

## Terms & Conditions

The following terms and conditions shall apply to and shall govern all contracts entered into by Sorted for the provision of Services by Sorted, provided however that:

- (a) If there is any inconsistency between these Terms and Conditions and the terms and conditions contained in any other document issued by or on behalf of Sorted in connection with the Services (i.e. a Service Level Agreement, or Customer generated and agreed warehousing or 3PL contract) these Terms and Conditions are deemed to be incorporated for the purposes of that particular contract, however these Terms and Conditions will be subordinate to any particular specific contract document in respect of inconsistency or precedence; and
- (b) If any such other document referred to in paragraph (a) above deals with any matter not dealt with in these Terms and Conditions, the provisions of that other document dealing with those matters not dealt with in these Terms and Conditions shall apply to the Services provided by Sorted.

These Terms and Conditions are subject only to any mandatory contrary provision of law and shall be read and construed as valid and enforceable except to the extent of such mandatory contrary provision. Sections 35-42 of the CCLA are hereby excluded.

### Definitions

**Carriage** means the carriage, storage, despatch, forwarding, packing, unpacking or handling of Goods, the provision of any container packing or unpacking service, and any Service related or ancillary to any of the foregoing.

**CCLA** means the Contract and Commercial Law Act 2017.

**Charges** mean Sorted's charges for providing the Services.

**Convention** means the provisions of the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw, 12 October 1929 and as amended by the Hague Protocol, 28 September 1985 and/or supplemented by the Guadalajara Convention 18 September 1961.

**Customer** means the person, company or entity that contract with Sorted for the provision of Services. **Goods** means all goods or products held by Sorted for the Customer for the purpose of performing any of the Services, or which are the subject of Services provided by Sorted.

**Hague Rules** means the provisions of the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924 and includes the amendments by the Protocols signed at Brussels in 1968 and 1979.

**Premises** means any warehouse or other building or storage area which Sorted may use from time to time

**Services** includes without limitation, all services and activities carried out by Sorted on the Customer's behalf in relation to receiving, storing, inventory management and delivery of the Goods and any other related services, and includes all incidental or indirect services and activities.

**Sorted** means Sorted Logistics Limited (trading as Sorted Logistics) and includes any related, associated or subsidiary companies of Sorted Logistics Limited.

### Interpretation

- (a) Headings are for convenience only and shall not affect the interpretation of this agreement
- (b) The singular includes the plural and vice versa
- (c) A gender includes all genders
- (d) Any reference to a natural person includes bodies corporate and unincorporate, partnerships, trusts, local or public authorities and any other entities or combinations thereof
- (e) References to "dollars" and "\$" are references to New Zealand currency
- (f) References to any statute or regulation will with all necessary modifications apply to any modification or re-enactment of that statute or regulation

- (g) References to the Customer and Sorted or either of them include their respective successors and permitted assigns

### Services and Carriage of Goods

- 2 Sorted agrees to carry out such Services for the Customer as Sorted and the Customer have mutually agreed. All such Services shall be carried out solely on the Terms and Conditions herein.
- 3 Sorted carries on business as a provider of warehousing, distribution, freight forwarding, domestic carriage and vehicle hire services (vehicle hire services may also include the hire of the vehicle driver). In providing such Services Sorted is an agent only for the Customer and/or the owner of Goods.
- 4 While Services may include the Carriage of Goods, it is acknowledged that Sorted is not a common carrier and reserves the right in its absolute discretion to refuse the Carriage of Goods or any class of Goods for any person. Unless Sorted is the actual carrier, its obligations are limited to arranging Carriage of the Goods by a reputable carrier. Sorted shall not be deemed the actual carrier unless the Goods are carried on a conveyance owned or operated by Sorted.
- 5 Notwithstanding the provisions of clause 4 above, where a vehicle (whether or not with a driver employed by Sorted) is hired by a Customer from Sorted, Sorted is neither the contracting carrier nor the actual carrier in respect of any goods carried by that vehicle. Such vehicle, while on hire to the Customer, shall operate at the Customer's direction and for such purposes any driver shall (if an employee of Sorted) be deemed to be an agent of the Customer. All the Terms and Conditions herein shall be read consistently with this clause 5 where a vehicle hire is involved.
- 6 Where Carriage to be arranged by Sorted is international Carriage by:
  - (a) air, as defined by the Convention; and/or
  - (b) sea, as defined by the Hague Rules,

it is hereby agreed and declared, and the Customer hereby acknowledges, that Sorted is not the carrier for the purposes of the Convention or the Hague Rules (as applicable). Sorted shall not be under any liability under the Convention or the Hague Rules (as applicable).

- 7 Where, and to the extent that, the provisions of the CCLA apply, the provision of the Services shall be deemed to be "at limited carrier's risk". The provisions of the CCLA shall apply only to the extent that such provisions are not inconsistent with these Terms and Conditions. Sorted shall under no circumstances be liable under the CCLA for any damages consequential upon the loss of or damage to the goods, or for loss of market or delay.
- 8 The Goods are carried at the Customer's risk and the Customer authorises Sorted to act as its agent to arrange on any terms the Carriage of Goods by any subcontractor and to enter into the terms and conditions in a transport document on behalf of the Customer.
- 9 Unless otherwise instructed, Sorted may adopt any means, mode, route or procedure whatsoever for the Carriage of Goods. Sorted will give priority to any instructions of the Customer in relation to the means, mode, route or procedure but if such instructions cannot in Sorted's reasonable opinion be conveniently adopted the Customer shall be deemed to authorise Sorted to carry or have the Goods carried by such other means, mode, route or procedure as Sorted determines in its discretion.
- 10 Any dates or times specified for departure or arrival at the point of delivery or collection, or for the performance of any Services by Sorted are estimates only and shall not be binding on Sorted.

### Subcontracting

- 11 Sorted may subcontract the Services (in whole or in part) on any terms and Sorted will be deemed to be acting as agent or trustee on behalf of and for the benefit of the subcontractor and/or any person who is or may be vicariously liable for the acts or omission of Sorted or a Subcontractor, each of who shall to the extent be or be deemed to be parties to this Agreement.

- 12 Every exemption, limitation, condition, right, defence and immunity available to Sorted will be available and will extend to protect a Subcontractor or any other person who is or may be vicariously liable for the acts or omissions of us or of a subcontractor.
- 13 Other than a claim or allegation by the Customer against Sorted, no claim or allegation shall be made by any person (including the Customer) against any other person who provides the Services or any part of the Services which impose or attempts to impose any liability whatsoever and howsoever arising in connection with the provision of the Services and/or the Goods.
- 19 None of Sorted, its subcontractors or the officers, employees and agents of Sorted and its subcontractors shall be liable for any accident, injury, death, damage or loss to any Goods, machinery, persons or property arising from the use of any vehicle, cargo handling appliances or other equipment and will use such vehicle, appliances and equipment at the sole risk of the Customer. The Customer shall indemnify each entity and person identified in the preceding sentence against all claims, loss, damages and expenses arising from or in connection with the use of such vehicle, appliances and equipment. This indemnity shall not however apply in respect of any claim, loss, damage or expense of or by any officer, employee, agent or subcontractor of Sorted where such claim, loss, damage or expense arises from the negligence, misconduct or wilful default of or by that officer, employee, agent or subcontractor of Sorted.

**Customer Warranties**

- 14 The Customer expressly warrants to Sorted that it is either the owner or authorised agent of the owner of the Goods and by entering into this contract the Customer accepts these Terms and Conditions for and on behalf of itself and all other persons having an interest in the Goods.
- 15 The Customer warrants to Sorted that any particulars relating to the Goods have been checked by the Customer prior to providing such particulars to Sorted, and that such particulars are correct, and the Customer shall indemnify Sorted against all loss, damage, fines and expenses arising or resulting from inaccuracies in or inadequacies of such particulars or from any other cause in connection with the goods for which Sorted is not responsible. Sorted or any person with whom Sorted has contracted for the Carriage of Goods or any person authorised by Sorted or such contractor shall be entitled, but under no obligation, to pen any container, package or unit at any time and to inspect the Goods.
- 16 The Customer warrants that it has complied with and undertakes that it will continue to comply with all laws, customs, conventions, codes and other regulations relating to the nature, condition, packaging, handling, storage and Carriage of the Goods. The Customer further warrants that the Goods are packed to withstand the ordinary risks of handling, storage and Carriage, having regard to their nature. The Customer indemnifies Sorted for all liability and for all costs incurred as a result of or arising out of a breach of this warranty. Further, the Customer shall provide to Sorted all such assistance, information, descriptions, valuations and documents as may be necessary or prudent to enable Sorted to comply with such laws, customs, conventions, codes and regulations in a timely manner. The expenses and charges of Sorted in complying therewith and with the requirements of any harbour, dock, airport, railway, shipping, customs, warehouse or other authority shall be paid by the Customer.
- 17 The Customer warrants that it has complied and will continue to comply with its obligations under the Chain of Responsibility Legislation as set out in the Land Transport Amendment Act 2005.
- 20 In all cases where liability has not been effectively excluded, whether by this agreement or by statute, Convention or otherwise, the total liability of Sorted to the Customer or to any other person shall be limited to the lesser of:
- (a) \$2000.00; or
  - (b) The value of the Goods at the time the Goods were received by Sorted; or
  - (c) A re-supply of the Goods or payment of the cost of resupplying the Goods; or
  - (d) In any case to which the CCLA applies, in accordance with clause 7 above.
- 21 Any claim for damage must be notified to Sorted in writing within five days (time being of the essence) of delivery of the Goods or within ten days for the loss of Goods from the date upon which the Goods should have been delivered or the date on which the Goods are or should have been collected by the Customer, as the case may be, failing which Sorted shall be discharged from all liability howsoever arising.
- 22 Sorted shall in any event be discharged from all liability unless suit is filed and served on it within 30 days after completion of the Services, delivery of the Goods or the date when the Goods should have been delivered, or the date when the Goods are or should have been collected by the Customer, whichever occurs first. Sorted hereby expressly contracts out of the operation of sections 274-280 of the CCLA.

**Liability and Indemnity**

- 18 The Customer, for itself and as authorised agent for the owner of the Goods, expressly indemnifies Sorted against:
- (a) any advice, assistance, representation, information, quotation, forecast, statement or prediction, or any Service of any kind provided in any form by or on behalf of Sorted (whether negligently or otherwise and whether verbally or otherwise) in the course of or in connection with the Goods (including, without limitation, in connection with liability for customs duty, excise duty or any other impost or tax or as to the particular tariff or classification applicable thereto under any legislation imposing or concerning customs duties, excise duties, tariffs or any other impost or tax); and
  - (b) any delay in delivery, failure to produce, mis-delivery or non-delivery, loss destruction or damage to the Goods (including, without limitation, any contamination, deterioration, or evaporation of the Goods) arising out of or incidental to the Carriage of the Goods; and
  - (c) any claim or allegation made against it by any person in connection with any liability arising out of or relating to the Goods or the provision of Services in respect of the Goods; and
  - (d) any consequential or indirect loss (including, without limitation, loss of profit, loss of market, damages or penalties) arising out of or in

**Disposal and Transfer of Goods**

- 23 Goods belonging to the Customer may at any time and from time to time be held at any Premises and may at any time and from time to time be removed from any Premises at which they are being held to any other Premises at Sorted's sole discretion and in every case at the Customer's risk and expense.

**Charges and Invoicing**

- 24 All Services will be invoiced to the Customer in accordance with Sorted's tariff and charges in force from time to time or as agreed. Sorted may fix its charges by weight, measurements or value and may at any time reweigh or revalue or re-measure or require the goods to be reweighed, revalued or re-measured and may fix proportional additional charges accordingly.
- 25 Prices quoted are based on costs prevailing at the date thereof in respect of freight, clearing, landing, delivery, insurance, bank and other charges, rates of exchange or currency conversion, taxes and duties and on the latest available quotation from carrier utilised by Sorted. Any increase in cost due to variation in any of the foregoing shall be to the Customer's account and the price payable by the Customer shall be increased accordingly.

- 26 Payment shall be made by the Customer within such period of time as has been agreed between Sorted and the Customer; and shall be made in full, without any deduction or set-off whatsoever. The Customer acknowledges that any third party charge incurred by Sorted on the Customer's behalf will, even if described as a disbursement or similar, be invoiced to the Customer with Sorted's handling fee included. The Customer agrees that the handling fee need not be separately identified.
- 27 All customers duty, excise duty, costs, expenses and penalties which Sorted becomes liable to pay for any reason whatsoever in respect of or in connection with the Goods and any documents relating to the Goods pursuant to any legislation governing customs and/or excise or the importation, export or Carriage of Goods shall be paid by the Customer (whether or not such customs duty, excise duty costs, expenses or penalties arise directly or indirectly from or in connection with the negligence of Sorted or otherwise). If it is necessary to make customs entry of Goods at any place, the Goods shall be deemed to be consigned at that place to the Customer, Sorted or any person Sorted designates as Customs Consignee.
- 28 If a charge is disputed, notice must be given to Sorted as soon as possible with relevant particulars of the disputed aspect, but before the due date of the invoice. The undisputed amount or amounts of any invoice are to be paid by the due date.
- 29 If any amount invoiced to the Customer has not been paid within seven days of the due date for payment the Customer will be in default and, whether or not any demand has been made by Sorted the Customer shall pay interest on the amount outstanding at the rate of 5% above Sorted's bank overdraft rate from time to time, calculated daily from the due date of the payment until payment has been made in full.
- 30 Sorted has the right to withhold any Services to any Customer whose account is in arrears until such time as the account is paid in full. Where Services are withheld subject to this clause, Sorted has no liability for any damage or deterioration to the Goods that occurred while the Services were withheld.
- 31 The Customer will pay on demand all expenses and costs (including legal costs, debt collection agency costs or any other applicable cost incurred by Sorted in relation to the collection of over due monies or in the exercise of any of our rights or remedies under these Terms.
- 32 Notwithstanding any indication that any Services are to be paid for by another person, the Customer shall remain responsible for all payments and charges whatsoever which be or become ascertained and payable in connection with the Services including, without limitation, any applicable costs of freight, insurance, salvage, storage and the like, and any costs of collection incurred by Sorted.
- 33 In relation to Carriage of Goods, when Goods have been loaded and carried any distance, freight shall be deemed to have been earned whether or not the Goods are delivered to the addressee and whether damaged in any way or otherwise. Under no circumstances will any freight be refunded.

#### **Termination of Services**

- 34 Either party may terminate any obligation Sorted have to purchase or provide Services under these Terms and Conditions (as the case may be) by giving each other thirty (30) days prior notice in writing.
- 35 Sorted may at any time, by giving the Customer notice in writing, end any obligation Sorted have to provide Services and terminate these Terms and Conditions if the Customer does not comply with any of its obligations to Sorted under these Terms and Conditions or the Customer fails to, or is unable to pay its debts when due, or becomes insolvent, or enters any restructuring which may be detrimental to Sorted's interests or appoint a liquidator, receiver, administrator or enter into either a formal or informal creditor compromise or being a partnership, the Customer dissolves the partnership, or being a natural person dies.
- 36 Where the Customer gives Sorted notice to terminate this agreement or move a significant amount of stock from Sorted's warehouse (over and above your normal commercial trading quantity), Sorted will require seven day payment terms of our invoices from the date notice is given to Sorted until the Customer's exit date. Further, Sorted reserves the right to withhold any stock in our warehouses, restrict access to the Customer's stock or information and withhold services until the Customer's account is paid in full prior to despatching final orders.
- 37 Further, in addition to the above, Sorted may from time to time require cash upfront for our services. In these circumstances, where Sorted's charges are not able to be quantified with certainty, Sorted will estimate the charges and account to the Customer for any over/under payment that was received in advance.
- 38 Where stock levels are depleted and not replenished in what Sorted consider to not be within the Customer's usual commercial operating profile, this will be considered a "quiet exit". Sorted reserves their right to withhold services until the Customer's account is paid in full and/or implement any of the termination clauses above. In these scenarios, Sorted will endeavour to discuss this with the Customer as soon as a quiet exit scenario comes to Sorted's attention.

#### **Lien**

- 39 Sorted shall have a general possessory lien (**Lien**) upon all Goods (which in this clause shall include any documents relating to those Goods) of the Customer whatsoever that are in the possession or under the control of Sorted until all accounts due to Sorted by the Customer, consignee or owner of such Goods are paid in full (including, without limitation, all costs and expenses incurred by Sorted in recovery or enforcing payment thereof). Reliance is placed on the CCLA for authority for the Lien. Where such payment is not made before such Goods (whether or not they are the subject of an overdue account) would be delivered or otherwise dealt with in the ordinary course then such Goods may be detained by Sorted and Sorted shall have the right to sell all or any of the Goods by public auction or private treaty without notice to the Customer and to apply such part of the proceeds of the sale as are necessary to satisfy the unpaid accounts (including all costs of detaining and selling the Goods).

#### **Security Interest**

- 40 The Customer agrees that to protect the Lien in clause 39 over all goods in Sorted's possession shall be subject to a security interest in Sorted's favour for the payment of all amounts owing, and the performance of all the Customer's obligations, under these Terms.
- 41 The Customer acknowledges that Sorted may, at the Customer's cost, register Sorted's security interest to protect the Lien on the Personal Property Securities Register.
- 42 The Customer must do all things and provide all information Sorted require for the purpose of securing the Lien, the payment of all amounts owing and the performance of all the Customer's obligations under these Terms and Conditions. The Customer shall not change your name or other detail without first notifying Sorted in writing at least 14 days before such change takes effect.
- 43 The Customer:
- (a) agree that nothing in sections 114(1)(a) (to receive notice of sale of goods), 116 (to receive a statement of account), 120 (2) (to receive notice of proposal to take goods), 133 (to reinstate security agreement and 134 (limit on reinstatement) of the Personal Property Securities Act 1999 (**PPSA**) applies to these Terms of the security interest under these Terms.
  - (b) waive all the Customer's rights under sections 121 (to object to proposal) and 132 (redemption of collateral) of the PPSA; and
  - (c) waive the Customer's right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest under these Terms.
- 44 The terms accessions, financing statement, personal property, verification statement and security interest have the same meanings given to them under the PPSA.

**Insurance**

45 Sorted shall not insure the Goods for the benefit of the Customer or the owner of the Goods except upon receipt of express written instructions from the Customer or the owner of the goods (including a signed declaration as to the value and nature of the Goods) and at the expense of the Customer or owner and any such insurance effected by Sorted may be subject to such exceptions and conditions as may be required by the insurance company or underwriter accepting the risk. Sorted may make an additional charge for arranging such insurance but shall have no liability or responsibility whatsoever (whether in negligence, contract or otherwise) in respect of any insurance policy. Sorted is not the insurer and no deduction or set-off may be made from any charges or other moneys due to Sorted on any account pending settlement by the insurance company.

**Dangerous Goods**

46 The Customer shall not tender for Carriage any Dangerous Goods without first presenting a full written description of the Goods and the nature and degree of their volatility so as to enable the Goods to be properly classified. Described, packaged and labelled for Carriage in accordance with the provisions of all relevant laws, regulations, codes, customs and conventions. In default of so doing, the Customer shall be liable for any loss or damage caused thereby or in connection therewith and shall indemnify Sorted against all claims, liability, loss, damage, penalties and expense which Sorted may suffer or incur thereby or in connection with herewith. In the event that the Goods are found to be explosive, flammable, noxious or otherwise dangerous, hazardous or likely to cause damage without having been so described to Sorted (as hereby required), then the Goods may be destroyed or otherwise dealt with by, and at the sole discretion of, Sorted or any other person in whose custody they may be at the relevant time, without compensation to the Customer and without prejudice to Sorted's right to freight and charges. If such Goods are accepted under the arrangements previously made in writing, they may nevertheless be destroyed or otherwise dealt with if they become dangerous to any person, other goods or property.

**Force Majeure**

47 Sorted shall not be liable to the Customer for any failure to carry out its obligation under these Terms or for any loss, or damage suffered by the Customer where such failure or such loss or damage is caused by mechanical breakdown of any equipment, weather conditions, strikes, lock outs, labour disputes or restraint of labour, shortages or fuel or other raw materials, road or track blockages, cyber-attack, utility interruption, act of God, terrorism, epidemic, war, (whether declared or not), any act, regulation or restriction imposed by Government, riot or civil commotion, any act or omission of the Customer, its servants, subcontractors or agents or any cause beyond the control of Sorted (**Force Majeure**).

48 Where Force Majeure applies and Sorted deems that it practically impossible or commercially unviable (in Sorted's opinion) to supply the services or goods Sorted, for the affected period shall be relieved of its obligation under these Terms and may delay (in whole or in part) supply and/or terminate any Services, without penalty and on written notices to the Customer.

**Confidentiality**

49 The Customer must keep all price, rates and service schedules or other pricing information/service variations strictly confidential. The Customer must not disclose any of this information to any third party.

**Privacy**

50 Sorted may collect Personal Information provided to Sorted, whether directly by the Customer or otherwise.

51 Sorted may use and disclose Personal Information for Sorted's business purposes including contacting the Customer about products and services that may be of interest to the Customer by email or using other contact details.

52 The Customer consents to Sorted collecting using and holding general credit information about the Customer and to Sorted collecting such

information from, and/or disclosing it to, any third party (including a credit reporting agency) in connection with credit management and enforcement purposes (including making decisions around regarding the provision of credit to the Customer). Sorted may credit check the Customer and Sorted may collect information from any person for this purpose.

53 The Customer has the right to access the Personal Information Sorted holds about the Customer and request a copy of that information and request that any incorrect information be corrected. The Customer consents to Sorted using updates to the Customer's Personal Information to update Sorted's other information Sorted hold about the Customer.

54 The Customer warrants that:

- (a) All Personal Information about the Customer's customers disclosed to Sorted has been collected by the Customer and disclosed to Sorted in accordance with the Privacy Act 2020; and
- (b) Each individual to whom such Personal Information relates has consented to Sorted:
  - (i) Collecting, using and holding information about them for Sorted's business purposes; and
  - (ii) Disclosing such personal information about them for Sorted's business purposes including making such disclosures to the Customer.

**General provisions**

55 Neither party shall assign or attempt to assign any of its rights and interests or obligations under this Agreement without the prior written consent of the other party.

56 Failure or omission by a party at any time to enforce or require strict or timely compliance with any provision of this Agreement shall not affect or impair the provision in any way or the rights of that party to avail itself of the remedies it may have in respect of any breach of that provision.

57 The invalidity or unenforceability of any clause or any part of any clause in this Agreement shall not affect the enforceability of the remaining clauses or remaining parts of clauses.

58 The terms and conditions of this Agreement may be modified by updates with email or website link with 14 days prior notice.

59 This Agreement shall be construed and interpreted according to the laws of New Zealand. The parties submit to the exclusive jurisdiction of the Courts of New Zealand.