

SAFefREIGHT LIMITED – GENERAL TERMS & CONDITIONS

1. CUSTOMER'S ACKNOWLEDGEMENTS

- 1.1 **This Contract becomes legally binding between the two parties** (based on these terms and conditions contained herein) and **deemed accepted** by the Customer once the Customer places an order for the supply of Safefreight's Services, thereby the Customer will immediately be bound, jointly and severally, by these terms and conditions.
- 1.2 **No amendment of this Contract will be of any force or effect, unless in writing signed by an authorised representative of each party.**
- 1.3 These terms and conditions are to be read in conjunction with Safefreight's quotation, consignment note, agreement, airway bills, manifests, Bills of Lading, or any other forms as provided by Safefreight to the Customer. If there are any inconsistencies between these documents, then any specific terms and conditions contained in any transport document shall prevail over these terms and conditions.
- 1.4 Upon signing this Contract both parties declare and confirm, they are lawfully entitled to enter this Contract (including where the Customer is to act in the capacity as a trustee of any trust ("**Trust**"). Furthermore, the Customer declares that they are not insolvent and accepts that this Contract creates an enforceable legal agreement for the Customer to meet his/her obligations and responsibilities under the Contract (including payment when requested).
- 1.5 If the Customer is primarily a Trust entity, the Customer declares that the provisions of the Trust does not imply excluding or removing the right of indemnity of the Customer against the Trust. The Customer agrees to notify Safefreight forthwith, if there are any substantial changes to the Trust that could affect the business relationship and the Customer's obligations under the Contract, which includes any variations or resettlements of trust assets or any changes of trustees, that may or could be the basis of any security under any contract with Safefreight.
- 1.6 **It is further agreed by the Customer that:**
- (a) Safefreight **may elect to subcontract out of any part of the Services**. Safefreight shall not be relieved from any liability or obligation under this Contract by so doing; and
 - (b) Any instruction to any subcontractors of Safefreight must be initiated by **Safefreight only**. The Customer does not have any right to redirect the performance of the Services or make any changes with a sub-contractor, without firstly obtaining written authority from Safefreight; and
 - (c) Any change to the Customer's business structure or ownership must be notified in writing to Safefreight within 14 Business Days of any proposed change. If an ownership change does occur, the new owners will need to complete a fresh application for credit, if a credit account is still to be operational. The Customer shall be liable for any loss incurred by Safefreight, because of the Customer's failure to comply with this clause; and
 - (d) Unless otherwise agreed **in advance in writing** with Safefreight, the Customer or his/her authorised agent **shall not tender** for carriage or for storage any:
 - (i) Explosive, flammable or otherwise **Dangerous Goods**; or
 - (ii) Bullion, coins, precious stones, jewellery, valuables, antiques pictures, livestock, or plants; and
 - (iii) The Customer shall be liable for and hereby indemnifies Safefreight for all loss or damage whatsoever caused by any Goods described in clauses 1.4(d)(i) and 1.4(d)(ii)
 - (e) All Goods are carried, transported, or stored and any other services performed by Safefreight are subject only to these terms and conditions, where the relationship between the Customer and Safefreight, is one of, Safefreight acting as an **agent only and never as a Principal** (including but not limited to, with customs and insurance); and
 - (f) If Safefreight is to take the **role of a Principal** on the Customer's behalf in respect of a Contract of carriage (domestic, international by air, international by sea, or combined transport), where Safefreight is described as the "carrier" and is the party that issues the consignment note, Bills of Lading, sea waybill, or combined transport document, then the terms and conditions of said transport document (including all limitations and exclusions of liability) shall, to the extent of any inconsistency, prevail over these terms and conditions;
 - (g) Notwithstanding, clauses 1.6(e) and 1.6(f) if there is any matter dealt with, in these terms and conditions that is not dealt with, in any transport document issued by Safefreight, or which relates to a period or stage of transit not covered by such transport document, these terms and conditions shall apply to the maximum extent permitted by law; and
 - (h) At Safefreight's discretion, Safefreight reserves the **right to refuse the carriage or transport** of any cargo for any person, corporation or body, and the carriage or transport of any class of Goods;
 - (i) Both parties agree to fully comply with all current requirements by law pertaining to electronic messaging (including but not limited to, Unsolicited Electronic Messages Act 2007) in the use of emails or mobile messaging or e-signatures in accordance with Contract and Commercial Law Act 2017 for compliance, which may form part thereof, the acceptance to this Contract;
 - (j) Any change to contact details must be advised to Safefreight immediately. Any communications will be sent to the last contact details that were provided;
 - (k) Non-receipt, delayed receipt, inadvertent misdirection, or interception by third parties in any form of communication is a risk, whether electronic, postal, or otherwise. The Contractor is **not responsible** for any such matters beyond their control.

2. QUOTATION

- 2.1 Unless otherwise stated, in the quotation **does not include:**
- (a) The cost of insurance, custom duties, quarantine charges, demurrage, storage, consular fees, municipal dues, taxed (other than NZ GST);

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- (b) Additional labour for removal or assembly of fixtures, fittings, blinds or curtains, or lifting or laying of carpets, linoleums or other floor coverings, dismantling, disconnecting or installing, connecting or reassembling any refrigerator, computer, home theatre, stereo, washing machine or similar equipment and the removal or erecting of any television aerial;
- (c) If alternative access is necessary due to the agreed access is hindered by staircases or doorways;
- (d) Additional labour if the Goods are required to be removed from or delivered to any property or via equivalent access, that is more than 2 stories; and
- (e) If access is required via any window or balcony and/or if tackle is necessary, access or use thereof, will be at Safefright's discretion, all risk and additional costs shall be at the Customer's own risk and expense.

3. PAYMENT TERMS

- 3.1 The Charges will be as stated on the invoice supplied to the Customer or as stated in the quotation (inclusive of any variations (if known)) prior to acceptance but the quoted Charges shall only be binding for the period offered by Safefright, **if no date is stated**, then the quote shall apply for a period of no less than **14 Business Days**).
- 3.2 Notwithstanding Safefright's Charges shall be:
- (a) As subject to Safefright's schedule of Charge Rates (Charges considered earned in the case of Goods for carriage as soon as the Goods are loaded and dispatched from the Customer's premises) and shall include (if applicable);
 - (b) Charges quoted and/or charged by Safefright may be in the **currency of origin or destination or another freight currency** based on the higher mass, volume, or value, **confirmation of this will be clearly marked on any quote or invoice submitted for acceptance and/or payment**;
 - (c) Safefright will not declare the value of Goods in any documentation unless instructed to do so in writing by the Customer;
 - (d) Collect Upon Arrival Charges (Consignee payment due), inclusive of a collection fee, may be converted into the currency of destination at exchange rates set by Safefright.
- 3.3 **Deposits due** (if any) are at the discretion of Safefright and the deposit amount may vary due to the nature of the Services to be supplied. Any deposit required will be stated at the time of quoting and shall become immediately due and payable to Safefright upon the Customer's acceptance. **No supply of Services will occur** (where a deposit is agreed) until payment by the Customer to Safefright occurs.
- 3.4 The Charges will be payable by the Customer on the date determined by Safefright, which may be:
- (a) Prior to the carriage of the Goods and/or release of import cargo, or prior to consignment of export cargo, unless otherwise agreed; or
 - (b) The date specified on any invoice/s, consignment note, airway bills, manifests or any other form as being the date for payment; or
 - (c) **Credit Account Approved Customers**, 20th of the month following the invoice date; or
 - (d) Failing any notice to the contrary, the due date will be 7 Business Days following the date of any invoice/s furnished by Safefright to the Customer.
- 3.5 **Storage and Warehousing:**
- (a) Storage and warehousing costs are calculated monthly and are payable in advance, and Charges will be pro-rata for part months in which Goods are brought into and removed from storage;
 - (b) Charges are reviewed on an annual basis and Customers will be advised in writing of any increases; the increased Charges will take effect 30 Business Days from the date of the notice;
 - (c) Stored Goods will not be released without written consent by the Customer or the Customer's authorised representative; and
 - (d) If access to the point of delivery is not available or cannot be affected as specified or needed, and storage is required, Safefright may charge for storage, handling and redelivery at its standard rate, or waiting time as detailed in the quotation.
- 3.6 Payment is accepted by either direct credit, or by any other method as agreed to between the Customer and Safefright.
- 3.7 When Safefright is instructed to collect freight charges, duties, or other expenses from any third-party, the Customer:
- (a) Shall remain responsible for these amounts; and
 - (b) Shall pay these amounts to Safefright on demand where these amounts have become due and have not been paid by the third party. Safefright shall be under no obligation to incur or pay any expenses unless the Customer has provided Safefright with sufficient funds to meet the same.
- 3.8 For the avoidance of doubt, it is agreed by both parties that the Customer may not **set-off** against any monies due to Safefright by the Customer, that the Customer considers Safefright owes the Customer, **it must not be automatically deducted** from the Charges, nor can any payment due be withheld by the Customer because part of any invoice is in dispute. Where the Customer believes that there has been a mistake made, and monies are due, Safefright requests that the Customer contacts Safefright within 7 Business Days of receipt of the invoice/statement, so that Safefright may investigate any alleged error. If a mistake has occurred, the Customer's subsequent invoice/statement will be adjusted.
- 3.9 Receipt of payment by Safefright of any form other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared, or recognised, until then Safefright's right in respect of the supply of Safefright's Services and the obligations (including payment) due by the Customer to Safefright under this Contract shall continue.
- 3.10 Apart from where Safefright states otherwise, GST is **not included** in the Charges. GST and any other taxes and duties that may be applicable shall be added to the Charges except where GST is **explicitly shown as included** in the Charges.

4. VARIATION

- 4.1 Safefright reserves the right to adjust the Charges (upon written notice to the Customer) due to any of the following:

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- (a) Variation to the Services and/or specifications of any Goods presented for carriage (as Safefreight calculates some Charges by weight, measurement, or value, and may at any time re-weigh, or re-measure, or re-value or require the Goods to be re-weighed, or re-measured, or re-valued and charge proportional additional Charges accordingly); or
- (b) Increase in the cost to Safefreight beyond the reasonable control of Safefreight (including, without limitation, foreign exchange fluctuations, increases in taxes or customs duties or insurance premiums or warehousing costs); or
- (c) Delays of more than thirty (30) minutes in loading or unloading any delivery vehicle occurring other than from the default of Safefreight once Safefreight has reported for loading or unloading. Loading or unloading the vehicle shall be the responsibility and expense of the Customer or Consignee; or
- (d) Additional labour necessary other than what is covered in the quotation (including but not limited to, ferry vehicle access and/or reasonable access for delivery or pick-up as per clause 2.
- (e) **Storage:** - if any Goods under Safefreight's control are held within a depot or terminal and not uplifted within the allotted "free time" storage charges will be imposed; or
- (f) **Demurrage:** - if packages or a Container under Safefreight's control (regardless of whether it is full or empty) is held **within** a port or a terminal and is not uplifted within the allotted "free time" demurrage charges will be imposed; or
- (g) **Detention:** - if packages or a Container under Safefreight's control (regardless of whether it is full or empty) is held **outside** of a port or facility and is not returned within the allotted "free time" a detention fee will be imposed.

5. BROKERAGE AND OTHER REMUNERATION

- 5.1 The Customer acknowledges that Safefreight has a financial interest in all contracts entered into by Safefreight as its agent in terms of these conditions and agrees that Safefreight may receive and retain all brokerage, commissions, discounts, allowances and other remuneration paid by the other party to the Contract and customarily received or retained by or paid to customs, shipping and forwarding agents and insurance brokers in addition to the Charges and expenses referred to in clause 2 and is not required to be disclosed to the Customer the existence, nature or amount thereof.
- 5.2 Furthermore, the Customer accepts and agrees that where any amount charged by Safefreight is described as a disbursement (or equally expressed), such amount will include Safefreight's handling and administration fee in respect of the same, and the existence or amount of the fee is not required to be disclosed separately.

6. PROVISION OF THE SERVICES

6.1 **Delivery:**

- (a) Safefreight is authorised to deliver the Goods to the address given to Safefreight by the Customer for that purpose and it is expressly agreed that Safefreight or Safefreight's Sub-contractors shall be taken to have delivered the Goods, in accordance with this Contract, if at that address Safefreight or Safefreight's Sub-contractors obtains from any person a receipt or a signed delivery docket for the Goods;
- (b) Goods arranged to be delivered to or uplifted from Safefreight's place of business need to be done so during business hours, Monday to Friday. Outside of such delivery or uplift times will be at the sole discretion of Safefreight and any additional costs incurred will be to the Customer's account;
- (c) Safefreight or Safefreight's Sub-contractors may deliver the Goods in 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;
- (d) Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery for the purposes of this Contract;
- (e) If Safefreight is instructed by the Customer to hold any Goods in storage, expressed written consent (for each delivery) must be provided by the Customer nor will the Customer have access to Safefreight's storage warehousing without Safefreight's written consent.

6.2 **Method Of Transport:**

- (a) If the Customer instructs Safefreight to use a particular method of carriage whether by road, rail, sea, or air Safefreight will give priority to the method designated; or
- (b) If that method cannot conveniently be adopted by Safefreight, the Customer shall be deemed to authorise Safefreight to carry or have the Goods carried by another method or methods; and
- (c) Any Goods awaiting forwarding and delivery may at Safefreight's sole discretion be warehoused or otherwise held at any place, all risk, and any expense incurred shall be borne by the Customer.

6.3 **Route Deviation:**

- (a) The Customer shall be deemed to authorise any deviation from the usual route; or
- (b) Manner of carriage of Goods that may in the absolute discretion of Safefreight be deemed reasonable or necessary in the circumstances.

- 6.4 Delivery dates for the carriage of the Goods will only be an estimate, Safefreight cannot guarantee timeframes, as delays may occur beyond Safefreight's control. Safefreight will not be liable for any loss or damage incurred by the Customer because of a delivery being late, however, Safefreight will at every opportunity liaise with the Customer to ensure the delivery does take place, as soon as reasonably possible. The failure of Safefreight to deliver shall not entitle either party to treat this Contract as repudiated.

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7. LOSS OR DAMAGE TO THE GOODS

- 7.1 Subject to the Contract and Commercial Law Act 2017 and 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) Safefreight shall not be under any liability for any damage to, loss, deterioration, mis-delivery, delay in delivery or non-delivery of the Goods (whether the Goods are or have been in the possession of Safefreight 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) In addition to clause 7.1(a) Safefreight shall be entitled to dispose of any **Dangerous Goods** which are found upon supply to Safefreight to not have a sufficient declaration or documentation or which are in or are likely to enter a dangerous state (including but not limited to, if Safefreight believes the Goods to be dangerous, flammable, or of a damaging nature), to avert the threat of harm to persons or property; and
 - (c) The Customer will indemnify Safefreight 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 Safefreight in connection with the Goods.
- 7.2 Furthermore, it is the Customer's responsibility to ensure that none of the Goods to be removed are left behind, that no Goods or fixtures are taken away in error and that articles left in unoccupied premises are protected.

8. INSURANCE

- 8.1 The Customer acknowledges that the Goods are carried and stored **at the Customer's sole risk and responsibility** to ensure that the Goods are insured adequately, or at all, and are **not at the risk** of Safefreight, nonetheless:
- (a) Although Safefreight is under no obligation to arrange insurance of the Goods, if there is an **expressed written agreement** between Safefreight and the Customer, Safefreight will arrange such insurance on the Customer's behalf; and
 - (b) Any insurance policy held by Safefreight on the Customer's behalf will be underwritten by a reputable insurance company or reputable broker. The full policy wording is available on request; and
 - (c) Safefreight makes no representations and gives no advice regarding any aspect of the policy, including as the suitability or appropriateness of the policy for the Customer's requirements, the policy's terms, conditions, and exclusions, or as to the competitiveness of the premium. The Customer warrants that it relies solely on its own skill and judgment in accepting the policy on the terms offered; and
 - (d) If a claim is lodged, the Customer shall have recourse solely against the insurer and Safefreight shall not be under any responsibility or residual liability to the Customer or Consignee for the loss of, or damage to any of the Goods or the failure of the policy to meet a claim in respect of the same and any insurance proceeds payable to the Customer under any policy procured by Safefreight will first be applied in satisfaction of any outstanding liability by the Customer to Safefreight.
- 8.2 Without prejudice to the generality of clause 8.1(b), the cover to be procured by Safefreight for the Customer will exclude:
- (a) Loss of or damage to Goods arising from wear and tear, moths, vermin, damp, mildew, loss of market, delay, or inherent vice; and
 - (b) Gradual deterioration, and rust or oxidation unless caused or contributed to by fire, collision, overturning or another accident to conveyance.

9. CLAIMS

- 9.1 Subject to clauses 7 & 8 the Customer must inspect their Goods on delivery and must immediately notify Safefreight of any alleged damage to their Goods. The Customer must then, within 7 Business Days of the date of delivery of the Goods or collection of the Goods (as the case may be), lodge a written notice of claim for consideration and determination by Safefreight. For loss or destruction of the Goods, Safefreight must be notified in writing within 14 Business Days after the date of dispatch.
- 9.2 The failure to notify a claim within the time limit specified in this clause is evidence of satisfactory performance by Safefreight by its obligations.
- 9.3 Any claims which could be made against Safefreight because of said claim being the subject of a general average or salvage nature, the Customer agrees to forthwith provide such security as may be required by Safefreight and in a form acceptable to Safefreight accordingly.
- 9.4 If any Goods are used/secondhand, it is recommended that digital images are taken prior to preparing such Goods for transport. Safefreight reserves the right to request photographic evidence before and after delivery of any alleged damage that may have been caused to the Goods by Safefreight during or upon delivery, should a claim be made.
- 9.5 Furthermore, no damaged Goods are to be destroyed or disposed of by the Customer, without written consent of Safefreight.

10. CLIENT'S RESPONSIBILITY

10.1 **Owner of the Goods:**

- (a) The Customer expressly warrants to Safefreight that the Customer 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 carriage and/or storage; and
- (b) By entering this Contract, the Customer accepts these conditions of carriage for the Consignee as well as for all other persons on whose behalf the Customer is acting; and
- (c) The Customer or Customer's authorised agent agrees to comply with all applicable laws and government regulations of any country to, from, through or over which the Goods may be carried.

10.2 **It is the Customer's sole responsibility to:**

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- (a) Address adequately each consignment relating to the nature, packaging, labelling, or carriage of Goods, and to provide written delivery instructions to enable effective delivery; and
- (b) Bear and pay all duties, taxes, fines, imposts, expenses, or losses (including freight for any additional carriage) incurred or suffered by reason of any failure to so comply, or by reason of any illegal, incorrect or insufficient weighing, marking, number or addressing of the Goods or Containers or any breach of the laws of any country through or to which the Goods may travel and agrees to indemnify Safefreight in relation to the same.

10.3 **Customer Packed Containers:**

- (a) The Customer will be responsible for sealing their Container, prior to the commencement of the carriage, except where it is agreed that Safefreight will complete the sealing of the Container; and
- (b) If a Container has not been stowed by, or on behalf of, Safefreight, Safefreight shall not be liable for loss of or damage to the Goods caused by:
 - (i) The way the Container has been stowed; or
 - (ii) The unsuitability of the Goods for carriage or storage in Containers; or
 - (iii) The unsuitability or defective condition of the Container.

10.4 **Nomination Of Sub-Contractor:**

- (a) The Customer hereby authorises Safefreight (if it should think fit to do so) to arrange with a Sub-Contractor for the carriage of any Goods by any route, means and carrier, for the storage, packing, trans-shipment, unloading or handling of the Goods by any person at any place and for any length of time, and for such other matters as in the opinion of Safefreight may be necessary or desirable to the performance of the Services; and
- (b) The Customer shall be bound by the terms of any consignment note, airway bill, Bills of Lading or other contractual transport document which Safefreight may receive for the Goods, or for any package, unit, or Container in which the Goods may be packed, whether by the Customer, Safefreight, or any other person; and
- (c) Any such arrangement shall be deemed to be ratified by the Customer upon delivery of the said Goods to such Sub-Contractor, who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as Safefreight; and
- (d) In so far, as it may be necessary to ensure that such Sub-Contractor shall be so entitled, Safefreight shall be deemed to enter this Contract for its own benefit and as agent for the Sub-Contractor.

11. SAFEFREIGHT'S SERVANTS OR AGENTS

- 11.1 The Customer undertakes that no claim or allegation shall be made against any servant or agent of Safefreight 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, the Customer agrees to indemnify Safefreight and any such servant or agent against all consequences thereof.
- 11.2 **Time Bar:** Notwithstanding clause 11.1, the Customer acknowledges and accepts that Safefreight or any servant, agent, employee, or sub-contractor shall be discharged from all liability (if any), unless suit is filed and served on Safefreight or any servant, agent, employee, or sub-contractor within 9 months (except as defined by statute or convention) after the completion of the Services, delivery of the Goods or the date when the Goods should have been delivered, whichever is the earlier and for the sake of clarity sections 273 to 280 of the Contract and Commercial Law Act 2017 shall not apply to this Contract.

12. DEFAULT

- 12.1 In any event, Safefreight reserves the right to charge the Customer interest in respect of the late payment of any sums due under this Contract, which will be calculated and cumulated monthly, at the rate of two and a half percent (2.5%) per calendar month, from the due date until receipt of payment, and prior, to any judgement being awarded by a court of law.
- 12.2 Safefreight shall be entitled to suspend or cancel all or any part of this Contract and/or any other contract or contracts with the Customer, in addition to its other remedies, upon the happening of any of the following events of default:
 - (a) If any amounts payable by the Customer to Safefreight are overdue; or
 - (b) If the Customer breaches, or fails to comply or repudiates, any obligation under this Contract or any other subsequent contract with Safefreight; or
 - (c) The Customer intimating that they will not pay any sum by the due date; or
 - (d) The Customer dies, becomes insolvent or subject to bankruptcy laws, calls a meeting of creditors, or if a company – enters into an arrangement with creditors or makes an assignment/compromise for the benefit of its creditors, or receivers, managers, liquidators (provisional or otherwise), administrators or any similar party is appointed in respect of the Customer (or any asset of the Customer), has any winding up petition presented against, or ceases to carry on business; or
 - (e) If the Customer ceases or threatens to cease carrying on business; or
 - (f) If the ownership or effective control of the Customer is transferred, or the nature of the Customer's business is materially altered.
- 12.3 Whether this Contract is ended by mutual agreement or due to any breach by the Customer, all monies owed by the Customer (including any interest or costs due) to Safefreight shall become immediately due and payable. Without limiting the effect of this clause 12.3 it shall survive the end of this Contract, and any other terms and conditions which by their nature are intended to survive.
- 12.4 Notwithstanding clause 12.1, it is further agreed that if the Customer owes Safefreight any money, the Customer shall indemnify Safefreight from and against all costs and disbursements incurred by Safefreight in recovering the debt, such as, any

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legal costs on a solicitor and own client basis or internal administration fee (which may include bank dishonour charges that Safefreight has incurred from their banking institute for dishonours or chargebacks) or any collection fees if a debt is passed to a recognised Debt Collection Recovery Agency.

13. PERSONAL PROPERTY SECURITIES ACT 1999 (“PPSA”)

- 13.1 The Customer will provide such information and do such acts and execute such further documents as in the opinion of Safefreight may be necessary or desirable to enable Safefreight to perfect under the PPSA the security interest created by these terms and conditions.
- 13.2 Safefreight may do all things which it thinks desirable to remedy any default (overdue monies) owed by the Customer, or the Consignee, Consignor, or owner where in respect of such Goods or otherwise protect the Goods held or stored for the security interest created by these terms and conditions.
- 13.3 The Customer irrevocably appoints Safefreight to be the Customer’s attorney to do anything which Safefreight agrees to do under these terms and conditions and anything which the attorney thinks desirable to protect Safefreight’s interests under these terms and conditions and the Customer ratifies anything done by an attorney under this clause. The Customer agrees sections 114(1)(a), 133 and 134 of the PPSA shall not apply to these terms or the security under these terms and conditions.
- 13.4 The Customer waives the Customer’s right to receive a copy of the verification statement confirming registration of a financing statement or a financing change statement relating to the security interest created by these terms and conditions.
- 13.5 The Customer agrees that none of the Customer’s rights as debtor under sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA shall apply to these terms and conditions.
- 13.6 The Customer also agrees that where the Customer has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.
- 13.7 The Customer must not change the Customer’s name without first notifying Safefreight of the new name not less than 7 Business Days before the change takes effect.
- 13.8 The Customer must not allow or permit the creation of a lien over any of the Goods.

14. SECURITY AND CHARGE

- 14.1 The Customer acknowledges and accepts that by accepting these terms and conditions, it charges all its rights, title, and interest (whether joint or several) in any land, realty, or other assets capable of being charged (including, but not limited to, the payment of any money), owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions. The Customer acknowledges and agrees that Safefreight (or Safefreight’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.
- 14.2 The Customer irrevocably appoints Safefreight and each director of Safefreight as the Customer’s true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Customer’s behalf.

15. PRIVACY POLICY

- 15.1 In accordance with the Privacy Act 2020 and full disclosure, Safefreight has advised the Customer that Personal Information will be collected, handled, used, and stored about the Customer during the business relationship and thereby, the Customer grants consent to Safefreight to proceed with any inquiries with any third party necessary for the following purposes:
 - (a) Assessing the Customer’s credit risk (if any);
 - (b) Administering the Customer instructions;
 - (c) Receiving information from one or more credit reference agencies, relating the credit record and repayment history of the Customer;
 - (d) Disclosing credit-related information to, and using the credit services of, one or more credit reference agencies, on a continuing basis at any time and entirely at its discretion concerning the Customer’s creditworthiness.
- 15.2 For the avoidance of doubt, all authorities given above are continuing authorities, to apply throughout the duration of the term of Safefreight and Customer’s trading relationship.
- 15.3 The Customer, if an individual, has a right of access to Personal Information about the Customer held by Safefreight and may request correction of the information.
- 15.4 Safefreight agrees to destroy Personal Information upon the Customer’s request in writing (or email) or if the Personal Information is no longer required unless it is required to fulfill the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 15.5 If any Customer believes their privacy has been breached in any way, then a privacy complaint can be made to Safefreight’s Privacy Officer via **email** at: jude@safefreight.nz or **post** to: The Privacy Officer, Safefreight Limited, 8 Parkhead Place, Rosedale, Auckland 0632. Safefreight will respond to that complaint within 7 days of its receipt, should more time be needed to investigate the complaint then Safefreight will undertake to decide on a resolution as to the complaint within 20 days of the original date of receipt. If the Customer is not satisfied with the resolution provided by Safefreight, the Customer can make a complaint to the Privacy Commissioner at www.privacy.org.nz.
- 15.6 For the purposes of this clause 15, Personal Information has the meaning given to it in the Privacy Act 2020.

16. CONFIDENTIALITY AND CONFLICT OF INTEREST

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- 16.1 The Customer assumes liability for all loss or damage suffered by Safefreight because of breach of confidentiality undertaken by itself, or its employees or agents.
- 16.2 Neither party will use the other party's confidential/personal information without prior written consent (including manuals and other materials and aids), except strictly for the purposes contemplated by this Contract, and a party may only disclose the other party's confidential/personal information:
- (a) If required by law;
 - (b) To exercise their rights under this Contract;
 - (c) If necessary to perform their obligations under this Contract;
 - (d) If the other party has provided their written consent to the disclosure;
 - (e) If the confidential/personal information is already in the public domain (otherwise than because of disclosure in breach of this Contract).
 - (f) Safefreight is obliged to remain vigilant to, and to advise the Customer of, any conflict of interest that may potentially impact or harm the Customer. To avoid conflict of interest and commercial sensitivities, it is agreed by Safefreight that all information regarding the Customer (and their business, commercial agenda and employees and shall always remain confidential) shall only be disclosed upon written consent or if required by law.
- 16.3 The obligations of confidentiality shall survive the termination or cancellation of this Contract between the Customer and Safefreight.
- 16.4 The Customer agrees to indemnify Safefreight on a continuing, full indemnity basis from and against any liability, loss, expense, and demand for or arising from any false, misleading, non-descriptive representation or statement made by the Customer in respect of the Goods to any third party (including but not limited to, in New Zealand where Goods are subject to customs inspection and any costs imposed on Safefreight if any Goods are held in detention by customs). The indemnity survives termination of this Contract.

17. CANCELLATION

17.1 **By Safefreight:**

- (a) May occur at any time before the Services are carried out by giving 7 Business Days written notice; and
- (b) Safefreight will repay to the Customer any money paid by the Customer for the Services, less any amounts owing to Safefreight incurred on the Customer's behalf; and
- (c) Safefreight shall not be liable for any loss or damage whatsoever arising from such cancellation.

17.2 **By the Customer:**

- (a) Prior to pick-up or Delivery of the Goods, by giving no less than 7 Business Days written notice; and
- (b) Any costs incurred by Safefreight, up to the time of cancellation on the Customer's behalf, remain the responsibility and obligation of the Customer to indemnify Safefreight (including, but not limited to, loss of profit) within 7 Business Days of the date of invoice issued by Safefreight.

18. GENERAL LIEN

- 18.1 All Goods shall immediately, once the Goods are in Safefreight's possession, be subject to a particular and general lien and Safefreight may hold such Goods and documents relating to the Goods until the Customer has fully paid all amounts the Customer owes Safefreight under these terms:
- (a) If payment is not received within 7 Business Days of the due date for payment, without prejudice to any other remedies available to Safefreight, Safefreight may, at Safefreight's discretion:
 - (i) Remove any Goods and store them in such a place and in such manner as Safefreight thinks fit at the Customer's expense, or
 - (ii) Sell the Goods (by public auction or private treaty after giving notice to the Customer) or part thereof, at the Customer's expense, and on such terms, as Safefreight thinks fit, and apply the proceeds towards payment of the outstanding amount (including any costs associated with the sale) or where payment in full is cleared, Safefreight shall disburse any surplus from the proceeds to the entitled person; and
 - (b) If Safefreight deems the Goods to be unsaleable or dangerous, Safefreight shall dispose of the Goods as Safefreight thinks fit, and in all cases without any liability to the Customer.

19. OTHER LEGISLATION

- 19.1 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the Contract and Commercial Law Act 2017 (including Sections 10, 18 to 27 of the Act), Consumer Guarantees Act 1993, the Fair Trading Act 1986, Part 9A of the Civil Aviation Act 1990 (carriage of Goods by air), Part 16 and Schedule 5 of the Maritime Transport Act 1994 (carriage of Goods by sea) except to the extent permitted by those Acts where applicable.

20. LIMITATION OF LIABILITY

- 20.1 Liability of Safefreight arising out of any one incident whether there has been any declaration of value of the Goods, or breach of warranty implied into these terms and conditions by the Contract and Commercial Law Act 2017 or howsoever arising, is limited to the maximum extent permitted by law, to the lesser of:
- (a) NZ\$100; or
 - (b) The cost of re-supplying the handling of the Goods; or

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- (c) Where the Customer is a consumer as defined in the Consumer Guarantees Act 1993 then the Customer shall also be entitled to the replacement value of the Goods; or
 - (d) Section 259 (at **limited carrier's risk or declared value risk**), where the Contract and Commercial Law Act 2017 applies.
- 20.2 If the Goods are to be carried under a Contract of carriage as:
- (a) "**at owner's risk**" this shall mean that Safefreight will pay no compensation if the Goods are lost or damaged unless Safefreight intentionally loses or damages them, in which case this Contract will be a Contract for carriage "**at owner's risk**" under which Safefreight shall not be liable for the loss of or damage to any Goods except where the loss or damage is intentionally caused by Safefreight; or
 - (b) "**on declared terms**" this shall mean Safefreight will be liable for the loss of or damage to any Goods in accordance with the precise terms of the Contract.
- 20.3 In any case ("at owner's risk" or "on declared terms", but subject to any applicable limitation or requirement in the Contract and Commercial Law Act 2017 or the Contract):
- (a) Safefreight shall not be under any liability, howsoever caused or arising and (without limiting the generalisation of the clause 20.2) whether caused or arising as a result of the negligence of Safefreight or otherwise for any damage to, (including but not limited to, any wall or wall covering, floor or floor covering, fixture or fitting, the structure of any building or any road, footpath, driveway, stairs or other means of access to any building from or to which the Goods are removed or delivered) loss, deterioration, mis-delivery, delay in delivery or non-delivery of the Goods (whether the Goods are or have been in the possession of Safefreight 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 Customer agrees to indemnify and keep indemnified Safefreight against all claims of any kind of loss or liability and all actions, suits, proceedings, claims, demands, costs and expenses whatsoever (without limiting the generalisation of the clause 20.2), whether caused or arising because of the negligence of Safefreight or otherwise, brought by any other person or incurred by Safefreight arising in whole or in part directly or indirectly because of or in connection with:
 - (i) A breach of any warranties;
 - (ii) Any steps taken by Safefreight, which were in its opinion necessary, at the time or desirable to protect the Goods;
 - (iii) Any damage or trespassing to the property of any other person occurs during the provision of the Services of packing, removing, transporting, delivery and/or storing the Goods.

21. FORCE MAJEURE

- 21.1 Both parties are freed from any liability or obligations, if a Force Majeure event occurs:
- (a) The obligations of a party under this Contract will be suspended to the extent that it is wholly or partially precluded from complying with its obligations under this Contract by Force Majeure; and
 - (b) A party affected by Force Majeure must notify the other party as soon as practicable of the Force Majeure and the extent to which that party is unable to comply with its obligations; and
 - (c) If a failure or delay in performance exceeds 60 calendar days, either party may immediately terminate this Contract by written notice to the other party.
- 21.2 Notwithstanding clause 21.1, shall excuse payment of any amount owing, due or which becomes due by the Customer under the terms of this Contract.

22. MISCELLANEOUS

- 22.1 **Notices for Service:** must be in writing and addressed to Safefreight, signed by the Customer or the Customer's authorised representative, and sent to Safefreight's address (or such other address as Safefreight may specify in writing) stated herein as Safefreight Limited, 8 Parkhead Place, Rosedale, Auckland 0632.
- 22.2 **Disputes:** Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by mediation before resorting to any external dispute resolution mechanisms (including arbitration, in accordance with the Arbitration Act 1996 or any re-enactment or amendment thereof or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees.
- 22.3 **Jurisdiction:**
- (d) If any term or obligation of this Contract is at any time held by any jurisdiction to be negated, invalid or unenforceable, then it shall be treated as changed or reduced, only to the extent minimally necessary to bring it within the laws of that jurisdiction and to prevent it from being void and it shall be binding in that changed or reduced form. Subject to that, each provision shall be interpreted as severable and shall not in any way affect any other provision covered in these terms and conditions; and
 - (e) The legality, construction and performance of this Contract shall be governed by the laws of New Zealand. The Customer agrees that any dispute arising from the Contract between the two parties that cannot reasonably be resolved by mediation shall then be litigated only, by the jurisdiction of the Auckland Courts of New Zealand.
- 22.4 Where the Customer has acquired the Services for the purposes of a business or held itself out as acquiring the Services for the purposes of a business, the Consumer Guarantees Act 1993 does not apply to the supply of Services and Safefreight's liability under the Act is excluded.
- 22.5 The Customer cannot licence or assign this Contract without the written permission of Safefreight.

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- 22.6 Safefreight may assign (including but not limited to, subcontracting out any part of the Services), encumber, declare a trust over or otherwise deal with its rights under this Contract without the Customer's consent and the Customer must do, and must ensure, that the Customer's personnel do anything necessary (including execute any document), that Safefreight may reasonably require to give full effect to this clause, nonetheless, in doing so Safefreight shall not be relieved from any liability or obligation under this Contract.
- 22.7 Safefreight reserves the right from time to time to amend their terms and conditions, but for disclosure purposes any amendments shall always be provided in writing to the Customer and/or notified by email that the updated terms and conditions are posted and ready for viewing on Safefreight's website. The amended terms and conditions take effect for any new contracts from when the Customer accepts the updated terms and conditions and/or from when the Customer asks Safefreight to supply additional Services.
- 22.8 Without limiting the effect of clauses 12 (**Default**), 16 (**Confidentiality**), 17 (**Cancellation**), 18 (**Lien**), 20 (**Limitation of Liability**), 22.1 (**Notices**) survive the end of this Contract, and any other terms and conditions which by their nature are intended to survive.

23. DEFINITIONS AND INTERPRETATION

23.1 In this Contract, unless the context otherwise requires capitalised terms have the meaning set out below:

- (a) "**Business Days**" means a day on which banks are open for business in New Zealand other than a Saturday, Sunday, or public holiday.
- (b) "**Charges**" means the Charges due under this Contract for the supply of Goods and/or Services as agreed between Safefreight and the Customer **and does not include** any Goods and Services Tax ("**GST**") payable, unless in accordance with clause 2.
- (c) "**Customer**" means the person/s, entities (including but not limited to, partnerships and/or a trust and where applicable shall include the Customer's executors, administrators, successors and permitted assigns and/or the owner, shipper and Consignee of the Goods or whom may become interested in the Goods) or any person acting on behalf of and with the authority of the Customer requesting Safefreight to provide the Services as specified in any quotation, order, invoice, or other documentation.
- (d) "**Confidential Information**" means any information:
- (i) Relating to this Contract;
 - (ii) Relating to a quotation, order or proposal or its contents;
 - (iii) Relating to a Customer of Safefreight;
 - (iv) Disclosed by either party to the other party on the express basis that such information is confidential; or
 - (v) Which might reasonably be expected by either party to be confidential in nature.
- Provided that, where information relates exclusively to one party, nothing in this Contract will require that party to maintain confidentiality in respect of that information.
- (e) "**Consignee**" shall mean the person to whom the Goods are to be delivered by way of Safefreight's Services.
- (f) "**Consignment Note**" means that the person delivering any Goods to Safefreight for carriage or forwarding is authorised to sign the Consignment Note for the Customer.
- (g) "**Container**" means any Container, trailer, pallet or other packaging or article used to carry, consolidate, store and any equipment of or connected thereto.
- (h) "**Contract**" means this Contract, inclusive of its terms and conditions contained herein, its schedules and annexures or any quotation, proposal, invoice, or document that forms part thereof and/or is deemed to be supplementary to this Contract.
- (i) "**Dangerous Goods**" means cargo which is volatile, explosive or which may become dangerous, flammable or offensive (including but not limited to, explosives, flammable gases, flammable liquids, flammable solids, oxidizing, toxic & infectious, radioactive, corrosives or goods harbouring or likely to harbour or encourage vermin, borer, or other pests) or any substance which may become liable to damage any person or property whatsoever or any other goods listed as such, on Safefreight's website from time to time.
- (j) "**Force Majeure**" means an event outside the reasonable control of either party, including an act of God, earthquake, adverse weather conditions, flood, storm, fire, explosion, war, rebellion, terrorism, strike, lock-out, industrial action national or global epidemics or pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government quarantine restrictions for Goods or individuals, etc.
- (k) "**Safefreight**" means Safefreight Services Limited, its successors, and assigns.
- (l) "**Goods**" and "**Cargo**" have the same meaning as in Part 5, Contract & Commercial Law Act 2017, together with any Container, packaging, or pallet(s) to be moved from one place to another by way of Safefreight's Services, or for storage by Safefreight. Safefreight provides to the Customer as specified in any Contract, quotation, proposal, order, or any other documentation.
- (m) "**GST**" means Goods and Services Tax (GST), as defined within the Goods and Services Tax Act 1985.
- (n) "**Personal Information**" means information about an identifiable individual by ways of their name, address, D.O.B., occupation, driver's license details, electronic contact type details, such as, email, IP Address, social media such as: Facebook, or Twitter, or next of kin and any other contact information (if applicable) and were deemed relevant shall include any previous credit applications or credit reporting details. By the nature of such information, it shall always be considered Confidential Information.

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- (o) **“Perishable Goods”** means any Goods liable to waste, deterioration, or spoilage, and includes without limitation fruit, vegetable, dairy products, meat, and animals.
- (p) **“PPSA”** means Personal Property Securities Act 1999.
- (q) **“Services”** shall mean all Services supplied by Safefreight to the Customer to facilitate the movement of Goods from one place to another by Safefreight as may be requested by the Customer from time to time (including, but not limited to, anything done or to be done in relation to the Goods, or the provision of the Services ancillary to the Goods such as moving, storing or leaving the Goods at any warehouse, yard, terminal, wharf or other place or area, loading or unloading the Goods from any vehicle, vessel or other conveyance, stowing or packing the Goods, or fumigating, transshipping, or otherwise handling the Goods, storage and distribution services or anything else done in relation thereto, including the offering of any advice or recommendations, as described on the quotations, invoices, consignment note, airway bills, Bills of Lading, manifests, sales order, or any other forms as provided by Safefreight to the Customer.
- (r) **“Sub-Contractor”** shall mean and include:
 - (i) Railways or airways operated by the Commonwealth or any state or any other country or by any corporation; or
 - (ii) Any other person, firm, or Safefreight with whom Safefreight may arrange for the carriage or storage of any Goods the subject of the Contract; or
 - (iii) Any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in clause 23(r)(i) and 23(r)(ii).
- (s) **“Valuables”** includes but are not limited to bullion, coin, negotiable instruments, securities of any kind, precious stones, jewellery, antiques and works of art.