

1 Definitions

- 1.1 “Company” means Forex Umac Express Cargo NZ Limited, and its successors and assigns, or any person acting on behalf of, and with the authority of, Forex Umac Express Cargo NZ Limited.
- 1.2 “Sub-Contractor” means and includes:
- (a) railways or airways operated by the Commonwealth or any state or any other country or by any corporation; or
 - (b) any other person or entity with whom the Company 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 sub-contractor of any of the persons referred to in sub-clauses (a) and (b).
- 1.3 “Shipper” means any person/s requesting the Company to provide the Services (or person/s acting on behalf of and with the authority of the Shipper) as specified in any invoice, document or order, and if there more than one person requesting the Services is a reference to each person jointly and severally.
- 1.4 “Consignee” shall mean the person (and person/s acting on behalf of and with the authority of the Consignee) to whom the Goods are to be delivered by way of the Company’s Services.
- 1.5 “Services” means all services provided by the Company to the Shipper (including, but not limited to, anything done or to be done in relation to the Goods, or the provision of any services ancillary to the Goods such as transporting, 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, or anything else done in relation thereto), including the offering of any advice or recommendations.
- 1.6 “Goods” means cargo or shipment together with any container, packaging, or pallet(s) to be moved from one place to another by way of the Company’s Services.
- 1.7 “Charges” means the cost of the Services as agreed between the Company and the Shipper subject to clause 5 of this contract.
- 1.8 “Shipper’s Export Declaration and Packing List” means the Company export declaration and packaging list is non-negotiable and the Shipper acknowledges that it has been prepared by the Shipper and/or the Company on behalf of the Shipper. The Shipper warrants that it is the owner of the Goods transported hereunder, or that it is the authorised agent of the owner of the Goods, and that the Shipper hereby accepts the Company’s Terms and Conditions for itself and acts as agent for and on behalf of any other person having interest in the Goods.

2 Acceptance

- 2.1 By tendering Goods and personal effects for shipment from Auckland, New Zealand to the Philippines via Forex Umac Express Cargo NZ Ltd (“Company”), the Shipper agrees to the Terms and Conditions stated herein, no agent or employee of the “Company” or the Shipper may alter these Terms and Conditions.
- 2.2 The Shipper is taken to have exclusively accepted and is immediately bound, jointly and severally, by these Terms and Conditions if the Shipper places an order for, or accepts, Services provided by the Company.
- 2.3 These Terms and Conditions are to be read in conjunction with the Company’s quotation, consignment note, agreement, airway bills, manifests, or any other forms as provided by the Company to the Shipper. If there are any inconsistencies between these documents, then the Terms and Conditions contained in this document shall prevail. In the absence of manifest error, a written notice by the Company of the charges due and payable shall be conclusive evidence of the same.
- 2.4 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.5 Any time specified by the Company for provision of the Services is an estimate only and the Company will not be liable for any loss or damage incurred by the Shipper as a result of any delay. However, both parties agree that they shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties. In the event that the Company is unable to provide the Services as agreed solely due to any action or inaction of the Shipper then the Company shall be entitled to charge a reasonable fee for re-providing the Services at a later time and date.
- 2.6 The Shipper warrants that each article in the Goods is properly described on this Export Declaration and Packing List and has not been declared by the Company to be unacceptable for transport, and that the Goods are properly marked, addressed, and packed to ensure that safe transportation with ordinary care in handling.
- 2.7 The Shipper hereby acknowledges that the Company may abandon and/or release any items consigned by the Shipper to the Company which the Company has declared to be unacceptable or which the Shipper has undervalued for Customs purposes or mis-described hereon, whether intentionally or otherwise, without incurring any liability whatsoever to the Shipper and the Shipper will save and defend, indemnify and hold the Company harmless from all claims, damages, fines and expenses arising therefrom.
- 2.8 The Shipper shall be liable for all the cost and expenses related to the Goods and for costs incurred in either returning the Goods to the Shipper or warehousing the Goods pending disposition.

3 Authorised Representatives

- 3.1 Unless otherwise limited as per clause 3.2, the Shipper agrees that should the Shipper introduce any third party to the Company as the Shipper’s duly authorised representative, that once introduced that person shall have the full authority of the Shipper to order any Services, and/or any variation thereto, on the Shipper’s behalf (such authority to continue until all requested Services have been completed or the Shipper otherwise notifies the Company in writing that said person is no longer the Shipper’s duly authorised representative).
- 3.2 In the event that the Shipper’s duly authorised representative as per clause 3.1 is to have only limited authority to act on the Shipper’s behalf then the Shipper must specifically and clearly advise the Company in writing of the parameters of the limited authority granted to its representative.
- 3.3 The Shipper specifically acknowledges and accepts that it will be solely liable to the Company for all additional costs incurred by the Company (including the Company’s profit margin) in providing any Services, or variation/s thereto, requested by the Shipper’s duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

4 Change in Control

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

5 Charges and Payment

- 5.1 At the Company's sole discretion the Charges shall be either:
- (a) as indicated on invoices provided by the Company to the Shipper in respect of Services provided; or
 - (b) as calculated by weight, measurement or value of the Goods as at the date of provision of the Services, according to the Company's current pricelist; or
 - (c) the Company's quoted Charges (subject to clause 5.2) which shall be binding upon the Company provided that the Shipper shall accept in writing the Company's quotation within thirty (30) days.
- 5.2 The Company reserves the right to change the Charges:
- (a) if a variation to the Company's quotation is requested or required (including as to the nature or quantity of the Goods, nature and location of the collection and/or delivery address, facilities available for packing, loading or unloading, weather conditions or delays beyond the control of the Company, delivery times or date or otherwise, etc.); or
 - (b) to reflect any increases to the Company in the cost of providing the Services which are beyond the reasonable control of the Company (including, without limitation, increases in the cost of labour or materials, foreign exchange fluctuations, or increases in fuel, fuel levies, taxes or customs duties or insurance premiums or warehousing costs); or
 - (c) for any delay over thirty (30) minutes in either loading and/or unloading (commencing from when the Company reports for loading or unloading), occurring other than from the Company's default; or
 - (d) where the Charges is calculated by weight, measurement or value, the Company may at any time re-weigh, or re-value or re-measure or require the Goods to be re-weighed, or re-valued or re-measured and charge proportional additional freight accordingly.
- 5.3 At the Company's sole discretion, a non-refundable deposit shall be required upon request. The deposit amount or percentage of the Charges due will be stipulated at the time of the order of the Services and shall become immediately due and payable. Requests for empty boxes will be subject to additional Charges where empty boxes are not available for dispatch within one (1) year period.
- 5.4 Time for payment for the Services being of the essence, the Charges will be payable by the Shipper on the date/s determined by the Company, which may be:
- (a) on delivery of the Goods; or
 - (b) by way of instalments in accordance with the Company's payment schedule; or
 - (c) twenty (20) days following the end of the month in which a statement is posted to the Shipper's address or address for notices; or
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice furnished to the Shipper by the Company.
- 5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Shipper and the Company.
- 5.6 Unless otherwise stated the Charges does not include GST. In addition to the Charges the Shipper must pay to the Company an amount equal to any GST the Company must pay for any provision of Services by the Company under this contract or any other agreement. The Shipper must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Shipper pays the Charges. In addition, the Shipper must pay any other taxes and duties that may be applicable in addition to the Charges, except where they are expressly included in the Charges.
- 5.7 Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised, and until then the Company's ownership or rights in respect of the Services, and this contract, shall continue.
- 5.8 The Shipper shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to the Shipper by the Company nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.9 Every special instruction to the effect that the Charges shall be paid by the Consignee shall be deemed to include a stipulation that if the Consignee does not pay the said charges within the specified date for payment, then the Shipper shall be liable for, and shall pay to the Company, the said charges, together with an account transfer fee.

6 Provision of the Services

- 6.1 All Goods are carried or transported, and any other services are performed, by the Company subject only to these conditions, and the Company reserves the right to refuse the carriage or transport of Goods for any person, corporation or body, and the carriage or transport of any class of Goods at its discretion.
- 6.2 *Freight Forwarding*
- (a) the Shipper authorises the Company (in its discretion at any time without notice to the Shipper) to:
 - (i) license or sub-contract all or any part of its rights and/or obligations, entering into contracts and arranges with any third party to perform or carry out the Services (or any part thereof). In so engaging such third parties, the Company has or will represent to such third parties that the terms of this contract, including the benefit of any terms conferred upon the Company, shall extend to such third parties in providing their goods and/or services;
 - (ii) deviate from the usual, customary, intended or advertised route (whether or not the nearest and/or most direct and/or customary) or manner of carriage of Goods that may be deemed reasonable or necessary in the circumstances, including stay at any place whatsoever once or more often in any order backwards or forwards and/or store the Goods at any such place for any period whatsoever;
 - (iii) the Shipper shall be bound by the terms of any consignment note, air waybill or other contractual document which the Company may receive for the Goods, or for any package, unit or container in which the Goods may be packed, whether by the Shipper, the Company, or any other person.
- 6.3 Except to the extent that any of the Services require the Company to act as a freight forwarder, the Company shall act as a forwarding agent only.
- 6.4 The Company's Charges shall be considered earned as soon as the Goods are loaded and despatched with the exception of where empty containers are supplied, a deposit must be paid and additional Charges will apply if pick-up and dispatch does not occur with the time period stipulated in clause 5.2.

7 Shipper-Packed Containers

- 7.1 Subject to any written special instructions to the contrary:

- (a) the Shipper is solely responsible for the safe and proper packaging of the Goods (including the manner in which the Goods have been packed, the suitability of the Goods for carriage or manner or packaging and/or the condition of the packaging, etc.) and for any loss suffered or incurred by any person (including the Shipper) through any such failure;
- (b) the Company is not obliged to pack the Goods or to provide any plant, power or labour required for loading and/or unloading of the Goods.

8 Shipper's Responsibility

- 8.1 The Shipper expressly warrants, represents, confirms and/or acknowledges that:
- (a) the Company has relied upon the Shipper accurately labelling and fully and accurately describing the Goods in writing (including name, nature and value of all articles subject to special rates of carriage or of a noxious, dangerous, hazardous or inflammable nature or capable of causing damage or injury to any other goods, or property or to any persons or animals (and additional freight charges shall be paid on such articles if deemed necessary by the Company), weight, measure, standard, strength, quantity, quality, figures and dimensions). Accordingly, the Company accepts no liability for any discrepancy that may arise with the description;
 - (b) the Company has relied upon the Shipper's skill in properly and safely packing, securing and preparing the Goods, and that the Shipper has complied with all applicable laws and regulations (including those relating to the packing, carriage, storage, customs clearance, delivery of other services in respect of the Goods, etc.) and shall furnish such information and provide such documents as may be necessary to comply with such laws and regulations;
 - (c) the Shipper is either the owner or the authorised agent of the owner of any Goods or property that is the subject matter of this contract, and by entering into this contract the Shipper accepts these terms and conditions for the Consignee as well as for all other persons on whose behalf the Shipper is acting;
 - (d) the Goods are fit for carriage, having undertaken due and careful enquiry the Goods are not dangerous, illegal, hazardous and do not contain any substance resulting in risks not readily apparent from the Shipper's description of the Goods. ;
 - (e) the person handing over the Goods to the Company is authorised to sign and accept these terms and conditions;
 - (f) it is the Shipper's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery.
- 8.2 Failure by the Shipper to comply with clause 8.1 shall render the Shipper liable for any loss or damage caused to, or by, the Goods, and acceptance of the Goods by the Company without discovery of any such defect or lack, shall not exclude or diminish any liability on the part of the Shipper.

9 Dangerous Goods

- 9.1 The Shipper warrants that the Goods are not noxious, hazardous, inflammable, explosive or likely to cause damage.
- 9.2 In the event that the Goods are found to be noxious, hazardous, inflammable, explosive or likely to cause damage:
- (a) the Shipper, and any person delivering the Goods to the Company, or causing the Company to handle or deal with the Goods, shall be liable for any loss or damage caused by the Goods or by their nature, and shall indemnify and keep indemnified the Company against all loss, damages, claims and costs incurred by the Company in connection therewith, and
 - (b) the Goods may be destroyed or otherwise dealt with as determined by Company in its absolute discretion at the expense of the Shipper or by any other person in whose custody they may be at the relevant time also at the expense of the Shipper, and neither the Company nor any such other person shall incur any liability whatsoever to the Shipper in relation to any action taken by them concerning the Goods.
- 9.3 For the purposes of this Clause 9, the expression "likely to cause damage" includes goods likely to harbour or encourage vermin or other pests or which fall within the definitions of "hazardous" or "dangerous" goods in any legislation governing carriage by rail, road, sea or air in New Zealand.
- 9.4 The Company reserves the right to refuse transport of commercial goods (more than a dozen of any kind) of the following items:
- (a) Currency;
 - (b) Precious Metals;
 - (c) Precious Stones;
 - (d) Fire arms & Ammunitions;
 - (e) Explosives / Toy guns;
 - (f) Money Orders;
 - (g) Traveller's Cheques;
 - (h) Perishables;
 - (i) Negotiable instruments in Bearer form;
 - (j) Electrical Appliances;
 - (k) Lewd, Obscene, or Pornographic, Materials;
 - (l) Gambling Paraphernalia;
 - (m) Industrial carbons and Diamonds;
 - (n) Communication Equipment and Computers;
 - (o) Combustible Materials / Hazard goods;
 - (p) Microwave ovens;
 - (q) Property of the carriage of which is prohibited by law, regulation or statute of any federal state or local government or any country from, to or through which the shipment may be carried.

10 Insurance

- 10.1 The Shipper acknowledges that:
- (a) the Goods are carried and stored at the Shipper's sole risk and not at the risk of the Company; and
 - (b) the Company is under no obligation to arrange insurance of the Goods, and it remains the Shipper's responsibility to ensure that the Goods are insured adequately or at all; and
 - (c) under no circumstances will the Company be under any liability with respect to the arranging of any such insurance, and no claim will be made against the Company for failure to arrange or ensure that the Goods are insured adequately or at all.

11 Delivery of the Goods

- 11.1 The Company shall be deemed to duly deliver the Goods, and discharge its obligations hereunder, by delivering the Goods to a person and location authorised or directed by the Shipper in writing, or at any other location directed by the Shipper orally. In the event the Company is unable to deliver the Goods due to the Consignee not being in attendance at the delivery address during normal trading hours:
- (a) an additional charge may be made (at the Company's current rates) for each attempt for re-delivery until delivery is accomplished;
 - (b) the Company may hold the Goods as bailee, and shall be entitled to receive storage fees (at the Company's current rates), and as bailee shall not be under any liability for any loss of, or damage to, the Goods, howsoever caused, while in the possession of the Company
 - (c) the Company may (at the Company's sole discretion) return the Goods to the Shipper at the risk and expense of the Shipper.
- 11.2 The Company shall have no liability, implied or otherwise, in respect of COD payments which may be collected by any of its servants or agents on behalf of the Shipper or any of its clients when making deliveries, and if, notwithstanding this clause, any such liability does attach to the Company, then the Shipper will indemnify the Company in respect of any such liability.
- 11.3 While the Company will endeavour to exercise its best efforts to provide expeditious delivery in accordance with regular schedules, the Company WILL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE FOR DELAY IN PICK-UP, TRANSPORTATION OR DELIVERY OF ANY GOODS, REGARDLESS OF THE CAUSE OF SUCH DELAY.

12 Loss or Damage

- 12.1 This contract is "at limited carrier's risk" unless:
- (a) the Shipper has agreed in writing that the Goods are to be carried at 'owner's risk', which means the Company will pay no compensation if the Goods are lost or damaged unless the Company intentionally loses or damages the Goods; and
 - (b) subject to any statutory provisions imposing liability in respect of the loss of or damage to the Goods, the Company shall not be under any liability, howsoever caused or arising, and (without limiting the generality of the forgoing) whether caused or arising as a result of the negligence of the Company or otherwise 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 the Company 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 or expense, loss of market or consequences of delay suffered by the Shipper arising out of a breach by the Company of these terms and conditions. Alternatively, the Company's liability shall be limited to damages which under no circumstances shall exceed the Charges; and
 - (c) the Shipper shall indemnify the Company against all claims whatsoever and howsoever caused or arising, and (without limiting the generality of the foregoing) whether caused or arising as a result of the negligence of the Company or otherwise, brought by any person in connection with any matter or thing done, said or omitted by the Company in connection with the Goods.

13 Lien

- 13.1 The Company shall have, and retain, a general lien on any Goods owned by the Shipper and in the possession or control of the Company (and any documents relating to those Goods) for pecuniary obligations owing from time to time by the Shipper on any account whatsoever to the Company (including, but not limited, to payment of the Charges), and the Company shall have the right to, after giving seven (7) days' notice to the Shipper:
- (a) remove such Goods (or part thereof) and store them in such a place and manner as the Company shall think proper, and at the risk and expense of the Shipper, or as the case may be;
 - (b) open any package and sell such Goods (or any part thereof) or cargo by public auction or private treaty without being liable to any person for damage caused thereby. The Company shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods, from the proceeds of sale and shall render any surplus to the entitled person. Any such sale shall not prejudice or affect the Company's right to recover from the Shipper any charges due or payable in respect of the carriage or such detention and sale; and
 - (c) have a lien on any Goods shipped for all freight Charges, Customs duties, advances or other Charges of any kind arising out of the transportation hereunder, as well as any damages or cost the Company may incur or suffer as a result of mis-declaration or non-declaration, and may refuse to surrender possession of the Goods under Charges are paid; and
 - (d) for any damages that may arise as a result of the shipment of such Goods even if such Goods were declared as belonging to those listed under clause 9.

14 Claims

- 14.1 The Company shall be under no liability whatsoever unless:
- (a) written notice of any claim, giving reasonable particulars of the event giving rise to the claim and any alleged damage or loss, is received by the Company within seven (7) days after delivery, or in the case of non-delivery, within sixty (60) days after the date of dispatch; and
 - (b) a claim on any Goods received by the Consignee that is accepted 'subject to inspection' shall be in writing, giving reasonable particulars of the event giving rise to the claim and any alleged damage or loss, and must be received by the Company within seven (7) days of delivery; and
 - (c) an action must be commenced by the Shipper in a court of competent jurisdiction (and in accordance with clause 20.2) within thirty (30) days of delivery, or in the case of non-delivery, within six (6) months and fourteen (14) days of the date of dispatch; and
 - (d) when claims are paid, the Company will not reimburse the basic cost of shipment, pick-up, and delivery.
- 14.2 The failure to notify a claim within the time limits under clause 14.1 is evidence of satisfactory performance by the Company of its obligations hereunder.

15 Cancellation

- 15.1 The Company may cancel any contract to which these terms and conditions apply, or cancel the provision of the Services at any time before the Services have commenced, by giving written notice to the Shipper. On giving such notice the Company shall repay to the Shipper any sums paid in respect of the Charges. The Company shall not be liable for any loss or damage whatever arising from such cancellation.
- 15.2 In the event that the Shipper cancels this contract, the provision of the Services, then the Shipper shall be liable for any loss incurred by the Company (including, but not limited to, any loss of profits) up to the time of cancellation.

16 Default and Consequences of Default

- 16.1 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 the Company's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 If the Shipper owes the Company any money the Shipper shall indemnify the Company from and against all costs and disbursements incurred by the Company in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Company's collection agency costs, and bank dishonour fees).
- 16.3 Further to any other rights or remedies the Company may have under this contract, if a Shipper has made payment to the Company by credit card, and the transaction is subsequently reversed, the Shipper shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Company under this clause 16, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Shipper's obligations under this agreement.
- 16.4 Without prejudice to any other remedies the Company may have, if at any time the Shipper is in breach of any obligation (including those relating to payment) the Company may suspend or terminate the provision of Services to the Shipper and any of its other obligations under the terms and conditions, and may (by written notice to the Shipper) demand that the Shipper collect the Goods. The Company will not be liable to the Shipper for any loss or damage the Shipper suffers because the Company exercised its rights under this clause and where the Shipper fails to collect the Goods when demanded by the Company to do so, the Company may (at the Shipper's expense) remove and relocate the Goods.
- 16.5 Without prejudice to the Company's other remedies at law, the Company shall be entitled to cancel all or any part of any order of the Shipper which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Company shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Company becomes overdue, or in the Company's opinion the Shipper will be unable to meet its payments as they fall due; or
 - (b) the Shipper becomes insolvent/bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Shipper or any asset of the Shipper.

17 Personal Property Securities Act 1999 ("PPSA")

- 17.1 Upon assenting to these terms and conditions in writing the Shipper acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Goods that have previously been carried (if any), and any Goods that will be carried in the future, by the Company to the Shipper in respect of all monetary obligations of the Shipper to the Company for Services that have previously been provided (if any), and that will be provided in the future, by the Company to the Shipper.
- 17.2 The Shipper undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Company may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, the Company for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby;
 - (c) not register a financing change statement or a change demand without the prior written consent of the Company.
- 17.3 The Company and the Shipper agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 17.4 The Shipper waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 17.5 Unless otherwise agreed to in writing by the Company, the Shipper waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 17.6 The Shipper shall unconditionally ratify any actions taken by the Company under clauses 17.1 to 17.5.

18 Security and Charge

- 18.1 In consideration of the Company agreeing to provide the Services, the Shipper charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Shipper either now or in the future, to secure the performance by the Shipper of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 18.2 The Shipper indemnifies the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Company's rights under this clause.
- 18.3 The Shipper irrevocably appoints the Company and each director of the Company as the Shipper's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 18 including, but not limited to, signing any document on the Shipper's behalf.

19 Privacy Act 1993

- 19.1 The Shipper authorises the Company (or the Company's agent) to:
- (a) access, collect, retain and use any information about the Shipper;
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Shipper's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Shipper.
 - (b) disclose information about the Shipper, whether collected by the Company from the Shipper directly or obtained by the Company from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Shipper.
- 19.2 Where the Shipper is an individual the authorities under clause 19.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 19.3 The Shipper shall have the right to request the Company for a copy of the information about the Shipper retained by the Company and the right to request the Company to correct any incorrect information about the Shipper held by the Company.

20 General

- 20.1 The failure by the Company to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Company's right to subsequently enforce that provision. 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.
- 20.2 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 Auckland Court of New Zealand.
- 20.3 This contract is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Shipper is contracting within the terms of a trade/business (which cases are specifically excluded).
- 20.4 The Shipper agrees that the Company may amend these terms and conditions at any time. If the Company makes a change to these terms and conditions, then that change will take effect from the date on which the Company notifies the Shipper of such change. The Shipper will be taken to have accepted such changes if the Shipper makes a further request for the Company to provide Services to the Shipper.
- 20.5 Where the Company is unable, wholly or in part, by reason of any fact, circumstance, matter or thing beyond the reasonable control of the Company, including but not limited to any act of God, war, terrorism, strike, civil commotion, lock-out, general or partial stoppage, restraint of labour, industrial action, fire, flood, storm, etc. ("Force Majeure") to carry out any obligation under this contract and the Company gives the Shipper prompt notice of such Force Majeure with reasonably full particulars thereof and, insofar as is known, the probable extent to which it will be unable to perform or be delayed in performing that obligation and uses all reasonable diligence to negate or remove that Force Majeure as quickly as possible, that obligation is suspended, so far as it is affected by Force Majeure, during the continuance thereof. The requirement that any Force Majeure shall be negated or removed with all reasonable diligence shall not require the settlement of strikes, lockouts or other labour disputes, or claims or demands by any government on terms contrary to the wishes of the Company.
- 20.6 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they is not insolvent and that this contract creates binding and valid legal obligations on them.

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