

# TRI-STAR INTERNATIONAL LTD, AUCKLAND NEW ZEALAND

## STANDARD TRADING CONDITIONS / CONDITIONS OF CONTRACT

### PART A: DEFINITIONS

#### In these conditions:

- The COMPANY:** means TRI-STAR INTERNATIONAL LTD, Owners and Consignees of any goods and their agents.  
**CUSTOMER:** Includes the Senders, Owners and Consignees of any goods and their agents.  
**COSTS:** includes losses, damages, fines and expenses and all other liabilities of the Company arising under the contract with the customer not directly attributable to the default or neglect of the Company.  
**GOODS:** includes containers whether or not belonging to the Company in which goods are stowed or carried at the time of receipt or collection by the Company.

### PART B: APPLICATION OF THESE CONDITIONS

- All business undertaken by the Company is carried out subject to these terms and conditions and, where applicable, the terms and conditions governing the relevant air waybill(s) and bill(s) of lading issued by the Company or its servants, agents contractors and sub-contractors. Every condition in this document shall be deemed to be a condition of any agreement between the Company and its customers. No terms used in any form used by a customer shall derogate from these conditions unless special arrangements have been made with the Company.
- Parts A, B and C of these conditions shall apply where goods are carried or stored or any service is provided by the Company in any circumstances. In addition:
  - Part G shall apply where goods are carried by air,
  - Part H shall apply where goods are carried by sea.

### PART C: GENERAL TRADING CONDITIONS

- The Company is not a common carrier. The Company may in its discretion refuse to accept any goods for carriage or storage.
- The customer authorises the Company to enter into any contracts with a third party to carry out all or part of this contract. The customer shall be bound by the conditions of such contract and indemnities the Company for any claims against the Company arising out of such contract.
- The Company may carry out the contract by such means, route and method as it decides in its discretion unless specific instructions to the contrary in writing are accepted by the Company.
- Any quotation given by the Company will not be binding on the Company unless it receives acceptance in writing from the customer. If any changes occur in the rates of freight, insurance premiums or other charges or if there is any statutory increase in labour and/or materials which increase the cost to the Company before the goods are received by the Company it may cancel or revise the quotation or agreement on giving notice to the customer at any time up to and including issuing of final invoice.
- The customer expressly warrants that it is either the owner or authorised agent of the owner of any goods the subject matter of this contract and by entering this contract accepts these conditions for itself as well as for all other parties on whose behalf it is acting.
- The customer shall be liable for any duty, tax, impost, costs or charges of any nature levied in connection with the goods by any authority and will indemnify the Company for such expenses incurred by the Company in connection with the goods. The Company shall not under any circumstances be liable for any costs resulting from any statement made by the Company or as to the classification or liability for or amount, scale, or rate of any tax, duty or charge applicable to any goods.
- The customer shall be deemed to be bound by and to warrant the accuracy of all marks, weights, numbers, brands, contents, quality, descriptions, values and other particulars of any goods furnished to the Company and the Customer agrees to indemnify the Company against all costs incurred by the Company arising from any inaccuracy or omission even if such an inaccuracy or omission is not due to any negligence.
- The Company will not accept any bullion, currency, precious stones, jewellery, precious or semi-precious metals or items of particular value, pictures, plants, any live animals or any goods which are inherently brittle or in such a condition that they cannot be moved without the risk of being damaged unless special arrangements have been previously made in writing and the Company will not accept liability for such goods unless special arrangements have been previously made. In particular radio and stereo equipment, electronic equipment and the like are subject to internal damage in shifting and no responsibility can be accepted by the Company for such damage unless special arrangements in writing are made with the Company at the time the contract is entered into.
- The Company may at any time waive its rights and exemptions from liability under clause 8 above in respect of any one or more of the categories of goods mentioned there in or any part of any category. If such a waiver is not in writing the onus of proving such a waiver shall be on the customer.
- The Company will not accept or deal with any dangerous, noxious, flammable or explosive goods or any goods likely to harbour or encourage vermin or borer or other pests or any goods likely to cause damage unless special arrangements are previously made in writing. Any customer delivering such goods to the Company or causing the Company to deal with such goods shall be liable for and shall indemnify the Company against all costs incurred by the Company or any third party in connection with the goods. 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 at the relevant time at the expense of the customer. If such goods are accepted under arrangements previously made in writing they may nevertheless be destroyed or otherwise dealt with if they become dangerous to life, other goods or property.
- Perishable goods which are not immediately uplifted by the customer on arrival or which are insufficiently addressed for delivery may be sold or otherwise disposed of at the discretion of the Company without notice to the customer and payment or tender of the net proceeds on any such sale after deduction of all charges shall be equivalent to delivery.
- 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 to the sender at the Company's option at any time after 21 days from a notice in writing sent either to the address given for the sender to the consignee. All charges and expenses in connection with the sale or return of the goods shall be paid by the customer. Where local Customs Department regulations vary, i.e. with less than 21 days from date of availability being the stipulated time limit upon which the Customs Department may seize the consignment if uncleared and/or uncollected, the Company reserves the right to shorten the duration of notice aforementioned.
- All goods (and documents relating to goods) shall be subject to a particular and general lien for moneys due in respect of such goods 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 the goods are detained, they may be sold at the discretion of the Company and at the expense of such person and the proceeds applied on account of such general or particular lien. Notwithstanding any transfer of physical possession the customer's goods are not released until all moneys owing have been paid to the Company. In the event of any goods for any reason being delivered to the owner of his nominee without payment having been made in full he Company retains a lien on such goods and may re-take possession of them pending payment and may peacefully enter any premises for that purpose.
- All Costs incurred in the recovery of overdue and outstanding debts whether by solicitor or debt collection agency shall be payable by the customer.
- In respect of any clause in these conditions which excludes or limits the liability of the Company the Company in addition to acting for itself as agent for each of its servants to the intent that each servant shall be party to this contract so far as each clause is concerned.
- These conditions and all agreements between the Company and the customer shall be governed by New Zealand and any dispute between the Company and the customer shall be within the exclusive jurisdiction of the New Zealand Courts.
- The Company shall not be liable for any loss or damage to any goods unless the loss or damage occurs while the goods are in the actual custody of the Company and under its actual control or the loss or damage is due to the wilful neglect or default of the Company or its servants or agents.
- All goods are forwarded or dealt with at owner's risk and no declaration of value shall be made for the purpose of extending liability unless express instructions to the contrary are given by the customer. (N.B. in some cases the Company's liability may be extended by statute or international convention.)
- Unless expressly agreed in writing the Company shall not be liable in tort, contract or otherwise for any loss or damage to or misdeliver or failure to deliver or delay in delivery of goods or for any damage or damages arising from loss of market or attribution to delay in forwarding or failure to carry out the instructions given to it (not amounting to wilful negligence).
- The Company will arrange insurance only as the agent of the customer if the customer instructs the Company to do so. All such insurance shall be at the expense of the customer and subject to the usual exemptions and conditions of the policy or policies of the insurance Company or underwriter accepting the risk. The Company may effect a separate insurance cover or arrange cover under an open or general policy. Should the insurer dispute its liability for any reason the customer shall have recourse against the insurer only and the Company shall not be responsible or liable. Any responsibility or liability in relation to thereto not withstanding that premium on a policy or policies may not be at the same rate as that charged by the Company or paid to the Company by the customer.
- No claim of any description shall be admitted or accepted by the Company unless written notification of the claim giving all details thereof is made to the Company within a reasonable time not exceeding one month or, within the time limits stipulated in the terms and conditions on the relevant airway bill(s) or bill(s) of lading issued by the Company or its servants, agents, contractors and sub-contractors.
- Whether the consignment is collect or prepaid, freight is deemed as being due on shipment and shall be considered as then earned and shall be paid, cargo delivered or not delivered, lost or not lost.
- Claims made by the customer against the Company will be handled according to the terms and conditions stated herein, the Company is not obliged to advise or assist the customer or any other party in respect of claims or the preparation of claims against carriers. Whether or not it does provide such advice and/or assistance, the Company will not be liable for any loss or damage resulting therefrom, howsoever caused. If the Company provides such advice and/or assistance it may make an additional charge for doing so.

- That the Company shall not be under any liability for any loss or damage to or mis-delivery, delay in delivery, concealed damage, deterioration, contamination, evaporation or non-delivery of goods held in the care, custody of itself or its agents, servants, contractors or sub-contractors or any consequential loss arising therefrom howsoever caused.
- In the event of the contract including any handling, installation, removal, assembly or erection of any kind whatsoever, the same is undertaken on a strict basis that the forwarder accepts on liability for any loss, damage or injury of any kind whatsoever however arising caused, incurred or occurring. This clause extends to include any other loss or damage to itemised equipment itself but loss, damage or injury to any person, property or thing damaged during or after the movements and to include any loss consequently or otherwise arising from any loss or damage or injury as aforesaid.
- That degenerating from the generality of any other terms of this agreement not the Company shall not be liable in any respect whatsoever for any loss or damage occasioned by the breakdown of or failure in refrigeration or cooling equipment or if refrigeration or cooling facilities are not provided in respect of any goods.
- In respect of any clause herein which excludes or in any way limits the liability of the Company in respect of this transaction and without derogating from the generality of such clauses. Each clause shall operate whether or not there has been fraud or other criminal activity on the part of the servants, agents or sub-contractors of the Company.
- All rights, immunities and limitations of liability in this contract shall continue to have their full force and effect in all circumstances and in particular they shall so continue notwithstanding any breach of the contract or any terms thereof by the Company, its agents or sub-contractors.

### PART D: PAYMENT, INTEREST AND CREDIT LIMIT

- Payment shall be made on or before 20<sup>th</sup> of the month following invoice date. Should credit be declined other payment terms will be advised in a letter of offer.
- A period of grace may, at the Company's sole discretion, apply before charging interest.
- Any expenses, disbursements and legal costs incurred by the Company in the enforcement of any rights in this contract shall be paid by the Customer, including any and all reasonable solicitor's fees or debt collection agency fees.
- Payments not made within 10 days of due date may, at the Company's discretion, bear interest from the due date at the rate of 1.5% per month until paid (or at such a rate as shall be in force at date of purchase).
- The Company may cancel orders in respect of any undelivered goods or may withhold delivery of future orders if the Customer's account exceeds the credit terms set by the Company.

### PART E: PRIVACY ACT

- The Customer authorises the Company:
  - to collect, retain and use personal information about the Customer (information contained within this document) for the following: (i) assessing the Customer's credit worthiness; (ii) administering the financing, whether directly or indirectly of the Customer contract(s) and enforcing the Company's rights thereunder; (iii) marketing goods and services supplied by the Company.
  - to provide the following information: (i) to any person for the foregoing purposes; (ii) to employees and agents of the Company and any other person, in the ordinary course of business, for any of the foregoing purposes; (iii) to credit agencies for the purposes of maintaining effective credit records.
- The Customer acknowledges: a) that the information is held by the Company at the address specified in this document, notwithstanding that it may also be held elsewhere by the Company and other persons for the purposes described above; b) that where information can be readily retrieved the Customer shall have access to it, the right to request correction and the right to be notified of action taken in response to any such request, subject to payment of any reasonable charge; c) that the aforesaid authorisations are irrevocable.

### PART F: PERSONAL PROPERTY SECURITIES ACT 1999 ('PPSA')

- The Customer grants to the Company a security interest in all present and after-acquired goods supplied by the Company to the Customer described in any: a) quotation or tender from the Company to the Customer; b) contract between the Company and the Customer including, without limitation, documentation (electronic or otherwise) supplementary to any contract incorporated in the contract by reference or otherwise; c) purchase order or any other order for goods from the Customer; d) dispatch order, invoice, statement or remittance advice from the Company to the Customer.
- At the request of the Company, the Customer will promptly execute any documents and do anything else required by the Company to ensure that any security interest created constitutes a perfectly security interest over all personal property supplied by the Company until all and any amounts due to the Customer have been paid in full. This obligation extends to executing any amendments to any contract with the Company reasonably requested by the Company and providing the information required by the Company to complete and register a financing statement or financing change statement.
- The customer will not, without the prior written consent of the Company, agree to allow any person (including the Customer) to file a financing statement over any personal property supplied by the Company while the Customer is liable to the Company for any debt.
- The terms 'security interest', 'perfected security interest', 'personal property', 'financing statement' and 'financing change statement' referred to in the above clauses have meaning given by the PPSA.

### PART G: CARRIAGE BY AIR

- If goods are carried by air to an ultimate destination of stop in a country other than the country of departure all carriage is subject to the terms and conditions of the master carrier's air waybill(s) (the master carrier being the actual airline(s) or its servant, agent, contractor or sub-contractor, or the servant, agent, contractor, sub-contractor of the Company) in which the Warsaw Convention may be applicable. The Convention governs and in most cases limits the liability of the Company in respect of loss or damage to such goods.
- Where goods are carried by air, no declaration of value by the client to increase the Company's liability or the liability of any other person or persons under the Carriage by Air Act 1935, will be made except on express instructions given in writing by the customer and accepted by the Company.

### PART H: CARRIAGE BY SEA

- Where export of goods are carried by sea, these conditions shall have effect subject to the Sea Carriage of Goods Act 1940 and the rules contained in the Schedule to that Act. Nothing in that Act or rules shall apply or form part of this agreement prior to the loading on and subsequent to the discharge from the ship on which the goods are carried by sea.
- Where the value of the goods exported by sea exceeds \$200.00 New Zealand currency 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 purposes of extending the Company's or any other person or person's liability under Article IV, Rule 5 of the Sea Carriage of Goods Act 1924 (or any enactment in replacement or amendment or substitution therefore) except on express instructions given in writing by the customer and accepted by the Company.
- Where import goods are carried by sea, the terms and conditions of the relevant house bill of lading or ocean bill of lading are applicable.
- The Company will not accept liability for any loss or damage if such loss or damage arises or results from:
  - the lack of or insufficient of or defective condition of packing in the case of goods which by their nature are liable to wastage or to be damaged when not properly packed.
  - Inherent vice of the goods.
  - Strikes, riots or civil commotion's including lock-outs or stoppage or restraints of labour from whatever cause whether partial or general: and
  - Any cause or event which the Company could not avoid and he consequence whereof the Company could not prevent by the exercise of reasonable diligence.

### PART I: MARINE INSURANCE

The Company will not be responsible for arranging Marine Insurance for the customer (Tri-star International Ltd highly recommends customers to arrange or hold Marine Insurance of their own.)

### ACCEPTED

for of the above mentioned company \_\_\_\_\_ Sign  
also confirms acceptance of **Tri-Star International** terms and conditions as received

Print Name \_\_\_\_\_ Title \_\_\_\_\_

Date \_\_\_\_\_