

Henning Harders (New Zealand) Limited – Standard Terms & Conditions of Carriage

<p>Goods that may be deemed reasonable or necessary in the circumstances, including stay at any place whatsoever once or more often in any order backwards or forwards and/or store the Goods at any such place for any period whatsoever.</p> <p>16. Pallet</p> <p>16.1 Any instruction to HHNZ to exchange or transfer consigned Pallets to HHNZ's Pallets hire account is accepted only on the basis that the Client will indemnify HHNZ against any loss or non-recovery. Evidence shown on the face of the consignment note or booking documentation shall be deemed conclusive proof of the instructions and/or non-recovery. A charge may be made by HHNZ for the cost of hiring, recovery and replacement (if applicable) for all Pallets hired by Client, unless exchange pallets are available at the time of delivery.</p> <p>17. Client-Packed Containers</p> <p>17.1 If a Container has not been stowed by or on behalf of HHNZ, HHNZ shall not be liable for loss of or damage to the Goods caused by:</p> <p>(a) the manner in which the container has been stowed; or</p> <p>(b) the unsuitability of the Goods for carriage or storage in containers; or</p> <p>(c) the unsuitability or defective condition of the container.</p> <p>17.2 HHNZ do not warrant or make any representation to the Client that a Container or Pallet is the appropriate form of storage or transport for the Goods which the Client has chosen to store or transport in a Container or Pallet.</p> <p>18. Loss or Damage</p> <p>18.1 This Contract is "at limited carrier's risk".</p> <p>18.2 Subject to statutory provisions imposing liability in respect of the loss of or damage to the Goods (including but not limited to chilled, frozen, refrigerated or perishable Goods), HHNZ shall not be under any liability, however caused or arising and (without limiting the generality of the foregoing) whether caused or arising as a result of the negligence of HHNZ or otherwise, for 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 HHNZ or not) nor for any instructions, 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 consequential or indirect loss, loss of market or consequences of delay.</p> <p>19. Claims against HHNZ</p> <p>19.1 Notwithstanding clauses 12 and 14.8, in the event that the Client believes that they have any claim against HHNZ for any loss or damage, then they must lodge any notice of claim for consideration and determination by HHNZ (by way of written notice to HHNZ, detailing the alleged damage), and that such claim shall be received within:</p> <p>(a) seven (7) days of the date of delivery;</p> <p>(b) fourteen (14) days of the date of dispatch of the Goods, where the Goods have been lost in transit.</p> <p>19.2 The failure to notify a claim within the time limits under clause 19.1 is evidence of satisfactory performance by HHNZ of its obligations, and HHNZ shall be under no liability whatsoever for loss or damage to the Goods.</p> <p>19.3 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by HHNZ. Any credit claim made by the Client will only be recognised if made in writing (30) days from the date of the applicable invoice.</p> <p>19.4 The Client will indemnify HHNZ against all claims of any kind whatsoever, howsoever caused or arising out of, or incidental to, or in connection with the Services supplied by HHNZ, whether caused or arising as a result of the negligence of HHNZ or otherwise.</p> <p>20. Conditions of Storage</p> <p>20.1 HHNZ will prepare an inventory of Goods received for storage and will ask the Client to sign that inventory. The Client will be provided with a copy of the inventory. If the Client signs the inventory, or does not do so and fails to object to its accuracy within seven (7) days of receiving it from HHNZ, then the inventory will be conclusive evidence of the Goods received. The inventory will disclose only visible items and not any contents unless the Client asks for the contents to be listed, in which case HHNZ will be entitled to make a reasonable additional charge.</p> <p>20.2 HHNZ is authorised to remove the Goods from one warehouse to another without cost to the Client. HHNZ will notify the Client of the removal and advise the address of the warehouse to which the Goods are being removed not less than five (5) days before removal (except in emergency, when such notice will be given as soon as possible).</p> <p>20.3 The Client is entitled upon giving HHNZ reasonable notice to inspect the Goods in store but a reasonable charge may be made by HHNZ for this service.</p> <p>20.4 Subject to payment for the balance of any fixed or minimum period of storage agreed the Client may require the Goods to be removed from the store at any time on giving HHNZ not less than five (5) working days' notice. If the Client gives HHNZ less than the required notice HHNZ will still use their best endeavours to meet the Client's requirements, but shall be entitled to make a reasonable additional charge for the short notice.</p> <p>21. Consumer Guarantees Act 1993</p> <p>21.1 This contract is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Client is contracting within the terms of a trade/business (which cases are specifically excluded).</p> <p>21.2 HHNZ shall be under no liability whatsoever for loss or damage to Goods unless:</p> <p>(a) the Client provides written notice to HHNZ detailing the alleged damage, and that such written notice shall be received by HHNZ within seven (7) days after the delivery of the Goods; or</p> <p>(b) in the case where the Goods have been lost in transit then the Client shall be required to provide written notice detailing the alleged loss within fourteen (14) days of the date of dispatch of the Goods.</p> <p>22. Intellectual Property And Confidentiality</p> <p>22.1 The Client acknowledges HHNZ's ownership in any of the information, documentation, programmes, flow charts, diagrams and any other material, and any intellectual property rights therein, prepared or provided by (or on behalf of) HHNZ pursuant to this contract.</p> <p>22.2 Subject to clause 29, HHNZ agrees to keep confidential all information relating to the Client's information, unless written release is given to HHNZ by the Client. Similarly, the Client agrees to keep confidential all of its dealings with HHNZ unless written release is given by HHNZ.</p> <p>23. Cancellation</p> <p>23.1 Without prejudice to any other remedies HHNZ may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and</p>	<p>conditions HHNZ may suspend or terminate the supply of Services to the Client. HHNZ will not be liable to the Client for any loss or damage the Client suffers because HHNZ has exercised its rights under this clause.</p> <p>23.2 HHNZ may cancel any contract to which these terms and conditions apply, or cancel the Services at any time, before the Services are commenced by giving written notice to the Client. On giving such notice HHNZ shall repay to the Client any sums paid in respect of the Price. HHNZ shall not be liable for any loss or damage whatever arising from such cancellation.</p> <p>23.3 In the event that the Client cancels the Services, then the Client shall be liable for any loss incurred by HHNZ (including, but not limited to, any loss of profits) up to the time of cancellation.</p> <p>24. Default and Consequences of Default</p> <p>24.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at HHNZ's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.</p> <p>24.2 If the Client owes HHNZ any money the Client shall indemnify HHNZ from and against all costs and disbursements incurred by HHNZ in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, HHNZ's collection agency costs, and bank disbursement fees).</p> <p>24.3 Further to any other rights or remedies HHNZ may have under this Contract, if a Client has made payment to HHNZ, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by HHNZ under this clause 24, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.</p> <p>24.4 Without prejudice to HHNZ's other remedies at law HHNZ shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to HHNZ shall, whether or not due for payment, become immediately payable if:</p> <p>(a) any money payable to HHNZ becomes overdue, or in HHNZ's opinion the Client will be unable to make a payment when it falls due;</p> <p>(b) the Client has exceeded any applicable credit limit provided by HHNZ;</p> <p>(c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or</p> <p>(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.</p> <p>25. Personal Property Securities Act 1999 ("PPSA")</p> <p>25.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:</p> <p>(a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and</p> <p>(b) a security interest is taken in all Goods being transported by HHNZ.</p> <p>25.2 The Client undertakes to:</p> <p>(a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which HHNZ may reasonably require to register a financing statement or financing charge statement on the Personal Property Securities Register;</p> <p>(b) indemnify, and upon demand reimburse, HHNZ for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register or releasing any Goods charged thereby;</p> <p>(c) not register a financing charge statement or a change demand without the prior written consent of HHNZ.</p> <p>25.3 HHNZ and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.</p> <p>25.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.</p> <p>25.5 Unless otherwise agreed to in writing by HHNZ, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.</p> <p>25.6 The Client shall unconditionally ratify any actions taken by HHNZ under clauses 25.1 to 25.5.</p> <p>26. Security and Charge</p> <p>26.1 Despite anything to the contrary contained herein or any other rights which HHNZ may have howsoever:</p> <p>(a) where the Client is the owner of land, realty or any other asset capable of being charged, the Client agrees to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to HHNZ or HHNZ's nominee to secure all amounts and other monetary obligations payable under the terms and conditions (as the Client acknowledges and agrees) that HHNZ or HHNZ's nominee shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.</p> <p>(b) should HHNZ elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client shall indemnify HHNZ from and against all HHNZ's costs and disbursements including legal costs on a solicitor and own client basis.</p> <p>(c) the Client agrees to irrevocably nominate constitute and appoint HHNZ or HHNZ's nominee as the Client's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 26.1.</p> <p>27. Right to Dispose of Goods</p> <p>27.1 HHNZ shall have a security interest in any Goods (and any documentation relating to those Goods) in the possession or control of HHNZ, and HHNZ may, without prejudice to any rights which they may have under this Contract, and without notice and responsibility, sell or dispose such Goods or cargo by public auction or private treaty:</p> <p>(a) in the event the Client fails to take delivery of the Goods within thirty (30) days of them being due (under clause 14.1);</p> <p>(b) where, in the opinion of HHNZ, the Goods have, or are likely to decay, deteriorate, become worthless, or incur any charges in excess to their value;</p> <p>(c) if the Goods are insufficiently addressed, marked, or unidentifiable;</p> <p>(d) for all sums payable by the Client to HHNZ; and</p> <p>(e) retain the sums due to it (in addition to the charges incurred in the detention and sale of such Goods) from the proceeds of sale, and shall render any surplus to the entitled person(s).</p> <p>28. Limitation of Liability</p>	<p>28.1 HHNZ shall be under no liability whatever to the Client for any indirect, direct, and consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by HHNZ of these terms and conditions (including any negligent or willful act by HHNZ). Without limiting the generality of the foregoing, this exclusion extends to any claim against HHNZ for loss or damage or delay or payment of any cost, charge, fine, penalty, sales tax or duty, whether the claim be founded in Contract, bailment or tort.</p> <p>28.2 In the event of any breach of this Contract by HHNZ the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of HHNZ exceed the Price of the Services.</p> <p>28.3 In all cases where liability has not been effectively excluded, whether by this Contract or by statute, convention or otherwise, the total liability of HHNZ for any loss or damage shall be as per:</p> <p>(a) the value stated under section 345 (1) (a) of the Contract and Commercial Law Act 2017 (or subsequent amendments); or</p> <p>(b) HHNZ's declared value risk amount specified on HHNZ's documentation; and</p> <p>(c) where contents, and condition of contents, are unknown, claims will be considered only where there are signs of outside damage only.</p> <p>29. Privacy Policy</p> <p>29.1 All emails, documents, images or other recorded information held or used by HHNZ is Personal Information as defined and referred to in clause 29.3 and therefore considered confidential. HHNZ acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines and as set out in the Act. HHNZ acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by HHNZ that may result in serious harm to the Client, HHNZ will notify the Client in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Client by written consent, unless subject to an operation of law.</p> <p>29.2 Notwithstanding clause 29.1, privacy limitations will extend to HHNZ in respect of Cookies where the Client utilizes HHNZ's website to make enquiries. HHNZ agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:</p> <p>(a) IP address; browser, email client type and other similar details;</p> <p>(b) tracking website usage and traffic; and</p> <p>(c) reports are available to HHNZ when HHNZ sends an email to the Client, so HHNZ may collect and review that information ("collectively Personal Information").</p> <p>29.3 If the Client consent to HHNZ's use of Cookies on HHNZ's website and later wish to withdraw that consent, the Client may manage and control HHNZ's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.</p> <p>29.4 The Client authorises HHNZ or HHNZ's agent to:</p> <p>(a) access, collect, retain and use any information about the Client;</p> <p>(b) (including name, address, D.O.B, occupation, driver's licence details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any other verifiable balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or</p> <p>(c) for the purpose of marketing products and services to the Client;</p> <p>(d) disclose information about the Client, whether collected by HHNZ from the Client directly or obtained by HHNZ from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.</p> <p>29.5 Where the Client is an individual the authorities under clause 29.3 are authorised or consents for the purposes of the Privacy Act 2020.</p> <p>29.6 The Client shall have the right to request HHNZ for a copy of the information about the Client retained by HHNZ and the right to request HHNZ to correct any incorrect information about the Client held by HHNZ.</p> <p>29.7 HHNZ will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.</p> <p>29.8 The Client can make a privacy complaint by contacting HHNZ via e-mail. HHNZ will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Privacy Commissioner at http://www.privacy.org.nz.</p> <p>30. Service of Notices</p> <p>30.1 Any written notice given under this Contract shall be deemed to have been given and received:</p> <p>(a) by handing the notice to the other party, in person;</p> <p>(b) by leaving it at the address of the other party as stated in this Contract;</p> <p>(c) by sending it by registered post to the address of the other party as stated in this Contract;</p> <p>(d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;</p> <p>(e) if sent by email to the other party's last known email address.</p> <p>30.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.</p> <p>31. Trusts</p> <p>31.1 If the Client at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not HHNZ may have notice of the Trust, the Client covenants with HHNZ as follows:</p> <p>(a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;</p> <p>(b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.</p> <p>(c) the Client will not without consent in writing of HHNZ (HHNZ not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:</p> <p>(i) the removal, replacement or retirement of the Client as trustee of the Trust;</p> <p>(ii) any alteration to or variation of the terms of the Trust;</p> <p>(iii) any advancement or distribution of capital of the Trust; or</p> <p>(iv) any resettlement of the trust property.</p> <p>32. General</p> <p>32.1 This contract is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Client is contracting within the terms of a trade/business (which cases are specifically excluded).</p> <p>32.2 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.</p> <p>32.3 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.</p> <p>32.4 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Lower Hutt Courts in New Zealand.</p> <p>32.5 Subject to any applicable statute or convention, HHNZ shall be discharged from all liability unless suit is filed and served on HHNZ within nine (9) months after delivery of the Services, or the date when the Goods were/should have been delivered, whichever is the shorter.</p> <p>32.6 The Client agrees that HHNZ is not obliged to advise or assist the Client, or any other party, to prepare or make a claim against a Sub-Contractor, and accepts no liability for any loss or damage, however caused. HHNZ may, at their sole discretion, agree in writing to provide advice or assistance, but may charge the Client additionally for doing so.</p> <p>32.7 HHNZ may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.</p> <p>32.8 The Client cannot licence or assign without the written approval of HHNZ.</p> <p>32.9 HHNZ may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of HHNZ's sub-contractors without the authority of HHNZ.</p> <p>32.10 The Client agrees that HHNZ may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for HHNZ to provide Services to the Client.</p> <p>32.11 Where HHNZ is unable, wholly or in part, by reason of any fact, circumstance, matter or thing beyond the reasonable control of HHNZ, including but not limited to, any act of God, war, terrorism, strike, civil commotion, lock-out, general or partial stoppage, restraint of labour, industrial action, fire, flood, storm and/or any Government imposed boarder lockdowns (including, worldwide destination ports), etc. ("Force Majeure") to carry out any obligation under this Contract and HHNZ gives the Client prompt notice of such Force Majeure with reasonably full particulars thereof and, insofar as is known, the probable extent to which it will be unable to perform or be delayed in performing that obligation and uses all reasonable diligence to negate or remove that Force Majeure as quickly as possible, that obligation is suspended, so far as it is affected by Force Majeure, during the continuance thereof. The requirement that any Force Majeure shall be negated or removed with all reasonable diligence shall not require the settlement of strikes, lockouts or other labour disputes, or claims or demands by any government on terms contrary to the wishes of HHNZ.</p> <p>32.12 In the event that either party shall be rendered totally, or partially, unable to carry out their obligations under this Contract by reasons or causes beyond their reasonable control, that party shall be excused from performing their obligations during the continuance of any disability so caused, provided that the party concerned advises the other party in writing of its inability within seven (7) days after becoming aware of its inability to perform its obligations by reason of such cause.</p> <p>32.13 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.</p> <p>32.14 The terms and conditions set out herein shall prevail over the terms and conditions set out in any document used by the Client, the owner or any other person having an interest in the Goods and purporting to have a contractual effect.</p>
--	---	--