

## STANDARD TRADING CONDITIONS OF CONTRACT

The Customer's attention is drawn to these Conditions which exclude or limit the Company's liability and require the Customer to indemnify the Company in certain circumstances.

### Definitions

1. In these Conditions, unless otherwise provided:

"Carrier" includes the actual carrier engaged to carry Goods, any contracting carrier and warehousemen.

"Charges" includes without limitation demurrage, container detention charges, container repair costs, container cleaning costs, salvage, average of any kind, customs and/or excise duties, costs, fines or penalties which the Company becomes liable to pay for any reason whatsoever in respect of the Goods and any documentation relating to the Goods (whether or not resulting from or arising out of the negligence of the Company).

"Company" means Magellan Logistics NZ Limited.

"Customer" means a person who contracts with the Company, and includes the consignor or (as the case may require) the consignee of the Goods.

"Dangerous Goods" means Goods which are noxious, volatile, explosive or hazardous or which are or may become dangerous, inflammable or offensive (including radioactive materials) or which may be liable to damage any person or property whatsoever.

"Goods" means the cargo accepted by the Company together with any container(s), pallet(s) or other packaging supplied by or on behalf of the Customer.

"GST" means the goods and services tax imposed by the Goods and Services Tax Act 1985.

"Insolvency Event" means any circumstance in which the Customer is unable to pay any amounts that have become due and payable and includes liquidation, receivership, official management, administration, merger, amalgamation, reconstruction, dissolution, deregistration, assignment for the benefit of creditors, scheme, compromise or composition or arrangement with creditors, insolvency, bankruptcy, or, as the case may be, changes in the constitution of any partnership or person, or death.

"PPSA" means the Personal Property Securities Act 1999.

"Services" mean the whole of the services and operations undertaken by the Company in respect of the Goods.

"Sub-contractor" includes any person who pursuant to a contract or arrangement with any other person (whether or not the Company) provides or agrees to provide the Services or any part of the Services.

"Transport Document" means any house or Carrier waybill, bill of lading, warehouse receipt, consignment note or other document issued by the Company or a third party providing Services in respect of the Goods.

### Use of Services

2. The Company is not a common carrier and accepts no liability as such. The Company reserves the right to accept or refuse the provision of Services in respect of the Goods at its sole discretion. All Services are provided to the Company subject to these Conditions which prevail at all times over the conditions of contract of the Customer. Use of the Services constitutes an acceptance of these Conditions by the Customer.
3. Where the Goods are not transported on an aircraft, ship, vehicle or conveyance owned or operated by the Company, the Company's obligations are limited to arranging carriage of the Goods by a reputable Carrier.
4. In the event of and to the extent of any inconsistency between these Conditions and the conditions incorporated into a Transport Document these Conditions prevail.

### Customer's authority to contract

5. The Customer warrants that it is the owner or the authorised agent of the owner or any other persons having any interest in the Goods or any part of the Goods and accepts these Conditions on its own behalf or as authorised agent of the owner or other persons. The Customer indemnifies the Company in respect of any liability arising (including without limitation from negligence, breach of contract, wilful act or default of the Company or others) in connection with the provision of the Services and/or the Goods to any person (other than the Customer) who claims to have, who has or may subsequently have any interest in the Goods or any part of the Goods.

### Compliance with regulations and Dangerous Goods

6. The Customer warrants that it has complied with all laws and regulations relating to the nature, condition, packaging, handling, storage and carriage of the Goods and that the Goods are packed to withstand the ordinary risks of handling, storage and carriage, having regard to their nature and indemnifies the Company for all liability and for all costs incurred as a result of or arising out of a breach of this warranty. The Customer shall provide to the Company all such assistance, information and documentation that may be necessary to enable the Company to comply with such laws and regulations.
7. The Customer shall not tender for the provision of Services by the Company any Dangerous Goods without presenting to the Company a full description including correct technical information, classifications, proper shipping names of restricted articles, correct packaging and handling instructions. The Customer shall certify that the contents of such consignments are fully and accurately described, classified, packed, marked and labelled to comply with all regulations applicable to the relevant mode or modes of transport. The Customer shall sign such certifications as may be required and under no circumstances shall the Company be required to provide or sign the same. The Customer shall be liable for all death, bodily injury, loss and/or damage caused by breach of this clause and shall indemnify the Company for any such liability.
8. If, in the opinion of the Company, the Goods are or are liable to become of a dangerous, inflammable, explosive, volatile, offensive, hazardous or damaging nature, the Goods may at any time be destroyed, disposed of or abandoned or rendered harmless by the Company without compensation to and at the cost of the Customer.

### Liability

9. Where carriage is subject to the Carriage of Goods Act 1979 the contract shall be at "*limited carrier's risk*" as defined in that statute, except to the extent that the provisions of the Carriage of Goods Act are inconsistent with these Conditions and may legally be excluded by contract.
10. Subject to clauses 9 and 36 of these conditions:
  - (i) The Company will under no circumstances whatsoever or howsoever arising (including its negligence or wilful act or default) be liable (whether the claim be formulated in contract, bailment, tort or otherwise) for direct or indirect loss or damage, deterioration, or injury to persons, Goods either in transit or in storage, property or other things as a result of the performance, or failure to perform, or the manner of performance of the Services, nor for any loss consequential on such loss or damage or injury to Goods, persons property or other things, including but not limited to late performance, failure or mis-delivery or delay in delivery of the Goods, breakdown of equipment or delay caused by accident, or the conversion or misappropriation of the Goods by the Company's servants, agents or Subcontractors, nor for any instructions, advice, information, representation or service given or provided to the Customer or any other person whether in respect of the Goods or any other matter. Without limiting the generality of the foregoing, this exclusion extends to any claim against the Company for loss or damage, or delay in delivery or non-delivery of the Goods, payment of any charge, fine, penalty, sales tax or duty.
  - (ii) The Company shall not be responsible in negligence or contract or otherwise for direct or indirect loss or damage, costs, fines or penalties incurred by the Customer or any other person resulting from or arising out of or in connection with any quotation, advice, statement, representation or information given or made by or on behalf of the Company to the Customer or others as to the classification of or any matter material to the valuation of or the liability for or the amount, scale or rate of customs and/or excise duty or other impost, tax or rate charged in respect of the Goods or any cargo whatsoever. In giving or making any such quotation, advice, statement, representation or information the Company relies solely on the particulars provided by the Customer which warrants that those particulars accurately and completely describe all aspects of the Goods or cargo and the transaction(s) relating to the Goods or cargo.
  - (iii) Where any handling, installation, removal, assembly or erection of any kind whatsoever is required to be undertaken by the Company, the Company shall not be liable for any death, injury, loss or damage which may result from or arise out of what the Company undertakes. Further the Customer shall indemnify the Company in respect of any such liability whether or not that liability arises from negligence or breach of contract or wilful act or default of the Company or the Company's servants, agents or Sub-contractors.
11. In all cases where liability has not been effectively excluded, whether by these conditions or by statute, convention or otherwise, the total liability of the Company for any loss or damage is limited to the lesser of:
  - (i) NZ\$2,000.00;

- (ii) The value of the Goods at the time the Goods were received by the Company; or
  - (iii) A resupply of the Services or payment of the cost of resupplying the Services.
12. All the rights, immunities and limitations of liability in these conditions shall continue to have their full force and effect in all circumstances and notwithstanding any breach of these conditions by the Company or any other person entitled to the benefit of such provisions.
13. If any part of these conditions is unenforceable such unenforceability shall not affect any other part.

#### **Sub-contracting**

14. The Customer authorises the Company and any Subcontractor to subcontract on any terms the whole or part of the provision of the Services.
15. The Customer undertakes that no claim or allegation shall be made, whether by the Customer or any other person who is or who may subsequently be interested in the provision of the Services and/or in the Goods, against any person (other than the Company) by whom (whether it is a Subcontractor, principal, employer, servant, agent or otherwise of the Company) the Services or any part of the Services are provided which imposes or attempts to impose upon such person any liability whatsoever and howsoever arising (including without limiting the foregoing from negligence or breach of contract or wilful act or default of the Company or others) in connection with the provision of the Services and/or the Goods. If such claim or allegation should nevertheless be made, the Customer shall indemnify the Company and the person against whom such claim or allegation is made against the consequences of such claim or allegation. For the purpose of this clause 15, the Company is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and each of them and all such persons and each of them shall to this extent be or be deemed to be parties to this Contract; and
16. Every exemption, limitation, condition and liberty in these Conditions and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Company or to which the Company is entitled in accordance with these Conditions shall also be available and shall extend to protect:
- (i) all Subcontractors;
  - (ii) every servant or agent of the Company or of a Subcontractor;
  - (iii) every other person (other than the Company) by whom the Services or any part of the Services are or is provided; and
  - (iv) all persons who are or may be vicariously liable for the acts or omissions of any persons falling within paragraphs (i), (ii) or (iii) of this Clause 16 and, for the purpose of this Clause 10, the Company is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of such persons and each of them and all such persons and each of them shall to this extent be or be deemed to be parties to this Contract.

#### **Methods and route of transportation**

17. If the Customer requests the Company to use a particular method of providing the Services the Company will endeavour to give effect to such request. Notwithstanding the foregoing the Company may in its sole discretion:
- (i) Use any means of transport or storage whatsoever;
  - (ii) Transfer the Goods from one conveyance to another including trans-shipment;
  - (iii) Unpack and remove Goods which have been stowed in or on any container and forward the same in or on any container or otherwise;
  - (iv) Proceed by any route;
  - (v) Load and unload Goods at any place and store the Goods at any such place;
  - (vi) Comply with all applicable local or international legislation, rules or regulations and 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.
18. Pending forwarding and delivery Goods may be warehoused or otherwise held at any place at the sole discretion of the Company at the Customer's risk and expense.

#### **Actions against the Company**

19. Any claim for loss or damage must be notified in writing to the Company within seven (7) days of delivery of the Goods or of the date upon which the Goods should have been delivered.
20. In any event the Company shall be discharged from all liability whatsoever in connection with the provision of the Services and/or the Goods unless suit is brought and notice given within nine (9) months of the provision of the Services or delivery of the Goods or when the Services should have been provided or the Goods should have been delivered.

#### **Insurance**

21. Insurance will not be arranged by the Company except on the express written instructions of the Customer and then only at the Customer's expense and on lodgement of a declaration as to value prior to acceptance of the Goods by the Company. The Company may charge the Customer for arranging such insurance. The Company acts only as the agent of the Customer and does not act as, nor offers advice as an insurance broker or intermediary. Any insurance arranged by the Company is subject to the exceptions and conditions in the policy. The Company accepts no liability for any insurance arrangements, whether obtained by the Company pursuant to this clause or otherwise, and the Customer agrees to indemnify the Company for any loss or damage it may suffer in relation to or arising out of the insurance arranged by the Company pursuant to this clause.

#### **Freight and charges**

22. The Company may charge freight and other Charges by weight, measurement or value and may at any time re-weigh, re-measure or re-value or require the Goods to be re-weighed, re-measured or re-valued and charge proportional additional freight and other Charges accordingly.
23. Freight and any other Charges due to the Company will be considered fully earned on receipt of the Goods by the Company or its agents or Sub-contractors whether the Goods are delivered or not and whether damaged or otherwise, and will be paid in full without any deduction, set off or counterclaim. Unless by prior arrangement with the Company, should payment of freight and other Charges not be made in full to the Company within [seven] days of invoice date, the Customer shall pay interest on the outstanding monies at the rate of 1.5% per month or part thereof computed from such date.
24. The Company shall be entitled to immediate reimbursement for all fees, disbursements, taxes (other than income tax), customs duties, stamp duties and other imposts which shall be or become payable to a public authority by reason of the performance of the Services or by breach of the Customer of these Conditions.
25. Every instruction to the effect that freight or other Charges shall be paid by a person other than the Customer shall be deemed to include a stipulation that if that nominated person does not pay those charges within seven (7) days of delivery or attempted delivery of the Goods, then the Customer shall pay those charges to the Company within seven (7) days of being notified of that person's failure to pay.

#### **Containers**

26. The Customer will indemnify the Company for all charges and liabilities arising in connection with the use of any Company supplied or arranged container(s) or similar equipment including repair costs, cleaning costs and/or detention or demurrage charges. The Customer's indemnity will include any reasonable costs, either administrative or legal (on a solicitor and own client basis), incurred by the Company in recovering from the Customer any amounts owing, pursuant to this indemnity.

#### **Lien and security interest**

27. Without limiting its rights at law or in equity, the Company, its servants and agents shall have a particular and general lien on any Goods and any documents relating to those Goods, and a right to sell the Goods and documents whether by public or private sale or auction without notice, for all freight and other Charges payable by the Customer to the Company. In addition, the lien shall cover the costs and expenses of exercising the lien and of any sale of the Goods including reasonable legal fees on a solicitor and own client basis.

28. The lien and rights granted by these conditions shall survive delivery of the Goods and the Company shall be entitled to retain the proceeds of sale of the Goods in respect of any outstanding amounts. Where the proceeds of sale are insufficient to cover all amounts payable to the Company, the Company is entitled to recover any deficit from the Customer or its principals. The Company sells or otherwise disposes of such Goods and any other documents as principal and not as agent and is not the trustee of the power of sale.
29. From the time the Company, or its servants, agents or Sub-contractors, receive the Goods into its custody, the Goods and all of the Customer's present and future rights in relation to the Goods and any documents relating to those Goods, are subject to a continuing security interest in favour of the Company for the payment of all the amounts owed for freight and Charges and for any and all other debts, charges, expenses or any other sums due and owing by the Customer or the Customer's principals. Further, the continuing security interest shall cover all the costs and expenses of exercising the lien, including the costs of a public or private sale or auction, including administration costs and legal costs on a solicitor and own client basis.
30. For the purpose of these trading conditions the Company shall be deemed to have custody and possession of the Goods whether the Goods are in the actual physical custody and possession of the Company or any of its Sub-contractors, servants or agents, and whether or not the Company is in possession of any documents of title relating to the Goods.
31. The Customer acknowledges that the Company may, at the Customer's cost, register a financing statement in respect of its security interests granted by the Customer under these conditions, and all of the Customer's present and future rights in relation to the Goods, on the Personal Property Securities Register established under PPSA.
32. The Customer will not
  - (a) permit to subsist any other security interest in relation to the Goods which would rank ahead of the Company's interests or;
  - (b) except in the normal course of business, sell, lease or dispose of, or permit the sale, lease or disposal of the Goods.
33. In addition to any rights that the Company has under the PPSA the Company shall have the right, as the Customer's agent, at any time while any amount owing by the Customer to the Company under these conditions remains outstanding, to enter into the premises where the Goods are stored and remove them without being responsible for any damage caused in exercising this right. The Customer shall indemnify the Company for all such monies and all such costs, charges and expenses in repossessing the Goods.
34. The Customer and Company agree pursuant to section 115 of the PPSA to contract out of sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
35. The Customer will immediately inform the Company if an Insolvency Event occurs with respect to the Customer. The Customer shall not change its name or other details without first notifying the Company in writing with at least 14 days' notice before such change takes effect.

#### **Variations**

36. The Company shall not be bound by any agreement purporting to waive or vary these Conditions unless such agreement to so waive or vary shall be in writing and signed by an executive officer of the Company.

#### **Compulsorily Applicable Legislation**

37. These Conditions are to be read subject to relevant statutory provisions or conventions (**Legislation**) which by law cannot be excluded, restricted or modified by contract. Any part of these Conditions which is inconsistent with or repugnant to such Legislation shall be null and void to the extent (but no further) of such inconsistency or repugnance. Nothing in these conditions shall be read as a surrender by the Company of any of its rights or immunities or as an increase in any of its responsibilities or liabilities under such Legislation, if any.

#### **Consumer Guarantees Act**

38. The Customer acknowledges that if the Services are supplied and acquired by it "in trade", the terms of the Consumer Guarantees Act 1993 shall not apply.

#### **Law and Jurisdiction**

39. These conditions shall be governed by and construed in accordance with the laws of New Zealand and any proceedings shall be commenced in the New Zealand courts.

#### **GST**

40. Unless otherwise stated, all freight and Charges shall be payable plus GST (or like value added tax) if any.
41. If the Customer makes default in the payment on the due date of any GST (or like value added tax) then without prejudice to any other remedies of the Company, the Customer shall pay to the Company upon demand an amount equal to the amount of the unpaid GST (or like value added tax) plus any penalties or interest that may become payable by the Company arising out of the default of the Customer.