

Cargo Co-ordinators

Terms and Conditions of Carriage

1.0 Definitions

- 1.1 **"Carrier"** means Cargo Co-ordinators (H.K.) Limited or Cargo Co-ordinators International N.Z. Ltd. or Anzus Line on whose behalf this Waybill has been signed.
- "Merchant"** includes the shipper, the Holder, Consignee, the Receiver of the Goods, any person owning or entitled to the possession of the Goods or of this Waybill and any one acting on behalf of any such persons.
- "Carriage"** means the whole of the operations and services undertaken by the Carrier in respect of the Goods.
- "Holder"** means any person for the time being in possession of this Waybill to whom the property in the Goods has been passed on or by reason of the consignment of the Goods or the endorsement of this Waybill or otherwise.
- "Goods"** means the whole or any part of the cargo accepted from the shipper and includes any Container not supplied by or on the behalf of the Carrier.
- "Container"** includes any Container, trailer, and transport tank, flat, pallet or any similar article used to consolidate Goods.
- "Combined Transport"** arises only when such transport is specifically indicates Combined Transport by reference to the applicable Tariff.
- "Demurrage"** means charges that may be levied by Port authorities when goods or containers of goods dwell in designated port areas over free allocated storage time periods.
- "Detention"** means charges that may be levied by the Carrier when containers are not returned to the Carrier's care within stipulated free time periods as detailed in the Carrier's Tariff and/or Arrival Notice/s.
- "Port to Port"** arises when the Carriage called for by this Waybill is not Combined Transport.
- "Freight"** includes all charges payable to the Carrier in accordance with the applicable Tariff and this Waybill.
- "Hague Rules"** means the Hague Rules contained in the International Convention for the Unification of Certain Rules Relating to the Waybill dated 25th August 1924.\
- "Hague Visby Rules"** means the Hague Rules contained in the Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to the Waybill dated 23rd February 1968 and the Protocol amending the International Convention and includes the amendments made by the Protocol dated 21st December 1979 but only if such amendments are compulsorily applicable to this Waybill.

2.0 Carriers Tariff

The terms of the Carriers applicable Tariff are incorporated herein and copies are obtained from or its agent upon request. In the case of inconsistency between this Waybill and the applicable Tariff, this Waybill shall prevail.

3.0 Warranty

The Merchant warrants that in agreeing to the terms hereof he is, or has the authority of the person owning or entitled to the possession of the Goods and this Waybill.

4.0 Sub-Contracting

- (a) The Carrier should be entitled to sub-contract on any terms the whole or any part of the Carriage.
- (b) The Merchant undertakes that no claim or allegation shall be made against any servant, agent or sub-contractor of the Carrier which imposes or attempts to impose upon any such person or vessel owned by any of them, any liability whatsoever in connection with the Goods or the Carriage whether or not arising out of negligence on the part of any of them, and if any such claim or allegation should be nevertheless made, to indemnify the Carrier against all consequences thereof. Without prejudice to the foregoing every such person shall have the benefit of all provisions herein benefiting the Carrier as if such provision were expressly for his benefit, and in entering into this contract the Carrier, to the extent of those provisions, does so not only on its own behalf, but also as agent and trustee for such servants, agents and sub-contractors.

5.0 Carrier's Responsibility

A. NEW ZEALAND PORT TO NEW ZEALAND PORT SHIPMENT

Where the Carriage called for by this Waybill is from a New Zealand port to a New Zealand port then:

- 1. The liability (if any) of the Carrier for loss of or damage to the Goods occurring from and during the loading onto any sea-going vessel into which the Goods shall have been Trans-shipped shall be determined in accordance with the New Zealand Carriage of Goods Act 1979.

B. INTERNATIONAL CARRIAGE

- 1. if the port of loading is in New Zealand this Waybill shall have effect subject to the Hague-Visby Rules and the SDR Protocol as applied by the New Zealand Maritime Transport Act 1994 and if the port of loading is in Australia this Waybill shall have effect subject to the Hague-Visby Rules and SDR Protocol as applied by the Australian Carriage of Goods by Sea Act 1991 (commonwealth).
- 2. if the Goods are delivered to the Carrier for vaning or devanning b the Carrier at a packing station, terminal or wharf area in or immediately

adjacent to the sea terminal the liability of the Carrier in respect of such Goods prior to loading on and subsequent to discharge from the vessel shall be determined in accordance with the provisions of the Rules which would apply in accordance with paragraph (A) (1) and (C) (1) - (2) of this clause.

C. COMBINED TRANSPORT

When the Carriage called for by this Waybill is Combined Transport then, save as is otherwise provided for in this Waybill the Carriage shall be liable for loss or damage occurring during Carriage to the extent set out below:

1. Where the stage of Carriage where loss or damage is not known:

a. **Exclusions** - Where the stage of Carriage where the loss or damage occurred is not

known the Carrier shall be relieved of liability for any loss or damage if such loss or

damage if such loss or damage was caused by:

- (i) an act or omission of Merchant
- (ii) insufficiency of or a defect of condition of packing or marking
- (iii) handling, loading, stowage or unloading of the Goods by or on the behalf of the Merchant
- (iv) inherent vice of the Goods
- (v) strike, lock-out, stoppage or restraint of labour the consequences of which the Carrier could not avoid by the exercise of reasonable diligence
- (vi) a nuclear incident if the operator of a nuclear installation or a person acting for him is liable for this damage under an applicable international convention or national law governing liability in respect of nuclear energy
- (vii) any cause or event which the Carrier could avoid and the consequence whereof he could not prevent by the exercise of reasonable diligence

b. **Burden of Proof** - The burden of proving that the loss or damage was due to one or more of the causes or events specified in this sub-clause (C) (1) shall rest upon the Carrier save that when the Carrier establishes that in the circumstances of the case, the loss or damage could be attributed to one or more of the clauses or events specified in paragraphs (a) (ii) or (iv) above, it shall be presumed that it was so caused. The Merchant shall however, be entitled to prove that the loss or damage was not in fact caused either wholly or partly by one or more of those causes or events

c. **Amount of Compensation** - Except provided in sub-clause (D) (3) below, Compensation shall in no circumstances whatsoever and however arising exceed NZD\$ 2.50 per kilo of the gross weight of the Goods lost or damaged or NZD\$ 200.00 for each package or unit whichever shall be the lesser, save in relation to Carriage to which the Australian Carriage of Goods by Sea Act 1991 (commonwealth) or the New Zealand Maritime Transport Act compulsorily applies in which case compensation in no circumstances whatsoever and however arising exceed 2 units of account

(as per Article 5 (a) of the SDR Protocol) as the date of loss or damage per kilo of the gross weight of the Goods lost or damaged or the current Australian dollar equivalent of 666.67 units of account (as per Article 5(a) of the SDR Protocol) as the date of loss or damage for each package or unit whichever shall be the lesser

2. Where the stage of Carriage where the loss or damage occurred is known: Notwithstanding anything provided for in sub-clause (C) (1) above and subject to clauses 12 and 13 where it is known during which stage of the Carriage the loss or damaged occurred the liability of the Carriage in respect of such loss damaged determined
 - (a) by the provisions contained in any international convention national or state law which provisions
 - (i) cannot be departed from private contract to the detriment of the Merchant and
 - (ii) would have applied if the Merchant had made a separate and direct contract with the Carrier in respect of the particular stage of the Carriage where loss or damage occurred and received as evidence thereof any particular document which must be issued in order to make such international convention national or state law applicable. Provided that an international convention national or state law will determined the Carriers liability as aforesaid only if it would have been applicable if the contract referred to in (ii) above were governed
 - (aa) Where the loss or damage occurred between the time that the Goods were accepted by the Carrier for Carriage and the time when the Goods were located at the port of loading by an internal law of the State of the place of acceptance: or
 - (bb) Where the loss or damage occurred during the time Carriage by sea, by the internal law of the State of the port of loading or the place where the Waybill was issued or by the internal law of the State of the port of discharge: or
 - (cc) Where the loss or damage occurred between the time that the Goods were discharged at the final port of discharged and the time that the Goods were delivered to the Merchant, by the internal law of the State of the place of delivery: or
- (b) Where no international convention national or state law would apply by Virtue of (a) above by The Hague Rules if the loss or damage is known to have occurred at sea or on inland waterways: or
- (c) By the provisions of sub-clause (C) (1) in cases of where the provisions of paragraphs (a) and (b) above do not apply.

Where under the provisions of this sub-clause (C) (2) the liability of the Carrier shall be determined by the provisions of any international convention

national or state law, this liability shall be determined as though the Carrier were the Carrier referred to in any such convention national or state law: References in this sub-clause (C) (2) to the internal law of a State shall be deemed to exclude all principles of private international law applied by that State. For the purposes of this sub-clause (C) (2) references in the Hague Rules and the Hague Visby Rules to Carriage by sea shall be deemed to include references to Carriage by inland waterways and the Hague Rules and Hague Visby Rules shall be construed accordingly.

3. **Special Provisions for combined Transport:**

- a. Notice of loss or damaged: The Carrier shall be deemed prima facie to have delivered the Goods as described in this Waybill unless notice of loss or damage to the Goods, indicating the general nature of such loss or damage, shall have been given in writing to the Carrier or its representative at the place of delivery before or at the time of removal of the Goods into the custody of the person entitled to delivery thereof under this Waybill, or, if the loss or damage is not apparent within three (3) consecutive days thereafter.
- b. "Time Limitation". Subject to any provisions of this clause 5 to the contrary, the Carrier shall be discharged of all liability under this Waybill, unless, suit is brought and notice thereof given to the Carrier within nine (9) months after delivery of Goods, or the date when Goods should have been delivered

D. **General - (applicable to both Port to Port Shipment and Combined transport)**

1. **Delay** - The Carrier does not undertake that the Goods shall arrive at the port of discharge or place of delivery at any particular time or to meet any particular market or use and save as provided in sub-clause (C) (2) above, the Carrier shall in no circumstances be liable for direct, indirect or consequential loss or damage caused by delay. Where under the provisions of (C) (2) above the Carrier is liable for delay, liability shall be limited to the element of the freight applicable to this relevant stage of transport provided this is not contrary to the international convention or the national law concerned.

2. **Supply of Containers by Carriage**

- (i) The shipper shall have the obligation to inspect and shall pursuant to that obligation inspect Container(s) which are lent, leased or howsoever otherwise furnished by or on behalf of the Carrier before packing Goods into or onto them, and any such Container(s) packed by the shipper shall be deemed to have been inspected by the shipper as being in sound and suitable condition for the purpose of the Carriage covered by this Waybill and no Merchant shall have any rights whatsoever against the Carrier for or in respect of

any loss or damage to Goods due to insufficient or unsound conditions of Container(s) howsoever arising.

- (ii) Each Merchant shall assume full responsibility and indemnify the Carrier for any loss or damage to any Container(s) or other equipment furnished by or on behalf of the Carrier which occurs while such Container(s) or equipment is in the possession of any Merchant or any servant(s) or agent(s) of or Inland Carrier(s) engaged by or on behalf of the Merchant.
 - (iii) The Carrier shall not in any event be liable for and each Merchant shall be severally liable to indemnify and hold the Carrier harmless from and against any loss or damage to property of other persons, or injuries to other persons caused by Container(s) furnished by on behalf of the Carrier or contents thereof during handling by any Merchant of any servant(s) or agent(s) of or Inland Carrier(s) engaged by or on behalf of any Merchant.
 - (iv) Where the Goods are delivered in a Container(s), which the Carrier owns, or to the possession of which the Carrier is otherwise entitled, the Merchant taking delivery shall return such Container(s) promptly.
3. **Ad Valorem** - Higher compensation may be claimed only when, with the consent of the Carrier, the value of Goods declared by the shipper, which exceed the limits laid down in this clause, has been stated in this Waybill and extra freight paid if required. In that case the amount of the declared value shall be substituted for those limits. Any partial loss or damage shall be adjusted pro rata on the basis of such declared value.
4. **Hague Rules Limitation** - Subject to (3) above, whenever Hague Rules are applicable, otherwise than by national law, in determining the liability of the Carrier, the liability shall in no event exceed NZD\$200.00 per package or unit.
5. **Scope or Application** - Save as otherwise provided herein, the Carrier shall in no circumstances whatsoever or howsoever arising be liable for direct or indirect consequential loss or damage. The defenses and limits of liability provided for in this Waybill shall apply in any action against the Carrier for loss or damage or delay whether the action can be founded in Contract or in Tort.
6. **Merchant Packed Containers** - If a Container has not been stowed by or on behalf of the Carrier:
- a. The Carrier shall not be liable for loss of or damage to the Goods caused by:
 - (i) the manner in which the Container has been stowed: or

- (ii) the unsuitability of the Goods for the Carriage in Containers: or
 - (iii) the unsuitability of or defective condition of the Container
 - b. The Merchant shall indemnify the Carrier against any loss, damage, liability or referred to in paragraph (a) (I), (ii) or (iii) above.
7. **Inspection of Goods** - The Carrier or its sub-contractor or any person authorised by it shall be but under no obligation to open any Container or package at any time and inspect the contents. If it thereupon appears that the contents or any part thereof cannot safely or properly be carried or carried further, either at all or without incurring any additional expenses or taking any measures in relation to the Container of the Goods or thereof and/or take any measure and/or incur any reasonable additional expense to transport or continue the transport of or to store the same ashore or afloat under cover or in the open, at any place. This abandonment or storage shall be deemed to constitute due delivery under this Waybill. The Merchant shall indemnify the Carrier against any reasonable expense so incurred.
8. **Description of Goods**
- 1. This Waybill shall be prima facie evidence of the acceptance by the Carrier, in apparent good order and condition except as otherwise noted, of the total numbers of Containers, packages or other units or weight of cargoes specified on the face hereof.
 - 2. Except as provided in sub-clause 8 (1) above, no representation is made by the Carrier as to weight, contents, measure, quantity, quality, description, condition, marks, numbers or value of Goods and the Carrier shall be under no responsibility whatsoever in respect of such description or particulars.
9. **Merchants Responsibility** - The Merchant warrants to the Carrier that the particulars relating to the Goods as set out on the face hereof have been checked by the Merchant on the receipt of this Waybill and that such particulars and any other particulars by or on behalf of the Merchant are correct. The Merchant shall indemnify the Carrier against all loss, damage and expenses arising or resulting from inaccuracies in or inadequacy of such particulars or from any other cause in connection with the Goods for which the Carrier is not responsible.
10. **Freight and Charges**
- a. Freight shall be deemed fully earned on acceptance of the Goods by the Carrier and shall be paid and non-returnable in any event.
 - b. The Merchant's attention is drawn to the stipulations concerning currency in which the freight has to be paid, rate of exchange, devaluation's and contingencies related to the freight in the applicable Tariff.
 - c. The freight payable hereunder has been calculated on the basis of particulars furnished by or on behalf of the shipper. The Carrier

shall at any time be entitled to reweigh, remeasure or revalue Goods and for this purpose to open, remove and examine the contents of any Container(s) or other packages or units and if the particulars furnished are found to be incorrect, the freight shall be adjusted accordingly and the Merchant shall be liable for and bound to pay to the Carriers expenses incurred in examining, reweighing, remeasuring or revaluing the Goods together with the excess (if any) of the adjusted freight over the amount previously paid.

- d. Except as may be provided to the contrary in the applicable Tariff all unpaid charges shall be paid without any set-off, counterclaim, deduction or stay of execution.
- e. Freight and expenses under sub-clause 10(c) above may be recovered by the Carrier from any person falling within the definition of Merchant in clause 1 whether or not such person is the shipper. Payment of The Carrier's charges shall be made in full as soon as incurred. The Merchant shall be liable for, detention or demurrage before and after the Carriage of the Goods (including but not limited to Containers) to the Carrier caused by the Merchant or any person acting on his behalf or for which the Merchant is otherwise responsible.
- f. Interest shall be paid by the Merchant at the rate of 12% per annum calculated on a daily basis from the date when the Charge(s) became due.
- g. Any and all costs of collection of monies due (be it freight, demurrage, detention or any other sum due to the Carrier by the Merchant), including but not limited to Legal and or Collection Agency costs, shall be payable by the Merchant.

11. Lien

- 1. The Carrier shall have a lien on the Goods and any documents relating thereto for all sums payable to the Carrier under this contract and for general average contributions to whomsoever due and for the cost of recovering the same, and for that purpose shall have the right to sell the Goods by public auction or private treaty without notice to the Merchant. If on sale of the Goods the proceeds fail to cover the amounts due and the costs incurred the Carrier shall be entitled to recover the deficit from the Merchant.
- 2. If the Goods are unclaimed during a reasonable time, or whenever in the Carriers opinion the Goods will become deteriorated, decayed or worthless, the Carrier may at its discretion and without notice to the Merchant and without prejudice to any other rights which it may have hereunder and without any responsibility attaching to it, sell, abandon or otherwise dispose of such Goods solely at the risk and expense of the Merchant.

12. Optional Stowage

- 1 The Goods may be stowed by the Carrier in a Container(s)
- 2 Goods whether stowed in Containers or not may be carried on deck or under deck without notice to the Merchant. All such Goods (other than live animals) whether carried on deck or under deck shall participate in general average and shall be deemed to be within the definition of Goods for the purposes of the Hague Rules.

13. **Deck Cargo and Live Animals**

1. The Hague Rules or the Hague Visby Rules shall not apply to Goods (not being Goods stowed in Container(s) which are stated herein to be carried on deck and so carried or to live animals whether or not carried on deck.
2. The Carrier shall have no responsibility for loss or damage of whatsoever nature arising during Carriage by sea, whether caused by unseaworthiness or negligence or any other cause whatsoever, for Goods, which are stated herein to be carried on deck and are so carried.
3. Live animals are carried at sole risk of the Merchant. The Carrier shall be under no liability whatsoever for injury, illness, death, delay or destruction howsoever arising even though caused or contributed to by the act, neglect or default of the Carrier or by the unseaworthiness or unfitness of any vessel, craft, conveyance, Container or other place existing at any time. In any event of the Master, in his sole discretion, considering that any live animal is likely to be injurious to the health of any other live animal or for any person on board or to cause the vessel to be delayed or impeded in the prosecution of the voyage such live animal may be destroyed and thrown overboard without any liability attaching to the Carrier. The Merchant shall indemnify the Carrier against all and any extra costs incurred for any reason whatsoever in connection with the Carriage of such live animals.

14. **Refrigerated Cargo**

1. The Merchant undertakes not to tender for Carriage any Goods which require refrigeration without previously giving written notice of their nature and particular temperature range to be maintained and in the case of a refrigerated Container packed by the Merchant, further undertake that the Goods have been properly stowed in the Container and that its thermostatic controls have been adequately set by him by before receipt of the Goods by the Carrier. If the above requirements are not complied with the Carrier shall not be liable for any loss of or damage to the Goods howsoever arising.
2. The Carrier shall not be liable for any loss of or damage to the Goods arising from latent defects, derangement, breakdown, stoppage or malfunction of the refrigeration machinery, plant, insulation and/or apparatus of the Container, vessel, conveyance and any other

facilities, provided that the Carrier has supplied the Container the Carrier shall before or at the beginning of the Carriage exercise due diligence to maintain the refrigerated Container in an efficient state.

15. **Methods of Routes of Transportation**

- a. The Carrier may at any time and without notice to the Merchant:
 - i. use any means of transport and storage whatsoever
 - ii. transfer or transship the Goods from one conveyance to another or carry the same on another vessel than that named on the face hereof or by any other means of transport whatsoever.
 - iii. Unpack and remove the Goods which have been stowed into a Container and forward the same in a Container or otherwise.
 - iv. Proceed by any by any route at it discretion (whether or not the nearest or most direct or customary or advertised route) and proceed to or stay at any place or port whatsoever once or more often and in any order.
 - v. Load or unload the Goods at any place or port (whether or not any such port is named on the face hereof as the Port of Loading or Port of Discharge) and store the Goods at any such place or port.
 - vi. Comply with any order or recommendations given by government or authority or any person or body acting or purporting to act as or on the behalf of such government or authority of having under the terms of the insurance on the conveyance employed by the Carrier the right to give orders or directions
 - vii. Permit the vessel to proceed with or without pilots
- b. The liberties set out in sub-clause (1) may be invoked by the Carrier for any purpose whatsoever whether or not the connected with the Carriage including loading or unloading other Goods, bunkering, including undergoing repairs, towing or being towed, adjusting instruments, dry-docking, picking up or landing any persons, and assisting vessels in all situations and anything done in accordance with sub-clause (1) or any delay arising therefrom shall be deemed to be within the contractual Carriage and shall not be a deviation.
- c. By tendering Goods for Carriage without any written request for Carriage in a specialised Container or for Carriage in a specialised Container or for Carriage otherwise than in a Container the Merchant accepts that the Carriage may properly be undertaken in a general-purpose Container.

16. **Matters Affecting Performance** if at any time the Carriage is or is likely to be affected by hindrance, risk, delay, difficulty or disadvantage of any kind (other than the inability of the Goods or any part thereof safely or properly to be carried or carried further) and howsoever arising (even though the circumstances giving rise to such hindrance, risk, delay, difficulty or disadvantage existed at the time this contract was entered into or the Goods, were accepted for Carriage) and which cannot be avoided by the exercise of reasonable endeavors the Carrier (whether or not the Carriage is commenced) may either:

- a. Without notice to the Merchant abandon the Carriage of the Goods and place the Goods or any part of them at the Merchant's disposal at any place or port that the Carrier may deem safe and convenient whereupon the responsibility of the Carrier in respect of such Goods shall cease. The Carrier shall nevertheless be entitled to full Freight on Goods accepted for Carriage, and the Merchant shall pay any additional costs of Carriage to and delivery and storage at such place or port: or
- b. Without prejudice to the Carrier's right subsequently to abandon the Carriage under (a), upon notice to the Merchant suspended Carriage of the Goods or any part of them and store them ashore or afloat upon the terms of the Waybill against payment of such reasonable additional charges as the Carrier may determined. The Carrier undertakes to use reasonable endeavors to forward Goods, the Carriage of which has been suspended, as soon as possible after the cause of hindrance, risk, delay, difficulty or disadvantage has been removed but makes no representations as to the maximum period between such removal and the forwarding of Goods to the place of delivery named in the Waybill.

17. **Dangerous Goods**

1. No Goods which are or may become dangerous, inflammable or damaging (including nuclear fuels and radioactive products or waste(s), or which are or may become liable to damage any property whatsoever, shall be tendered to the Carrier for Carriage without its express consent in writing and without the Container or other covering in which the Goods are to be transported and the Goods being distinctly marked on the outside so as to indicate the nature and character of any such articles and so as to comply with any applicable laws, regulations or requirements. If such articles are delivered to the Carrier without such written consent and markings or if in the opinion of the Carrier the articles are or are likely to become dangerous, inflammable or of a damaging nature, the same

- may at any time be destroyed, disposed of, abandon, or rendered harmless without prejudice to the Carriers right to Freight.
2. The Merchant undertakes that the Goods are packed in a manner adequate to withstand the ordinary risks of Carriage having regard to their nature and in compliance with all or regulations, which may be applicable during Carriage.
 3. Whether or not the Merchant was aware of the nature of the Goods the Merchant shall indemnify the Carrier against all claims, losses, damages or expenses arising in consequence of any breach of the provisions of this clause.
 4. Nothing contained in this clause shall deprive the Carrier of any of its rights otherwise provided for.
18. **Regulations Relating to Goods** The Merchant shall comply with all regulations or requirements of customs, port and other authorities and shall bear and pay all duties, taxes, fines, imposts, expenses or losses incurred or suffered by reason thereof or by reason of any illegal incorrect or insufficient packing and marking, numbering or addressing of the Goods and shall indemnify the Carrier in respect thereof.
19. **Notification and Delivery/Collection of Goods and Return of Containers**
1. Any mention herein of parties to be notified of the arrival of Goods is solely for information of the Carrier and failure to give such notification shall not involve the Carrier in any liability nor relieve the Merchant of any obligation.
 2. The Merchant shall take prompt delivery of the Goods and in any event within the time provided for in clause 19.5 below. In any case where there has been made between the Carrier and the Merchant the arrangement that the Merchant shall directly take delivery of the Goods from alongside or on board a seagoing vessel at the port of discharge. The Merchant shall do so as soon as the vessel is ready to discharge them at any wharf place in that port on any day and at any time.
 3. If the Merchant fails to take delivery of the Goods or any part of them in accordance with sub-clause (b) above the Carrier may without notice unstow the Goods or that part thereof and/or store the same ashore, afloat, in the open or under cover. Such storage shall constitute due delivery hereunder and thereupon all liability whatsoever of the Carrier in respect of such Goods shall cease.
 4. The Merchant's attention is drawn to the stipulations concerning free storage time and charges for demurrage beyond that time as contained in the respective Port authorities Tariffs.
 5. Where the Merchant is required to collect or take delivery of the Goods while the Goods remain held in a Container and/or to devan

the Goods from a Container and/or to return a Container following devanning of the Goods, the Merchant shall complete those steps within seven days of arrival, whether or not receiving notification as to arrival of the Goods. If the Merchant fails to complete those steps within those seven days, the Carrier shall be entitled to levy detention charges (at the same rate specified in the Carrier's Applicable Tariff) in respect of the Container used to hold the Goods.

6. Where the Merchant devans the Goods from a Container used to hold the Goods during transit, the Merchant shall return that Container in a clean condition, free of cargo residue and labels and in all other aspects in the same condition as when supplied by or on the behalf of the Carrier. The Merchant further undertakes to reimburse the Carrier for any costs the Carrier itself incurs in having the Container returned to the condition specified in the preceding sentence of this sub-clause.
20. **Both to Blame Collision.** If the carrying ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default in the navigation or the management of the carrying ship the Merchant undertakes to pay to the Carrier, or where the Carrier is not the owner and in possession of the carrying ship, to pay the Carrier as trustee for the owner and/or demise character of the carrying ship a sum sufficient to indemnify the Carrier and/or the owner and/or demise character of the carrying ship against all loss or liability to the other non-carrying ship or her owners insofar as such loss or liability represents loss or damage to, or any claim whatsoever of the Merchant, paid or payable by the other or non-carrying ship or her owners to the Merchant and set off, recouped or recovered by the other non-carrying ship or her owners as part of their claim against the carrying ship or her owners or demise charterers or to the Carrier. The foregoing provisions shall also apply where the owners, operators or those in charge of any ship or ships or objects, other than, or in addition to the colliding ships or objects are at fault in respect to a collision, contract, stranding or other accident.
21. **General Average**
 1. In the event of accident, danger, damage or disaster before or after the commencement of voyage, resulting from any cause whatsoever, due to negligence or not, for which or for the consequences of which the Carrier is not responsible, by statute, contract or otherwise, the Merchant shall contribute with the Carrier in General Average to the payment of such sacrifices, losses or expenses of a General Average nature that may be made or incurred and shall pay salvage and special charges in respect of the Goods.
 2. General Average shall be adjustable according to the York/Antwerp Rules as from time to time amended at any port or place at the

option of the Carrier whether declared by the Carrier or a sub-contractor of the Carrier. The Merchant shall give such case deposit or other security as the Carrier may deem sufficient to cover estimated General Average contribution of the Goods before delivery, if the Carrier requires, or if the Carrier does not so require, within three (3) months of the delivery of the Goods, whether or not at the time of delivery the Merchant had notice of the Carrier's lien. The Carrier shall be under no obligation to exercise any lien for the General Average contribution due to the Merchant.

3. If a salving vessel is owned or operated by the Carrier salvage shall be paid for as fully as if the salving vessel or vessels belonged to strangers.
22. **Variation of the Contract etc.** No servant or agent of the Carrier shall have power to waive or vary any of the terms, hereof unless such waiver or variation is in writing and is specifically authorised or ratified in writing by the Carrier.
23. **Law and Jurisdiction.** Any claim or dispute arising under the Waybill shall be determined by the Courts of the country where the Carrier has its principal place of business and according to the law of those Courts, or at the option of the Merchant by the Australian Courts according to Australian law where the Carriage includes shipment to or from Australia and by New Zealand Courts according to New Zealand law where the Carriage includes shipment to or from New Zealand.
24. **Fire.** Save as provided otherwise herein the Carrier shall not be responsible for any loss of or damage to the Goods arising or resulting from a fire occurring at any time, unless caused by the actual fault or privity of the Carrier.
25. **Package Limitation.** Where the Goods have been packed or stowed by the Merchant into Container(s) (whether loose or on pallets or other modes used for the consolidation of Goods) or unitised into pallet(s) or similar article(s) of transport then each such Container or pallet or article together with the contents thereof shall constitute one package or unit of transport for the purpose of determining the Carrier's liability under the Hague Rules or under the New Zealand Maritime Transport Act 1994 or the Australian Carriage of Goods by Sea Act 1991 (commonwealth) and/or the provisions of this Waybill and/or the New Zealand Carriage of Goods Act 1979.
This condition applies in addition to and shall not be construed as derogating from any defence or exclusion restriction or limitation of liability available to the Carrier under the terms of this Waybill or otherwise.

26. **Demise Clause.** If the vessel is not owned or chartered by demise to the Carrier (as may be the case notwithstanding anything that appears to the contrary) this Waybill shall take effect only as a contract with the other or demised charterer as the case may be as principal made through the agency of the Carrier which acts as agent only and shall be under no personal liability in respect thereof.
27. **Validity.** This Waybill shall have effect subject to the provisions of the Hague Rules, or the Hague Visby Rules, or the Hague Visby Rules including the SDR Protocol, or the New Zealand Maritime Transport Act 1994 or the Australian Carriage of Goods by Sea Act 1991 (commonwealth) as applicable or such other similar national legislation as may mandatorily apply by virtue of origin or destination of the Waybill, and which will be incorporated herein as if the same was specifically set out. If anything herein contained is inconsistent with the said provisions, it shall, to the extent of such inconsistency and no further, be null and void.