



HILTON HAULAGE LIMITED PARTNERSHIP TERMS AND CONDITIONS FOR CARRIAGE AND STORAGE SERVICES

1 TERMS OF CONTRACT

These are the Terms on which we contract with you for Services. Providing Goods for Services will be deemed to be acceptance of these Terms, despite anything you may state to the contrary, unless we have agreed in writing to contract with you on a different basis than as set out in these Terms.

2 CHARGES

- 2.1 Our charges for the Services shall be our prevailing rates for them from time to time, or as otherwise set out in the Quotation.
- 2.2 We may withdraw a Quotation before it is accepted and, in any event, a Quotation will lapse, without notice, 30 days after it is given.
- 2.3 Unless otherwise agreed in writing, our charges are exclusive of GST, which will be charged to you at the prevailing rate.
- 2.4 We may (but are not obliged to) check-weight and check-measure your Goods and alter any consignment note (or other applicable documentation) and any charges calculated based on weight or measurement accordingly. We do not accept responsibility for, or guarantee, our weighing or measurement.
- 2.5 Our charges shall be considered fully earned for the requested Services as soon as the relevant Goods are received by us.

3 PAYMENT

- 3.1 You shall remain liable for any amount owing to us even where you have directed that the amount owing is to be paid by another person.
- 3.2 You must pay all amounts set out in each invoice issued by us in full, without deduction or set off, by the due date specified on the invoice. We may require payment in full of all charges prior to commencement of Services. Your payment is made only when funds have fully cleared through the bank's system into our bank account.
- 3.3 If full payment is not made by the due date, then without prejudice to any other rights or remedies available to us:
 - (a) we may charge interest on overdue monies on a daily basis at 5% per annum above the current overdraft rate charged by our bankers at that time, and interest shall continue to accrue both before and after judgment;
 - (b) you will be responsible for all costs (including legal costs on a solicitor/client basis) incurred by us in recovering such monies; and
 - (c) we may discontinue or suspend any Services.
- 3.4 We may accept and apply payments from you in respect of any indebtedness as we see fit, and we will not be bound by any conditions or qualifications attaching to the payments.

4 RISK AND INSURANCE

- 4.1 Risk in your Goods shall remain with you at all times during performance of the Services, and it shall be your sole responsibility and cost to arrange appropriate insurance cover for your Goods.

5 WARRANTIES AND INDEMNITY

- 5.1 You warrant to us that:
 - (a) you will, prior to us taking possession of your Goods, supply us with accurate, true and complete details about your Goods and any other information we may request;
 - (b) you will comply with the requirements of any instruction or direction we issue and with any applicable law relating to the nature, labelling and packaging of your Goods, and

- so as to enable us to lawfully provide the Services in relation to the Goods;
- (c) you have title to and ownership of, or a valid right of possession to, your Goods;
- (d) your Goods are properly packaged and labelled and in a fit and proper condition to be safely stored, carried and otherwise handled as part of the Services;
- (e) your Goods are and will remain free from any perishable or objectionable matter or odour, and are not of an offensive nature or illegal; and
- (f) your Goods are not of a deleterious or inflammable nature or a substance likely to cause harm, or a Hazardous Substance for the purposes of the Hazardous Substances and New Organisms Act 1996.

- 5.2 You agree to indemnify us, on demand, against all liabilities, losses, damages, costs and expenses of any nature whatsoever suffered or incurred by us, directly or indirectly, as a result of or in connection with any breach of the these Terms, including any of the warranties given by you in clause 5.1 above.
- 5.3 Without limiting clause 5.2, all expenses and charges we incur in complying with the provisions of any law referred to in clause 5.1(b) or with any order or requirement under such law or of any competent authority or otherwise in connection with the performance of the Services (including pursuant to clause 7.3), shall be paid by you.

6 ACCEPTANCE OF GOODS FOR SERVICES

- 6.1 Subject to clause 6.3, Goods are accepted for Services at the time we take possession of those Goods.
- 6.2 We reserve the right to only accept your Goods under special arrangements or conditions.
- 6.3 We (and/or our contractors) may at any time, at our discretion and without any liability to you:
 - (a) refuse to accept any Goods for Services; and/or
 - (b) open and inspect any Goods.
- 6.4 We shall issue you a receipt, consignment note or other confirmation for any Goods which you provide to us for Services. The confirmation will contain the details supplied by you or on your behalf about your Goods. We cannot accept responsibility for the correctness of these details, which we will use for identification purposes only, and we will not be obliged to inspect or otherwise check whether your Goods are as described in these details.

7 CARRIAGE SERVICES

- 7.1 Subject to the limitations and other provisions of these Terms, our responsibility to you for Carriage Services starts at the time we accept the Goods for carriage pursuant to clause 6.1 and ceases at the earlier of:
 - (a) the time we deliver the Goods to your nominated delivery address (or, if we are unable to do so, the time we give you notice under clause 7.3(a));
 - (b) the time you collect the Goods; and
 - (c) the date that is five days after we notify you that the Goods are ready for collection.
- 7.2 We may carry or sub-contract carriage of any Goods and have them carried by any method or any person which we deem fit and notwithstanding any instructions that the Goods are to be carried or on-forwarded by another method.
- 7.3 Without prejudice to our rights under clause 7.4, we may store your Goods as bailee and charge you storage fees at our normal rates if:
 - (a) we are unable (due to circumstances beyond our control) to deliver the Goods as required by your instructions (or instructions given on your behalf) and we notify you accordingly; or



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- (b) you (or the relevant consignee) have not collected the Goods within 24 hours of the time at which they are available for collection.
- 7.4 Where we store Goods on your behalf under clause 7.3:
- (a) you must collect such Goods within 48 hours of such Goods being available from our storage facility;
 - (b) you acknowledge and agree that the Goods are stored and held "at owner's risk";
 - (c) we shall not be liable for any loss of or damage to the Goods, however caused and we make no guarantees as to the storage conditions;
 - (d) we may, in our discretion, return the Goods to you at your risk and expense or sell or dispose of the Goods under clause 10.3.
- 7.5 We will endeavour to deliver Goods that are correctly addressed within our target delivery timeframe. However, we do not guarantee delivery within any target timeframe given.
- 8 STORAGE SERVICES**
- 8.1 We may, at our discretion, move your Goods to and from different storerooms in our premises, and we may store your Goods at such locations for such periods as we consider expedient. Additional charges may apply for any such movements as a result of a breach by you of these Terms.
- 8.2 You may, at reasonable times during our business hours and upon at least 48 hours' prior written notice to us, inspect your Goods while they are in our possession. You must reimburse us on demand for any costs incurred by us in relation to your inspection.
- 8.3 We give you no warranty or undertaking of any kind in relation to any of the following matters:
- (a) the method of stacking, or the height or size of any stacks;
 - (b) the use of dunnage in the creation of any stacks;
 - (c) the distance of your Goods from any ceilings, walls or doors of the relevant premises; or
 - (d) the segregation of your Goods from any other goods.
- 8.4 The Storage Services will end and you must collect your Goods, at your cost, from the location where your Goods are stored:
- (a) on the date agreed between you and us;
 - (b) upon not less than two months' written notice by one party to the other; or
 - (c) upon notice to you under clause 9 below.
- 8.5 We shall use reasonable efforts to ensure your Goods are ready for collection on their date for collection under clause 8.4 above, but we shall have no liability if, for any reason, they are not ready.
- 9 RIGHT TO SUSPEND OR DISCONTINUE SERVICES**
- 9.1 We may, at our discretion and without any liability to you, by written notice to you, suspend or discontinue the Services (or any of them) at any time if:
- (a) you fail to comply with any of the provisions of these Terms (or any other agreement with us)
 - (b) we consider that your creditworthiness, or ability or willingness to comply with your obligations under these Terms, may be at risk for any reason whatsoever;
 - (c) you (or any guarantor of your obligations under these Terms) become insolvent or commit any act of bankruptcy; a receiver, liquidator, administrator or statutory manager is appointed over any of your assets or undertaking; you make or attempt to make an arrangement or composition with your creditors; or you are unable (or deemed unable) to pay your debts as they fall due; or
- (d) we believe that your Goods are, or are likely to become, unfit to store or transport, or are likely to cause damage to our storage facility, vehicles or other goods, or injury to people.
- 9.2 Where we exercise our discretion to suspend or discontinue Services under these Terms, all Charges shall become immediately due and payable and you must collect your Goods by the time and from the location we require in our notice to you (provided that if the Goods are perishable, we may dispose of the Goods without liability to you).
- 10 LIEN**
- 10.1 Where the Services are subject to a common law or statutory lien, that lien shall take precedence over the provisions of clause 10.2, which shall have no effect.
- 10.2 Subject to clause 10.1, we shall have a first and paramount lien over your Goods for all amounts owing by you to us pursuant to these Terms however arising, including all charges, debts and liabilities in connection with the Services, together with charges, debts and liabilities owing by you to us in respect of any other goods or services.
- 10.3 If you do not pay, in full, any amounts owing to us on or before their due date, or if you fail to collect your Goods when you are required to do so under these Terms, we may exercise all or any of the following rights and remedies without liability to you or notice to you:
- (a) remove such Goods or part thereof and store them in such place and manner as we think proper and at your risk and expense;
 - (b) dispose or sell your Goods, either at one time or from time to time, individually or in such lots as we may think fit, by private sale or public auction, and on such terms and conditions and at such price(s) as we think fit; and
 - (c) apply the proceeds of sale of your Goods towards the satisfaction of all charges, debts and liabilities owed by you to us (including under clause 10.4).
- 10.4 You shall be liable to us for, and shall indemnify us against, all costs and expenses (whether direct or indirect) of removal, storage, sale or attempted sale of your Goods under clause 10.3 above. Storage charges at our prevailing rates will continue to accrue to your account for so long as the Goods are held and stored pursuant to our rights under this clause 10.
- 11 SECURITY INTEREST**
- 11.1 You acknowledge that the lien in clause 10.2 above is a security interest for the purposes of the PPSA.
- 11.2 You undertake to:
- (a) do all acts and provide us on request all information we require to register a financing statement or financing change statement on the Personal Property Securities Register; and
 - (b) advise us immediately in writing of any proposed change in your name or other details on the Personal Property Securities Register.
- 11.3 You:
- (a) waive your right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interests created under these Terms;
 - (b) agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these Terms and, with our agreement, contract out of such sections; and
 - (c) waive your rights and, with our agreement, contract out of your rights under sections 116, 120(2), 121, 125, 129 and 131 of the PPSA.



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11.4 Unless the context otherwise requires, the terms and expressions used in this clause 11 have the meanings given to them in, or by virtue of, the PPSA.

12 LIMITATION OF LIABILITY

12.1 Our liability under these Terms shall be limited as follows:

- (a) if and to the extent that the Act applies to the Carriage Services, the Carriage Services are undertaken on the basis of "at limited carrier's risk" as defined in the Act and, in calculating our liability under the Act, Unit shall have the meaning given to that term in clause 18.1;
- (b) if and to the extent that the Act applies to any Services incidental to the carriage of Goods, including any Additional Services, those services are undertaken on the basis of "at owner's risk" for the purposes of the Act;

You acknowledge and agree that where the Goods are to be carried and/or held at owner's risk, this means that we will pay no compensation if the Goods are lost or damaged, unless we intentionally lose or damage them;

- (c) if, and to the extent that, the Act does not apply to the Services our liability for any physical loss or damage of any kind shall be limited to the lowest of:
 - (i) the value of the Goods concerned; or
 - (ii) an amount equal to one month's charges to you for the Services concerned; or
 - (iii) a maximum of \$2,000 per Unit (including the product and the container itself),

and we shall not be liable for any loss or damage arising from the Services, including any loss or damage to your Goods however caused, unless such loss or damage is caused by the negligence or wilful default of any person under our control. All other liability of any kind (whether arising in contract, tort (including negligence), statute or otherwise) to you or any other person is excluded to the maximum extent permitted by applicable law.

12.2 Without limiting clause 12.1, we shall not be liable (whether in contract, tort (including negligence) or otherwise) for:

- (a) deterioration, misdelivery, delay in delivery or non-delivery of the Goods (whether the Goods are or have been in our possession or not);
- (b) any instructions, advice or other information given or provided by us to any person, whether in respect of the Goods or any other thing or matter;
- (c) any loss or damage or any failure to perform any Services which arises directly or indirectly from, or is contributed to by, incorrect or incomplete information provided by you (or your customers), your failure to comply with these Terms or any circumstances beyond our reasonable control; and
- (d) any loss (whether direct or indirect) of profits, business, anticipated savings or other economic loss or for any indirect, special or consequential loss, regardless of whether such loss or damage was reasonably foreseeable or we were or should have been aware of the likelihood of such loss.

12.3 We shall not be liable in respect of a claim against us under these Terms unless:

- (a) you write to us, giving full details of the claim and the alleged damage or loss, within seven days after the earlier of our delivery or your collection of the Goods (or in the case of non-delivery, within fourteen days of the date of despatch) or the date the Storage Services end; and

(b) (if a claim is not settled) an action is commenced by you in a Court of competent jurisdiction within six months of the date on which we accepted the relevant Goods for Services.

The parties acknowledge that the provisions of this clause 12.3 are in substitution for sections 274 to 281 of the Act, which shall not apply.

- 12.4 If the Consumer Guarantees Act 1993 applies, these Terms shall be read subject to your rights under that Act. Where you are in trade and the Services are supplied and acquired in trade you agree that none of the rights and remedies under that Act will apply.
- 12.5 You will use your reasonable endeavours to avoid or mitigate any loss, damage or liability that might give rise to any claim under these Terms, including by fully exercising any liability limitation or exclusion to which you are entitled by contract or applicable law against any third party. We will not be liable for any loss or damage that could have been avoided by you.
- 12.6 The exclusions and limitations of liability set out in this clause 12 and the indemnities in our favour in these Terms also apply to, and are for the benefit of, our employees, contractors, representatives and agents together with any "actual Carrier" (as defined in the Act) providing Services and their employees, contractors, representatives and agents. The aggregate amount recoverable from us and any of the people referred to in this clause will not exceed the maximum amount of liability expressed in this clause 12.

13 ASSIGNMENT AND SUBCONTRACTING

- 13.1 We may perform any of our obligations, and exercise any of the rights granted to us, under these Terms through any agents or sub-contractors appointed by us in our absolute discretion for that purpose.
- 13.2 None of your rights or obligations under these Terms may be assigned or transferred without our prior written consent. No assignment or transfer of title in your Goods shall relieve you of your obligations under these Terms.

14 ACCESS TO OUR PROPERTY

Where, for the purposes of these Terms, you or any of your employees, agents or contractors enters upon any premises owned or used by us in relation to the Services, whether to inspect or collect Goods, you shall:

- (a) comply with all directions given by us (including all policies and codes of practice supplied to you);
- (b) consult, cooperate and coordinate activities with us and other persons conducting a business or undertaking (as defined in the Health and Safety at Work Act 2015) who are accessing our premises; and
- (c) indemnify us, on demand, against liabilities, losses, damages, costs and expenses suffered or incurred by us, directly or indirectly, from any breach or non-observance by you of your obligations under paragraph (a) of this clause 14 or any act or omission of any of your employees, agents or contractors while on our premises.

15 PRIVACY ACT 1993

- 15.1 We may use any personal information that you give to us for credit, administration, service and marketing purposes. If you do not give this information, we may not be able to provide the Services.
- 15.2 You authorise any person or company to give us such information as we may require in response to our credit and other enquiries.
- 15.3 You understand that we may use a credit reporting agency to credit check you. In such case:
 - (a) the agency will give us information about you for that purpose;



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- (b) we will give your personal information to the agency, and the agency will hold the information on its systems and use it to provide their credit reporting service;
- (c) when other customers use the service, the agency may give the information to those customers; and
- (d) if you default in your payment obligations to us, information about the default may be given to the agency, and the agency may give the information to other customers.

- 15.4 You have a right of access to, and may request correction of, your personal information.
- 15.5 If the customer is a company, the word "you", where used in this clause 15, includes its directors and shareholders.

16 NOTICES

- 16.1 Every notice given or required to be given under these Terms ("**Notice**") shall be in writing. A Notice shall be served on a party at that party's last known place of abode or business in New Zealand.
- 16.2 Every Notice shall be sent by courier, by fastpost, by facsimile transmission or by electronic mail.
- 16.3 A Notice shall be deemed to be served if by courier, at the time of delivery and, if posted, at 10.00 am on the third day after the day it was put in the post. If sent by facsimile transmission or electronic mail, it shall be deemed to be served at the expiration of two hours after the time of despatch, if despatched before 3.00 pm and in any other case at 10.00 am on the first day after the date of despatch.

17 GENERAL TERMS

- 17.1 **Amendments:** We may amend these Terms from time to time by notice to you in writing.
- 17.2 **Entire Agreement:** These Terms (together with any Quotation and any agreement between you and us which incorporates these Terms) constitute the entire agreement between us and you for the Services and exclude any other representations, understandings, terms, agreements and arrangements, including those in any proposal, document or terms provided by you.
- 17.3 **Waiver:** No delay or failure by us to exercise our rights under these Terms operates as a waiver of those rights. A partial exercise of those rights does not prevent their further exercise in the future.
- 17.4 **Severability:** If a court decides that part of these Terms is unenforceable, the part concerned shall be deleted from the rest of these Terms, which will then continue in force.
- 17.5 **Law:** These Terms will be interpreted in accordance with and governed by the laws of New Zealand, and the New Zealand courts will have non-exclusive jurisdiction in respect of all matters between us.
- 17.6 **No lease or implied licence:** These Terms constitute a contract of bailment only in respect of storage services and you acknowledge that you have no entitlement to claim any interest in the premises at which the Goods are stored, whether as a lessee, licensee or otherwise.

18 DEFINED TERMS AND INTERPRETATION

- 18.1 In these Terms, the following words have the following special meanings:
 - "**Act**" means the Contract and Commercial Law Act 2017;
 - "**Additional Services**" means any processing, assembly or other services supplied by us to you in relation to your Goods but specifically exclude the carriage or storage of your Goods;
 - "**Carriage Services**" means the carriage services supplied by us to you in relation to your Goods;
 - "**Goods**" means goods presented to us by you at any time for the purposes of the Services;
 - "**PPSA**" means the Personal Property Securities Act 1999;

"**Quotation**" means a quotation for the supply of the Services on the terms set out in the quotation and these Terms;

"**Services**" means the Carriage Services, the Storage Services and the Additional Services;

"**Storage Services**" means the storage services supplied by us to you in relation to your Goods;

"**Terms**" means these terms of trade (as amended from time to time);

"**Unit**" means, for the purpose of these Terms, the unit of Goods accepted by us for carriage or storage as the case may be;

"**we**", "**our**", "**us**" means Hilton Haulage Limited Partnership and any of its related companies (as defined in the Companies Act 1993) from time to time; and

"**you**" means (subject to clause 15.5 above) the customer named in the receipt or invoice.

- 18.2 For convenience, these Terms have been grouped under different headings, but the headings do not affect the meanings of these Terms.

- 18.3 Where the provisions in these Terms differ from the provisions in the Act then, to the extent permitted by law, the provisions in these Terms are in substitution for, and prevail over, the statutory provisions, and the parties agree that they have contracted out of the relevant provisions in the Act.