

Kalgin International Freight Services (NZ) Ltd - Standard Trading Conditions

1. All and any business undertaken by Kalgin International Freight Services (NZ) Limited is transacted subject to the conditions hereinafter set out ("the Conditions") and each and every such condition shall be deemed to be a condition of any agreement between the company and its customers. No modification, amendment or other variation of the conditions shall be valid and binding on the company unless made in writing and duly executed by or on behalf of the company. Without limiting the foregoing, the use of a customer's own forms does not in any way serve to modify, amend or vary the conditions, nor does any letter of authority provided by the customer.
2. The company is not a common carrier and will accept no liability as such. The Company reserves the right in its absolute discretion to refuse the Carriage of Goods or any class of Goods for any person. The Company carries on business as a customs and forwarding agent and is not the actual carrier unless the goods are carried on an aircraft, ship or other conveyance owned or operated by the Company. The obligations of the Company are limited to arranging Carriage of Goods by a reputable carrier. The Goods are carried at the Client's risk and the Client authorises the Company to act as its agent to enter into the terms and conditions in a transport document on behalf of the customer.
3. Customer means the person, firm or corporation who engages the company's services or otherwise has an interest in the shipment and includes, without limiting the foregoing, Senders, Owners and Consignees.
4. Subject to and in accordance with terms and conditions and instructions contained herein, the company agrees and the customer hereby employs and authorizes the company as agent for the customer to contact either in its own name as principal or as agent with any person, firm or company (hereinafter referred to as "the sub-contractor") for the carriage, movement, transport or storage of the goods or for the performance of any other service ("the services") to be performed by the company pursuant to or ancillary to this contract. Any such contract may be made upon the terms of contract used by the sub-contractor with whom the company may contract for the services and may be made upon the terms and subject to the conditions of any special contract which the sub- contractor may in any particular case require, including in every case any term that the sub-contractor may employ any person, firm or company for performance of the services contracted for.
5. The company may, and is hereby expressly authorized by the customer, to delegate its authority hereunder to contract for the services and the performance of any of its obligations hereunder, to such other person, firm or company as it may think fit and also if it thinks fit may, and is hereby expressly authorized by the customer, to constitute the relation of principal and agent between the customer and any such person, firm or company for the purpose of contracting for the services or for the performance of any such obligation.
6. Pending forwarding, the goods may at any time and from time to time be warehoused or otherwise held at any place or places or at any time and from time to time be removed from any place or places at which they may be warehoused or otherwise held to any other place or places there to be warehoused or otherwise held at the sole discretion of the company and in every case at the customers risk and expense as a charge or charges of and incidental to or in connection with the services.
7. The company shall not be liable for any loss of or damage to or mis-delivery, delay in delivery, failure to produce or non-delivery of goods, either in transit or in storage or occurring during the term of this

contract or whether caused by the negligence of the company or by some other cause, whether the cause of damage or loss, mis-delivery, delay in delivery, failure to produce or non delivery is known or unknown to the company, except as provided in these conditions and company's liability is limited accordingly. It is specifically agreed that all rights, immunities and limitations of liability granted to the company by the provisions set forth in these conditions shall continue to have their full force and effect in all circumstances and notwithstanding any breach of the contract or any conditions hereof by the company.

8. If the customer instructs the company to use a particular method or route for movement of the goods, the company will give priority to the method or route designated but if that method or route cannot conveniently be adopted by the company, the customer shall be deemed to have authorized it to move or have the goods moved by another method or methods or by any other route.

9. Customers entering into transactions of any kind with the company expressly warrant that they are the owners or the authorized agents of the owners of any goods or property the subject matter of the transaction, and by entering into the transaction they accept these conditions for themselves as well as for all other parties on whose behalf they are acting.

10. The company is entitled to retain and be paid all brokerages, commissions, allowances and other remuneration customarily retained by or paid to shipping and forwarding agents and insurance brokers.

11. All receivables due to the company in New Zealand are payable in New Zealand dollars. The company is entitled to charge a currency conversion premium when converting receivables into New Zealand dollars.

12. Quotations are given on the basis of immediate acceptance and subject to the right of withdrawal or revision; quotations are valid only for the specified weight and volume ranges quoted and for the designated services and standard of service quoted. Quotations will be valid for a period of 30 days and will be filed on receipt of written acceptance and in the case of inbound freight rates shall be valid only for the suppliers detailed by the customer at each origin point. Where a particular method of carriage or service with a carrier is specified in the quotations, the quotation is only valid for that method of carriage, carrier or service specified in that quotation. Rates are quoted on the basis that the cargo is suitable for standard airline containers. Over-dimensional, overweight or hazardous cargo suitable for cargo aircraft or other specialized aircraft is subject to airline schedules, which may vary or be discontinued from time to time on some routes. Freight rates are subject to official airline, IATA, and seafreight company rate increases, and insurance premiums are subject to revision by the principal insurer. If any changes occur in rates of freight, insurance premiums, or any other cost or charges applicable to the goods, quotations and charges shall be subject to revision accordingly with or without notice to the customer. Customer acknowledges and agrees that the rates and service quotations given by the company and its agents will be based on information provided by customer, and that final rates and service may vary based on the shipment actually tendered and the application of these conditions, company will not be liable for nor will any adjustment, refund or credit of any kind be made as a result of any discrepancy in the rate or service quotation made prior to the actual tender of the shipment.

13. The company relies solely on the information provided by the customer, Sender, Owner and Consignee of any goods and their agents, if any, in providing advice to the customer, Sender, Owner and Consignee and their agents, if any, and information to the crown, the collector of customs or any other statutory body or authority whether representing the crown or not as well as any private body, company or person regarding the classification of or liability for the amount, scale or rate of customs duty, excise duty or other

impost or tax applicable to any goods or property whatsoever or as to the nature, type, quantity of goods or any other matter material to the valuation of the goods and/or the amount of duty properly payable on the goods. The customer, Sender, Owner and Consignee and their agents, if any, shall be deemed to be bound by and to warrant the accuracy of all descriptions, values and other particulars furnished to the company for customs, consular and other purposes. The customer undertakes to indemnify the company against all losses, damages penalties and fines arising out of or in connection with any inaccuracy or omission in the information provided to the crown, to the collector of customs or any other statutory body or authority whether representing the crown or not as well as any private body, company or person, whether the inaccuracy or omission is brought about wholly or in part by the negligence or alleged negligence or any act, omission, neglect, default or breach of duty or breach of obligation of the company's servants or agents or not.

14. The Customer shall indemnify the company against any duties, losses, costs, penalties or other moneys which the company is called upon or obligated to pay in respect of or in connection with the goods, any documents relating to the goods, the valuation of the goods or the amount of duty payable on the goods, and the keeping or failure to keep any documents relating to the goods, the valuation of the goods or the amount payable on the goods, and any statements made in respect of the goods, the valuation of the goods or the amount or duty payable on the goods, howsoever rising, including but not limited to, an obligation arising by reason of any statute proclamation declaration rule of law or other legislative or quasi-legislative act or by reason of liability arising in contract to in tort or by reason of the existence of any lien charge bill of sale mortgage or other hypothecation of the goods or under any hire purchase agreement or by reason of the law relating to the companies, bankruptcy, insolvency or executions or otherwise. The indemnity hereby conferred upon by the company shall continue in force and effect whether or not the goods are or have been pillaged, stolen, lost, damaged or destroyed and shall not be affected in any way if such pillaging, stealing, loss, damage or destruction has occurred or been brought about wholly or in part by the negligence or the alleged negligence or any default, omission, neglect or default or breach of duty or obligation of the company, its servants or agents.

15. The customer undertakes to reimburse to the company any expenses incurred directly or indirectly arising out of or in connection with entry of a customs officer or authorised person on the premises of the company for the purpose of searching the premises and/or inspecting, examining, making copies of or taking extracts from documents found on the premises.

16. No insurance will be effected except upon the express instructions given in writing by the customer and all insurances effected by the company are subject to the usual exceptions and conditions of the policies of the insurance company or underwriters taking the risk. The company shall not be under any obligation to effect separate insurance on each consignment but may declare it in any open or general policy. Should the insurers dispute their liability for any reason the insured shall have recourse against the insurers only and the company shall not be under any responsibility or liability in relation thereto, notwithstanding that the premium upon the policy may not be at the same rate as that charged by the company or paid to the company by its customer.

17. The company shall not be liable for loss of or damage to goods unless such loss or damage occurs whilst the goods are in the actual custody of the company and under its actual control and unless such loss or damage is due to the willful neglect or default of the company or its own servants.

18. It is hereby agreed between the customer and the company that the liability of the company on whatsoever grounds shall be limited in amount to the sum of \$20.00 in total in respect of losses or damages to all the goods listed in Forwarding instructions, included on any commercial invoice, or any other declaration of freight to be carried, whether or not there has been any declaration of value of the goods or of any of them by the customer. Sender. Owner or consignee for purpose of carriage or otherwise.

19. It is hereby agreed between the customer and the company that the customer's right to compensation for damaged, lost or non-delivered freight will only be maintained provided the following is strictly adhered to:

a) Any claim for damage must be lodged in writing to the company within 2 days of delivery of goods.

b) Any claim for loss/non-delivery of goods must be notified in writing to the company within 90 days from the date of issue of the airway bill/bill of lading.

c) Any rights to damage against the company shall be extinguished unless action is brought within one year after the completion of the services, delivery of the goods or the date the goods should have been delivered, whichever is shorter. To the extent that the Carriage of Goods Act 1979 may apply, the company expressly contracts out of section 19 (including section 19(4) of that Act, which shall be of no effect whatsoever.

20. a) In the case of Carriage by Sea, where the goods are of value exceeding \$200 per package or unit or the equivalent of that sum in other currency, the value will not be declared or inserted in the Bill of Lading for the purpose of extending the shipowner's liability under Article IV, rule 5 of the Fifth Schedule to the Maritime Transport Act 1994.

b) In the case of Carriage by Air, no optional declaration of value to increase the Air Carrier's liability under the Civil Aviation Act 1990, Article 22(2) of the Fourth Schedule will be made except on express instructions by the customer.

c) In all other cases where there is a choice of tariff rates according to the extent of the liability assumed by the carriers warehousemen or others, no declaration of value (where optional) will be made for the purpose of extending liability and goods will be forwarded or dealt with at owner's own risk or other minimum charges, unless express instructions in writing to the contrary are given by the customer.

21 Notwithstanding clauses 17, 18 and 29 of these Standard Trading Conditions, where the liability of the company is governed by the mandatory provisions of the Carriage of Goods Act 1979 the Company's liability shall be at "limited carrier's risk" and the amount of such liability calculated accordingly.

22. Instructions to collect payment on delivery (C.O.D.) in cash or otherwise are accepted by the company upon the condition that the company in the matter of such collection will be liable for the exercise of reasonable diligence and care only.

23. Perishable goods, which are not taken up immediately upon arrival or which are insufficiently addressed or marked or otherwise not identifiable, may be sold or otherwise disposed of without any notice to the customer and payment or tender of the net proceeds of any sale after deduction of charges shall be equivalent to delivery.

24. Non-perishable goods which cannot be delivered either because they are insufficiently or incorrectly addressed or because they are not collected or accepted by the consignee may be sold or returned, at the company's option, at any time after the expiration of 21 days from notice in writing sent to the address which the customer gave to the company on delivery of the goods. All charges and expenses arising in connection with the sale or return of the goods shall be paid by the customer. A communication from any agent or correspondent of the company to the effect that the goods cannot be delivered for any reason shall be conclusive evidence of that fact.

25. Except under special arrangements previously made in writing, the company will not accept or deal with any noxious, dangerous, hazardous or inflammable or explosive goods or any goods likely to cause damage. Any customer delivering such goods to the company or causing the company to handle or deal with any such goods (except under special arrangements previously made in writing) shall be liable for all loss or damage caused thereby and shall indemnify, defend and hold the company harmless against all penalties claims damages costs and expenses arising in connection therewith and the goods may be destroyed or otherwise dealt with at the sole discretion of the company or any other person in whose custody they may be in at the relevant time. If such goods are accepted under arrangements previously made in writing they may nevertheless be so destroyed or otherwise dealt with if they become dangerous to other goods or property. The expression "goods likely to cause damage" includes those likely to harbour or encourage vermin or other pests, and any damaged freight that may be a risk to the safety of the employees, servants or agents of the company.

26. Except under special arrangements previously made in writing, the company will not accept bullion, coins, precious stones, jewellery, valuables, antiques, pictures, livestock or plants, and the company will not accept any liability whatsoever for any such goods except under special arrangements previously made in writing.

27. All goods (and documents relating to goods) shall be subject to a particular and general lien and pledge for moneys due either in respect of such goods or for any particular or general balance or other moneys due from the customer to the company. If any moneys due to the company are not paid within one calendar month after notice has been given to the person from whom the moneys are due that such goods are detained, they may be sold by auction or otherwise at the sole discretion of the company and at the expense of the customer and the proceeds applied in or towards satisfaction of such particular and general lien. No sale or disposal pursuant to this provision shall discharge any liability or lien to any greater extent than the proceeds thereof, less selling expenses, and the customer shall remain liable for any deficiency.

28. It is hereby expressly agreed that no employee, servant or agent of the company (including every independent contractor from time to time employed by the company) shall in any circumstances whatsoever be under any liability whatsoever to the customer and the customer indemnifies the company and its employees, servants and agents (including every independent contractor from time to time employed by the company) in respect of any liability to the sender, owner or consignee of the goods for any loss or damage or delay of whatsoever kind arising or resulting directly or indirectly from any act, neglect or default on his part while acting in the course of or in connection with his employment and without prejudice to the generality of the foregoing provisions in this clause, every exemption, limitation, condition and liability herein contained and right, exemption from liability, defence and immunity of whatsoever nature applicable to the company or to which the company is entitled hereunder shall also be available and shall extend to protect every such employee, servant and agent of the company (including

every independent contractor from time to time employed by the company) acting as aforesaid and for the purpose of all the foregoing provisions of this clause the company is or shall be deemed to be acting as agents or trustee on behalf of and for the benefit of all persons who are or might be employees, servants or agents of the company (including every independent contractor from time to time employed by the company) and all such persons shall, to this extent only, be or deemed to be parties to this contract.

29. All agreements between the company and its customers shall be governed by New Zealand Law and within the exclusive jurisdiction of New Zealand courts. Customer hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the courts of New Zealand for any actions, suits or proceedings arising out of this contract.

30. The company shall not be liable for:

a) Any loss, injury or damage in respect of the goods caused by destruction, fire, explosion, stealing, fraud, burglary, theft, storm, flood, tempest or water or by any other cause whatsoever whether brought about wholly or in part by the alleged negligence or any act, omission, neglect, default, breach of duty or breach of obligation of the company its servants its agents or not.

b) Any loss, injury or damage suffered by delayed delivery of goods.

c) Any loss, injury or damage in respect of the goods resulting from or contributed to by the contract of the goods with or proximity to other goods or sweating, freezing, defrosting, evaporation, leakage, breakage, shrinkage, deterioration, fermentation, wasting, decay, putrefaction, contamination, vermin, strikes, lockouts, shortage of labour or resulting from or contributed to by any circumstances beyond the reasonable control of the company.

d) Any duties, losses, costs or penalties or other moneys incurred or actions, claims or proceedings arising out of or in connection with the keeping or failure to keep documentation relating to the goods, the valuation of the goods or the amount of duty payable on the goods, whether brought about wholly or in part by the negligence or alleged negligence or any act, omission, neglect, default, breach of duty or breach of obligation of the company its servants or agents or not.

31. To the extent permitted by law, and subject to the following clause, the company shall under no circumstances be liable in any way whatsoever to the customer or any third part for any loss, damage, penalty or costs in respect of any claim (whether contractual, tortious, statutory or otherwise) for any form of damages, losses, costs, penalties or harm sustained or incurred by the customer arising out of or in connection with the relationship established by this agreement, including (without limiting the generality of the foregoing) any advice, quotation, statement, representation, or information, whether oral or in writing, made or given by or on behalf of the company or by any servant, agent or employee of the company as to the classification of or the liability for, the amount, scale or rate of customs duty, excise duty or other impost or tax applicable to any goods or property whatsoever, or as to the nature, type, quantity of goods or any other matter material to the valuation of the goods and/or the amount of duty properly payable on the goods.

32. The company shall not in any circumstances be liable in respect of any loss, penalty, costs, claim, action or proceedings arising out of or in connection with a failure by the company to pass on to or provide the customer with any documents relating to the goods, the valuation or the assessment of liability for duty of the goods or any penalty imposed on the customer.

33. The terms and conditions hereof which exclude or limit the company's liability shall apply only to the extent permitted by law Provisions of the Consumer Guarantees Act, 1993 and other statutes from time to time in force in New Zealand may imply warranties or conditions or impose obligations upon the company which cannot be excluded, restricted or modified except to a limited extent. This agreement must be read and construed subject to any statutory provision. If any such statutory provisions apply, then to the extent to which the company is entitled to do so, its liability under those statutory provisions shall be limited at its option to:

(i) the re-supply of the services provided to the customer under this agreement;

(ii) the payment of the cost of having such services performed again; or

(iii) the refunding to the customer of any sums paid in respect of such services.

34. If any payment due under any agreement between the company and the customer is not made within seven days of the due date, the customer will be in default and without limiting any other rights of the company, the customer shall pay to the company, by way of liquidated damages, interest at the rate of 5 per cent per annum above the company's bank overdraft rate on the amount outstanding calculated from the due date of payment until payment is made in full. All sums payable to the company must be paid by the due date, without any deduction or set-off whatsoever.

35. All freight moved by air is subject to volumetric conversion on the basis of one kilo being the equivalent of six thousand cubic centimetres. Freight moved by other means is subject to volumetric conversion on the basis of relevant industry standards or as modified by the carrier's standard trading conditions.

36. The company reserves the right to offset any amounts receivable from the customer against any amounts payable to that customer or any company affiliated with the customer. This right exists irrespective of the date the liability has been created or debt incurred with the company.

37. The company shall not be liable in any event for specific, incidental, or consequential damages, including, but not limited to, loss of profits, income, utility, interest, or loss of market, whether or not the company had knowledge that such damage might be incurred.

38. The company and customer acknowledges that goods moving by airfreight are subject to the applicable international treaties including the Convention for the Unification of Certain Rules relating to International Carriage by Air, signed at Warsaw, 12th October 1929, or that Convention as amended by the Hague Protocol 1955. The customer's recovery of any loss or damage is against the airline carrier and is limited in accordance with these or any other conventions that may be applicable. In the event of any loss or damage suffered by the customer whilst the goods are in the possession of the airline carrier, the company will seek to recover on behalf of the customer from the principal airline carrier amounts payable by these conventions as they are applicable. The customer will indemnify, defend, and hold the company harmless against any claims for loss or damage to their goods incurred whilst they were in the possession of the airline carrier.

39. The company and customer acknowledges that goods moving by seafreight are subject to the applicable international treaties including International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on August 25, 1924 (the Hague Rules), or those as amended by the Protocol signed at Brussels on February 23, 1968 (the Hague Visby Rules) and the SDR Protocol (1979).

The customer's recovery of any loss or damage is against the seafreight carrier and is limited in accordance with these or any other conventions that may be applicable. In the event of any loss or damage suffered by the customer whilst the goods are in the possession of the seafreight carrier, the company will seek to recovery on behalf of the customer from the carrier amounts payable by these conventions as they are applicable. The customer will indemnify, defend and hold the company harmless against any claims for loss or damage to their goods incurred whilst in the possession of the seafreight carrier.

40. If any provision of these Standard Trading Conditions is unenforceable, such unenforceability shall not affect any other part of such provision or any other provision thereof. However, for the avoidance of doubt, sections 6-10 Contractual Remedies Act 1979 are hereby excluded and shall have no operation or effect in relation to this contract.

41. If the client has acknowledged in writing that the supply of Services is for the Client's business purposes (as that term is defined in the Consumer Guarantees Act 1993) or if the Customer has actually acquired the Services for such purposes, the Consumer Guarantees Act shall not apply to the transaction. Where the Act continues to apply and there is a conflict between these terms and conditions and the Consumer Guarantees Act, the Consumer Guarantees Act shall prevail and any such conflict shall not be deemed to be an attempt out of the Consumer Guarantees Act.

Kalgin International Freight Services, New Zealand - GST No. 95-074-510