



THE SHIPPER™

Shipping Dreams All Around The World.

The Shipper – Terms & Conditions

1. DEFINITIONS.

1.1. For this terms and conditions:

“**Company**” means The Shipper Ltd.

“**Container**” means all types of shipping containers, including dry storage containers, flat racks and car carriers.

“**Customer**” means the person or entity with whom this Contract is made, whether as principal or on behalf of another party - disclosed or undisclosed - and includes any person who has or had an interest in the Goods

“**Goods**” means the cargo accepted by The Shipper Ltd and includes any container, packaging or pallet supplied by or on behalf of the Customer.

“**Dangerous Goods**” means cargo which is volatile, explosive or which is or may become dangerous, inflammable or offensive (including radioactive materials) or which has the potential to damage any person or property whatsoever.

“**GST**” means the goods and services tax imposed by or under the Goods and Services Tax Act 1985 or any similar or replacement legislation.

“**Services**” means the whole of the operations undertaken by The Shipper Ltd in respect of the Goods.

“**Subcontractor**” includes any person who pursuant to a contract or arrangement with any other person (including The Shipper Ltd) provides or agrees to provide the Services or any part of the Services.

“**VGM**” means the Verified Gross Mass of Goods, calculated in accordance with one of the methods specified in Chapter VI, Regulation 2 of the Safety of Life at Sea Convention and guidelines issued by Maritime New Zealand.

“**PPSR**” means Personal Property Securities Register.

2. SERVICES PROVIDED.

2.1. All Services are provided by The Shipper Ltd as **agents only**, except in the following circumstances where The Shipper Ltd acts as principal:

- a) where The Shipper Ltd performs any carriage, handling or storage of Goods, but only to the extent that the carriage is performed by The Shipper Ltd itself or its servants and the Goods are in the actual custody and control of The Shipper Ltd; or
- b) where, prior to the commencement of the carriage of Goods, the Customer in writing demands from The Shipper Ltd particulars of the identity, services or charges of persons instructed by The Shipper Ltd to perform part or all of the carriage, and The Shipper Ltd fails to give the particulars demanded within 28 days. However, for the purposes of this sub-clause, The Shipper Ltd shall only be deemed to be contracting as a principal in respect of that part of the carriage in respect of which The Shipper Ltd fails to give the particulars demanded; or
- c) to the extent that The Shipper Ltd expressly agrees in writing to act as a principal, or
- d) to the extent that The Shipper Ltd is held by a court of law to have acted as a principal.

2.2. **Without prejudice** to the generality of clause 2.1:

- a) charging by The Shipper Ltd of a fixed price for any Services whatsoever shall not in itself determine or be evidence that The Shipper Ltd is acting as an agent or a principal in respect of those Services.
- b) supply by The Shipper Ltd of its own or a leased Container shall not in itself determine or be evidence that The Shipper Ltd is acting as agent or a principal in respect of any carriage, handling or storage of Goods;
- c) The Shipper Ltd acts as an agent where The Shipper Ltd procures a bill of lading, sea or air waybill or other document evidencing a contract of carriage between a person other than The Shipper Ltd, and the Customer or owner;
- d) The Shipper Ltd acts as an agent and never as a principal when providing any other Services whatsoever for or on behalf of the Customer, including but not limited to Customs and Insurance.

3. WARRANTIES BY THE CUSTOMER.

3.1. The Customer hereby represents and warrants that:

- a) they have full and exclusive legal and beneficial title to the Goods or is the authorised agent of the person with such title;
- b) they are authorised to accept and is accepting these terms and conditions not only for themselves but also as agent for and on behalf of the owner;
- c) they are competent and have all necessary knowledge of the matters affecting the conduct of business insofar as relevant to the carriage of the Goods, including contractual and other obligations and need for insurance;
- d) all marks, weights, numbers, brands, contents, descriptions, values and other particulars or information given to The Shipper Ltd with respect to the Goods are accurate and complete;
- e) the Goods are fit to be carried and stored in the condition and packaging in which they are tendered to The Shipper Ltd (or in accordance the Customer's instructions, if the Goods are tendered with instructions that The Shipper Ltd arrange packaging);
- f) the Customer and the owner have complied with all applicable laws and obligations and have obtained all necessary consents and authorizations in respect of the Goods and the handling, packaging and carriage of the goods.
- g) that the person or individual completing the order on behalf of the customer warrants and affirms that such person has the full authority to enter into the contract on behalf of the customer and that, where applicable, the customer expressly authorises The Shipper Ltd to act in accordance with requests made on behalf of the customer by its representative and the customer further indemnifies The Shipper Ltd from and against all claims and expenses or other liability arising out of its acting in good faith in accordance with the arrangements made on behalf of the customer by such person or individual as the case may be. The Customer hereby indemnifies The Shipper Ltd on demand against all claims, losses, costs and expenses, penalties and fines, or any other liability arising in consequence of a breach of any warranty or representation set out in clause.

4. WARRANTIES BY THE SHIPPER.

4.1. The Customer warrants and represents to The Shipper Ltd on a continuing basis:

Ownership: they are either the owner of the Goods, or the authorised agent of the owner of the Goods, and are authorised by any person who has or may acquire an interest in the Goods to enter into and accept the terms of this agreement;

Particulars: the accuracy and completeness of all descriptions, values and other particulars of the Goods, and all other information provided to The Shipper Ltd by them or their representatives in relation to the Goods or otherwise in connection with the Services, including in particular for customs clearance purposes;

Packing: except where The Shipper Ltd are instructed by the Customer in writing to arrange for the packing of the Goods on your behalf, that the Goods have been properly and sufficiently packed and prepared for transport, and such packing complies with any instructions for packing and preparation that The Shipper Ltd may have given the Customer; and

Prohibited Goods: subject to clause 4.1, that the Goods are not Prohibited Goods as that term is defined in clause 4.1.

4.2. They indemnify and hold The Shipper Ltd and our subcontractors harmless in respect of any liability for costs, loss or damage suffered by The Shipper Ltd or our subcontractors arising out of a breach of the warranties set out in clause 4.1

5. INSURANCE

5.1. The Customer hereby represents and warrants that:

- a) The Goods remain at their risk at all times, and they acknowledge that it is their responsibility to effect appropriate and adequate insurance for the Goods.
- b) Any assistance provided by The Shipper Ltd in respect of arranging insurance for the Goods is provided to the Customer strictly on a no-reliance basis. They are solely responsible for reviewing the terms of any such insurance and satisfying themselves of the adequacy and appropriateness of any insurance policy, and any insurance coverage affected by them is done so entirely at their own risk.
- c) If for any reason, The Shipper Ltd or our subcontractors agree to effect insurance for the Customer, such insurance shall be subject to any exceptions and conditions in the policies of the insurer taking the risk. In all circumstances, if an insurer disputes its liability for any reason the Customer shall have recourse against the insurer only, and The Shipper Ltd shall not have any responsibility or liability to them in respect of any such matters.

6. FORWARDING AGENTS.

6.1. The Shipper Ltd is providing the Freight Forwarding Services as agent of the Customer and not as a common carrier. The Shipper Ltd reserves the right to refuse to perform its services for any person, or to arrange carriage, storage, packing or handling for any class or particular consignment of goods.

6.2. The Shipper Ltd is not a carrier but shall (as a forwarding agent only) procure or arrange carriage and handling of the Goods to be undertaken by other persons on behalf of the Customer.

6.3. Where, in any circumstances, The Shipper Ltd enters into a contract with any other person for the carriage or handling of the Goods, The Shipper Ltd does so as an agent for and on behalf of the Customer. Any such contract shall be a direct contract between the Customer and the third party unless otherwise stated.

6.4. The carriage and handling of the Goods by any carrier or contractor are and shall be regarded as operations and services distinct from the Freight Forwarding Services provided by The Shipper Ltd.

7. RETENTIONS OF BROKERAGES AND REMUNERATIONS.

7.1. The Customer hereby acknowledges that:

a) The Shipper Ltd may have a pecuniary interest in any contract entered into by The Shipper Ltd as agent for or on behalf of the Customer or the owner pursuant to the provisions of these terms and conditions.

b) The Shipper Ltd shall be entitled to receive, be paid and retain, and the Customer hereby expressly consents to the receipt by The Shipper Ltd of, all brokerages, commissions, discounts, rebates, bonuses, deduction, allowances and other remunerations customarily received or retained by or paid to forwarding agents.

c) The Shipper Ltd shall not be bound to disclose to the Customer or the owner the nature or amount of any such remunerations received or receivable by The Shipper Ltd.

8. CONSUMER GUARANTEES ACT 1993.

8.1. The provisions of the Consumer Guarantees Act 1993 are hereby expressly excluded (and shall not apply) where Freight Forwarding Services are acquired in the course of and for the purposes of a business.

8.2. Where (in any other circumstances) the Consumer Guarantees Act 1993 applies, the Contract shall be read subject to the application of that Act and, in the case of any conflict or inconsistency, the provisions of that Act will apply.

9. SUBCONTRACTING.

9.1. The Shipper Ltd and any subcontractor shall be entitled to subcontract on any terms part or all of the Freight Forwarding Services, or other related industry services including by not limited to Warehousing and Distribution, Domestic Transport and Carriage of Goods. The subcontractors Standard Terms and Conditions will apply where related to specialised service offerings that are outside the scope of the Freight Forwarding Services provided by The Shipper Ltd.

9.2. Where The Shipper Ltd acts as an agent for services outside the definition Freight Forwarding Services, The Shipper Ltd will by request supply subcontractor Terms and Conditions to the Customer.

9.3. The Customer undertakes that no claim or allegation shall be made by the Customer or the owner against any persons (other than The Shipper Ltd) by whom (whether as subcontractor, principal, employer, servant, agent or otherwise) the Freight Forwarding Services or any part thereof are performed or undertaken which imposes or attempts to impose upon any such person any liability whatever in connection with the Goods whether or not arising out of negligence on the part of such person and if such claim or allegation should nevertheless be made to indemnify The Shipper Ltd and the person against whom such claim or allegation is made against the consequences thereof. Without prejudice to the foregoing every such person shall have the benefit of all provisions herein benefiting The Shipper Ltd as if such provisions were expressly for their benefit and in entering into this Contract The Shipper Ltd is and shall be deemed to be acting as agent and trustee on behalf of and for the benefit of all such persons and each of them shall to this extent be deemed to be parties to this Contract.

10. CHARGES

10.1. The Shipper Ltd's charges shall be deemed to be due and payable in full on receipt of the Goods by The Shipper Ltd and are payable on a non-refundable basis irrespective of whether the Goods are delivered to the consignee.

10.2. The Shipper Ltd may fix its charges by weight, measurements or value, and may at any time re-weigh, re-measure or re-value or require the Goods to be reweighed, re-measured or re-valued and may adjust its charges accordingly.

10.3. All quotations given by The Shipper Ltd are based on costs prevailing at the date of the quotation in respect of freight, insurance and other charges, rates of exchange or currency conversion, taxes, duties and other imposts, and on the latest available quotations from carriers utilised by The Shipper Ltd. Any increase at any time in costs due to variations in any of the foregoing shall be to the Customer's account and that price payable by the Customer shall be increased accordingly. The Customer is not entitled to a refund if there is a decrease in such costs or if the actual cost for such matter is less than the amount accepted by the Customer.

10.4. The Shipper Ltd's charges, and any other amounts payable to The Shipper Ltd, shall be paid on or before the due date for payment without deduction or deferment on account of any claim, counterclaim or setoff. The due date for all amounts payable to The Shipper Ltd is the date or dates communicated by The Shipper Ltd in writing and shall be strictly observed (time being of the essence).

10.5. Notwithstanding any direction that part or all of The Shipper Ltd's charges shall be payable by any particular person; the Customer shall remain liable to The Shipper Ltd for all of The Shipper Ltd's charges.

10.6. Should payment of The Shipper Ltd's charges not be made by the due date, the Customer shall pay default interest on all monies outstanding at a rate equal to 4% above The Shipper Ltd's bank's indicator lending rate from time to time (as stated by The Shipper Ltd) calculated on a daily basis from such date until the date on which payment is actually received by The Shipper Ltd but The Shipper Ltd's right to claim interest pursuant to this clause shall be without prejudice to The Shipper Ltd's other rights and remedies in respect of the default in failing to make payment by the due date.

10.7. The Shipper Ltd reserves the right to recover all legal costs, on a solicitor and own client basis and incidental expenses as a result of expenses incurred recovering any outstanding monies owed or disputed. The Shipper Ltd can make credit checks on the Customer as required on the Personal Property Securities Register "PPSR" and can further:

(a) register The Shipper Ltd General Security Agreement on the PPSR for any debt due or any future interest or advances; and

(b) register The Shipper Ltd security on the PPSR over the inventory and proceeds of sale of the inventory within a container

10.8 If at any time payment of The Shipper Ltd's charges is in arrears, any subsisting obligations of The Shipper Ltd may be suspended and The Shipper Ltd shall not be under any liability to the Customer or the owner during any such period of suspension.

10.9 Unless otherwise stated, The Shipper Ltd's charges are exclusive of any GST. To the extent that any GST is payable, such amount shall be payable by the Customer to The Shipper Ltd at the same time as the payment to which it relates is due.

11. DISBURSEMENTS AND EXPENSES.

11.1. The Shipper Ltd may at its discretion pay, and the Customer shall on demand reimburse and indemnify The Shipper Ltd for, any duties, taxes or other charges, costs or disbursements paid, or any expenses incurred (including penalties and other costs arising as a result of the Customer failing to pay such amounts), by The Shipper Ltd in connection with the performance of the Freight Forwarding Services.

11.2. All costs, expenses or charges incurred by The Shipper Ltd in respect of any arrangement made, or any contract entered into or any other form of liability shall be recoverable from the Customer pursuant to clause 11.1, notwithstanding that any such arrangement, contract or liability was not known or contemplated by the Customer or the owner at the time of entering into this Contract or the date of the On-Forwarding Instructions.

11.3. Notwithstanding clauses 11.1 and 11.2, The Shipper Ltd shall be under no obligation to incur and pay any costs, expenses or charges except where the Customer has put The Shipper Ltd in sufficient funds so as to meet the same.

12. RETENTIONS OF BROKERAGES AND REMUNERATIONS.

12.1. The Customer hereby acknowledges that:

a) The Shipper Ltd may have a pecuniary interest in any contract entered into by The Shipper Ltd as agent for or on behalf of the Customer or the owner pursuant to the provisions of these terms and conditions.

b) The Shipper Ltd shall be entitled to receive, be paid and retain, and the Customer hereby expressly consents to the receipt by The Shipper Ltd of, all brokerages, commissions, discounts, rebates, bonuses, deduction, allowances and other remunerations customarily received or retained by or paid to forwarding agents.

c) The Shipper Ltd shall not be bound to disclose to the Customer or the owner the nature or amount of any such remunerations received or receivable by The Shipper Ltd.

13. SALE AND DISPOSAL OF GOODS.

13.1. The Shipper Ltd shall be entitled at the expense of the Customer to sell or dispose of goods:

- a) on 21 days' notice in writing to the Customer or where the Customer cannot be traced, after such goods have been held by The Shipper Ltd for 90 days, all goods which in the opinion of The Shipper Ltd cannot be delivered, either because they are insufficiently or incorrectly addressed or because they are not collected or accepted by the consignee or for any other reason;
- b) without notice to the Customer or the owner, any perishable goods which are not taken up immediately on arrival or which are insufficiently or incorrectly addressed or marked or otherwise are not readily identifiable, or which in the opinion of The Shipper Ltd appear to be deteriorating or would be likely to perish during the course of the carriage and handling of the Goods.
- c) All Goods which The Shipper Ltd is, in accordance with this Contract, entitled to sell or dispose of, may be sold by auction or otherwise at the discretion of The Shipper Ltd. All charges and expenses in connection with the sale or disposal of such goods shall be paid by the Customer and payment or tender of the net proceeds of the sale or disposal, after deduction of all such charges and expenses and any other indebtedness of the Customer to The Shipper Ltd, shall be equivalent to delivery. Any such sale or disposal shall not prejudice or affect The Shipper Ltd's rights to recover from any person any balance due or payable to The Shipper Ltd in respect of any services provided by it or any costs associated with the detention and sale of the goods.

14. INDEMNITY.

14.1. The Customer shall on demand, indemnify and save harmless The Shipper Ltd from and against all duties, taxes, penalties, fines, payments, claims, demands, costs and expenses, and other liabilities of whatever kind, whether or not arising out of the negligence of The Shipper Ltd, its servants or agents, which are imposed on, or suffered or incurred by The Shipper Ltd and which arise directly or indirectly from or in connection with the performance of the Freight Forwarding Services, the implementation of the On-forwarding Instructions, the procurement of the carriage and handling of the Goods, or otherwise, including any liability to indemnify any other person against claims made against such other person by the Customer or the owner.

15. NOTICES.

15.1. Any notice to be given under this Contract will be deemed to have been properly served if delivered or sent by registered post, facsimile transmission or email to the registered office of the party to receive it or the usual or last known residence or place of business of such party.

15.2. Any notice sent by registered post will be deemed to have been properly served two days after the date upon which it was posted.

15.3. Any notice sent by facsimile will be deemed to have been properly served on the date of transmission or, if the transmission was made after 5.00pm or on a day other than a normal working day, then on the next working day following the date of transmission.

15.4. Any notice sent by email will be deemed to have been properly served on the date of email or, if the email was made after 5.00pm or on a day other than a normal working day, then on the next working day following the date of the email.

15.5. Any notice delivered to the appropriate address will be deemed to have been properly served on the date upon which the notice was so delivered.

16. MISCELLANEOUS MATTERS.

16.1. To the extent that any provision of this Contract is contrary to law (including the Fair Trading Act 1986), it shall be void but any such provision shall remain in full force and effect to the extent that it is not contrary to law and the invalidity of any such provision or part thereof shall not affect the validity and enforceability of any other provision of this Contract.

16.2. No servant, agent or representative of The Shipper Ltd has any authority to alter, amend, modify or waive any provision of this Contract unless such alterations, amendment, modification or waiver is in writing and signed by a duly authorised representative on behalf of The Shipper Ltd.

16.3. All of the rights, immunities and limitations of liability in this Contract shall continue to have their full force and effect in all circumstances and notwithstanding any breach of contract or of any of these terms and conditions by, or any negligence on the part of, The Shipper Ltd or any other person entitled to the benefit of any of the provisions of this Contract.

16.4. Nothing in this Contract shall in any circumstances be evidence of or be deemed to create a partnership or fiduciary relationship between the customer and The Shipper Ltd.

16.5. Where the Customer has entered into this Contract for and on behalf of the owner, the owner agrees that it is jointly and severally liable for all the obligations, undertakings, warranties and indemnities of the Customer.

17. GOVERNING LAW.

17.1. This Contract, and any act or contract to which it applies, shall be governed by, and interpreted in accordance with, the laws of New Zealand and the parties hereby submit to the non-exclusive jurisdiction of the New Zealand courts in respect of any dispute, matter or thing arising in respect of this Contract.