

TERMS AND CONDITIONS RELATING TO ATL LIMITED, MCAULEYS TRANSPORT LIMITED, NZL GROUP LIMITED AND TIL FREIGHTING LIMITED

1. Definitions

The following definitions apply in this Agreement:

- 1.1 "Act" means the Contract and Commercial Law Act 2017.
- 1.2 "Agreement" means the agreement constituted by the credit application form (if credit is made available to the Customer), these terms and conditions, and any variation or amendment made in accordance with these terms and conditions.
- 1.3 "Company" means each of ATL Limited, McAuleys Transport Limited, NZL Group Limited and TIL Freight Limited, as applicable as the case may be as supplier of Services or Products (and any credit), and is to be read to include more than one of such supplier entities in the event the Customer engages the Services of more than one such supplier entity.
- 1.4 "Customer" means the person, firm or company specified as the Customer and includes any "Contracting Party" as that term is defined in the Act.
- 1.5 "Goods" means any goods (as that term is defined in the Act) supplied by the Customer for which the Company agrees to provide Services for in accordance with this Agreement.
- 1.6 "PPSA" means the Personal Property Securities Act 1999 and associated regulations.
- 1.7 "Products" means any products supplied by the Company to the Customer from time to time.
- 1.8 "Services" means Transportation Services and/or Storage Services that the Company has agreed to provide to the Customer.
- 1.9 "Storage Services" means storage services provided by the Company to the Customer for the storage of Goods.
- 1.10 "Transportation Services" means transportation services provided by the Company to the Customer in relation to the transportation of Goods.
- 1.11 "Unit of Goods" has the meaning of that term in the Act.

2. Interpretation

The following rules of interpretation apply in this Agreement:

- 2.1 References to parties include their respective executors, administrators, successors and permitted assigns.
- 2.2 References to persons includes natural persons, companies, and any other body corporates and unincorporated bodies.
- 2.3 References to the words including, include or similar words do not imply any limitation and are deemed to have the words without limitation following them.
- 2.4 References to a time or time period applicable to the Customer's obligations are deemed to mean that the time or time period is of the essence.
- 2.5 References to a statute or a statutory provision means a New Zealand statute or statutory provision as amended, consolidated and/or replaced from time to time.
- 2.6 References to the Company obtaining signatures or authorisations include those recorded by electronic means on a handheld device.

3. Parties

This Agreement is made between the Customer and the Company. All Services and Products provided by the Company, and any credit made available, including the provision of any advice, information or other services, is undertaken upon and subject to this Agreement. The provisions of these terms and conditions which relate to credit being made available by the Company do not apply to transactions which are carried out as cash sales and/or in relation to Customers for which no credit account has been approved, but the balance of these terms and conditions continue to apply to such transactions and Customers.

4. Price

- 4.1 Except as set out in a Company quotation (subject to these terms and conditions) which has been accepted by the Customer, the price of the Services shall be the price as at the date of delivery of the Goods (for Transportation Services) or the date of completion of the storage of the Goods (for Storage Services). Where the delivery is by instalments, then the prices shall be those prevailing on the date of each delivery.
- 4.2 Except as set out in a Company quotation (subject to these terms and conditions) which has been accepted by the Customer, the Company reserves the right to adjust its prices at any time and from time to time.
- 4.3 Prices submitted or quoted (including accepted quotes) may be subject to change in the event of (i) events beyond the Company's control (e.g. acts of god, road or infrastructure closures or disruptions, natural disasters, road diversions), (ii) the Company exercising its right to charge a Fuel Adjustment Factor (FAF) in addition to quoted rates if pricing for FAF inputs increases prior to the time some or all of the Services are completed (the then-current FAF percentage rate can be found on the website www.tilfreight.kiwi www.mcauleys.co.nz www.athhaulage.co.nz www.nzlgroup.nz), with the FAF rate workings available on request in the event the Company exercises its rights under this clause 4.3(ii); and/or (iii) where the Company is subjected to an increase in Government Levies (e.g. Road User Tax charges), in which case the Company reserves the right to pass these on to the Customer by way of an increase in rate. In such event, the Company will contact the Customer and notify them of these changes.
- 4.4 All prices and other charges contained in any price list, quotation, proposal, confirmation or other material submitted to the Customer may be withdrawn or varied at any time prior to acceptance of any order/quote placed by the Customer.
- 4.5 In the event any Goods provided for carriage differ from (i) any information or declaration given to the Company, and/or (ii) assumptions made by the Company in preparing a price estimate or quote, including as to description, items, pallet space, quantity, volume, weight, dimensions, quality, value and/or measurements, the Company reserves the right to measure and/or weigh the Goods and charge any increase accordingly, and the Customer must pay such increased amount.

5. Payment

- 5.1 Any credit granted by the Company shall be on the basis that the price shall be paid in full within agreed payment terms or if no payment terms have been agreed, (i) by no later than the 20th day of the month following delivery of the Products, delivery of the Goods or completion of the storage of the Goods (as applicable) or (ii) by the 20th of the month following the month in which the Company's invoice is dated (whichever is the earlier). For transactions carried out as cash sales and/or in relation to customers for which no credit account has been approved, payment shall be required prior to the company performing any services. Payment must be made in cleared funds without deduction, counterclaim or set-off. The Company may apportion payments to outstanding accounts as it thinks fit. If the Customer chooses to pay the price of the Products and/or Services by credit card, the Company will be entitled to charge the Customer a surcharge fee. The default surcharge fee will be 2% of the total price of the Products and/or Services, however from time to time the Company may adjust the prevailing surcharge rate to ensure that it bears a reasonable relationship to the Company's associated costs. If the Customer indicates that they wish to make payment by credit card, the Company will advise the Customer of the prevailing surcharge rate before the payment is processed.
- 5.2 For transactions not on credit, the Company may in its discretion, if evidenced by acceptance in writing, provide Services on the basis that the consignee will pay its charges but nevertheless the Customer remains liable for payment and the Customer's other obligations under the Agreement in the event of default of payment by the consignee.

6. Limitation of Credit Facility

Notwithstanding the Company having processed or approved the credit application or having previously granted credit and without prejudice to any of its other rights, the Company shall be entitled to suspend performance of the Services and withhold delivery of any Products or Goods until payment has been made for any reason, including if it considers the Customer's credit worthiness to be unsatisfactory. Credit shall be revocable by the Company at any time prior to delivery. The Company may require the deposit of a sum equivalent to its charges or any lesser sum determined by the Company as a deposit on account of payment.

7. Interest on Overdue Moneys

Without prejudice to any of its other rights, the Company shall be entitled to charge interest at the rate of 15% per annum on all overdue moneys, calculated from the date payment is due until the date payment is made. Interest shall compound monthly on the 20th day of each month.

8. Costs of Collection

If the Customer fails to pay any money when due or breaches its obligations under this Agreement, or the Company incurs damages, fees or costs due to Customer payment being dishonoured or reversed, then the Company may (without prejudice to its other rights and remedies) require the Customer to pay all of the Company's costs (including debt collection and legal costs on a solicitor/own client basis) in connection with the enforcement or attempted enforcement of the Company's rights, remedies and powers against the Customer or any Guarantor, or such dishonouring/reversal, and the Customer shall be immediately liable for the payment of such costs.

9. Default

The whole of the amount of credit outstanding shall become immediately due and payable to the Company:

- (a) If the Customer fails to make payment of any moneys on the due date for payment or is otherwise in breach of this Agreement; or
- (b) On the appointment of a liquidator or receiver or administrator of the Customer; or
- (c) Upon the termination of this Agreement or revocation of a Customer's credit in accordance with these terms and conditions.

10. Unauthorised Use of Account

The Customer shall be liable for any indebtedness arising from the unauthorised use of the account provided that the authorisation came from an employee, contractor or agent of the Customer.

11. Credit Information

- 11.1 The Customer and the directors and shareholders of the Customer authorise any person, company or organisation to provide the Company with such information as the Company may require in response to the Company's credit enquiries. Any information obtained by the Company under this clause will be confined to that reasonably required by the Company.
- 11.2 The Customer and the directors and shareholders of the Customer authorise the Company to provide any third party with details of this application and any subsequent dealings that the Company may have with the Customer or its directors and shareholders as a result of the application being actioned. The third party may supply such information to any other person, company or organisation for their use. Any disclosure made by the Company under this clause will be confined to that reasonably required by the third party.
- 11.3 Under the Privacy Act 1993 the Customer (if an individual) and the Guarantor have the right of access to and correction of their personal information held by the Company.

12. Customer's Warranties

12.1 The Customer warrants that:

- (a) the Goods are fit for carriage and/or storage (as applicable) and have been suitably packaged for those purposes, and comply with all applicable laws in this regard;
- (b) the Customer has the authority of all persons owning or having any interest in the Goods to enter into this Agreement on their behalf;
- (c) the Customer has effected and will maintain a policy of insurance for the full insurable value of the Goods to cover any loss of or damage to the Goods during carriage and/or storage (as applicable);
- (d) the details of description, items, pallet space, quantity, weight, quality, value and measurements supplied by the Customer or any other party are correct;
- (e) there is a suitable practicable road and approach for the Company and the Company's vehicles to the place from which the Goods are to be collected and the place to which the Goods are to be delivered;

TERMS AND CONDITIONS RELATING TO ATL LIMITED, MCAULEYS TRANSPORT LIMITED, NZL GROUP LIMITED AND TIL FREIGHTING LIMITED

- (f) the place from which any Goods are to be collected will have safe and adequate loading facilities and equipment available;
- (g) where required by law, the Customer has accurately completed and supplied a container weight declaration form;
- (h) refrigerated Goods are supplied to the Company at a temperature suitable for carriage;
- (i) the Goods are not dangerous Goods, and the nature and value of all Goods subject to special rates for Services or of a noxious, dangerous, hazardous or inflammable nature and capable of causing damage or injury to any other Goods or property or to any persons or animals, will be clearly stated in writing before provision to the Company in respect of Services; and
- (j) the Goods comply with the requirement of any applicable law relating to the nature, labelling and packaging and carriage of goods and the expenses and charges of the Company in complying with the provisions of any such law or with any order or requirement thereunder or with the requirement of any harbour, dock, railway, shipping, customs, excise duty or sales tax, warehouse or other authority or company of the expense, charges, levies or fines arising out of the breach of any applicable law shall be paid by the Customer.

12.2 The Customer:

- (a) acknowledges that the Company has no responsibility or liability in relation to any pallet used for carriage;
 - (b) must ensure that pallets are transferred from and to any relevant hire accounts and that any necessary documentation is signed and delivered to the applicable pallet hire company; and
 - (c) releases and indemnifies the Company from and against any liability in relation to the loss of pallets or failure of any party to transfer pallets on or off any hire account.
- 12.3 The Company relies on the details of description, items, pallet space, quantity, weight, quality, value and measurements supplied by the Customer and the consignor but does not admit their accuracy. The Company will have no liability or responsibility for any loss incurred due to the Customer providing inaccurate information.
- 12.4 The Company accepts no responsibility for collection of cash or other payments from any party.
- 12.5 The Customer indemnifies the Company in respect of any liability whatsoever in respect of the Goods to any person (other than the Customer) who claims to have, who has, or who in the future may have any interest in the Goods or any part of the Goods.

13. Delivery

- 13.1 The Company is authorised to deliver the Goods and/or Products at the address nominated to the Company by the Customer for that purpose. The Company will be conclusively presumed to have delivered the Goods and/or Products in accordance with these conditions if at that address it obtains from any person a receipt or signed delivery docket for the Goods and/or Products.
- 13.2 If the nominated place of delivery should be unattended or if delivery cannot otherwise be effected by the Company or the consignee otherwise fails to take delivery of the Goods and/or Products, the Company may at its option deposit the Goods and/or Products at that place (which will be conclusively presumed to be due delivery under these conditions) or store the Goods and/or Products and if the Goods and/or Products are stored by the Company the Customer will pay or indemnify the Company for all costs and expenses incurred in providing Storage Services. If the Goods and/or Products are stored by the Company, the Company will be at liberty to redeliver them to the Customer from the place of storage at the Customer's expense.
- 13.3 The Company may carry or on-forward Goods or have them carried by any method or any person which the Company deems fit and notwithstanding any instructions that the Goods are to be carried or on-forwarded by another method. The Customer authorises the Company to contract either as principal or as agent for the carriage of Goods and any such contract will be made upon the terms and subject to the conditions of any bill of lading or other forms or terms of contract for carriage, whether by sea, rail or road or air.
- 13.4 A charge may be made by the Company in respect of any delay in excess of one hour in loading or unloading occurring other than from the fault of the Company. Such permissible delay period will commence upon the Company reporting for loading or unloading.
- 13.5 If any time for delivery is stated at the time of any request for Services, such time shall be approximate only and shall not be deemed to be of the essence.
- 13.6 The Company may, in its sole discretion, refuse to accept Goods or impose any restrictions or conditions before accepting Goods in relation to Transportation Services.
- 13.7 Risk of loss of or damage to the Goods and/or Products will pass from the Company to the Customer on delivery.
- 13.8 The legal and beneficial ownership in all Products delivered by the Company to the Customer remains with the Company until those Products have been paid for. All Products must be stored in a manner which allows them to be separately identified until dealt with under the terms of this Agreement.

14. Storage

- 14.1 Where Goods are stored by the Company at the request of the Customer, the Customer will provide:
- (a) an address to which notices will be sent;
 - (b) samples of the signatures of persons entitled to collect the Goods; and
 - (c) an inventory of the Goods to be stored.
- 14.2 The Company may remove the Goods from a place of storage to another place of storage at its discretion.
- 14.3 The Customer must give 48 hours' written notice to the Company of its intention to remove Goods from storage.
- 14.4 The Company will not be obliged to deliver any Goods except to the Customer or to a person authorised in writing by the Customer to receive the Goods without:
- (a) a direction in writing from the Customer; and
 - (b) payment of all amounts due by the Customer to the Company on any account whatsoever.
- 14.5 The Customer will remove its Goods from storage within seven days of receipt of written notice from the Company.
- 14.6 If any identifying document or mark is lost, damaged, destroyed or defaced, the Company may open any document, wrapping, package or other container in which the Goods are placed or carried to inspect them either to determine their nature or condition or to determine their ownership.
- 14.7 The Company may, in its sole discretion, refuse to accept Goods or impose any restrictions or conditions before accepting Goods in relation to Storage Services.

15. Indemnity

- 15.1 The Customer indemnifies the Company from and against any and all losses, damages, costs, actions, proceedings, claims and demands which the Company may incur or suffer (including any reasonable legal fees or amount paid by way of settlement) as a direct or indirect result of the Customer's failure to perform its obligations under this Agreement or any willful or negligent act or omission by the Customer in the course of performing the Customer's obligations under this Agreement. This indemnity will continue to apply after termination of this Agreement.

16. Liability of Company

- 16.1 The Customer acknowledges and agrees that, unless the parties expressly agree in writing otherwise, this is a contract for carriage at "limited carrier's risk" of \$2,000 for each Unit of Goods lost or damaged in accordance with the Act.
- 16.2 In respect of any loss, costs or damage in excess of that set out in clause 16.1, to the maximum extent permitted by law, the Customer acknowledges and agrees that neither the Company nor any officer, employee, subcontractor or agent of the Company nor any other person who undertakes the carriage and/or storage of the Goods at any time pursuant to this Agreement will in any circumstances (except where any statute otherwise requires) be under any liability whatever (whether in contract, tort or otherwise) for any loss, costs or damage whatsoever, including (without limitation):
- (a) any loss of or damage to, deterioration, evaporation or contamination of the Goods;
 - (b) misdelivery, delay in delivery or non-delivery of the Goods or any of them, whether in the course of carriage, storage or otherwise including where such loss, damage, deterioration, evaporation, contamination or misdelivery, delay in delivery or non-delivery is caused or alleged to have been caused by the negligence of the Company or its officers, employees, agents or subcontractors;
 - (c) loss or damage attributable in any respect to any inherent defect in the Goods or their packaging/containment, anything beyond the control of the Company, or anything arising in connection with a breach of this Agreement by the Customer.
- 16.3 Nothing whatsoever done or omitted to be done or other conduct by the Company in breach of contract or otherwise will under any circumstances constitute a fundamental breach of contract, or a repudiation of contract such as to have the effect of disentitling the Company from obtaining the benefit of and enforcing all rights, defences, exemptions, immunities and limitations of liability of the Company contained in this Agreement, and all such rights, defences, exemptions, immunities, limitations of liability and like protection will continue to have full force and effect in any event whatsoever.
- 16.4 Notwithstanding any other provision in this Agreement, the Company will under no circumstances be liable for any claim for consequential or indirect loss or loss of profits.
- 16.5 In respect of any loss, costs or damage in excess of that set out in clause 16.1, to the extent that the Company's liability cannot be excluded or limited under the other provisions of this clause 16 and to the extent permitted by law, the Company's maximum total liability is limited, at the Company's option, to (i) re-performance of the Services, or (ii) the amount paid to the Company in respect of the specific Services the subject of the claim.
- 16.6 The Company will not be liable for any failure or delay in performance of its obligations under this Agreement if such failure or delay is due, in whole or in part, to any cause whatsoever beyond its control.
- 16.7 To the fullest extent permitted by law, the Company excludes its liability for business-to-business transactions under the Consumer Guarantees Act, Fair Trading Act, in particular sections 9, 12A, 13 and 14 of the Fair Trading Act and any other applicable consumer law. Where the Customer is a "Consumer" under the provisions of the Consumer Guarantees Act, the Consumer Guarantees Act is to apply.
- 16.8 This clause 16 will continue to apply after termination of this Agreement.

17. Claims

To the extent that the Company's liability is not excluded or limited under clause 16, written notice of any claim must be received by the Company within 5 days after performance or delivery of the Services or Products, together with full particulars of any alleged loss or damage and supporting evidence of the quantum of the claim, including proof of the cost price of any lost or damaged Goods. No claims will be considered unless the Customer has paid the Company's invoice. The Company reserves the right to obtain salvage of any damaged Goods prior to conclusion of any claim, and claims may be refused should the salvage not be available.

18. Security

- 18.1 All Goods held by the Company for the purposes of providing Transportation Services are subject to a statutory lien in respect of any amount owing by the Customer to the Company, as provided for under section 285(1) of the Act.

TERMS AND CONDITIONS RELATING TO ATL LIMITED, MCAULEYS TRANSPORT LIMITED, NZL GROUP LIMITED AND TIL FREIGHTING LIMITED

- 18.2 All Goods held by the Company for the purposes of providing Storage Services are subject to a general lien in respect of any amount owing by the Customer to the Company (including any costs to exercise or defend the lien). If the Customer fails to pay the charges when due or the Goods are not collected when required or designated, the Company may, without notice, immediately:
- (a) remove all or any of the Goods and store them as the Company thinks fit at the Customer's risk and expense until all amounts owing to the Company have been paid in full; or
 - (b) open any package and sell all or any of the Goods as the Company thinks fit at any price and apply the proceeds towards the costs of sale and the amounts owing to the Company without being liable to any person for any loss or damage caused.
- 18.3 The Customer agrees that the lien arising under clause 18.2 is a security interest in the Goods in terms of the PPSA and that security interest in the Goods continues in all present and after acquired goods and proceeds.
- 18.4 The Customer agrees that clause 13.8 creates a security interest in the Products in terms of the PPSA and that security interest in the Products continues in all present and after acquired goods and proceeds.
- 18.5 If the Company requests, then the Customer must promptly upon receipt of a request from the Company do anything for the purposes of ensuring that any security interest created under clause 18.2 and/or clause 13.8 is enforceable, perfected (including but not limited to perfection by registration), maintained and is otherwise effective. Anything that is required by the Customer to be done under this clause will be done by the Customer at its own expense. The Customer agrees to reimburse the costs of the Company in connection with any action taken by the Carrier under or in connection with this clause.
- 18.6 Nothing in sections 114(1)(a), 133 and 134 of the PPSA will apply to this Agreement.
- 18.7 The Customer waives its right under the PPSA to:
- (a) receive notice under section 120(2) and 129;
 - (b) receive a statement of account under section 116;
 - (c) object to any proposal of the Company to retain collateral under section 121;
 - (d) not have Goods damaged or to be reimbursed in the event that the Company were to remove an accession under sections 125, 126 or 127;
 - (e) apply to the Court for an order concerning the removal of an accession under section 131.
- 18.8 The Customer must give the Company prior written notice of a proposed change of its name or address.
- 18.9 The Customer and Guarantor agree that the Company shall have the right to complete and register a mortgage over any property owned by the Customer and/or any Guarantor of the Customer to secure any sum owing to the Company whether under this Agreement or any other. The mortgage will be in a commonly used all obligations form chosen by the Company's solicitor. The Company shall have the right at its discretion to place a caveat on any such property for the purpose of this clause. The Customer and/or Guarantor irrevocably appoint the directors of the Company as the attorney of the Customer and/or Guarantor for the purpose of the Company exercising its right under this clause whilst any amount owing remains outstanding. The directors of the Company may severally exercise the power of attorney.
- 19. Right to Subcontract**
The Company at its discretion may subcontract on any terms the whole or any part of the Services.
- 20. Extension of Exemptions to Subcontractors**
20.1 Every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Company or to which the Company is entitled under this Agreement will also be available to and will extend to protect:
- (a) all subcontractors of the Company;
 - (b) every officer, employee or agent of the Company or of a subcontractor of the Company;
 - (c) every other person (other than the Company) by whom the Services or any part of them are undertaken; and
 - (d) all persons who are or might be vicariously liable for the acts or omissions of any person falling within clauses 20.1(a), 20.1(b) or 20.1(c).
- 21. Termination**
In addition to any other of the Company's rights of termination provided herein or at law, both the Company and the Customer shall have the right to terminate this Agreement on giving not less than three working days' notice in writing to the other party, but no such termination shall release the Customer from any moneys owing or from liability under, or for any previous breach of, this Agreement, including without limitation any booking cancellation or reallocation costs arising from Customer termination. The Customer may not collect the Goods held by the Company following termination of this Agreement until all amounts owing have been paid in full. This clause 21 will continue to apply after termination of this Agreement.
- 22. Consumer Guarantees Act**
The parties acknowledge that where the Products or Services supplied under this Agreement are being purchased for business purposes the provisions of the Consumer Guarantees Act 1993 do not apply.
- 23. Variation of Terms and Conditions**
The Company reserves the right to amend these terms and conditions at any time and from time to time by giving to the Customer notice in writing or electronic notification, and/or updating these terms on its website, and use thereafter by the Customer of its account, and/or orders, shall constitute acceptance of any such amendments.
- 24. Entire Agreement**
This Agreement is the entire agreement between the parties relating to the Products and Services and replaces any previous written or verbal agreements between the parties relating to the Products and Services.
- 25. Assignment**
25.1 The Company may assign or transfer any of its rights or obligations under this Agreement.
25.2 The Customer may not assign or transfer any of its rights or obligations under this Agreement without the Company's prior written consent.
- 26. Counterparts**
This Agreement may be executed and delivered in any number of counterparts (including by email). All counterparts, when taken together, will form the same document.
- 27. New Zealand Law**
New Zealand law applies to this Agreement and any claims relating to it. The parties agree to submit to the exclusive jurisdiction of the New Zealand courts.