

## 1 Application

- 1.1 All Services are provided by Visy Global Logistics (NZ) Ltd (**Visy**) subject only to these Conditions, and any bill of lading, sea waybill, air waybill or consignment note issued by Visy or its agent in relation to the Goods.
- 1.2 In the event of (and only to the extent of) any inconsistency between these Conditions and the conditions contained in any bill of lading, sea waybill, air waybill or consignment note issued by Visy, the conditions in the bill of lading, sea waybill, air waybill or consignment note will prevail.
- 1.3 All rights, immunities, indemnities and limitations of liability in these Conditions shall continue to have their full force and effect in all circumstances and notwithstanding any breach of this contract or of these Conditions by Visy or any other person entitled to the benefit of these Conditions.
- 1.4 If any provision or any part of a provision in these Conditions is unenforceable, such unenforceability will not affect any other provision or any other part of a provision.
- 1.5 Visy shall not be bound by any agreement purporting to waive or vary these Conditions unless such agreement is in writing and signed by an authorised person on behalf of Visy.
- 1.6 Visy and Customer acknowledges that under the *Consumer Guarantees Act 1993 (NZ)* (as amended), consumers (as defined in that legislation) have certain rights and guarantees which cannot be excluded. Subject to clause 8.1 of these Conditions, nothing in these Conditions will be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law which by law cannot be excluded, restricted or modified.

## 2 Customer's Warranties

- 2.1 The Customer warrants that:
  - 2.1.1 It is either the owner and/or the authorised agent of the person or persons owning or having any interest in the Goods or any part of the Goods and enters into the contract with Visy on its own behalf and/or as authorised agent of that person or persons.
  - 2.1.2 The Goods are packed to withstand the ordinary risks of the Services having regard to the nature of the Goods, and have been appropriately secured within the Container.
  - 2.1.3 It has accurately and fully described the Goods and their weight and mass and it has provided all necessary instructions and information regarding handling, care and control of the Goods having regard to their nature, weight, mass and packaging.
  - 2.1.4 It has complied with the requirements of any applicable laws (including without limitation the *Land Transport Rule: Dangerous Goods 2005*, the *Hazardous Substances and New Organisms Act 1996* and the *Health and Safety at Work Act 2015*) relating to the nature, condition, packaging, handling, labelling, storage and carriage of the Goods and it will provide all necessary assistance, information and documentation to enable Visy to comply with any of its obligations under such laws.
  - 2.1.5 It will not tender any Dangerous Goods or Temperature Controlled Goods for the provision of Services by Visy without presenting a full description of the Goods and disclosing their nature, and where relevant, information relating to the manner in which the Services must be provided.
  - 2.1.6 It has complied and will comply with its obligations under the Chain of Responsibility Legislation.

## 3 Customer's Indemnities

- 3.1 The Customer shall be liable for and shall defend, indemnify and hold Visy harmless against all penalties, liabilities, claims, loss, damage, costs, expense, fines, legal or other professional fees and all or any debt incurred by Visy arising out of or in connection with:
  - 3.1.1 Visy acting in accordance with the instructions of the Customer, Owner or bailee of Goods; and
  - 3.1.2 any negligent act or omission of the Customer, Owner, or bailee of Goods; or
  - 3.1.3 a breach of a warranty or obligation by the Customer.
- 3.2 Except to the extent caused by Visy's Gross Negligence, wilful misconduct or fraud the Customer shall be liable for and shall defend, indemnify and hold Visy harmless in respect of all costs, expenses, fines, duties, taxes, imposts, levies, deposits and outlays of whatsoever nature imposed by any Government Agency arising out of or in connection with the Goods or the Services.
- 3.3 Except to the extent caused by the Visy's Gross Negligence, wilful misconduct or fraud, the Customer shall be liable for and shall defend, indemnify and hold Visy harmless against any loss, damage, contamination detention or demurrage of Containers supplied by or on behalf of Visy for use in the performance of the Services.
- 3.4 All advice and information provided by Visy is exclusively for the exclusively for the benefit of the Customer and the Customer shall defend, indemnify and hold Visy harmless for all liability, loss, damage, costs and expenses arising out of or in connection with any person (including the Owner) relying on such advice of information.

## 4 Visy's Rights

- 4.1 Visy may provide the Services by any method which Visy in its absolute discretion deems fit notwithstanding any instructions of the Customer that the Services are to be supplied by another method.
- 4.2 Visy may comply with any orders, directions or recommendations made by a Government Agency in relation to the Goods and/or the provision of the Services without recourse by, and at the risk and expense of, the Customer.
- 4.3 If the Customer or the receiver fails to accept delivery of the Goods, Visy will be entitled to store the goods at the risk and expense of the Customer.
- 4.4 Visy will dispose of Abandoned Goods at the expense of the Customer in any way it deems fit and without compensation to the Customer. The Customer will be given 14 days written notice of Visy's intention to dispose of the Goods.
- 4.5 If, in the opinion of Visy, the Goods are Dangerous Goods, Visy in its absolute discretion may refuse to provide the Services, or may at any time destroy, dispose of, abandon or render harmless the Goods without compensation to and at the expense of the Customer.
- 4.6 If, in the reasonable opinion of Visy, the Goods do not meet the requirements of all applicable laws relating to the Goods and/or the Services or are unsuitable to be handled by Visy using the equipment and operating procedures normally employed by Visy in providing the Services, Visy in its absolute discretion may:
  - 4.6.1 refuse to provide the Services in respect of the Goods or any part of them; or
  - 4.6.2 take whatever measures are deemed necessary at the risk and expense of the Customer to cause the Goods to comply with the requirements of all such laws or to make the Goods suitable to be handled by Visy.
- 4.7 Visy may open any Container, package, wrapping or document if, in the reasonable opinion of Visy it is necessary and reasonable to do so to render the Goods or the Services safe.

## 5 Subcontracting

- 5.1 Visy may subcontract the Services (in whole or in part) on any terms and Visy is or 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 omissions of Visy or a Subcontractor, each of who shall to this extent be or be deemed to be parties to this contract.
- 5.2 Every exemption, limitation, condition, right, defence and immunity available to Visy will be available and will extend to protect a Subcontractor or any person who is or may be vicariously liable for the acts or omissions of Visy or of a Subcontractor.
- 5.3 The Customer warrants that no servant or subcontractor of Visy shall in circumstances whatsoever by under any liability to the Customer or the Owner of any claims, damages, costs or expenses of any kind arising directly or indirectly from an act or omission of the servant or subcontractor while acting in connection with the Goods or the Services. In the event that a claim of the type referred to in this clause 5.3 is initiated, the Customer shall defend, indemnify and hold Visy harmless against all liability, damages, costs and expenses arising out of the claim.

## 6 Visy's Liabilities

- 6.1 Visy will not be liable in tort, contract, bailment or otherwise for any, or the consequences of any:
  - 6.1.1 breach by the Customer of any warranty in these Conditions and/or any applicable Services Agreement; or
  - 6.1.2 loss of or damage to the Goods, concealed damage, deterioration, contamination or evaporation of the Goods, misdelivery of the Goods, or delay in delivering or failure to deliver the Goods, unless caused by the Gross Negligence, wilful misconduct or fraud of Visy; or
  - 6.1.3 delay in providing or failure to provide or perform the Services, unless caused by the Gross Negligence, wilful misconduct or fraud by Visy.
- 6.2 Visy accepts no responsibility for the accuracy or any part of any description of or declaration in relation to the Goods on any document to which the Services relate and will be under no liability for any inaccuracy unless caused by Gross Negligence, wilful misconduct or fraud of Visy;
- 6.3 Visy will not be liable in tort, contract or otherwise for any, or the consequences of any loss or damage, costs, fines or penalties incurred by the Customer or any other person resulting from or arising out of or in connection with any quotation, advice, statement, representation or information given or made by or on behalf of Visy to the Customer or others as to the classification of or any matter material to the valuation of or the liability for the amount, scale or rate of customs and/or excise duty or other impost, tax or rate charged in respect of the Goods or cargo which is the subject of or relates to the Services.
- 6.4 In giving or making any such quotation, advice, statement, representation or information of the kind referred to in clause 6.3 Visy relies solely on the particulars provided by the Customer in relation to the Goods and in relation to the Services.
- 6.5 Visy will not be liable in tort, contract or otherwise for any consequential loss suffered or incurred by the Customer arising out of or in connection with Goods or the Services. For the purposes of this clause 6.5, 'consequential loss' means loss that is indirect loss or loss that was not reasonably foreseeable, and also includes deferment of income, loss of profit or revenue, loss of denial of opportunity, loss of access to markets, loss of goodwill, loss business

reputation, or damage to credit rating.

- 6.6 If the Customer has acknowledged in writing that the supply of Services is for the Customer's business purposes (as that term is defined in the Consumer Guarantees Act 1993) or if the Customer has actually acquired the Services for such purposes, the Act shall not apply. In circumstances where the Consumer Guarantees Act 1993 does apply to the Services and there is a conflict between these Conditions and the Act, the Act shall prevail and any such conflict will not be deemed to be an attempt to contract out of the Act.

## 7 Containers

- 7.1 The Customer will be responsible for the return of any Container to the person who owns it or has the right of possession of a Container or its agent and the Customer must indemnify, defend and hold Visy harmless against any claims, demands or liabilities which may arise as a result of a failure or a delay by the Customer in doing so.
- 7.2 Visy will not be responsible for the safe and proper packing and stowage of the Goods in any Container, having regard to the requirements of the Container, unless such packing and stowage is done by Visy. Any Container supplied by Visy will be:
- 7.2.1 inspected by the Customer prior to packing and stowage to ensure that it is undamaged and suitable for carriage of the Goods; and
- 7.2.2 returned to Visy clean and undamaged to the place nominated by Visy, failing which the Responsible Persons will be jointly and severally liable for demurrage which will be charged in accordance with the applicable Services Agreement or notified charge rate, and for all related costs and expenses reasonably incurred by Visy.

## 8 Insurance and Liability Cap

- 8.1 Visy shall not arrange or provide insurance for the Customer. The Customer must obtain its own insurance in respect of the Goods and/or Services, with a deductible of no more than \$5000 and no right of subrogation against Visy. To the extent Visy has any liability to the Customer under clause 6 or elsewhere under these Conditions, Visy's liability is limited (other than in circumstances of fraud by Visy) to the lesser of three times the Charge for the affected Service or \$5,000, except for instances where the Contract and Commercial Law Act 2017 applies, in which case Visy's liability shall be at "limited carrier's risk" in accordance with sections 256 to 260 of that Act and the amount of such liability shall be calculated accordingly. Customer must first exhaust its recovery rights under its own insurance before seeking recovery from Visy.

## 9 Payment

- 9.1 Visy's charges must be paid in full within 30 days of the date of the Invoice issued by Visy without discount, deduction, counterclaim or setoff, and regardless of any dispute between Visy and the Customer. Interest will be payable on any sum which remains due and unpaid after the date for payment and will be charged at the current statutory penalty rate per annum calculated daily on any overdue amounts. In the event of a breach by the Customer of this clause, Visy reserves the right to suspend or to refuse to provide the Services to the Customer in its absolute discretion.
- 9.2 Visy may charge by weight, measurement or value and may at any time re-weigh or re-value or re-measure or require the Goods to be re-weighed, re-valued or re-measured and may charge proportional additional charges accordingly.
- 9.3 Visy's charges will be considered earned as soon as the Goods are delivered to Visy and under no circumstances will those charges be refunded.
- 9.4 Every special instruction to the effect that charges will be paid by a person other than a Customer will; be deemed to include a stipulation that if that person does not pay those charges within 7 days of the date set for payment, or if no date is set for payment within 7 days of delivery or attempted delivery of the Goods, then the Customer will pay those charges within 7 days of being notified of that person's failure to pay.

## 10 Lien

- 10.1 Visy shall have a particular and general lien on all Goods and/or any and all other property of the Customer coming into Visy's actual or constructive possession or control, for any amount due to Visy arising out of or in connection with any Services provided in relation to the Goods, and/or for any other services provided to the Customer or Owner.
- 10.2 Prior to exercising the lien, Visy shall provide written notice to the Customer of its intent to exercise its lien, the property over which the lien will be exercised and the exact amount due and owing.
- 10.3 Visy will have the right to charge for storage and/or may remove to a warehouse or bond store the Goods, and/or other property of the Customer, subject to a lien at the risk and expense of the Customer.
- 10.4 Unless, within 14 days of receiving the written notice referred to in clause 10.2, the Customer pays the entire amount due and owing, Visy will have the right to sell the Goods and/or other property at public or private sale or auction and apply the proceeds to the amount due and owing and also toward the costs and expenses of exercising the power of sale (including legal fees).

## 11 Force Majeure

- 11.1 If at any time (by reason of war, storm, severe weather event, fire, smoke, flood or other act of God, or natural disaster (including lightning inductions caused by lightning storm, and fallen trees), terrorism, epidemic or other public health emergency, strike, labour dispute, shortage of labour, parts, fuel or other raw materials, road or track blockage,

trespassers, accident, emergency services operations, incidents caused by rail operators, vehicle breakdown, cyberattack, software malfunction, utility interruption, damage or breakdown of plant and equipment, changed market conditions, order of any governmental or regulatory body, or any other reason beyond Visy's control) it becomes practically impossible or commercially unviable in the opinion of Visy to supply the Services (or part of the Services) then Visy shall, be relieved of its obligations under this contract for as long as the event continues, but always subject to Visy taking reasonable steps to cure or otherwise minimize the impact of the event and further subject to Visy notifying Customer at the earliest reasonable time that such an event has occurred.

## 12 Notice of Claim and Time Bar

- 12.1 Visy shall be discharged of all liability unless:
- 12.1.1 notice of any claim for loss of or damage to the Goods or relating to the performance of the Services is received by Visy in writing within 21 days of the date specified in clause 12.2 below, or within a reasonable time after such date if the Customer proves that it was impossible to notify within 21 days; and
- 12.1.2 suit is brought in a proper forum and written notice thereof received by Visy within 9 months after the date specified in clause 12.2 below.
- 12.2 For the purpose of clause 12.1, the relevant date:
- 12.2.1 in the case of loss of damage to Goods, the date of delivery of the Goods;
- 12.2.2 in the case of delay or non-delivery of Goods, the date the Goods should be delivered;
- 12.2.3 in any other case, the event giving rise to the claim.

## 13 Governing law and jurisdiction

- 13.1 This contract is governed by the law of New Zealand. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

## 14 Definitions

- 14.1 In these Conditions:

**Abandoned Goods** means Goods which have not been accepted for delivery and which have remained in the possession of Visy or its Subcontractor for at least 90 days.

**Chain of Responsibility Legislation** means the chain of responsibility requirements set out in the Land Transport Amendment Act 2005.

**Charges** means Visy's quoted charges for Services calculated under its rate schedule or other agreed rates and the charges and any cost of any extra service provided by Visy under any contract or agreement with the Customer, and including any tax including a goods and services tax pursuant to the GST Law.

**Conditions** means these Standard Terms and Conditions of Services.

**Container** means any container, trailer, transportable tank, pallet, flat rack, bolster or any device used to carry or consolidate goods.

**Customer** means the person at whose request or on whose behalf Visy provides the Services.

**Dangerous Goods** means a hazardous substance as defined in the *Hazardous Substances and New Organisms Act 1996*, and any Goods which are dangerous, volatile, explosive, inflammable, or offensive or which may become so, or which may become harmful to any person, property or the environment whatsoever.

**Goods** means the cargo, baggage, vehicle or item in relation to which any part of the Services have been or are to be performed and also includes any Container supplied by the Customer that is used, or is to be used, in relation to the Goods.

**Government Agency** means a government or government department or other body, a governmental, semi-governmental or judicial person, or a person (whether autonomous or not) who is charged with the administration of a law.

**Gross Negligence** means any act or failure to act which materially and substantially deviates from a reasonable course of action and demonstrates a reckless disregard for foreseeable, harmful and avoidable consequences (but does not include any error of judgement or mistake that is made in good faith).

**GST Law** has the same meaning as in the *Goods and Services Tax Act 1985 (NZ)*.

**Invoice** means a tax invoice issued under the GST Law.

**Owner** means the owner, shipper, buyer and consignee of the Goods and any other person who is or may become interested in the Goods and anyone acting on their behalf.

**Responsible Persons** means the Customer, the Owner and anyone enjoying the benefit (whether directly or indirectly) of any part of the Services whether as principal, employee or agent.

**Services** means the whole of the operations and services undertaken by Visy in any way whatsoever connected with or concerning the Goods.

**Services Agreement** means, where applicable, an agreement with the Customer which includes these Conditions and contains other provisions relating to the Services.

**Subcontractor** means any person, and its employees or agents, who pursuant to a contract or arrangement with any other person (whether or not Visy) provides or agrees to provide the Services or any part of the Services.

**Temperature Controlled Goods** means Goods which require or may require temperature control.

**Visy** means Visy Global Logistics (NZ) Ltd (NZ Company Number 3689598).