

1. Definitions

- 1.1 "Company" shall mean Wilson Bulk Transport Limited, its successors and assigns, or any person acting on behalf of and with the authority of Wilson Bulk Transport Limited.
- 1.2 "Customer" shall mean the Customer, or any person acting on behalf of and with the authority of the Customer, as described on any quotation, work authorisation, weigh-bill or other form as provided by the Company to the Customer.
- 1.3 "Dangerous Goods" shall mean any goods that are, or become, in fact or at law noxious, dangerous, hazardous, explosive, radioactive, inflammable or capable by their nature of causing damage or injury to other goods or to any person or animals or to anything in which goods are carried, handled or stored.
- 1.4 "Goods and Services" shall mean Goods and Services supplied by the Company to the Customer and describes Goods and Services, including any advice or recommendations, described on any invoices, quotation, work authorisation, waybill or any other forms as provided by the Company to the Customer.
- 1.5 "Perishable Goods" shall mean any goods as are, in fact or law, liable to deteriorate in quality and/or value and includes but is not limited to fruits, vegetables, dairy products, and meats.
- 1.6 "Price" shall mean the price payable for the goods and services as agreed between the Company and the Customer in accordance with Clause 3 of this contract.
- 1.7 "Valuables" shall mean bullion, coins, precious stones, jewellery, antiques, and works of art.

2. Acceptance

- 2.1 Any instructions received by the Company from the Customer for the supply of Goods or Services supplied by the Company shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Customer, the terms and conditions are binding and can only be amended with the written consent of the Company.
- 2.4 The Customer undertakes to give the Company at least 14 (fourteen) days' notice of any change in the Customer's name, address and/or any other change in the Customer's details.

3. Supply of Goods and Services

- 3.1 The Company will use its reasonable skill, care and effort in supplying all goods and services to the Customer, using resources reasonably available to the Company, and will use its reasonable efforts to supply all goods and services by any agreed delivery date(s) in a timely and efficient manner. However the Company will not be liable for any delay or non-performance in supplying Goods or Services to the Customer, including where there are delays in cartage.
- 3.2 The Company shall maintain, clean, and employ a pest control programme for, all storage facilities to an industry accepted standard. While the Company agrees to take these precautions, the Company shall take no responsibility for any problems that may occur from the storage of goods that are out of condition or suffer from a pest infestation at the time of delivery.
- 3.3 The Customer warrants that it is the owner or authorised representative of the owner of the goods and of any person who is or claims to be entitled to possession of the goods.
- 3.4 The Customer, their agents, or any person acting on behalf of and with their authority, may not enter storage facilities or areas at any time without the express prior approval of the Company and then only on such terms as are advised by the Company.
- 3.5 It is a requirement that while utilising storage with the Company, all transport of goods in and out of the facility is to be carried out by the Company, unless previously agreed with the Company in writing prior to any storage being allocated.
- 3.6 Bulk products, whether stored in silos or bunkers, will incur a shrinkage allowance of 1.0%. Shrinkage refers to the quantity of bulk product lost in normal storage and handling processes including loss of mass through changes in moisture, handling, and waste.
- 3.7 Instructions and orders shall be sent to the Company via email to the following email addresses:
 - (a) Container cartage, sales and purchases containers@wilsonbulktransport.co.nz
 - (b) Bulk cartage bulk@wilsonbulktransport.co.nz
 - (c) Fertiliser sales and spreading fert@wilsonbulktransport.co.nz
 - (d) Bulk storage storage@wilsonbulktransport.co.nz
- 3.8 The Company operates Monday to Friday 7.00am to 6.00pm, and Saturday 7.00am to 12.00 noon. However, confirmation must be obtained on the Friday preceding that the depot will be open on that Saturday.

4. Price and Payment

- 4.1 At the Company's sole discretion, the Price shall be either:
 - (a) As indicated on invoices provided by the Company to the Customer in respect of the Goods and Services supplied; or
 - (b) The Company's quoted price (subject to Clause 4.6) which shall be binding upon the Company provided that the Customer shall accept the Company's quotation in writing within 30 (thirty) days.
- 4.2 Fuel Adjustment Factor (FAF) shall apply for all goods transported.
- 4.3 FAF will be calculated on the last working day of the month and will apply for the entirety of the following month.
- 4.4 All quoted rates and charges are exclusive of GST.
- 4.5 Other taxes and duties that may be applicable shall be added to the Price except where they are expressly included in the Price.
- 4.6 The Company reserves the right to change the Price in the event of a variation to the Company's quotation.
- 4.7 At the Company's sole discretion, a deposit may be required.
- 4.8 Time for payment for the Goods and Services shall be of the essence and at the Company's sole discretion:
 - (a) Payment shall be due on supply of the Goods and Services; or
 - (b) Payment shall be due before supply of the Goods and Services; or
 - (c) Payment for approved Customer's shall be due 20 (twenty) days following the end of the month in which an invoice was dated.
- 4.9 Payment shall be made by cash, cheque, or by direct credit, or by any other method as agreed to between the Customer and the Company.
- 4.10 Payment by the Customer to the Company can be made direct to BNZ bank account 02-0868-0105544-000. Any and all bank charges incurred in undertaking payment via electronic banking shall be the Customers responsibility.

5. Default and Consequences of Default

- 5.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at the rate of 18% per annum and such interest shall compound monthly at such a rate after, as well as before, any judgement.
- 5.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in pursuing the debt including legal costs on a solicitor and own client basis and the Company's collection agency costs.
- 5.3 Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of Goods or Services to the Customer and any of its obligations under the terms and conditions. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company has exercised its rights under this clause.
- 5.4 The Customer acknowledges that all goods and any documents relating thereto held in storage by the Company on behalf of the Customer, and any other goods of the Customer in the possession of the Customer or any documents relating thereto and any other goods of the Customer which may come into the possession of the Company or any documents relating thereto for all sums payable by the Customer to the Company, whether or not any sum or sums is overdue for payment, are subject to a general lien for all storage fees and any other amounts owing to the Company by the Customer. In the event of the storage charges not being paid in full by the due date, the Company may, upon giving 14 (fourteen) days written notice to the Customer, take possession of any goods held in storage and may, at the Company's sole discretion:

- (a) Sell the goods by private arrangement or public auction to defray any unpaid storage charges, cleaning fees, late payment fees, or costs associated with collection of fees and/or costs associated with disposal of the goods; or
- (b) Dispose of the goods in any other manner, as the Company sees fit, whether for value or not, if the goods are unsaleable, remain unsold after being offered for sale, pose a health and safety risk, or are of insufficient value to warrant a formal sale process; or
- (c) If the Company believes in its reasonable opinion that it is a health and safety risk to conduct an inventory of the goods in the allocated storage space, the Company may decide to dispose of some or all of the goods without conducting an inventory.

Should any money be recovered from the sale or disposal of goods, that money shall be used as follows:

- (d) First, to pay the costs of, and associated with, the sale or disposal of the goods;
- (e) Second, all storage charges and other fees owed to the Company by the Customer and any other costs incurred by the Company in connection with the selling and disposal of the goods;
- (f) Third, any excess funds shall be sent to the Customer.

5.5 Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Company shall, whether or not due for payment, become immediately payable in the event that:

- (a) Any money payable to the Company becomes overdue, or in the Company's opinion the Customer will be unable to meet its payments as they fall due; or
- (b) The Customer becomes insolvent, convenes in 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
- (c) A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

6. Risk and Insurance

- 6.1 If the Company retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Company is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.
- 6.3 Transport services shall be provided at "Limited Carriers Risk" (pursuant to the Contract and Commercial Law Act 2017, 5(1)) unless requested by the client in writing to be otherwise.
- 6.4 Customers shall ensure that their goods and products have insurance cover while being transported.
- 6.5 The Company holds Public Liability and Third Party insurance policies to the value of \$5,000,000.00 on each policy. Should it be a requirement, copies of these policies can be provided upon request.
- 6.6 The Company will not accept, and the Customer will not tender for storage Valuables, Dangerous Goods, Perishable Goods, goods that require refrigeration or other temperature control, livestock, or plants. Should the Customer nevertheless deliver any such goods to the Company, or cause the Company to handle or deal with any such goods, the Customer shall be liable for any loss or damage thereto or consequent thereon whether direct, indirect or consequential and howsoever caused and the Customer shall indemnify the Company from and against all penalties, taxes, duties, claims, demands, damages, costs and expenses arising in connection therewith. Any such Valuables, Dangerous Goods, Perishable Goods, livestock, goods that require refrigeration or other temperature control, or plants, may be destroyed at the sole and absolute discretion of the Company. In the event that the goods are destroyed the Company shall bear no liability therefore and the Customer shall indemnify the Company from and against all costs and expenses with respect thereto.
- 6.7 The Company has the right to refuse any goods that in its opinion are unfit to be stored and may remove from the store any goods that in the Company's opinion have or may become harmful to any person or animal or to other goods and may destroy the same if in the Company's opinion destruction is appropriate. The Customer shall be liable for and shall indemnify the Company against all damages, costs, or expenses which arise as a result of any such removal or destruction, whether in respect of the goods removed or destroyed by other goods.
- 6.8 The Customer warrants that all goods are and shall remain free from any deleterious or objectionable matter, substance or odour which may prejudicially or adversely affect any other goods in store. The Customer will be liable for and shall indemnify the Company in respect of any such prejudicial or adverse effects that may result from breach of this warranty.
- 6.9 The Company takes no responsibility to insure goods received for, or in, storage, nor for any loss or damage arising other than as a result of negligent act or omission by the Company and/or their personnel or person acting on behalf of and with the authority of the Company. This applies to any goods stored on any premises owned, leased or occupied by the Company.
- 6.10 The Customer warrants that all goods are packed in a manner adequate to withstand the ordinary risks of storage having regard to their nature and are in compliance with all laws and regulations which may be applicable during storage. The Customer shall indemnify the Company against all claims, fines, losses, damages or expenses arising in consequence of any breach of this provision.
- 6.11 The Customer warrants that owners of any goods held in storage have advised their insurer that the goods are held in storage, under the above conditions, and that the goods are insured against all risks to which the goods may be exposed during storage.

7. Title

- 7.1 The Company and the Customer agree that ownership of any Goods shall not pass until:
 - (a) The Customer has paid the Company all amounts owing for the particular goods; and
 - (b) The Customer has met all other obligations due by the Customer to the Company in respect of all contracts between the Company and the Customer.
- 7.2 Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Company's ownership or rights in respect of the Goods shall continue.
- 7.3 It is further agreed that:
 - (a) Where practicable the Goods shall be kept separate and identifiable until the Company has received payment and all other obligations of the customer are met; and
 - (b) Until such time as ownership of the Goods shall pass from the Company to the Customer the Company may give notice in writing to the Customer to return the Goods to the Company. Upon such notice being given the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
 - (c) The Customer is only a Bailee of the Goods and until such time as the Company has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods on trust for the Company; and
 - (d) Until such time as ownership of the Goods shall pass from the Company to the Customer, if the goods are converted into other products, the parties agree that the Company will be owner of the end products; and
 - (e) If the customer fails to return the Goods to the Company then the Company or the Company's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated as the invitee of the Customer and take possession of the Goods, and the Company will not be liable for any reasonable loss or damage suffered as a result of any action by the Company under this clause.

8. Defects and Returns

- 8.1 The Customer shall inspect any Goods on delivery and shall within 7 (seven) days of delivery (time being of the essence) notify the Company of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Company an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Company has agreed in writing that the Customer is entitled to reject, the Company's liability is limited to either, at the Company's discretion, replacing the Goods or repairing the Goods.
- 8.2 Returns will only be accepted provided that:
 - (a) The Customer has complied with the provisions of Clause 8.1; and
 - (b) The Company has agreed in writing to accept the return of the Goods; and

- (c) The Goods are returned at the Customer's cost within 7 (seven) days of the delivery date; and
 (d) The Company will not be liable for Goods which have not been stored or used in the proper manner; and
 (e) The Goods are returned in the condition in which they were delivered.
- 8.3 In the event of Services provided by the Company to the Customer, the Customer shall within 2 (two) days of completion of the services notify the Company of any alleged negligence, damage or failure to comply with the description or quote. The Customer shall afford the Company an opportunity to inspect any evidence relating to the alleged negligence, damage or failure to comply with the description or quote within a reasonable time following the provision of the services if the Customer believes the services fail to meet agreed standards.
- 8.4 Should the Company acknowledge liability for any failure to perform agreed services and elects to re-perform any services for the Customer the Company shall use reasonable endeavours to do so as soon as practicable but will not be liable for any delay in such re-performance.
- 9. Warranty**
- 9.1 Second-hand Goods are purchased "as seen", including any flaws or wear and tear.
- 9.2 The Company gives no warranty on any Goods beyond that offered by the manufacturer of the Goods. The judgement of the manufacturer as to the validity of any claim is final and binds both the Customer and the Company. The liability in the event of a valid claim will not exceed the sale price of the Goods concerned plus the cost of labour charged by the Company.
- 9.3 In respect of Services performed by the Company, no warranty is given for any sum greater than the cost of labour originally provided by the Company and transport costs incurred by the Company in the performing of the Service.
- 9.4 This undertaking is in place of any implied condition as to the merchantable quality of the Goods, and all other conditions, warranties, undertakings or terms whether expressed or implied, statutory or otherwise, inconsistent with the provisions of this warranty are to the extent permitted by law hereby expressly excluded.
- 9.5 The Company gives no warranty that the Goods are fit for any purpose, suitable for any purpose or any other warranty other than that referred to in Clause 9.2 above.
- 10. Consumer Guarantees Act 1993**
- 10.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Company to the Customer.
- 11. Personal Property Securities Act 1999 ("PPSA")**
- 11.1 Upon assenting to these terms and conditions in writing, the Customer acknowledges and agrees that:
- (a) These terms and conditions constitute a security agreement for the purposes of the PPSA; and
 (b) A security interest is taken in all Goods previously supplied by the Company to the Customer (if any) and all Goods that will be supplied in the future by the Company to the Customer.
- 11.2 The Customer undertakes to:
- (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 the Company may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 (b) Indemnify, and upon demand reimburse, the Company for all expenses incurred in registering a financial statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
 (c) Not register a financing change statement or a change demand without the prior written consent of the Company; and
 (d) Immediately advise the Company of any material change in its business practices of Selling the Goods which would result in a change in the nature of proceeds derived from such sales/
- 11.3 The Company and the Customer agree that nothing in Sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 11.4 The Customer waives its rights as a debtor under Sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 11.5 Unless otherwise agreed in writing by the Company, the Customer waives its right to receive a verification statement in accordance with Section 148 of the PPSA.
- 11.6 The Customer shall unconditionally ratify any actions taken by the Company under Clauses 11.1 to 11.5.
- 12. Customer's Disclaimer**
- 12.1 The Customer hereby disclaims any right to rescind, or cancel, any contract with the Company or to sue for damages or to claim restitution arising out of misrepresentation made to the Customer by the Company and the Customer acknowledges that the Goods and Services are bought relying solely upon the Customer's skill and judgement.
- 13. Cancellation**
- 13.1 The Company may cancel any contract to which these terms and conditions apply or cancel delivery of Goods or provision of Services at any time before the Goods are delivered or Services performed by giving written notice to the Customer. On giving notice the Company shall repay to the Customer any sums paid in respect of the Price. The Company shall not be liable for any loss or damage whatever arising from such cancellation.
- 13.2 In the event that the Customer cancels delivery of the Goods or Services the Customer shall be liable for any loss incurred by the Company, including but not limited to any loss of profits, up to the time of cancellation.
- 14. Privacy Act 1993**
- 14.1 The Customer authorises the Company to:
- (a) Collect, retain and use any information about the Customer, for the purpose of assessing the Customer's creditworthiness or marketing goods and services to the Customer; and
 (b) Disclose information about the Customer, whether collected by the Company from the Customer directly or obtained by the Company 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 Customer.
- 14.2 Where the Customer is an individual the authorities under Clause 15.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 14.3 The Customer shall have the right to request the Company for a copy of the information about the Customer retained by the Company and the right to request the Company to correct any incorrect information about the Customer held by the Company.
- 15. General**
- 15.1 If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 15.2 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 courts of New Zealand.
- 15.3 The Company shall be under no liability whatever to the Customer for any indirect loss and/or expense, including loss of profit, suffered by the Customer arising out of a breach by the Company of these terms and conditions.
- 15.4 In the event of any breach of this contract by the Company the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods or Services.
- 15.5 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by the Company.
- 15.6 The Company may licence or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 15.7 The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if Section 15(d) were omitted from the Contractual Remedies Act 1979.
- 15.8 The Company reserves the right to review these terms and conditions at any time. If, following any such review, there is to be a change to these terms and conditions, then that change will take effect from the date on which the Company notifies the Customer of such change.
- 15.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm, disease or pandemic, or other event beyond the reasonable control of either party.
- 15.10 The failure by the Company to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Company's right to subsequently enforce the provision.