (a) \$100;
- (b) the cost of resupplying the Services; or
- (c) the replacement value of the Goods.

11 **Notification of Claims and Limitation of Actions**

- 11.1 The Company shall be under no liability whatsoever unless:

- (a) written notice of the claim, giving full particulars of any alleged loss or damage, is received by the Company within three days after the delivery of the Goods, or in the

case of non-delivery, within seven days of the date when they should have been delivered; and

- (b) an action has been commenced by the Customer in a Court of competent jurisdiction and notice given to the Company within 6 months from the date of delivery of the Goods or in the case of non-delivery, within 6 months from the date when they should have been delivered.

12 **Indemnity**

- 12.1 The Customer fully indemnifies the Company against all loss arising from the Customer's negligence or from the Customer's breach of any of these Terms or any Third Party Agreement or otherwise connected with the provision of the Services.

13 **Disposal of Goods**

- 13.1 The Company shall be entitled to sell or dispose of Goods which in its sole opinion, acting reasonably, cannot be delivered either because they are insufficiently or incorrectly addressed or because they are not collected or accepted by the consignee or any other person after twenty one days' notice in writing of the intention to sell or dispose of Goods has been given to the Customer. All charges and expenses arising in connection with the storage and sale or disposal of the Goods shall be paid by the Customer.

14 **Insurance**

- 14.1 Insurance of the Goods is the responsibility of the Customer.
- 14.2 The Company shall arrange insurance over the Goods only upon express instructions given in writing by, and at the cost of, the Customer and all such insurances are subject to any exceptions and conditions in the policies of the insurer. The Company shall not be obliged to arrange a separate insurance on each consignment but may declare it on any open or general policy. Should an insurer dispute liability for any reason the insured shall have recourse against the insurers only, and the Company shall not be under any responsibility or liability whatsoever.

15 **Lien**

- 15.1 All Goods and documents relating to Goods in the possession of the Company or any subcontractor are subject to a particular and general lien and right of detention for any moneys due to the Company or any of its related companies as defined in the Companies Act 1993 by the Customer or the consignee, whether in respect of such goods or otherwise, and whether or not such moneys are due for payment. If any moneys are due to the Company such that the Goods are being detained, they may be sold by auction or otherwise at the sole discretion of the Company and at the expense of such person, and the net proceeds applied in or towards satisfaction of any such indebtedness. Any such sale shall not prejudice the Company or the related company's rights to recover from such persons any balance or any amount remaining unpaid.
- 15.2 The contractual lien may be registered by the Company on the Personal Property Securities Register and the Customer shall do all things reasonably required for the Company to perfect its security interest. The Customer waives their right to receive a verification statement or a copy of any financing change statement.

16 **Privacy Act 1993**

16.1 The Customer authorises the Company to collect, retain and use any information about the Customer for the purposes of assessing the Customer's creditworthiness, providing the Services or for marketing the Company's services.

16.2 The Customer authorises the Company to disclose any information obtained to any person for the above purposes, including Third Party Providers.

17 **Brokerage and other Remuneration**

17.1 The Customer acknowledges that the Company may have a pecuniary interest in any contract entered into by the Company as its agent and agrees that the Company may receive and retain all brokerage, commission, discounts, allowances and other remuneration paid by the other party to the contract in addition to the charges and expenses referred to in paragraph 6, and need not disclose to the Customer the nature or amount.

17.2 No payment made or received by the Company shall be construed as a gift or secret reward under the Secret Commissions Act 1910.

18 **Governing Law**

18.1 These terms, carriage of goods contract and any other agreement between the Customer and the Company are governed by and construed in accordance with the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the New Zealand courts.

19 **Notices**

19.1 Any notices to be given under these terms shall be deemed to have been delivered when they are delivered to the registered office of the party to receive it or the usual or last known address or place of business of such party.

20 **General**

20.1 If any provision or any part of the provision of these terms is unenforceable such unenforceability shall not affect any other provision or any other part of such provision.

20.2 **Company** means Nautica Shipping and Logistics Limited its servants, agents, employees and directors and includes any subsidiary, parent or related company of the foregoing.

20.3 **Credit Application Form** means the Company's application for credit account for deferral of payment of New Zealand Customs duty, GST and transaction charges form that must be satisfactorily completed by the Customer where an extension of credit is sought.

20.4 **Customer** means any person or entity which, whether as principal or as agent for another, contracts with the Company and includes also the holder of any carriage documentation issued by the Company as well as the owner, shipper or consignee of any goods in respect of the Services provided by the Company.

20.5 **Goods** means the cargo accepted by the Company together with any container, packaging or pallet supplied by or on behalf of the Customer.

20.6 **GST** means goods and services tax chargeable under the Goods and Services Tax Act 1985, and any penalties, additional tax or interest payable in respect of goods and services tax.

- 20.7 **Losses** means all costs, losses, liabilities (including legal and other professional expenses on a full indemnity basis and GST and similar taxes), claims, demands, damages, fines and penalties including any consequential or indirect losses, economic losses or loss of profits.
- 20.8 **Services** means the carriage, storage, warehousing, packaging, handling, packing, unpacking, consolidation, despatch, loading or unloading of any goods or any container or both, and includes any other service provided by the Company as forwarding, transport, customs or shipping agent of the Customer, and any services ancillary to or connected with any of the above.

