

**1. Definitions**

- 1.1 “**CISL**” means Chatham Islands Shipping Limited, its successors and assigns, sub-contractor, or any person acting on behalf of and with the authority of Chatham Islands Shipping Limited.
- 1.2 “**Client**” means the person/s or any person acting on behalf of and with the authority of the Client requesting CISL to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
  - (b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (c) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.3 “**Consignee**” shall mean the person (and person/s acting on behalf of and with the authority of the Consignee) to whom the Goods are to be delivered by way of CISL’s Services.
- 1.4 “**Container**” means any container, trailer, transportable tank, pallet or other packaging or article used to carry, consolidate, store, or package the Goods.
- 1.5 “**Contract**” means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.6 “**Cookies**” means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client’s computer. **If the Client does not wish to allow Cookies to operate in the background when using CISL’s website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.7 “**Dangerous Goods**” means any Goods or hazardous substances which are or may become of a dangerous, hazardous, noxious, explosive, inflammable, radio-active, damaging, corrosive or poisoning nature and include Goods likely to harbour or encourage vermin or other pests.
- 1.8 “**Goods**” shall mean cargo (including, but not limited to livestock and animals, vehicles, containers, building materials and where appropriate, may include any Container) to be moved from one place to another by way of CISL’s Services, or for storage by CISL.
- 1.9 “**Price**” shall mean the cost of the Services (plus any Goods and Services Tax (“GST”) where applicable) as agreed between CISL and the Client subject to clause 3 of this contract.
- 1.10 “**Services**” shall mean all services supplied by CISL to the Client and are as described on the quotations, invoices, consignment note, manifests, sales order or any other forms as provided by CISL.
- 1.11 “**Sub-Contractor**” means the actual carrier engaged to carry the Goods, and includes:
- (a) warehousemen;
  - (b) any other person or entity with whom CISL may arrange for the carriage or storage of any Goods the subject of the contract; or
  - (c) and any person who is now or hereafter a servant, agent, employee, or sub-contractor of any of the persons referred to in clause 1.2(a) and 1.2(b).
- 1.12 “**Transport Document**” means house or bill of lading, manifest, warehouse receipt, consignment note, or other document issued by CISL, Sub-Contractor, or third party supplying Services in respect to the Goods.

**2. Acceptance**

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts Services provided by CISL.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or contract between the Client and CISL.
- 2.3 These terms and conditions are to be read in conjunction with CISL’s quotation and/or any Transport Document(s) and where the context so permits, the terms ‘Goods’ or ‘Services’ shall include any supply of Equipment, as defined therein.
- 2.4 The Client acknowledges that all Goods are carried, transported, and stored and the Services supplied by CISL are subject only to these terms and conditions. CISL reserves the right to refuse the carriage or transport of any Goods for the Client.
- 2.5 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.6 Where applicable, the Client acknowledges that CISL will extend a duty of care during the provision of transporting livestock, however it is the Client’s responsibility to ensure that all livestock are in fit condition for transportation and meeting all applicable Acts, regulations, guidelines, and Codes of Welfare relating to the transportation of such livestock.
- 2.7 In the event of there being any inconsistency between these conditions and any specific agreement entered into in relation to Services offered by CISL and/or any conditions relating to permits, the conditions of such agreement and/or permit shall take precedence only to the extent of such inconsistency.
- 2.8 The Client acknowledges and accepts that **all** animals (whether or not classified as livestock) travel on an owner’s risk basis and should be adequately insured as per clause 15. CISL shall not be held liable for any loss or damages where the Client chooses not to insure any animal.

**3. Credit Card Information**

- 3.1 CISL will:
- (a) keep the Client’s personal details, including credit card details for only as long as is deemed necessary by CISL;
  - (b) not disclose the Client’s credit card details to any third party;
  - (c) not unnecessarily disclose any of the Client’s personal information, except in accordance with the Privacy Policy (clause 27) or where required by law.
- 3.2 The Client expressly agrees that, if pursuant to this Contract, there are:
- (a) any unpaid charges;
  - (b) other amounts due and outstanding by the Client;
  - (c) any Equipment (or any part of them) supplied on loan that are lost or damaged.

3.3 CISL is entitled to immediately charge the Client's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Client pursuant to the terms of this Contract.

**4. Errors and Omissions**

4.1 The Client acknowledges and accepts that CISL shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):

- (a) resulting from an inadvertent mistake made by CISL in the formation and/or administration of this contract; and/or
- (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by CISL in respect of the Services.

4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of CISL; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

**5. Change in Control**

5.1 The Client shall give CISL not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees or business practice). The Client shall be liable for any loss incurred by CISL as a result of the Client's failure to comply with this clause.

**6. Authorised Representatives**

6.1 Unless otherwise limited as per clause 6.2, the Client agrees that should the Client introduce any third party to CISL as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Services, and/or any variation thereto, on the Client's behalf (such authority to continue until all requested Services have been completed or the Client otherwise notifies CISL in writing that said person is no longer the Client's duly authorised representative).

6.2 In the event that the Client's duly authorised representative as per clause 6.1 is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise CISL in writing of the parameters of the limited authority granted to its representative.

6.3 The Client specifically acknowledges and accepts that it will be solely liable to CISL for all additional costs incurred by CISL (including CISL's profit margin) in providing any Services, or variation/s thereto, requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 6.2 (if any)).

**7. Consignment Note**

7.1 It is agreed that the person delivering any Goods to CISL for transport is authorised to sign the consignment note for the Client.

**8. Nomination of Sub-Contractor**

8.1 The Client hereby authorises CISL (if it should think fit to do so) to arrange with a Sub-Contractor for the carriage of any Goods that are the subject of the contract. Any such arrangement shall be deemed to be ratified by the Client upon delivery of the said Goods to such Sub-Contractor, who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as CISL. In so far as it may be necessary to ensure that such Sub-Contractor shall be so entitled CISL shall be deemed to enter into this contract for its own benefit, and also as agent for the Sub-Contractor.

**9. Price and Payment**

9.1 At CISL's sole discretion the Price shall be:

- (a) as indicated on invoices provided by CISL to the Client in respect of Services supplied; or
- (b) the Price as at the date of delivery of the Services based on CISL's price list at the commencement of the transaction or current hourly rate(s); or
- (c) CISL's quoted Price (subject to clause 9.2) which shall be binding upon CISL provided that the Client shall accept in writing CISL's quotation within thirty (30) days (quarantine and statutory charges or origin or destination additional charges are not included, unless specifically stated at the time of quoting); or
- (d) calculated by weight or measurement on behalf of the Client. CISL may, at any time, open any container or any other package or unit to re-weigh or re-measure or require the Goods to be re-weighed or re-measured and charge proportional additional freight accordingly.

9.2 CISL reserves the right to change the Price:

- (a) if a variation to CISL's quotation is requested or required (including as to the nature or quantity of the Goods, nature and location of the collection and/or delivery address, facilities available for packing, loading or unloading, weather conditions or delays beyond the control of CISL, delivery times or date or otherwise, etc.);
- (b) to reflect any increases to CISL in the cost of providing the Services which are beyond the reasonable control of CISL (including, without limitation, increases in the cost of labour or materials, administration costs (including photocopying, postage, etc.), or increases in fuel costs, taxes, insurance premiums or warehousing costs, or for any other services, facilities or resources provided by CISL); or
- (c) any other associated costs incurred by CISL in the provision of supplying the Services.

9.3 At CISL's sole discretion, a deposit may be required and shall become due and payable on request.

9.4 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by CISL, which may be:

- (a) on or before delivery of the Goods; or
- (b) payment before uplift of Goods; or
- (c) the date specified on any invoice or other form as being the date for payment; or
- (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by CISL.

9.5 Payment may be made by electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and CISL.

- 9.6 CISL may in its discretion allocate any payment received from the Client towards any invoice that CISL determines and may do so at the time of receipt or at any time afterwards.
- 9.7 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by CISL nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Client must notify CISL in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as CISL investigates the dispute claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in CISL placing the Client's account into default and subject to default interest in accordance with clause 22.1.
- 9.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to CISL an amount equal to any GST CISL must pay for any supply of Services by CISL under this or any other contract. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 9.9 Every special instruction to the effect that the Price shall be paid by the Consignee shall be deemed to include a stipulation that if the Consignee does not pay the said charges within the specified date for payment, then the Client shall be liable for, and shall pay to CISL, the said charges, together with an account transfer fee.
- 9.10 The Client acknowledges and agrees that the Client's obligations to CISL for the supply of Services shall not cease until:
- (a) the Client has paid CISL all amounts owing for the Services; and
  - (b) the Client has met all other obligations due by the Client to CISL in respect of all contracts between CISL and the Client.
- 9.11 Receipt by CISL of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared, or recognised, and until then CISL's ownership or rights in respect of the Services, and this contract, shall continue.

## **10. Provision of the Services**

- 10.1 The Client authorises CISL (in its discretion at any time without notice to the Client) to:
- (a) license or sub-contract all or any part of its rights and/or obligations, entering into contracts and arranges with any third party to perform or carry out the Services (or any part thereof). In so engaging such third parties, CISL has or will represent to such third parties that the terms of this contract, including the benefit of any terms conferred upon CISL, shall extend to such third parties in providing their goods and/or services;
  - (b) alter or deviate from CISL's normal or advertised route or manner of transportation where CISL deems such deviations as being reasonable or necessary in the circumstances. Such deviations may:
    - (i) occur due to poor weather, scheduling, or unforeseen events etc.; and
    - (ii) include, but not be limited to, the mode of transport returning to base without completing the journey, completing the routes in a circuitous route, storing the Goods for a period of time in any place as deemed necessary.
  - (c) the Client shall be bound by the terms of any consignment note or other contractual document which CISL may receive for the Goods, or for any package, unit, or container in which the Goods may be packed, whether by the Client, CISL, or any other person.
- 10.2 CISL's charges shall be considered earned as soon as the Goods are loaded and despatched.

## **11. Client-Packed Containers**

- 11.1 Subject to any written special instructions to the contrary:
- (a) the Client is solely responsible for the safe and proper packaging of the Goods (including the manner in which the Goods have been packed, the suitability of the Goods for carriage or manner or packaging and/or the condition of the packaging, etc.) and for any loss suffered or incurred by any person (including the Client) through any such failure;
  - (b) CISL is not obliged to pack the Goods or to provide any plant, power or labour required for loading and/or unloading of the Goods unless specifically stated within the scope of the Services nor to provide the Client use of any site under CISL's control.

## **12. Client's Responsibility**

- 12.1 The Client expressly warrants, represents, confirms and/or acknowledges that:
- (a) CISL has relied upon the Client accurately labelling and fully and accurately describing the Goods in writing (including name, nature and value of all articles subject to special rates of carriage or of a noxious, dangerous, hazardous or inflammable nature or capable of causing damage or injury to any other goods, or property or to any persons or animals (and additional freight charges shall be paid on such articles if deemed necessary by CISL), weight, measure and dimensions). Accordingly, CISL accepts no liability for any discrepancy that may arise with the description;
  - (b) CISL has relied upon the Client's skill in properly and safely packing, securing and preparing the Goods, and that the Client has complied with all applicable laws and regulations (including those relating to the packing, carriage, storage, customs clearance, delivery of other services in respect of the Goods, etc.) and shall furnish such information and provide such documents as may be necessary to comply with such laws and regulations;
  - (c) the Client is either the owner or the authorised agent of the owner of any Goods or property that is the subject matter of this contract, and by entering into this contract the Client accepts these terms and conditions for the Consignee as well as for all other persons on whose behalf the Client is acting;
  - (d) the Goods are fit for carriage, having undertaken due and careful enquiry the Goods are not dangerous, illegal, hazardous and do not contain any substance resulting in risks not readily apparent from the Client's description of the Goods;
  - (e) the person handing over the Goods to CISL is authorised to sign and accept these terms and conditions;
  - (f) all information provided to CISL in connection with the Goods is accurate and adequate (including, but not limited to, address and written delivery instructions, stock movement documentation), and the Client agrees to indemnify CISL against all loss, damage, fees, and expenses arising, or resulting, from any inaccuracies or inadequacy in that information.
- 12.2 In the event that the Goods are found to be noxious, hazardous, inflammable, explosive or likely to cause damage, thereby a failure by the Client to comply with clause 12.1(a) shall render the Client liable for any loss or damage caused to, or by, the Goods, and acceptance of the Goods by CISL without discovery of any such defect or lack, shall not exclude or diminish any liability on the part of the Client.

- 12.3 For the purposes of this Clause 12, the expression “likely to cause damage” includes goods likely to harbour or encourage vermin or other pests or which fall within the definitions of “hazardous” or “dangerous” goods in any legislation governing carriage by rail, road or sea in New Zealand.
- 12.4 In the event that the Goods are found to be noxious, hazardous, inflammable, explosive or likely to cause damage:
- (a) the Client, and any person delivering the Goods to CISL, or causing CISL to handle or deal with the Goods, shall be liable for any loss or damage caused by the Goods or by their nature, and shall indemnify and keep indemnified CISL against all loss, damages, claims, and costs incurred by CISL in connection therewith, and
  - (b) the Goods may be destroyed or otherwise dealt with as determined by Carrier in its absolute discretion at the expense of the Client or by any other person in whose custody they may be at the relevant time also at the expense of the Client, and neither CISL nor any such other person shall incur any liability whatsoever to the Client in relation to any action taken by them concerning the Goods.

### **13. Dangerous Goods**

- 13.1 Unless agreed in writing, the Client shall not deliver to CISL for carriage or storage, or cause CISL to deal with or handle, Dangerous Goods without giving such notice of intention to transport Dangerous Goods, presenting a full description thereof to CISL and complying with all applicable laws, regulations or requirements. If, in the opinion of CISL, any Goods are liable to become of a dangerous, flammable or damaging nature, those Goods may (at any time) be destroyed, disposed of, abandoned or rendered harmless at the expense of the Client. CISL shall not be liable to compensate the Client, and such action will not exclude CISL’s right to the Price and any other applicable charges.
- 13.2 If the Client is in breach of clause 13.1, the Client, and any person delivering the Goods to CISL, or causing CISL to handle or deal with the Goods, shall be liable for any loss or damage caused to, or by the Goods, or by their nature, and shall indemnify and keep indemnified CISL against all loss, damages, claims and costs (howsoever arising) incurred by CISL in connection therewith; and
- 13.3 Where CISL agrees to accept Dangerous Goods, if during the period of cartage, CISL, it’s Sub-Contractors (or any other suitably qualified person or authority) reasonably forms the view that those Goods pose any risk to other goods, property, life or health, then the provisions of clauses 13.1 and 13.2 shall apply.

### **14. Delivery**

- 14.1 At CISL’s sole discretion, the Goods may be stored at the Client’s sole risk and expense, pending forwarding and delivery.
- 14.2 CISL shall be deemed to duly deliver the Goods, and discharge its obligations hereunder, by delivering the Goods port to port.
- 14.3 CISL shall be taken to have delivered the Goods in accordance with this Contract if CISL obtains from any person a receipt or a signed delivery docket for the Goods.
- 14.4 In the event the Consignee is not in attendance at the port/depot to pick up the Goods the following conditions may apply:
- (a) an additional charge may be made (at CISL’s current rates) for each attempt for re-delivery until delivery is accomplished;
  - (b) CISL may hold the Goods as bailee, and shall be entitled to receive storage fees (at CISL’s current rates), and as bailee shall not be under any liability for any loss of, or damage to, the Goods, howsoever caused, while in the possession of CISL
  - (c) CISL may (at CISL’s sole discretion) return the Goods to the Client at the risk and expense of the Client.
- 14.5 CISL may, at any time and without notice to the Client:
- (a) transfer the Goods from one conveyance to another, including transshipment;
  - (b) unpack and remove Goods which have been stowed in a Container, and forward the same in a Container, or otherwise;
  - (c) load or unload the Goods, at any place, and store the Goods at any such place;
  - (d) comply with any orders or recommendations given by any government or authority, or any person or body acting, or purporting to act, as or on behalf of such government or authority.
- 14.6 CISL is authorised to deliver the Goods at the address given to CISL by the Client for that purpose, and it is expressly agreed that CISL shall be taken to have delivered the Goods in accordance with this contract.
- 14.7 The Client must take delivery by receipt of the Goods. In the event that the Client fails to take delivery of the Goods at the time and place, as arranged, then CISL shall be entitled to, without notice, unstow the Goods (if stowed in Containers), or to store the Goods at the sole risk of the Client. Such storage shall constitute delivery, and the liability of CISL in respect of the Goods shall wholly cease and the costs of such storage shall be payable by the Client, charge a reasonable fee for redelivery and/or storage.
- 14.8 The failure of CISL to deliver shall not entitle either party to treat this contract as repudiated.
- 14.9 The Client acknowledges and agrees:
- (a) CISL contracts with the Client both on its own behalf and on the behalf of CISL’s servants, agents and sub-contractors, and the Client undertakes that the Client will not make any claims against such servant, agent or subcontractor which may impose upon any of them any liability whatsoever in connection with the Goods or the provision of the Services, whether or not arising out of negligence or a wilful act or omission by any of them;
  - (b) in respect of any clause herein which excludes, or in any way limits, the liability of CISL in respect of the Services, CISL, in addition to acting for itself, is acting as an agent of, and trustee for, each of its employees and also any other person or company with whom CISL arranges for the carriage of the Goods (and the employees of such person or company) so that these parties are parties to this contract in so far as to the exclusions or indemnities that are contained herein are concerned and, in so far as may be necessary to give effect to this clause, CISL will hold the benefit of these terms and conditions for its employees and so any such person or company and their employees;
  - (c) the Client shall indemnify CISL against:
    - (i) the consequences of such claim or allegation thereof;
    - (ii) all claims or demands whatsoever by whomsoever made in respect of any loss, damage, or injury howsoever caused whether or not by negligence or wilful act or omission of CISL, its servants, agents or subcontractors.

### **15. Insurance**

- 15.1 CISL will not, without the Client’s written instruction, **and CISL’s written approval**, insure the Goods, and:
- (a) the Goods (including livestock where applicable) are carried and stored at the Client’s sole risk (“owner’s risk” as defined in Part 5 of the Contract and Commercial Law 2017) and not at the risk of CISL;
  - (b) subject to sub-clause (c):

- (i) CISL is under no obligation to arrange insurance of the Goods and it remains the Client's responsibility to ensure that the Goods are insured adequately or at all;
  - (ii) under no circumstances will CISL be under any liability with respect to the arranging of any such insurance and no claim will be made against CISL for failure to arrange or ensure that the Goods are insured adequately or at all.
- (c) any such insurance is at the Client's own expense. Where the Client's instruction does not specify the class of insurance to be effected, CISL may in its discretion affect that class of insurance which it considers appropriate. Such insurance shall exclude all claims resultant from:
- (i) wear, tear, moths, vermin, damp, mildew or loss of market;
  - (ii) loss, damage or expensed proximately caused by delay;
  - (iii) strikes, riots, civil commotions or malicious damage of the insured Goods;
  - (iv) gradual deterioration, rust or oxidation unless due to or consequent upon fire, collision, overturning or other accident;
  - (v) any exclusion common to that class of insurance;
  - (vi) any other exclusion advised by the Client to CISL, detailed in the special instructions.

**16. Loss or Damage**

- 16.1 Subject to clause 20 and any statutory provisions imposing liability in respect of the loss of or damage to the Goods (including, but not limited to livestock, chilled, frozen, refrigerated, or perishable Goods), CISL shall not be under any liability for:
- (a) any delay or any loss or damage to the Goods occasioned during carriage arising from any Force Majeure or any confiscation, requisition, destruction of or damage by order of any authority, or seizure under legal process;
  - (b) compliance with the directions of any person or lawful authority entitled to give them;
  - (c) deterioration, contamination (including any contamination of any grain or other cargo compromising the Goods), evaporation, breakdown or malfunction of any refrigeration or cooling equipment, wrongful delivery, mis delivery, delay in delivery or non-delivery of the Goods whenever or howsoever occurring (and whether the Goods are or have been in the possession of CISL or not);
  - (d) any instructions, advice, information, or service given or provided to any person, whether in respect of the Goods or any other thing or matter, nor for any consequential or indirect loss, loss of market or consequences of any delay in delivery, forwarding or transit or failure to deliver the Goods; and
  - (e) any act or omission whether wilful, reckless, negligent or otherwise of CISL, or its servants or agents or subcontractors;
  - (f) any failure to follow instructions given to CISL by, or on behalf of, the Client, whether or not such failure is wilful;
  - (g) any latent defect or inherent vice or natural deterioration or wastage of the Goods or packaging;
  - (h) any act, omission, or neglect of the Client, including insufficient or improper packaging, labelling or addressing or quality of description of the Goods, or failure to take delivery, or any handling, loading, storage or unloading of the Goods.

**17. Claims against CISL**

- 17.1 CISL shall be under no liability whatsoever unless:
- (a) written notice of any claim, giving reasonable particulars of the event giving rise to the claim and any alleged damage or loss, is received by CISL within forty-eight (48) hours after delivery, or in the case of non-delivery, within fourteen (14) days after the date of dispatch; and
  - (b) a claim on any Goods received by the Consignee that is accepted 'subject to inspection' shall be in writing, giving reasonable particulars of the event giving rise to the claim and any alleged damage or loss, and must be received by CISL within forty-eight (48) hours of delivery; and
  - (c) an action must be commenced by the Client in a court of competent jurisdiction (and in accordance with clause 30.2) within thirty (30) days of delivery, or in the case of non-delivery, within six (6) months and fourteen (14) days of the date of dispatch.
- 17.2 The failure to notify a claim within the time limits under clause 17.1 is evidence of satisfactory performance by CISL of its obligations hereunder.

**18. Limitation of Liability**

- 18.1 CISL shall be under no liability whatever to the Client for:
- (a) any indirect, direct, and consequential loss and/or expense (including loss of profit, loss of sale or opportunity) suffered by the Client arising out of a breach by CISL of these terms and conditions (including, any negligent or wilful act by CISL); or
  - (b) failure by the Client to package or carton Goods in a satisfactory condition suitable for transport; or
  - (c) attributional loss of life or condition of the cargo; or
  - (d) damage by overspray or salt water; or
  - (e) mechanical or electrical derangement unless caused by visible external damage to the packing or stowage carton; and
  - (f) without limiting the generality of the foregoing, this exclusion extends to any claim against CISL for loss or damage or delay or payment of any cost, charge, fine, penalty, sales tax, or duty, whether the claim be founded in contract, bailment, or tort.
- 18.2 CISL shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit, associated costs, etc.) suffered by the Client arising out of a breach by CISL of these terms and conditions (alternatively CISL's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services).
- 18.3 In all cases where liability has not been effectively excluded, whether by this contract or by statute, convention or otherwise, the total liability of CISL for any loss or damage shall be as per:
- (a) the value stated under the Contract and Commercial Law Act 2017 (or subsequent amendments); or
  - (b) where contents, and condition of contents, are unknown, claims will be considered only where there are signs of outside damage only.

**19. CISL's Lien**

- 19.1 CISL shall have a right to take a particular and general lien on any Goods the property of the Client or a third party owner which are in the possession or control of CISL (and any documents relating to those Goods) for all sums owed at any time by the Client or a third party owner to CISL (whether those sums are due from the Client on those Goods or documents, or on any other Goods or documents), and CISL shall have the right to sell such Goods or cargo by public auction or private treaty after giving seven (7) days' notice to the Client. CISL 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.

- 19.2 Notwithstanding clause 19.1 nothing shall prejudice CISL's rights to use any of CISL's other rights and remedies contained in this Contract to recover any outstanding charges or fees payable in respect of the Goods that were not recovered out the sale of the Goods in accordance with clause 19.1 and no exception shall be taken upon the grounds that the charges realised is less than the full market value of the Goods.

**20. Consumer Guarantees Act 1993**

- 20.1 This Contract is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Client is contracting within the terms of a trade/business (which cases are specifically excluded).
- 20.2 CISL shall be under no liability whatsoever for loss or damage to Goods unless;
- (a) the Client provides written notice to CISL detailing the alleged damage, and that such written notice shall be received by CISL within forty-eight (48) hours after the delivery of the Goods; or
  - (b) in the case where the Goods have been lost in transit then the Client shall be required to provide written notice detailing the alleged loss within thirty (30) days of the date of dispatch of the Goods.

**21. Cancellation**

- 21.1 Without prejudice to any other remedies CISL may have, if at any time the Client is in breach of any obligation (including those relating to payment) CISL may suspend or terminate the provision of Services to the Client and any of its other obligations under the terms and conditions and may (by written notice to the Client) demand that the Client collect the Goods. CISL will not be liable to the Client for any loss or damage the Client suffers because CISL exercised its rights under this clause and where the Client fails to collect the Goods when demanded by CISL to do so, CISL may (at the Client's expense) remove and relocate the Goods.
- 21.2 CISL may cancel any contract to which these terms and conditions apply or cancel the Services at any time before the Services are commenced by giving written notice to the Client. On giving such notice CISL shall repay to the Client any sums paid in respect of the Price. CISL shall not be liable for any loss or damage whatever arising from such cancellation.
- 21.3 In the event that the Client cancels the Services (including, but not limited to booked or allocated space cancelled on short notice), then the Client shall be liable for any loss incurred by CISL (including, but not limited to, any loss of profits) up to the time of cancellation.

**22. Default and Consequences of Default**

- 22.1 At CISL's sole discretion, interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at CISL's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 22.2 If the Client owes CISL any money the Client shall indemnify CISL from and against all costs and disbursements incurred by CISL in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, CISL's collection agency costs, and bank dishonour fees).
- 22.3 Further to any other rights or remedies CISL may have under this contract, if a Client has made payment to CISL, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by CISL under this clause 22, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.
- 22.4 Without prejudice to CISL's other remedies at law CISL shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to CISL shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to CISL becomes overdue, or in CISL's opinion the Client will be unable to make a payment when it falls due;
  - (b) the Client has exceeded any applicable credit limit provided by CISL;
  - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

**23. Personal Property Securities Act 1999 ("PPSA")**

- 23.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 23.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in:
- (a) all Goods previously supplied by CISL to the Client;
  - (b) all Goods will be supplied in the future by CISL to the Client and the proceeds from such Services as listed by CISL to the Client in invoices rendered from time to time; and
  - (c) all the Client's present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest, or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to CISL for Services – that have previously been provided and that will be provided in the future by CISL to the Client.
- 23.3 The Client 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 CISL may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, CISL for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register 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 or the proceeds of such Goods in favour of a third party without the prior written consent of CISL.
- 23.4 CISL and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

- 23.5 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 23.6 Unless otherwise agreed to in writing by CISL, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 23.7 The Client shall unconditionally ratify any actions taken by CISL under clauses 23.1 to 23.6.
- 23.8 Subject to any express provisions to the contrary (including those contained in this clause 23), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

**24. Security and Charge**

- 24.1 In consideration of CISL agreeing to supply Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, and the Client grants a security interest in all of its present and after-acquired property, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.
- 24.2 The Client indemnifies CISL from and against all CISL's costs and disbursements including legal costs of a solicitor and own client basis incurred in exercising CISL's rights under this clause.
- 24.3 The Client irrevocably appoints CISL and each director of CISL as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 24 including, but not limited to, signing any document on the Client's behalf.

**25. Right to Dispose of Goods**

- 25.1 CISL shall have a security interest in any Goods (and any documentation relating to those Goods) in the possession or control of CISL, and CISL may, without prejudice to any rights which they may have under this contract, and without notice and responsibility, sell or dispose such Goods or cargo by public auction or private treaty:
- (a) in the event the Client fails to take delivery of the Goods within thirty (30) days of them being due (under clause 14.1);
  - (b) where, in the opinion of CISL, the Goods have, or are likely to decay, deteriorate, become worthless, or incur any charges in excess to their value;
  - (c) if the Goods are insufficiently addressed, marked, or unidentifiable;
  - (d) for all sums payable by the Client to CISL; and
  - (e) retain the sums due to it (in addition to the charges incurred in the detention and sale of such Goods) from the proceeds of sale and shall render any surplus to the entitled person(s).
- 25.2 Where the Goods under this clause relates to livestock, CISL shall provide a level of adequate care (including, but not limited to containment, feeding, food, water and shelter, etc.) until such time that resolution occurs with such costs incurred whilst providing such care being recoverable as per clause 25.1(e).

**26. Dispute Resolution**

- 26.1 The Client shall refer all disputes to arbitration in New Zealand. The arbitration shall be conducted in accordance with the Arbitration Act 1996, or any re-enactment or amendment thereof.

**27. Privacy Policy**

- 27.1 All emails, documents, images, or other recorded information held or used by CISL is "**Personal Information**" as defined and referred to in clause 27.3 and therefore considered confidential. CISL acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines and as set out in the Act and any statutory requirements where relevant in a European Economic Area "EEA" under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). CISL acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by CISL that may result in serious harm to the Client, CISL will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 27.2 Notwithstanding clause 27.1, privacy limitations will extend to CISL in respect of Cookies where the Client utilises CISL's website to make enquiries. CISL agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
  - (b) tracking website usage and traffic; and
  - (c) reports are available to CISL when CISL sends an email to the Client, so CISL may collect and review that information ("collectively Personal Information")
- If the Client consents to CISL's use of Cookies on CISL's website and later wishes to withdraw that consent, the Client may manage and control CISL's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the website.
- 27.3 The Client authorises CISL or CISL's agent to:
- (a) access, collect, retain and use any information about the Client;
    - (i) including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice for the purpose of assessing the Client's creditworthiness; or
    - (ii) for the purpose of marketing products and services to the Client.
  - (b) disclose information about the Client, whether collected by CISL from the Client directly or obtained by CISL from any other source to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 27.4 Where the Client is an individual the authorities under clause 27.3 are authorities or consents for the purposes of the Privacy Act 2020.

- 27.5 The Client shall have the right to request (by e-mail) from CISL, a copy of the Personal Information about the Client retained by CISL and the right to request that CISL correct any incorrect Personal Information.
- 27.6 CISL will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 27.7 The Client can make a privacy complaint by contacting CISL via e-mail. CISL will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.

**28. Service of Notices**

- 28.1 Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
  - (b) by leaving it at the address of the other party as stated in this contract;
  - (c) by sending it by registered post to the address of the other party as stated in this contract;
  - (d) if sent by email to the other party's last known email address.
- 28.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

**29. Trusts**

- 29.1 If the Client at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not CISL may have notice of the Trust, the Client covenants with CISL as follows:
- (a) the contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
  - (b) the Client has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
  - (c) the Client will not without consent in writing of CISL (CISL will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
    - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
    - (ii) any alteration to or variation of the terms of the Trust;
    - (iii) any advancement or distribution of capital of the Trust; or
    - (iv) any resettlement of the trust property.

**30. General**

- 30.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality, and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 30.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 30.3 CISL shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by CISL of these terms and conditions (alternatively CISL's liability shall be limited to damages which under no circumstances shall exceed the charges).
- 30.4 CISL may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 30.5 The Client cannot licence or assign without the written approval of CISL.
- 30.6 CISL may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of CISL's sub-contractors without the authority of CISL.
- 30.7 The Client agrees that CISL may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for CISL to provide Goods to the Client.
- 30.8 Where CISL is unable, wholly or in part, by reason of any fact, circumstance, matter or thing beyond the reasonable control of CISL, including but not limited to, any act of God, war, terrorism, strike, civil commotion, lock-out, general or partial stoppage, restraint of labour, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments including, but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc. ("Force Majeure") to carry out any obligation under this Contract and CISL gives the Client prompt notice of such Force Majeure with reasonably full particulars thereof and, insofar as is known, the probable extent to which it will be unable to perform or be delayed in performing that obligation and uses all reasonable diligence to negate or remove that Force Majeure as quickly as possible, that obligation is suspended, so far as it is affected by Force Majeure, during the continuance thereof. The requirement that any Force Majeure shall be negated or removed with all reasonable diligence shall not require the settlement of strikes, lockouts, or other labour disputes, or claims or demands by any government on terms contrary to the wishes of CISL.
- 30.9 In the event that either party shall be rendered totally, or partially, unable to carry out their obligations under this Contract by reasons or causes beyond their reasonable control, that party shall be excused from performing their obligations during the continuance of any disability so caused, provided that the party concerned advises the other party in writing of its inability within seven (7) days after becoming aware of its inability to perform its obligations by reason of such cause.
- 30.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.