MONDIALE VGL
GLOBAL LOGISTICS

Conditions of Contract

1. Role of the Forwarder

1.1 The business of the Forwarder is to arrange the receipt, packing, storage, transport, customs clearance, delivery and other handling of goods as a forwarding and customs agent and accordingly, except to the extent that an incidental part of the services is directly performed by the Forwarder and except where paragraph 2.2 applies, the relationship between the Customer and the Forwarder shall be that of principal and agent only.

1.2 The Forwarder may refuse to provide services to any person, or for any class of goods.

1.3 The Customer authorises the Forwarder, as agent, to enter into contracts for the carriage and/or handling of the goods by any route or means with, and to entrust the goods to, any contractor or subcontractor on terms agreed between such persons and the Forwarder, and agrees that such terms will bind the Customer, as principal.

1.4 The Customer authorises the Forwarder to depart from any instructions given by it or on its behalf in any respect if, in the Forwarder's opinion, it is necessary or desirable to do so.

2. Application of Conditions

2.1 Subject to paragraph 2.2, these Conditions govern all dealings between the Forwarder and the Customer, including the provision of any advice or information and shall prevail over any terms and conditions in any document used by the Customer purporting to have contractual effect.

2.2 In any case where the Forwarder issues a bill of lading or other transport document in which the Forwarder is described as the carrier, the terms and conditions of such transport document (including all limitations and exclusions of liability) shall, to the extent of any inconsistency, prevail over these Conditions.

2.3 For the avoidance of doubt, if there is any matter dealt with in these Conditions that is not dealt with in any transport document issued by the Forwarder, or which relates to a period of time or stage of transit not covered by such transport document, these Conditions shall apply to the maximum extent permitted by law.

2.4 No modification or waiver of any term of these Conditions shall bind the Forwarder unless in writing and signed by a director or other representative of the Forwarder holding written authority signed by a director.

3. Parties Benefiting from or Bound by Conditions

3.1 These Conditions shall also benefit, and be enforceable by, every contractor, subcontractor, servant and agent of the Forwarder.

3.2 The Customer warrants that it is authorised to accept and does accept these Conditions on behalf of all other persons who have, or may acquire, any interest in the goods.

4. Application of Legislation

4.1 Where any legislation applies to the services provided by the Forwarder then:

(a) these Conditions shall be read subject to any provision which is mandatory;

(b) the Forwarder shall be entitled to any rights, immunities from or limitations of liability under such legislation.

4.2 Without limiting the generality of paragraph 4.1:

(a) Sections 274 to 281 of the Act shall apply to the services provided by the Forwarder only to the extent that they extend or enlarge the Forwarder's rights and powers under these Conditions;

(b) Where the Customer is in trade, it agrees that these terms constitute an agreement in writing and agrees also to contract out of the provisions of the Consumer Guarantees Act 1993, which shall be of no application.

5. Preparation and Packing of goods, VGM

5.1 The Customer warrants that:

(a) all goods are fit to be carried and stored in accordance with the contract in the condition, and packed in the manner, in which the goods are tendered for carriage;

(b) all marks, weights, numbers, brands, contents, descriptions, values and other particulars furnished to the Forwarder relating to the goods are correct; and

(c) the Customer has complied with all applicable laws and government regulations of any country to, from, through or over which the goods may be carried relating to the nature, packaging, labelling or carriage of goods, including but not limited to those relating to VGM and shall bear and pay all duties, taxes, fines, imposts, expenses or losses (including freight for any additional carriage) incurred or suffered by reason of any failure to so comply, or by reason of any illegal, incorrect or insufficient weighing, marking, number or addressing of the goods or containers or any breach of the laws of any country through or to which the goods may travel and shall indemnify the Forwarder in relation to the same.

6. Prohibited goods

6.1 Without prior notification and agreement, the Forwarder will not accept or deal with:

(a) goods which it is unlawful to carry or handle, or which can only be carried or handled with a permit or similar authorisation;

(b) goods which either in fact or in the opinion of the Forwarder are dangerous or hazardous or which are likely to become dangerous or hazardous or may cause damage;

(c) any perishable goods or goods which require special handling or packaging;

(d) valuables of any kind;

(e) household effects.

6.2 Where the Forwarder agrees to accept or deal with any goods referred to in paragraph 6.1, the Customer will provide all documents and information relating to the goods (including any relevant permits) necessary to enable the Forwarder to:

(a) comply with the law; and

(b) arrange for the goods to be carried or handled safely and in a manner which is likely to avoid or minimise loss.

6.3 If the Customer delivers any goods referred to in paragraph 6.1 to, or causes the Forwarder to carry or handle such goods, or for the Forwarder to arrange for the goods to be carried or handled by any contractor or subcontractor without prior notification and agreement:

(a) neither the Forwarder nor any such contractor or subcontractor shall be liable for any loss or damage whatsoever arising out of its dealings with the goods;

(b) the Customer shall be liable for all loss or damage whatsoever caused by, to or in connection with the goods however caused or arising;

(c) the Customer shall indemnify the Forwarder, the contractors, subcontractors and their respective servants, and agents against all penalties, claims, damages, costs and expenses whatsoever arising as a result; and

(d) in the case of goods referred to in paragraphs 6.1(a), (b) and (c), the goods may be destroyed or otherwise dealt with at the sole discretion of the Forwarder, the contractor, subcontractor or any other person in whose custody they may be at the expense of the Customer without the Forwarder, the contractor, subcontractor or such other person having any liability whatsoever to any person.

7. Delivery

7.1 The goods shall be deemed to have been delivered when they are tendered to the consignee in accordance with the contract.

8. Payment of Charges and Expenses

8.1 The Customer agrees to pay all charges invoiced by the Forwarder in accordance with the terms of any separate agreement relating to the services provided or, if there is no such agreement, the Forwarder's standard charges, and any other expenses (including, without limitation, taxes or duties) reasonably incurred by the Forwarder in connection with the goods or the services provided by the Forwarder.

8.2 The Forwarder shall be under no obligation to incur or pay any expenses unless the Customer has provided the Forwarder with sufficient funds to meet the same.

8.3 The Forwarder may fix its charges by weight, measurements or value, and may at any time have or require the goods to be re-weighed, re- measured or re-valued and re-fix its charges accordingly.

8.4 All quotations given by the Forwarder are based on costs for freight, insurance and other charges, rates of exchange, taxes, duties and other imposts, prevailing at the date of quotation and on the latest available quotations from contractors or subcontractors used by the Forwarder. If such costs increase at any time as a result of variations in any of the foregoing, the charges payable by the Customer shall increase accordingly.

8.5 The Forwarder's charges and expenses shall be deemed earned as soon as any handling of the goods has occurred. Unless otherwise agreed in writing, the Forwarder's charges and expenses shall be paid, without any deductions, counterclaims or set off, prior to the release of the goods by the Forwarder and, if not so paid, the Customer agrees to pay interest at 1.5 per cent per month on the unpaid balance until payment is made.

8.6 The Customer shall remain liable to the Forwarder for all the Forwarder's charges notwithstanding any direction that the whole or any part of them shall be payable by some other person.

8.7 If at any time any payment due by the Customer to the Forwarder is in arrears, any subsisting obligations of the Forwarder to the Customer shall be suspended.

9. Brokerage and other Remuneration

9.1 The Customer acknowledges that the Forwarder has a pecuniary interest in all contracts entered into by the Forwarder as its agent in terms of these Conditions and agrees that the Forwarder may receive and retain all brokerage, commission, discounts, allowances and other remuneration paid by the other party to the contract and customarily received or retained by forwarding agents in addition to the charges and expenses referred to in paragraph 8, and is not required to disclose to the Customer the existence, nature or amount thereof.

9.2 The Customer further acknowledges and agrees that where any amount charged by the Forwarder is described as a disbursement (or similar expression), such amount will include the Forwarder's handling and administration fee in respect of the same, and the existence or amount of the fee is not required to be separately disclosed.

10. Insurance

10.1 Insurance of the goods is the responsibility of the Customer.

10.2 The Forwarder will arrange insurance of the goods as the agent of the Customer only if there is an express written agreement to do so between the Customer and the Forwarder. Any such insurance:

(a) Will be placed by the Forwarder on the terms of the marine open cargo policy held by the Forwarder. The full policy wording is available on request. The Forwarder makes no representations and gives no advice regarding any aspect of the policy, including as to the suitability or appropriateness of the policy for the Customer's requirements, the policy's terms, conditions and exclusions, or as to the competitiveness of the premium. The Customer warrants that it relies solely on its own skill and judgement in accepting the policy on the terms offered.

(b) In the event of a claim the Customer shall have recourse solely against the insurer and the Forwarder shall not be under any responsibility or residual liability to the Customer or consignee for the loss of or damage to any of the Goods or the failure of the policy to meet a claim in respect of the same.

11. Lien

11.1 Immediately they come into the possession of the Forwarder or any contractor or subcontractor, all goods and documents relating to goods shall be subject to a particular and general lien securing payment of all moneys due to the Forwarder by the Customer or the consignee, consignor or owner, whether in respect of such goods or otherwise, and whether or not such moneys are overdue for payment.

11.2 If any moneys due to the Forwarder are not paid within fourteen (14) days after notice to the debtor that the lien is being exercised, the goods may be sold by auction or otherwise at the debtor's expense, and the net proceeds applied in reduction of the indebtedness. No such sale shall prejudice or affect the Forwarder's rights to recover any balance owing to the Forwarder for its services or the cost of the detention and sale.

12. Limitation of Liability

12.1 All handling which is subject to the Act shall be performed at limited carrier's risk.

12.2 Subject to paragraph 12.1 and to any other mandatory provision of law to the contrary, the Forwarder shall not be under any liability, however caused or arising and (without limiting the generality of the foregoing) whether arising or resulting from negligence, breach of contract on the part of the Forwarder or otherwise for:

a) any damage to or loss, deterioration, contamination, misdelivery, delay in delivery or non-delivery of the goods;

b) any loss of or damage to perishable goods due to any failure or breakdown of machinery or plant, shortage of power or labour, or pilferage, theft or burglary (or any attempt at the same) whether by any servant or agent of the Forwarder or any other person;

c) in connection with any instruction, advice, information or service given or provided to any person whether in respect of the goods or any other matter or thing; or

d) any direct, indirect or consequential loss or damage caused by or arising from delay, loss of market or loss of or damage to the goods, or otherwise howsoever and whether or not the Forwarder had actual or constructive notice that such loss or damage could arise.

12.3 The Customer shall indemnify the Forwarder against any claims (whether resulting from the negligence of the Forwarder or otherwise) brought by any person in connection with any matter or thing done, said or omitted by the Forwarder in connection with its dealings with the Customer or the goods.

12.4 All of the rights, immunities and limitations of liability in these Conditions shall continue to have full force and effect in all circumstances and notwithstanding any breach of contract by, or any negligence on the part of, the Forwarder.

12.5 Subject to paragraph 12.1, in any case where the Forwarder's liability has not been effectively excluded by those Conditions, such liability shall to the maximum extent permitted by law be limited to the lesser of:

a) $100; or

b) The cost of resupplying the handling of the goods; or

c) The replacement value of the goods

13. Actions against the Forwarder The Forwarder shall be under no liability whatsoever unless:

(a) written notice of any claim, giving full particulars of any alleged loss or damage, is received by the Forwarder within three (3) days after delivery of the goods or the date when they should have been delivered; and

(b) an action shall have been commenced by the Customer in a Court of competent jurisdiction within six (6) months from the date of dispatch of the goods.

14. Governing Law These Conditions, and any act or contract to which they apply, shall be governed by and interpreted in accordance with New Zealand law. All actions against the Forwarder shall be brought in a Court in New Zealand.

15. Personal Property Securities Act 1999

15.1 Without limiting anything else in these Conditions, the Customer acknowledges that:

(a) these Conditions create, in favour of the Forwarder, a security interest in all goods and documents relating to goods which at any time come into the possession of the Forwarder, to secure the payment by the Customer to the Forwarder of all moneys due to the Forwarder by the Customer, or the consignee, consignor or owner, where in respect of such goods or otherwise and whether or not such moneys are overdue for payment ("the Amount Owing"); and

(b) these Conditions will apply notwithstanding anything, express or implied, to the contrary contained in any purchase order (or its equivalent, whatever called) of the Customer; and

(c) the security interest shall continue until the Forwarder gives the Customer a final release.

15.2 The Customer undertakes to:

(a) promptly do all things, sign any further documents and/or provide any information which the Forwarder may reasonably require to enable the Forwarder to perfect and maintain the perfection of its security interest (including by registration of a financing statement);

(b) give the Forwarder (addressed to the Financial Controller or equivalent) not less than 14 days' prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including, but not limited to, changes in the Customer's address, facsimile number, trading name or business practice).

15.3 The Customer waives its right to receive a verification statement in respect of any financing statement relating to the security interest,

15.4 To the extent permitted by law, the Customer and the Forwarder contract out of:

(a) section 114(1)a of the PPSA; and

(b) the Customer's rights referred to in sections 107(2)(c), (d), (h) and (i) of the PPSA.

15.5 The Customer agrees that the security interest has the same priority in relation to all amounts forming part of the amount owing, including future advances.

15.6 If an event of default occurs:

(a) the Forwarder may suspend or terminate any contract;

(b) the amount owing shall immediately become due and payable notwithstanding that the due date for payment has not arisen;

(c) the Forwarder may enforce the security interest; and

(d) the Forwarder may (without the consent of the Customer) appoint a receiver in respect of any Goods and any receiver is authorised to do anything referred to in these terms and conditions and otherwise to exercise all rights and powers conferred on a receiver by law.

15.7 The Customer agrees that, at any time after an event of default has occurred and is continuing or at any time if any goods are at risk, the Forwarder may:

(a) take or retain possession of any goods; and/or

(b) sell or otherwise dispose of any goods,

In each case in such a manner and generally on such terms and conditions as it thinks fit and, in each case, otherwise do anything the Customer could do in relation to those goods. The Forwarder and the Customer agree that section 109(1) of the PPSA is contracted out of in respect of particular goods if, and only for so long as, the Forwarder is not the secured party with priority over all other secured parties in respect of those goods. As the Customer's agent, the Forwarder (and its employees and agents) may, without prior notice, enter any land or premises where the goods are kept in order to take possession of and/or remove them, without being responsible for any damage caused in doing so. The Customer agrees to procure all other rights (including consents) necessary to enable, and to indemnify the Forwarder (and its employees and agents) against any liability incurred in connection with, such entry, taking of possession and removal. The Forwarder may resell any of the goods and apply the proceeds of sale in reduction of the amount owing.

16. Interpretation In these Conditions:

(a) "the Act" means Part 5, subpart 1 of the Contract and Commercial Law Act 2017;

(b) "container" includes any container, trailer, transportable tank, flat or pallet, or any similar article of transport used to consolidate goods;

(c) "contractor" includes any person carrying or handling the goods for the Customer under a contract arranged by, or with the authority of, the Forwarder as agent for the Customer;

(d) "the Customer" includes any person referred to in paragraph 1.3 and any "contracting party" in terms of the Act;

(e) "dangerous goods" includes noxious goods, explosives, poisons, corrosive, inflammable or radioactive substances, compressed gases, goods harbouring or likely to harbour or encourage vermin, borer or other pests, and any other goods, or substances which, in the opinion of the Forwarder, are likely to cause damage or injury to other goods, property or persons;

(f) "the Forwarder" means Mondiale VGL, its employees, officers, agents and subsidiary and related companies;

(g) "goods" means the goods or other cargo which is the subject of instructions issued to the Forwarder by the Customer and includes any container not supplied by or on behalf of the Forwarder;

(h) "handling" includes any packing, storage, trans-shipment, unloading, loading, customs clearance, delivery and other services relating to the goods;

(i) "subcontractor" means any person carrying or handling the goods for the Customer under a contract in terms of which the Forwarder is, or is deemed to be, a principal;

(j) "valuables" includes bullion, coins, negotiable instruments, securities of any kind, precious stones, jewellery, antiques and works of art, and

(k) Terms which are defined in the Act have the same meaning.

(l) "VGM" means the verified gross mass obtained by one of the permissible methods pursuant to the SOLAS Convention 1974 (or its replacement or amendments) and the applicable regulations of the country of the load port.

17. Privacy

17.1 Mondiale VGL collects, stores and uses personal information in accordance with its privacy policy, a copy of which can be found here: https://www.MondialeVGL.com/downloads/privacy-policy