

## **DIVINE LOGISTICS LTD**

### TERMS AND CONDITIONS

**1.** These Terms and Conditions govern all dealings between **Divine Logistics Limited** (the "Forwarder") and the Customer, including the provision of any advice or information and shall prevail over any terms and conditions in any document used by the Customer purporting to have contractual effect. In these Conditions:

(1) "the Act" means the Carriage of Goods Act 1979;

(2) "carriage" means the carriage, storage, transit, packaging, handling of goods, the packing and loading of containers, and any other service by the Forwarder as forwarding, transport, customs or shipping agent of the Customer.

(3) "container" includes any container, trailer, transportable tank, flat or pallet, or any similar article of transport used to consolidate goods;

(4) "contractor" includes any person carrying or handling the goods for the Customer under a contract arranged by, or with the authority of, the Forwarder as agent for the Customer;

(5) "the Customer" includes any person referred to in paragraph 3 and any "contracting party" in terms of the Act;

(6) "dangerous goods" includes noxious goods, explosives, poisons, corrosive, inflammable or radioactive substances, compressed gases, goods harbouring or likely to harbour or encourage vermin, borer or other pests, and any other goods, or substances which, in the opinion of the Forwarder, are likely to cause damage or injury to other goods, property or persons;

(7) "the Forwarder" means Divine Logistics Limited, its employees, officers, agents and subsidiary and related companies;

(8) "goods" means the goods or other cargo which are the subject of instructions issued to the Forwarder by the Customer and includes any container not supplied by or on behalf of the Forwarder;

(9) "handling" includes any packing, storage, trans-shipment, unloading, loading, customs clearance, delivery and other services relating to the

(10) "subcontractor" means any person carrying or handling the goods for the Customer under a contract in terms of which the Forwarder is, or is deemed to be, a principal;

(11) "valuables" includes bullion, coins, negotiable instruments, securities of any kind, precious stones, jewellery, antiques and works of art.

**2.** The Forwarder undertakes to arrange the receipt, packing, storage, transport, customs clearance, delivery and other handling of goods as a forwarding and customs agent. Accordingly, except to the extent that an incidental part of the services is directly performed by the Forwarder and/or where paragraph 7 applies, the relationship between the Customer and the Forwarder shall be that of principal and agent only.

**3.** The Customer authorizes the Forwarder to enter into contracts on its behalf for the carriage and/or handling of the goods by any route or means with, and to entrust the goods to any contractor or subcontractor on terms agreed between such parties the Forwarder, the Customer agrees that it will be bound by such terms. In doing so, the Forwarder assumes no responsibility for the competency or otherwise of any such third party so engaged.

**4.** The Customer may or may not be the owner of the goods. In contracting with the Forwarder the Customer warrants that it is authorized to accept and does accept these Terms and Conditions on behalf of all other persons who have, or may acquire, any interest in the goods and on whose behalf it is acting.

**5.** Any dates or times specified for departure or arrival of goods are estimates only and will not bind the Forwarder.

**6.** The Customer authorises the Forwarder to depart from any instructions given by it or on its behalf in any respect if, in the Forwarder's reasonable opinion, it is necessary or desirable to do so.

**7.** Where the Forwarder issues a bill of lading or other transport document in which the Forwarder is named and assumes liability as the carrier, the terms and conditions of such transport document (including all limitations and exclusions of liability) shall, to the extent of any inconsistency, prevail over these Conditions.

**8.** No modification or waiver of any term of these Conditions shall bind the Forwarder unless in writing and signed by a director or other representative of the Forwarder holding written authority to sign as a director.

**9.** These Terms and Conditions shall also benefit, and be enforceable by, every contractor, subcontractor, servant and agent of the Forwarder.

**10.** Where any national or international convention and/or legislation compulsorily applies to the services provided by the Forwarder then:

(1) these Conditions shall be read subject to any provision which is mandatory;

(2) the Forwarder shall be entitled to any rights, immunities from or limitations of liability under such legislation.

**11.** Without limiting the generality of paragraph 11, sections 10, and 18 to 27 of the NZ Carriage of Goods Act 1979 shall apply to the services provided by the Forwarder only to the extent that they extend or enlarge the Forwarder's rights and powers under these Conditions.

**12.** Where the Customer carries on a "business" as defined in the Consumer Guarantees Act 1993, it agrees it is acquiring the services of the Forwarder for the purposes of that business and nothing in that Act shall apply.

**13.** The Customer warrants that when the goods are presented for carriage:

(1) all goods have been properly and sufficiently packed and prepared to withstand the risks of carriage, storage and handling having regard to their nature and destination; and

(2) all marks, weights, numbers, brands, contents, descriptions, values and other particulars furnished to the Forwarder relating to the goods are correct; and

(3) the Customer has complied with all applicable laws and government regulations of any country to, from, through or over which the goods may be carried relating to the nature, packaging, labeling or carriage of goods; and

(4) the Customer will comply with all Occupational Health and Safety laws; and

(5) the Customer and/or the owner of the goods will indemnify the Forwarder in respect of all loss or damage arising whatsoever from any breach of these warranties.

**14.** Without prior notification and agreement, the Forwarder will not accept or deal with:

(1) goods which it is unlawful to carry or handle, or which can only be carried or handled with a permit;

(2) dangerous goods or goods likely to cause damage;

(3) any perishable goods or goods which require special handling or packaging;

(4) valuables of any kind;

(5) household effects;

(6) the Customer and/or the owner of the goods will indemnify the Forwarder in respect of all loss or damage arising whatsoever from any breach of the warranties as set out in paragraph 16.

**15.** Where the Forwarder herewith agrees to accept or deal with any goods referred to in paragraph 15, the Customer warrants it will provide all documents and information relating to the goods (including any relevant permits and a full description of the goods and the nature and degree of their volatility and value ) necessary to enable the Forwarder to:

(1) comply with the law; and

(2) arrange for the goods to be carried or handled safely and in a manner which is likely to minimize loss;

(3) comply with any requirement necessary for the safe carriage of any such goods.

**16.** If the Customer delivers any goods referred to in paragraph 15 to, or causes the Forwarder to carry or handle the goods, or arrange for the goods to be carried or handled by any contractor or subcontractor without prior notification and agreement:

(1) neither the Forwarder nor any such contractor or subcontractor shall be liable for any loss or damage whatsoever arising out of its dealings with the goods;

(2) the Customer shall be liable for all loss or damage whatsoever caused by, to or in connection with the goods however caused or arising;

(3) the Customer and/or the owner of the goods shall indemnify the Forwarder, the contractors, subcontractors and their respective servants, and agents against all penalties, claims, damages, costs and expenses whatsoever arising as a result; and

(4) in the case of goods referred to in paragraph 15, the goods may be destroyed or otherwise dealt with at the sole discretion of the Forwarder, the contractor, subcontractor or any other person in whose custody they may be at the expense of the Customer without the Forwarder, the contractor, subcontractor or such other person being responsible or accountable in any way.

**17.** The goods shall be deemed to have been delivered when they are delivered to the address given to the Forwarder by the Customer or consignee for that purpose or collected by the Customer. If the Forwarder is unable to deliver the goods as instructed, then in the event the Forwarder is required to continue to hold and/or store the goods the Customer will be required to pay any additional costs, including storage, arising.

**18.** The Customer agrees to pay the Forwarder's standard charges, and any other expenses (including, without limitation, taxes, penalties or duties) reasonably incurred by the Forwarder in connection with the goods or the services provided by the Forwarder unless a specific agreement is entered into varying those costs.

**19.** All quotations given by the Forwarder are based on costs for freight, and other charges, rates of exchange, taxes, duties and other imposts, prevailing at the date of quotation and on the latest available quotations from contractors or subcontractors used by the Forwarder. If such costs increase at any time as a result of variations in any of the foregoing, the charges payable by the Customer shall increase accordingly.

**20.** Quotations do not constitute a binding offer by the company and lapse forthwith, without notice to the person they are given to if, in the opinion of the Forwarder, there has been a change in the circumstances in which the quote was given. All quotations shall lapse in any event unless accepted by the Customer and confirmed by the Forwarder within twenty one (21) days.

**21.** The Forwarder may fix its charges by weight, measurements or value, and may at any time have or require the goods to be re-weighed, re-measured or re-valued and re-fix its charges accordingly.

**22.** The Forwarder shall be under no obligation to incur or pay any expenses unless the Customer has provided the Forwarder with sufficient funds to meet the same.

**23.** The Forwarder's charges and expenses shall be deemed earned as soon as any handling of the goods has occurred. Unless otherwise agreed in writing, the Forwarder's charges and expenses shall be paid, without any deductions or set off, prior to the release of the goods by the Forwarder. If charges are not so paid, the Customer agrees to pay interest at 1.5 per cent per month on the unpaid balance until payment is made. Additional costs incurred to recover such costs and/or express, including legal costs will be payable by the Customer.

1. If at any time any payment due by the Customer to the Forwarder is in arrears, the Forwarder shall at its sole discretion have the right to suspend all other services or obligations to the Customer.

2. The Customer agrees that the Forwarder may receive and retain all brokerage, commission, discounts, allowances and other remuneration paid by any other party to the contract and which may be either customarily paid and/or by agreement due and need not disclose to the Customer the nature or amount thereof.

**24.** Prices quoted will not include insurance unless requested. Insurance of goods handled by the Forwarder as agent or carrier is therefore at all times the responsibility of the Customer. If requested by the Customer the Forwarder will endeavour to arrange insurance on the goods as the agent of the Customer, provided there is an express written agreement (including a signed declaration as to the value and nature of the goods) to do so between the Customer and the Forwarder. In doing so the Customer agrees to pay all insurance costs. Any such insurance may, in the sole discretion of the Forwarder, be on a separate, or an open or general, policy and will be subject to the usual exceptions and conditions of the policies of the insurer accepting the risk.

**25.** In so arranging any such insurance, the Forwarder is acting as an agent only, and not as an insurance intermediary. The Forwarder shall have no liability or responsibility whatsoever in respect of any insurance policy or insurance arrangements. The policy will be for the benefit of the named insured who shall assume responsibility for making any claims on such policy. If the insurer disputes liability for any reason, the Customer shall have recourse against the insurer only.

The Forwarder shall not be under any responsibility or liability, notwithstanding that the premium on any policy may not be the same as that charged to or paid by the Customer.

**26.** All goods and documents relating to goods shall be subject to a particular and general lien securing payment of all moneys due to the Forwarder by the Customer or the consignee, consignor or owner, whether in respect of such goods or otherwise, and whether or not such moneys are overdue for payment.

**27.** If any moneys due to the Forwarder are not paid within fourteen (14) days after notice of default, and/or notice to the Customer that the lien is being exercised, the goods may be sold by auction or otherwise at the Customer's expense. The net proceeds shall be applied in reduction of the indebtedness. No such sale shall prejudice or affect the Forwarder's rights otherwise to recover any balance owing to the Forwarder for its services or the cost of the detention and sale.

**28-A :** In the event of payment default, the client will be liable for collection cost, agency commission fees and legal costs on a solicitor/own client basis. Interest will be charged at 2.5 % per month.

**29.** The following are the limits of the Forwarder's Liability in respect of loss and/or damage:

(1) All handling which is subject to the Act shall be performed at limited carrier's risk. The Forwarder shall be deemed the contracting carrier;

(2) Subject to paragraph 29(1) and to any other mandatory provision of law which may apply, the Forwarder shall not be under any liability, howsoever caused or arising and (without limiting the generality of the foregoing) whether arising or resulting from negligence, any other tort, bailment, or breach of contract or on any other basis on the part of the Forwarder for:

(a) any damage to or loss, including without limitation, deterioration, contamination, evaporation, destruction, failure to produce the goods, mis-delivery, delay in delivery or non-delivery of the goods; or

(b) any loss of or damage to perishable goods due to any failure or breakdown of machinery or plant, shortage of power or labour, or pilferage, theft or burglary (or any attempt at the same) whether by any servant or agent of the Forwarder or any other person; or

(c) in connection with any instruction, advice, information or service given or provided to any person whether in respect of the goods or any other matter or thing; or

(d) any direct, indirect or consequential loss or damage caused by or arising from delay, loss of market or loss of or damage to the goods, or otherwise howsoever and whether or not the Forwarder had actual

or constructive notice that such loss or damage could arise;

(3) Where the Forwarder contracts as carrier it shall be entitled to rely on the Terms and Conditions of any such document in respect of all obligations, liability and limitation provisions in addition to any other legislative provision which applies by force of law to any such document.

**30.** The Customer shall indemnify the Forwarder against any claims (whether resulting from the negligence of the Forwarder or otherwise) brought by any person in connection with any matter or thing done, said or omitted by the Forwarder in connection with its dealings with the Customer or the goods.

**31.** All of the rights, immunities and limitations of liability in these Conditions shall continue to have full force and effect in all circumstances and notwithstanding any breach of contract by, or any negligence on the part of, the Forwarder.

**32. CONSUMER GUARANTEES ACT**

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

**33.** The Forwarder and Customer acknowledge that goods moving by airfreight are subject to international treaties including the Warsaw Convention for the Unification of Certain Rules relating to International Carriage by Air, signed at Warsaw, or that Convention as amended by the Hague Protocol 1955 and including any applicable amendments made time to time. The Customers recovery is limited against the airline carrier and is limited in accordance with these or any other conventions that may be applicable.

**34.** Subject to paragraph 29, in any case the Forwarder's liability has not been effectively excluded and/or limited by those Conditions, such liability shall to the maximum extent permitted by law be limited to the lesser of:

(1) \$100

**35.** The Forwarder and Customer acknowledge that goods moving by ocean freight are subject to international treaties including the Convention for the Unification of Certain Rules relating to Bills of Lading, signed at Brussels (the Hague Rules), or that Convention as amended by the Protocol 1968 (the Hague Visby Rules) and the SDR Protocol and including any applicable amendments made time to time. The Customers recovery is limited against the ocean freight carrier and is limited in accordance with these or any other conventions that may be applicable.

**36.** These Terms and Conditions, and any act or contract to which they apply, shall be governed by and interpreted in accordance with New Zealand law. All actions against the Forwarder shall be brought in a Court in New Zealand.

