

## **L.W. Bonney & Sons Ltd – Terms and Conditions of Trade**

### **1. Paramount**

A request by the Customer for services of the Company is deemed acceptance of the terms of this contract which shall prevail over any conditions specified in the Customer's order unless specifically agreed in writing by a director of the Company.

### **2. Parties**

This contract is made between the Customer which term includes any "contracting party" as defined in section 246 of the Contract and Commercial Law Act 2017 (defined as "Customer" or "you") and L.W. Bonney & Sons Ltd (defined as "Company"). All business undertaken by the Company, including the provision of any advice, information or other services is undertaken upon and subject to these conditions.

### **3. Consumer Guarantees Act 1993**

The Customer agrees that the services from the Company are being acquired for the purposes of a business as defined in the Consumer Guarantees Act 1993 ("CGA"), the CGA will not apply to the supply of those services.

### **4. Application of the Contract and Commercial Law Act 2017 ("the Act")**

Subject to the provisions of the Act, sections 283 to 292 of the Act shall apply to this contract only to the extent that they extend or enlarge the Company's rights and powers under this contract.

### **5. Subcontractors**

All or part of any work accepted by the Company may be fulfilled by the Company engaging or entrusting the Customer's goods to its authorised subcontractors ("subcontractors") on such terms agreed between the Company and its subcontractors. The Customer agrees that all work may be performed on behalf of the Company by any subcontractor. In carrying out the work on behalf of the Company, the Customer acknowledges that the subcontractor has the right to rely on the benefit of this contract to the Company.

### **6. Protection of Servants and Agents**

The Customer undertakes that no claim or allegation shall be made against any servant or agent of the Company which attempts to impose on any of them any liability whatsoever in connection with the goods or services and, if any such claim or allegation should nevertheless be made, to indemnify the Company and any such servant or agent against all consequences thereof.

### **7. Ownership of Goods**

The Customer expressly warrants to the Company that it is the owner or the authorised agent of the goods and that it is authorised to accept and does accept the terms of this contract not only for itself but also for and on behalf of all other persons who are or may hereafter become interested in the goods.

### **8. Delivery**

The goods shall be deemed to have been delivered when they are physically deposited at the address given to the Company by the Customer or consignee for that purpose.

### **9. Packing**

The Customer warrants that all goods have been labelled correctly and properly and sufficiently packed and prepared for carriage and that all other information provided to the Company is accurate.

10. Insurance

Insurance of the goods at all times is the responsibility of the Customer.

11. Exclusion of certain Items

The Company reserves the right to refuse carriage for any person or entity or for any goods or class of goods and in particular but without limitation reserves the right to refuse carriage in respect of:

- (i) Bullion, cash, coins, negotiable instruments, precious stones, jewelry, antiques, paintings or other valuables.
- (ii) Any noxious, dangerous or inflammable or perishable goods, firearms or any goods likely to cause damage or which it is unlawful to carry.

The Customer expressly warrants and agrees that unless it has obtained express authorisation in writing from the Company in respect of the particular consignment it will not give any goods of the type referred to in clause 11 to the Company. Notwithstanding the nature of the Customer's business the Customer acknowledges that the Company is not in a position to ascertain the contents of any consignment given to it for delivery and will not under any circumstances be deemed to be aware of the contents except if it has been notified prior to the consignment being given to it and consented to delivery of the same. If the Customer delivers such goods of the type referred to in clause 11 to or causes such goods to be handled or dealt with by the Company or any subcontractor or agent without such prior notice and consent by the Company the Customer shall be liable for all loss, damage or deterioration whatsoever caused by or to in connection with any other consignment and shall indemnify the Company, the subcontractors and the agents against all penalties, claims, damages, costs and expenses whatsoever arising or connection therewith and the goods may be destroyed or otherwise dealt with at the sole discretion of the Company, the subcontractors or any other person in whose custody they may be at the expense of the Customer without the Company, the subcontractors or such other person being responsible or accountable for the value thereof.

12. Payment of Charges

- (a) The Customer agrees to pay the Company's standard charges including but not limited to cancellation surcharges and variable cost components (which includes the Company's standard fuel adjustment factor) and those of any subcontractor engaged by the Company and any other costs incurred or money expended by the Company in connection with the goods and services including but not limited to detention, demurrage, weighbridge and permit charges and any additional freight costs due to normal transport routes being unavailable.
- (b) All prices quoted will be GST exclusive unless stated otherwise and the Customer must pay GST on top of all charges. Except under an arrangement previously made in writing with the Company, no credit will be given for the Company's charges.
- (c) The Company may charge freight by weight or measurement and may at any time re-weigh or re-measure or require the goods to be re-weighed or re-measured and charge proportional additional freight, travel costs and any weighing charges incurred. The Company may recover from the Customer on a full indemnity basis any LTSA infringement fines issued to the Company in respect to any under-declared consignments. Every special instruction to the effect that charges shall be paid by the consignee shall be deemed to include a stipulation that if the consignee does not pay the said charges, then the consignor shall pay the said charges. The Company may carry or on-forward all 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.
- (d) The Customer authorises the Company 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, road or air. From the date on which the responsibility of the Company ceases as provided by section 258 of the Act

the Company may hold the goods if undelivered as bailee and shall be entitled to storage fees at normal rates charged by the Company AND as bailee shall not be under any liability for any loss or damage to the goods OR in its discretion return the goods to the Customer at the risk and expense of the Customer.

- (e) If any part of an invoice is legitimately disputed, the Customer must provide notice setting out the particulars of the dispute within 5 days of the invoice being received. The undisputed part of any invoice must be paid on time. The parties will then meet within 10 days to attempt to resolve the issues.
- (f) Unless otherwise agreed by the Company, payment of all charges is to be made by the 20<sup>th</sup> of the month following the date of invoice. Interest will accrue on all late payments at the 90 day bank bill rate plus 10% from the due date for payment up to and including the date payment is received. The Customer indemnifies the Company against, and must pay on demand, all enforcement of recovery costs incurred.

### 13. Lien

All goods (and documents relating to goods) shall, immediately after they come into possession of the Company or any subcontractor, be subject to a particular and general lien and right of detention for all moneys due to the Company by the Customer or the consignee, consignor or owner whether in respect of such goods or otherwise. If any moneys due to the Company are not paid within fourteen (14) days after notice has been given to the person from whom the moneys are due that such goods are being detained, then they may be sold by auction or otherwise at the sole discretion of the Company and at the expense of such person, and the net proceeds applied in or towards satisfaction of any such indebtedness. Any such sale shall not prejudice the Company's rights hereunder nor the Company's rights of recovery of the costs of the said detention and sale.

### 14. Suspension

If at any time payment from the Customer to the Company shall be in arrears, any subsisting obligation of the Company shall be suspended and the Company shall not be under any liability to the Customer during such period.

### 15. Limited Carrier's Risk and Liability

- (a) This contract is "at limited carriers risk" as defined in the Act.
- (b) Subject only to the provisions of the Act imposing liability in respect of the loss of or damage to the goods that cannot be altered by this contract, the Company shall not be under any liability to the Customer or any third party 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, for:
  - (i) 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 instruction, 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 loss of market or consequences of delay, loss of profit, loss of sales, loss of goodwill or reputation, third party claims, incidental or special damages or any indirect or consequential loss of any kind whatsoever; or

for any indirect or consequential loss including any loss of profit, nor for any damage, expense or economic loss of any kind, or similar claims arising, either directly or indirectly from any error or omission where the Company has completed the export pre-advice online as required by Port of Auckland (or other ports) in respect of export containers at the Customer's request, or where Customer has not completed the pre-advice by the time the export container is notified as ready for pickup, and the Customer will indemnify the Company against all claims of any kind whatsoever, 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.

- (c) The Customer will indemnify the Company against all liability whatsoever arising out of any errors or misrepresentations made by the Customer or any breach of this contract by the Customer or insufficient or improper packing, labelling, marking or stowing of the goods (other than by the Company or its subcontractor).
- (d) For all claims whatsoever arising under this contract, the liability of the Company will be limited to the lesser of the value of the loss or damage (based on actual out of pockets costs of production without any margin) and any limitation provided by the Act.
- (e) The Company will not be responsible for, and the Customer must pay, costs incurred for any detention, demurrage, missed bookings or futile trip, unless:
  - (i) such costs were incurred as a direct result of the Company's own failure to perform by the time agreed by the Company; and
  - (ii) such failure falls outside any agreed service levels; and
  - (iii) the failure by the Company was not caused or contributed to by, misinformation provided to the Company, changes to instructions provided after the services have commenced, the acts, omissions, delays or failures of the Customer or any third party, or any cause or event which the Company is unable to avoid and the consequences of which the Company is unable to prevent by the exercise of reasonable diligence.
  - (iv) Any acceptance of a claim for detention is a Bonney's discretion and does not limit Bonney's ability to refuse any future claims. The amount accepted will be calculated at the lowest tariff rate irrespective of the actual amount charged by the shipping line

#### 16. International Convention and National Law

- (a) Notwithstanding other provisions in this Contract, if it can be proved where the loss of or damage to the Goods occurred, the Company's liability shall be determined by the provisions contained in this contract except to the extent this contract is inconsistent with any international convention or national law, the provisions of which:
  - (i) cannot be departed from by private contract, to the detriment of the Customer; and
  - (ii) would have applied if the Customer had made a separate and direct contract with the actual provider of the particular service in respect of that service or stage of carriage where the loss or damage occurred and received as evidence thereof any particular document which must be issued if such international convention or national law shall apply.
- (b) In the event of any inconsistency between this contract and the conditions of any Bill of Lading or Air Waybill issued by or on behalf of the Company as principal, the conditions of any such Bill of Lading or Air Waybill shall prevail to the extent of such inconsistency but no further.

#### 17. Governing Law

These terms and conditions, and any act or contract to which they apply, shall be governed by and interpreted in accordance with the laws of New Zealand and any proceedings in respect of any dispute, matter or thing shall be instituted in New Zealand

18. Storage and Freight Station Services

All goods are held and stored entirely at the Owner's risk and neither the Company nor any employee, agent or subcontractor for the Company shall be under any liability for any loss or damage to the goods in storage or for any mis-delivery, delay in delivery or non-delivery of the goods.

All cartons, containers, trucks or other such transportation containers, either packed or unpacked, or in any way subject to handling by the Company shall be done so entirely at the Owner's risk and neither the Company nor any employee, agent or subcontractor for the Company shall be under any liability for any loss or damage to the goods or for any mis-delivery, delay in delivery or non-delivery of the goods.

19. Actions against the Company

The Company shall be under no liability whatsoever unless:

- (a) Written notice of any claim, giving full particulars of any alleged damage or destruction is received by the Company within seven (7) days after the delivery of the goods or in the case of loss of the goods, within fourteen (14) days of the date of despatch; and
- (b) An action shall have been commenced by the Customer to this contract of carriage in a Court of competent jurisdiction within six (6) months from the date of despatch of the goods.

20. Notice

Any notice or document ("Notice") required or authorised to be delivered or served under this Contract must be in writing and must be delivered or served by personal delivery, or by posting by registered post or ordinary mail, or by facsimile, or by email to the last known address of the recipient. Any Notice given in terms of clause 20(b)(ii) will be deemed to be delivered or served and received by the other party when signed for or:

- (a) Email: when acknowledged by the recipient or the recipient's email server as being received;
- (b) Facsimile: on completion of an error-free transmission;
- (c) Personal Delivery: on personal delivery, and where the other party is a company, then personal delivery in the manner as provided for in section 387 (1) or section 388 of the Companies Act 1993;
- (d) Ordinary Mail: four Business Days after being posted by prepaid mail; or
- (e) Registered Post: two Business Days after being posted by prepaid registered post; and
- (f) any Notice given or served after 5.00 pm Monday to Friday, or on Saturday, Sunday or public holiday in the location of the recipient's business, shall be deemed to have been served on the next business day.

21. Assignment

The Company may assign this contract by notice in writing to the Customer. The Customer may only assign this contract with the prior written consent of the Company.

22. General

The terms and conditions set out herein shall prevail over the terms and conditions set out in any documents used by the Customer, the owner or any other person having an interest in the goods and purporting to have a contractual effect unless specifically varied and agreed to in writing by the parties.

Except under special arrangements agreed in writing by a director of the Company, the Company gives no warranties or undertakings with regard to the provision of services or advice under this contract or collection or delivery dates or times and is under no liability whatsoever for failure to adhere to any collection or delivery dates or times.

These terms may be modified by the Company at any time and the new terms will apply to any orders made by the Customer after receiving written notification of the changes from the Company.

I hereby certify that I am an authorised to sign on behalf of the Customer and have read and agree to these terms and conditions and agree to be bound thereby hence forth:

Signed:

Date:

Name of signatory:

Name of Customer:

Position:

Address: