

TERMS AND CONDITIONS OF TRADE

1. Definitions

1.1 "KLNZ" shall mean Kerry Logistics (Oceania) Limited NZCN 3370972 and its successors and assigns or any person acting on behalf of and with the authority of it.

1.2 "Sub-Contractor" shall mean and include:

(a) railways or airways operated by the government or any local authority or any other country or by any corporation; or

(b) any other person, firm or KLNZ with whom KLNZ may arrange for the carriage or storage of any Goods the subject of the contract; or

(c) any person who is now or hereafter a servant, agent, employee or subcontractor of any of the persons referred to in clause 1.2

1.3 "Client" shall mean the Client or any person or persons acting on behalf of and with the authority of the Client. Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.

1.4 "Consignee" shall mean the person to whom the Goods are to be delivered by way of KLNZ's Services.

1.5 "Freight Forwarding Services" means the forwarding of Goods by KLNZ from the Client to a third party, and any ancillary Services related thereto.

1.6 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Client on a principal debtor basis.

1.7 "Goods" shall mean cargo together with any container, packaging, or pallet(s) to be moved from one place to another by way of KLNZ's Services, or for storage by KLNZ.

1.8 "Services" shall mean all services supplied by KLNZ to the Client and are as described on the quotations, invoices, consignment note, airway bills, manifests, sales order or any other forms as provided by KLNZ to the Client (including, without limitation, the Warehousing Services and the Freight Forwarding Services) and are as described on the quotations, invoices, consignment note, airway bill, manifests, sales order or any other forms as provided by KLNZ to the Client and includes any advice or recommendations.

1.9 "PPSA" means the Personal Property Securities Act 1999 and any regulation made at any time under the PPSA (each as amended from time to time) or any amendment made at any time to any other legislation as a consequence of the PPSA;

1.10 "Premises" means the premises owned or operated by KLNZ at which the Warehouse Services are to be provided as set out in any quote or invoice.

1.11 "Price" shall mean the cost of the Services as agreed between KLNZ and the Client as set out in any quote or invoice subject to clause 4 of this contract.

2. Limitation of Liability

2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Consumer Guarantees Act 1993 or the Fair Trading Act 1986, except to the extent permitted by those Acts where applicable. The Client acknowledges that it is acquiring the Services for the purposes of a business.

2.2 Subject to clause 2.1, KLNZ offers no guarantee or warranty in respect of the Services it supplies to the Client, and all representations, conditions and warranties of any nature made in relation to the goods are expressly excluded from these terms and conditions and shall not bind KLNZ.

2.3 To the extent permitted by law, where KLNZ becomes liable to the Client in any manner for any breach of any condition or warranty expressed or implied in relation to the Services to the Client which cannot be excluded, KLNZ's liability will be limited, at KLNZ's sole discretion to either:

(a) the supplying of the Services again; or

(b) the payment of the cost of having the Services supplied again, and where a Client is a consumer as defined in the Consumer Guarantees Act 1993 then the Client may also be entitled to a refund.

2.4 KLNZ shall not be liable, to the maximum extent permitted by law, for any indirect, special or consequential loss or damage of any nature whatsoever and howsoever arising, including (without limitation) arising from or caused by the supply of the Services, or KLNZ's breach of contract, negligence, wilful act or omission or default, where "indirect, special or consequential loss or damage" includes (without limitation): (A) any loss of income, profit, production, contract, customers, business opportunity or business; (B) any loss of goodwill or reputation; (C) any loss of value of intellectual property; (D) any loss or damage resulting from the loss or damage to goods other than the Goods.

2.5 Any claim by the Client in respect of defective Services must be made in writing within 14 days of the provision of the Services, unless a longer period is expressly agreed to by KLNZ in writing.

2.6 Without limiting the above and to the extent permitted by law, KLNZ is not liable in any respect if it does not fulfil any obligations to the Client as a result of:

(a) circumstances beyond KLNZ's control such as (but not limited to):

(i) acts of god including earthquakes, cyclones, storms, flooding, fire, disease, fog, snow or frost;

(ii) force majeure including (but not limited to) war, accidents, acts of public enemies, strikes, embargoes, perils of the air, local disputes or civil commotions;

(iii) national or local disruptions in air or ground transportation networks and mechanical problems to modes of transport or machinery;

(iv) latent defects or inherent vice in the contents of the shipment;

(v) criminal acts of third parties such as theft and arson,

(b) the Client's acts or omissions or those of third parties such as:

(i) the Client being in breach of (or any other party claiming an interest in the Goods causing the Client to breach) its obligations under these terms and conditions;

(ii) an act or omission of any customs, security, airline, airport or government official,

(c) the contents of the Goods consisting of any article that is a prohibited item even though KLNZ may have accepted the shipment by mistake; or

(d) KLNZ's refusal to make any illegal payments on the Client's behalf.

3. Acceptance

3.1 Any instructions received by KLNZ from the Client for the supply of Services shall constitute acceptance of the terms and conditions contained herein.

3.2 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be amended or rescinded in accordance with these terms and conditions or with the written consent of the manager of KLNZ.

3.3 These terms and conditions are to be read in conjunction with KLNZ's quotation, consignment note, agreement, airway bills, manifests, or any other forms as provided by KLNZ to the Client. If there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail.

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

4. Price And Payment

4.1 At KLNZ's sole discretion the Price shall be either;
(a) as indicated on invoices provided by KLNZ to the Client in respect of Services supplied; or

(b) KLNZ's quoted Price (subject to clauses 4.2 & 4.3) which shall be binding upon KLNZ provided that the Client shall accept in writing KLNZ's quotation within thirty (30) days.

4.2 KLNZ may by giving 30 days' written notice to the Client increase the Price of the Services to reflect any increase in the cost to KLNZ beyond the reasonable control of KLNZ (including, without limitation, foreign exchange fluctuations, or increases in taxes, levies, customs duties, insurance premiums or warehousing costs).

4.3 KLNZ may charge freight by weight, measurement or value, and may at any time reweigh, or re-value or re-measure or require the Goods to be re-weighed, or revalued or remeasured and charge proportional additional freight accordingly.

4.4 Time for payment for the Services shall be of the essence and will be stated on the invoice, consignment note, airway bills, manifests or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.

4.5 At KLNZ's sole discretion;

(a) payment for approved Clients shall be due on twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices.

(b) payment for approved Clients shall be due twenty days following the date of the Statement.

4.6 Payment will be made by cash, cheque, bank cheque, credit card or EFT, or by any other method as agreed to between the Client and KLNZ.

4.7 Unless otherwise stated, all Prices quoted are exclusive of GST and other taxes and duties, and GST and other taxes and duties that may be applicable shall be added to the Price.

5. Freight Forwarding

This clause 5 shall apply only to the extent that KLNZ is undertaking freight forwarding for the Client.

5.1 Except to the extent that any of the Services shall be actually performed by KLNZ, KLNZ shall act as a forwarding agent only.

5.2 KLNZ shall be entitled, to enter into contracts on behalf of and as agent for the Client and without notice to the Client, for the carriage of the Goods by any route, means and carrier, for the storage, packing, trans-shipment, unloading, loading or handling of Goods by any person at any place and for any length of time, and for such other matters as in the opinion of KLNZ may be necessary or desirable to the performance of the Services.

5.3 The Client hereby appoints KLNZ the agent of the Client for the purpose of entering into any contract, upon such terms and conditions, as KLNZ may in its absolute discretion think fit. The Client shall be bound by the terms of any consignment note, air waybill or other contractual document which KLNZ may receive for the Goods, or for any package, unit or container in which the Goods may be packed, whether by the Client, KLNZ, or any other person.

6. Seller Not Common Carrier

6.1 KLNZ is not a common carrier and will accept no liability as such. All articles are carried or transported and all storage and other services are performed by KLNZ subject only to these conditions and KLNZ reserves the right to refuse the carriage or transport of articles for any person, corporation or body, and the carriage or transport of any class of articles at its discretion. For the purposes of section 8 of the Carriage of Goods Act 1979, these terms and conditions are a contract for carriage on declared terms.

7. Client-Packed Containers

7.1 Without limiting clause 2 of these terms and conditions, if a container has not been stowed by or on behalf of KLNZ, KLNZ shall not be liable for loss of or damage to the Goods caused by:

(a) the manner in which the container has been stowed; or

(b) the unsuitability of the Goods for carriage or storage in containers; or

(c) the unsuitability or defective condition of the container.

8. Nomination Of Sub-Contractor

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

9. KLNZ's Servants or Agents

9.1 The Client undertakes that no claim or allegation shall be made against any servant or agent of KLNZ which attempts to impose upon any of them any liability whatsoever in connection with the Goods and, if any such claim or allegation should nevertheless be made, to indemnify KLNZ and any such servant or agent against all consequences thereof.

10. Method Of Transport

10.1 If the Client instructs KLNZ to use a particular method of carriage whether by road, rail, sea or air KLNZ will give priority to the method designated but if that method cannot conveniently be adopted by KLNZ the Client shall be deemed to authorise KLNZ to carry or have the Goods carried by another method or methods.

11. Route Deviation

11.1 The Client shall be deemed to authorise any deviation from the usual route or manner of carriage of Goods that may in the absolute discretion of KLNZ be deemed reasonable or necessary in the circumstances.

12. Charges Earned

12.1 KLNZ's charges shall be considered earned in the case of Goods for carriage as soon as the Goods are loaded and despatched from the Client's premises.

13. Demurrage

13.1 The Client will be and shall remain responsible to KLNZ for all its proper charges incurred for any reason. A charge may be made by KLNZ in respect of any delay in excess of thirty (30) minutes in loading or unloading occurring other than from the default of KLNZ. Such permissible delay period shall commence upon KLNZ reporting for loading or unloading. Labour to load or unload the vehicle shall be the responsibility and expense of the Client or Consignee.

14. Dangerous Goods

14.1 Unless otherwise agreed in advance in writing with KLNZ the Client or his authorised agent shall not tender for carriage or for storage any explosive, inflammable or otherwise dangerous goods (as considered by KLNZ in its sole discretion) (Dangerous Goods). The Client shall be liable for and hereby indemnifies KLNZ for all loss or damage whatsoever caused by any Dangerous Goods.

14.2 In the event that KLNZ agrees in writing to the carriage or storage of Dangerous Goods for the Client, the following conditions shall apply:

- (a) the Dangerous Goods shall be marked and labelled on the outside of the packaging so as to indicate the nature and character of the Dangerous Goods.
- (b) the Client shall supply KLNZ with any special instructions and a material safety data sheet for the handling and care for the Dangerous Goods at least twenty four (24) hours prior to the specified pick up of the Dangerous Goods.
- (c) the Client shall ensure the Dangerous Goods are packed in a manner adequate to withstand the risk of transporting the Dangerous Goods.
- (d) If at any time KLNZ perceives the Dangerous Goods to hold significant risk of becoming dangerous, inflammable, explosive, volatile or damaging in nature beyond their normal stable state, the Dangerous Goods may at any time at KLNZ sole discretion be destroyed, disposed of, abandoned or rendered harmless without compensation to the Client.

15. Perishable Goods

15.1 Perishable Goods which are not taken up immediately upon arrival or which are insufficiently addressed or marked or otherwise not readily identifiable may be sold or otherwise disposed of by KLNZ without any notice to the Client and payment or tender of the net proceeds of any sale after deduction of charges and expenses shall be deemed to constitute delivery.

16. Consignment Note

16.1 It is agreed that the person delivering any Goods to KLNZ for carriage or forwarding is authorised to sign the consignment note for the Client.

17. Client's Responsibility

17.1 The Client expressly warrants to KLNZ that 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 of cartage and/or storage and by entering into this contract the Client accepts these conditions of contract for the Consignee as well as for all other persons on whose behalf the Client is acting.

17.2 The Client agrees to provide all information requested by KLNZ to enable KLNZ to perform the Services, including but not limited to details of Goods, shipping instructions, weight, content, measure, quantity, quality, condition, marks, numbers, values, risk or potential risk associated with the Goods and warrants that such information is correct.

17.3 The Client and KLNZ shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.

18. Delivery

18.1 KLNZ is authorised to deliver the Goods at the address given to KLNZ by the Client for that purpose and it is expressly agreed that KLNZ shall be taken to have delivered the Goods in accordance with this contract if at that address KLNZ obtains from any person a receipt or a signed delivery docket for the Goods.

18.2 KLNZ may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract.

18.3 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery for the purposes of this agreement.

18.4 It is the Client's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery.

18.5 The failure of KLNZ to deliver shall not entitle either party to treat this contract as repudiated.

19. Loss Or Damage

19.1 Without limiting clause 2 and subject to any statutory provisions imposing liability in respect of the loss of or damage to the Goods (including but not limited to chilled, frozen, refrigerated or perishable Goods):

- (a) KLNZ shall not be under any liability for any damage to, or the loss, deterioration, mis-delivery, delay in delivery or non-delivery of, the Goods (whether the Goods are or have been in the possession of KLNZ or not) nor for 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 delay; and
- (b) the Client will indemnify KLNZ against all claims of any kind whatsoever, howsoever caused or arising brought by any person in connection with any matter or thing done, said or omitted by KLNZ in connection with the Goods.

20. Warehousing Services

20.1 KLNZ may common stock Goods of the Client with goods of the same type received from other clients.

20.2 Title to common stocked Goods is held jointly by the Client and relevant other client/s of KLNZ in the proportions that each client/s Goods bear to the total quantity of the common stocked Goods.

21. Insurance

21.1 The Client acknowledges that:

- (a) the Goods are carried and stored at the Client's sole risk and not at the risk of KLNZ; and
- (b) KLNZ 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; and
- (c) under no circumstances will KLNZ be under any liability with respect to the arranging of any such insurance and no

claim will be made against KLNZ for failure to arrange or ensure that the Goods are insured adequately or at all.

22. Default & Consequences Of Default

22.1 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 one half percent (2.5%) per calendar month (and at KLNZ's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

22.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by KLNZ.

22.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify KLNZ from and against all costs and disbursements incurred by KLNZ in pursuing the debt including legal costs on a solicitor and own client basis and KLNZ's collection agency costs.

22.4 Without prejudice to any other remedies KLNZ may have, if at any time the Client is in breach of any obligation (including those relating to payment), KLNZ may suspend or terminate the supply of Services to the Client and any of its other obligations under these terms and conditions. KLNZ will not be liable to the Client for any loss or damage the Client suffers because KLNZ exercised its rights under this clause.

22.5 If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.

22.6 Without prejudice to KLNZ's other remedies at law, KLNZ shall be entitled to cancel all or any part of any order of the Client which remains unperformed and all amounts owing to KLNZ shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to KLNZ becomes overdue, or in KLNZ's opinion the Client will be unable to meet its payments as they fall due; or
- (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes to or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, voluntary administrator, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

23. Lien

23.1 KLNZ has a general and particular lien over all of the Goods (and any document relating to those Goods), to secure payment of any charges owing by the Client to KLNZ in respect of any of the Goods, and KLNZ may sell any of the Goods to retain that payment, in the event that the Client fails to comply with its payment obligations set out in these terms and conditions or as otherwise agreed between the parties.

23.2 Where charges due by the Client to KLNZ are not paid, and where KLNZ delivers the Goods to the Client or a person nominated by the Client, and the Client or the person nominated by the Client refuses to accept delivery of the goods, KLNZ may without notice to the Client:

- (a) store the Goods as KLNZ thinks fit at the Client's, or the person nominated by the Client's, risk and expense; or
- (b) open any package and sell all or any of the Goods as KLNZ thinks fit and apply the proceeds of sale to discharge the lien and pay any costs of or incidental to the sale.

23.3 KLNZ may deduct or set-off from any monies due from KLNZ to the Client under any contract, debts and monies due from the Client to KLNZ under these terms and conditions or any other contract or agreement between the parties.

23.4 All costs and expenses incurred by KLNZ in recovering any outstanding money (including, without limitation, fees incurred in the sale of the Goods, debt collection agency fees or lawyer's costs on a solicitor-own client basis) shall be paid by the Client.

24. Security And Charge

24.1 Despite anything to the contrary contained herein or any other rights which KLNZ may have howsoever:

(a) the Client and the Guarantor agree to mortgage and charge all of their joint and/or several interest in all current and future personal and real property to KLNZ or KLNZ's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and the Guarantor acknowledge and agree that KLNZ (or KLNZ's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met and agree to execute such formal mortgage documentation in registrable form as may be required by KLNZ.

(b) should KLNZ elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify KLNZ from and against all KLNZ's costs and disbursements including legal costs on a solicitor and own client basis.

(c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint KLNZ or KLNZ's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause.

25. Personal Property Security

25.1 To the extent that these Terms and Conditions create or contain a security interest for the purposes of the PPSA, the Client agrees to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which KLNZ asks and considers necessary for the purposes of:

- (a) ensuring that the security interest is enforceable, perfected and otherwise effective;
- (b) enabling KLNZ to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority required by KLNZ; or
- (c) enabling KLNZ rights in connection with the security interest.

25.2 To the extent permitted by law the Client agrees:

(a) to contract out of the following sections of the PPSA: 114(1)(a) (notice of sale of collateral); section 116 (statement of account); section 120(2) (notice of proposal to retain collateral); section 121 (objection to proposal to retain collateral); section 125 (no damage when accession removed); section 125 (reimbursement for damage caused); section 126 (refuse permission to remove accession); section 131 (court order concerning removal of accession); and section 133 (reinstatement of security agreement); and (b) waive the right to receive any notice under the PPSA, including a notice of a verification statement under section 148 of the PPSA in respect of any financing statement or financing change statement relating to a security interest registered by KLNZ.

25.3 The Client agrees to pay the costs, charges and expenses of and incidental to the need for, or desirability of registration of, a financing statement or financing change statement or any action taken by KLNZ to comply with the PPSA or to protect its position under the PPSA. The Client agrees to pay any costs incurred by KLNZ, including, but not limited to, legal costs on a solicitor-own client basis, arising from any disputes or negotiations with third parties claiming an interest in any property which KLNZ has a security interest pursuant to these terms and conditions.

26. Privacy Act 1993

26.1 The Client and the Guarantor/s agree for KLNZ to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by KLNZ.

26.2 The Client and the Guarantor/s agree that KLNZ may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes: (a) to assess an application by Client; and/or (b) to notify other credit providers of a default by the Client; and/or (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or (d) to assess the credit worthiness of Client and Guarantor/s.

26.3 The Client and the Guarantor/s consents to KLNZ being given a consumer credit report to collect overdue payment on commercial credit.

26.4 To the extent permitted by the Privacy Act 1993, the Client and the Guarantor/s agree that personal credit information provided may be used and retained by KLNZ for the following purposes and for other purposes as shall be agreed between the Client and the Guarantor/s and KLNZ or required by law from time to time:

(a) provision of Services; and/or
(b) marketing of Services by KLNZ, its agents or distributors in relation to the Services; and/or
(c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Services; and/or
(d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and/or
(e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services.

26.5 KLNZ may give information about the Client and the Guarantor/s to a credit reporting agency for the following purposes:

(a) to obtain a consumer credit report about the Client and Guarantor/s; and/or
(b) to allow the credit reporting agency to create or maintain a credit information file containing information about the Client or Guarantor/s.

27. Cancellation

27.1 KLNZ may cancel any contract to which these terms and conditions apply or cancel delivery of Goods or the provision of any Services at any time before the Goods are delivered or the Services provided, by giving written notice to the Client. On giving such notice KLNZ shall repay to the Client any sums paid in respect of the Price. KLNZ shall not be liable for any loss or damage whatever arising from such cancellation.

27.2 In the event that the Client cancels delivery of the Goods or the provision of the Services, the Client shall be liable for any costs or loss incurred by KLNZ (including, but not limited to, any loss of profits) up to the time of cancellation.

28. General

28.1 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.

28.2 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.

28.3 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 KLNZ.

28.4 KLNZ reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which KLNZ notifies the Client of such change or posts the amended terms and conditions on its website.

28.5 The terms and conditions set out herein shall prevail over the terms and conditions set out in any document used by the Client, the owner or any other person having an interest in the Goods and purporting to have a contractual effect.

28.6 The failure by KLNZ to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect KLNZ's right to subsequently enforce that provision.