

**BOOTH'S TRANSPORT LIMITED
TERMS OF TRADE**

In these Terms of Trade we have used "we", "us", and "our" to refer to **BOOTH'S TRANSPORT LIMITED** and "you" to refer to our Customer.

1. ACCEPTANCE

- 1.1 Any instructions received by us from you for the supply of the Work shall constitute acceptance of the terms and conditions contained herein.
- 1.2 Upon acceptance of these Terms of Trade by you the terms and conditions are irrevocable and can only be rescinded in accordance with these Terms of Trade or with our written consent.
- 1.3 These Terms of Trade are to be read in conjunction with any quote or estimate provided by us to you. If there are any inconsistencies between our quote or estimate and the terms and conditions contained herein then these Terms of Trade shall prevail.

2. ESTIMATES

- 2.1 Unless stated otherwise, any price we give you for the Work is an estimate ("the Estimate") on a plus GST basis of the anticipated cost for us to complete the Work. The Estimate is subject to clause 3 below.
- 2.2 The Estimate is open for acceptance for 20 days after it is dated unless withdrawn by us prior to acceptance.
- 2.3 We will not commence the Work until you have accepted the Estimate in writing and signed a copy of Customer Form provided by us.
- 2.4 We will advise you when 75% of the Estimate has been exceeded and when the Estimate has been reached.

3. PRICE

- 3.1 Notwithstanding any Estimate given, unless we have agreed in writing to be bound by a set price for the Work, you shall pay to us our actual cost of completing the Work ("the Actual Cost") which will be calculated by totalling the following:
 - a. the number of hours of service multiplied by the hourly rates for the workers involved on the date which the Work is undertaken or if the supply occurs over more than one day, the relevant hourly rates on the last day on which services are rendered;
 - b. any disbursements (including without limitation delivery costs) incurred by us on your behalf;
 - c. the cost of any Goods supplied by us as part of the Work.
- 3.2 The Actual Cost and all prices are plus GST and other taxes which are payable by you in New Zealand dollars.
- 3.3 Disbursements incurred by us on your behalf may include a reasonable mark-up by us.
- 3.4 In the event these Terms of Trade are terminated in accordance with clause 0 or by you under clause 23 prior to completion of the Work, you must immediately pay us the Actual Cost at the termination date.

4. TERMS OF PAYMENT

- 4.1 We may require you to pay a deposit, being an advanced payment for the Work, before we commence the Work.
- 4.2 Payment for the Work (and any associated expenses and disbursements) is due on the 20th day of the month following the date of our invoice except where we have agreed in writing that other terms shall apply ("the Due Date").
- 4.3 If you do not make payment on the Due Date, you are in default and must pay default interest at the rate of 10% per annum, which shall accrue on a daily basis on the total amount outstanding from the Due Date to the date of payment in full.
- 4.4 Notwithstanding clause 4.3, if payment is outstanding for 7 days from the Due Date, we may suspend performing the Work on credit until the date of payment in full (subject always to clause 4.5). You must pay in cash for the Work done by us until payment is made in full (together with any accrued interest).
- 4.5 We may notify you at any time that we have ceased to carry out the Work on credit. This cessation does not relieve you for amounts owing up to the date on which the contract is terminated.
- 4.6 Payment of all money shall be without set-off or deduction of any kind.
- 4.7 We will apportion payments to outstanding accounts as we think fit.

- 4.8 You agree to give any further securities as we may from time to time require, in the form required by us, and to comply with all of your obligations under those securities.

5. PERFORMANCE OF THE WORK

- 5.1 We will:
 - a. perform the Work with reasonable skill, care and diligence in a professional manner;
 - b. endeavor to ensure that the Work is performed in accordance with any time frames agreed in writing with you;
 - c. liaise with you during the course of performing the Work in accordance with your reasonable requirements.

6. INDEPENDENT CONTRACTOR

- 6.1 You acknowledge that we are an independent contractor only and that nothing contained in these Terms of Trade shall create a relationship between the parties of partners, joint venturers, or employer and employee.

7. YOUR OBLIGATIONS

- 7.1 You warrant that you are either the owner or the authorised agent of the owner of any goods or other items provided by you to us as part of the Work and that you are authorised to accept and accept these Terms of Trade, not only for yourself, but also as agent for and on behalf of the owner.
- 7.2 You warrant that the person giving instructions to us for the performance of the Work is authorised by you to do so.
- 7.3 You shall give sufficient, clear and executable instructions.
- 7.4 You warrant that the description and particulars of any goods or other items provided by you to us as part of the Work are complete and correct.
- 7.5 Except where we have agreed to pack goods or other items provided by you to us as part of the Work, you warrant that the goods or other items provided by you to us as part of the Work are properly and sufficiently prepared, packed, stowed, labelled and/or marked, and that the preparation, packing, stowage, labelling and marking are appropriate given the nature of the Work to be undertaken.
- 7.6 Where we have agreed to pack the goods or other items provided by you to us as part of the Work:
 - a. unless otherwise previously agreed in writing, you shall at your own expense provide us with the appropriate quantity of suitable packing material for the preparation, packing, stowing, labelling or marking of the goods or other items provided by you to us as part of the Work;
 - b. you shall provide any necessary instructions and training to our personnel in respect of the packaging and handling of the goods or other items provided by you to us as part of the Work, and your requirements in respect of the same.
- 7.7 You shall in a timely manner provide to us all such assistance, information, descriptions, valuations and documents as may be necessary or prudent to comply with any laws, customs, conventions, codes and regulations where you have not otherwise effected compliance with such.
- 7.8 You warrant that any goods or other items provided by you to us as part of the Work shall comply with the requirement of any applicable law relating to the nature, labelling, packaging and carriage of such goods or other items. You indemnify us against any expenses or charges we incur in complying with any such law or requirement.

8. TRANSPORT

- 8.1 We reserve the right to refuse carriage of any goods or other items provided by you to us as part of the Work.
- 8.2 We may charge freight by weight, measurement or value and may at any time re-weigh, re-measure, or re-value the goods or other items provided by you to us as part of the Work and charge proportional additional freight accordingly.
- 8.3 All or part of the Work accepted by us may be fulfilled by us engaging or entrusting goods or other items provided by you to us as part of the Work to our authorised subcontractors on such terms as are agreed between us and our subcontractors. You

acknowledge that in carrying out the Work on our behalf, the subcontractors have the right to rely on the benefit of these Terms of Trade. You undertake not to make any claims against any of our employees, agents or subcontractors which attempts to impose upon any of them any liability whatsoever in connection with the goods or other items provided by you to us as part of the Work and, if any such claim should nevertheless be made, you indemnify us and any such employee, agent or subcontractor against all consequences thereof.

8.4 If delivery of any goods or other items provided by you to us as part of the Work is not taken by you (or your nominee) at the time and place when and where we are entitled to call upon you (or your nominee) to take delivery thereof, we shall be entitled without notice to unstow any goods or other items provided by you to us as part of the Work if stowed in containers or to store any goods or other items provided by you to us as part of the Work at your sole risk. Such storage shall constitute delivery, and our liability in respect of the goods or other items provided by you to us as part of the Work shall wholly cease and the cost of such storage shall be payable by you.

8.5 If you fail to take delivery of the goods or other items provided by you to us as part of the Work within 30 days of it becoming due pursuant to clause 8.4 above or we are of the opinion that the goods or other items provided by you to us as part of the Work are likely to deteriorate, become worthless or incur any charges in excess of their value of if the goods or other items provided by you to us as part of the Work are insufficiently addressed, marked or not identifiable, we may without prejudice to any rights which we may have against you, without notice and without any responsibility, sell or dispose any goods or other items provided by you to us as part of the Work and apply any proceeds in reduction of any sums due to us from you.

9. CARRIAGE OF GOODS ACT 1979

9.1 Unless otherwise agreed in writing, all contracts of carriage shall be "at limited carriers risk" pursuant to the Carriage of Goods Act 1979 (hereinafter called "the Act").

9.2 Subject to the provisions of the Act imposing liability in respect of the loss of damage to any goods or other items provided by you to us as part of the Work:

- a. we shall not be under any liability, howsoever caused or arising, and whether caused or arising as a result of the negligence on our part or otherwise for any damage to, loss, deterioration, mis-delivery, delay in delivery or non delivery of any such goods or other items (whether the goods or other items are or have been in our possession or not) nor for any instructions, advice, information or service given or provided to any person, whether in respect of the goods or other items provided by you to us as part of the Work or any other thing or matter, nor for any consequential or indirect loss, loss of market or consequences of delay.
- b. you indemnify us against all claims of any kind whatsoever, howsoever caused or arising and whether caused or arising as a result of our negligence or otherwise, brought by any person in connection with any matter or thing done, said or omitted by us in connection with any goods or other items provided by you to us as part of the Work.

9.3 Sections 18 and 19 of the Act are modified by the following provisions of this clause and shall, in relation to any matter arising out of the provisions of those sections, otherwise have effect subject to the express terms contained in this clause. We shall be under no liability whatsoever unless:

- a. Written notice of any claim, giving reasonable particulars of the event giving rise to the claim and any alleged damage or loss is received by us within seven (7) days after delivery at the destination or, in the case of non-delivery, within fourteen days after the date of despatch.
- b. An action shall have been commenced by you in a court of competent jurisdiction within six (6) months of delivery.

10. DANGEROUS GOODS

10.1 Unless agreed in writing, you shall not deliver to us, or cause us to deal with or handle, Dangerous Goods.

10.2 If you are in breach of Clause 10.1:

- a. you shall be liable for all loss or damage whatsoever caused by or to or in connection with the Dangerous Goods howsoever arising and regardless of whether you were aware of the nature of the Dangerous Goods);
- b. you shall defend, indemnify and hold us harmless against all penalties, claims, damages, costs and expenses whatsoever arising in connection therewith; and
- c. we (or any other person in whose custody the Dangerous Goods may be in at the relevant time) may, at our sole discretion, have the Dangerous Goods destroyed or otherwise dealt with. For the purposes of this sub-clause, notice is not required to be given to any person of the intention to destroy or otherwise deal with the Dangerous Goods.

10.3 If we agree to accept Dangerous Goods and then we (or any other person) reasonably forms the view that those Dangerous Goods constitute a risk to other goods, property, life or health, we may (without notice and without liability) have the Dangerous Goods destroyed or otherwise dealt with at your expense.

10.4 You undertake not to tender for transportation any goods or other items which require temperature control without previously giving written notice of their nature and the particular temperature range to be maintained and, in the case of a temperature controlled container packed by you or on your behalf, you further undertake that:

- a. the container has been properly pre-cooled or pre-heated as appropriate;
- b. the goods or other items have been properly packed in the container; and
- c. you have properly set the container's thermostatic controls.

10.5 If the requirements of Clause 10.4 are not complied with, we shall not be liable for any loss of or damage to the Dangerous Goods caused by such non-compliance.

11. LIEN

11.1 Any goods or other items provided by you to us as part of the Work (and any documents relating to such goods or other items) shall be subject to a particular and general lien for moneys due in respect of such goods or other items or any other moneys due to us from you.

11.2 Where any sum due to us from you remains unpaid, we, on giving 28 days notice in writing to you, shall be entitled to sell or dispose of such goods or other items provided by you to us as part of the Work (and any documents relating to such goods or other items) by public auction or by private treaty at your risk and expense and to apply the proceeds of any such sale or disposal in or towards the payment of the sums due. Any such sale shall be without prejudice to our other rights or remedies. If we, in our sole discretion, deem the goods or other items to be unsalvageable then we may dispose of the goods or other items as we think fit without any liability to you. If you do not own the goods or other items, you hereby indemnify us against all claims of whatsoever nature by the owner or owners of the goods or other items.

11.3 Notwithstanding any transfer of physical possession, any goods or other items provided by you to us as part of the Work (and any documents relating to such goods or other items) are not released until all moneys owing have been paid to us. In the event of any such goods or other items for any reason being delivered to you or your nominee without payment having been made in full, we retain a lien on such goods or other items and may retake possession of them pending payment and may enter any premises for that purpose.

11.4 In the event that and goods or other items provided by you to us as part of the Work are partly or wholly lost or destroyed then we shall have a lien and/or charge over any related compensation and/or insurance proceeds.

12. PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")

12.1 Without limiting anything else in these Terms of Trade (and without prejudice to our right to assert that these Terms of Trade create rights that are not subject to the PPSA), you

acknowledge that:

- a. these Terms of Trade create, in our favour, a security interest in all goods or other items provided by you to us as part of the Work (and any documents relating to such goods or other items) that are or which come into our possession (or the possession of our agents; or subcontractors) to secure the payment of all amounts due to the us (whether or not overdue) from you; and
 - b. the security interest shall continue until we give you a final release.
- 12.2 You undertake to:
- a. promptly do all things, sign any further documents and/or provide any information which we may reasonably require to enable us to perfect and maintain the perfection of its security interest (including by registration of a financing statement);
 - b. give us (addressed to the Financial Controller or equivalent) not less than 14 days' prior written notice of any proposed change in your business name and/or any other change in the your details (including, but not limited to, changes in your address, facsimile number, trading name or business practice).
- 12.3 The Client waives its right to receive a verification statement in respect of any financing statement relating to the security interest,
- 12.4 To the extent permitted by law, the parties contract out of:
- a. section 114(1)a of the PPSA; and
 - b. your rights referred to in sections 107(2)c), (d), (h) of the PPSA.

13. LIMITATION OF LIABILITY

- 13.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986, and other statutes may impose warranties, conditions or obligations upon us which cannot by law (or which can only to a limited extent by law) be excluded. We exclude all such imposed warranties, conditions or obligations to the extent permitted by law and exclude any warranty, condition or obligation imposed or implied under common law, equity or otherwise.
- 13.2 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where you acquire the Work from us for the purposes of a business in terms of sections 2 and 43 of that Act.
- 13.3 Except to the extent that the law prevents us from excluding liability and as expressly provided for in clause 13.5, we shall not be liable for any loss or damage or liability of any kind whatsoever (including consequential loss or lost profit or business) whether suffered or incurred by you or another person and whether in contract, or tort (including in negligence), or otherwise and whether such loss or damage arises directly or indirectly from the Work provided by us to you.
- 13.4 You shall indemnify us against all claims and loss of any kind whatsoever however caused or arising which is brought by any person in connection with any matter, act, omission, or error by us, our agents or employees in connection with the Work.
- 13.5 To the extent that we are liable for any reason for any loss suffered or liability incurred by you arising from any breach of these Terms of Trade or for any other reason, such liability is limited to the amount of the Actual Cost.

14. DEFAULT

- 14.1 If:
- a. you fail to pay any money owing on the Due Date;
 - b. we believe you have committed or will commit an act of bankruptcy, have had or are about to have a receiver or liquidator appointed, or are declared insolvent;
 - c. you are otherwise in breach of your obligations under these Terms of Trade.

Then, in addition to any remedies we may have at law, we may do one or more of the following:

- d. suspend the Work in accordance with clause 4.4;
- e. charge default interest in accordance with clause 4.3;
- f. immediately terminate these Terms of Trade by notice in writing to you.

15. RISK AND INSURANCE

- 15.1 Any goods or other items provided by you to us as part of the Work is stored and or delivered at your risk.
- 15.2 We have no responsibility for any loss, deterioration of, or damage to, anything stored by us as part of the Work however caused, including water, fire, theft, pest, vermin or any act of omission by us or anyone else.
- 15.3 You acknowledge that you are responsible for arranging insurance cover against theft, fire, water damage and any other risk that that may result in loss of, or damage to, any goods or other items provided by you to us as part of the Work.

16. INTELLECTUAL PROPERTY

- 16.1 All pre-existing Intellectual Property (used in or arising from the performance of the Work) which is the subject of an Intellectual Property right resides with the owner as at the date of these Terms of Trade (whether you or us).

17. PRIVACY OF INFORMATION

- 17.1 You authorise us:
- a. to collect, retain and use information about you from any person for the purpose of assessing your creditworthiness;
 - b. to disclose information about you:
 - i. to any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to your obligations to us;
 - ii. to such persons as may be necessary or desirable to enable us to exercise any power or enforce or attempt to enforce any of our rights, remedies and powers under these Terms of Trade.

18. NOTICES

- 18.1 Any notice may be given by phone, in person, posted, or sent by fax or email to you (or where you are a company, to any of your directors).

19. VARIATION

- 19.1 We may amend these Terms of Trade at any time. Any such amendment applies from when it is published on our website www.booths.co.nz.

20. CONFIDENTIALITY

- 20.1 You shall at all times treat as confidential all non-public information and material received from us and shall not publish, release, or disclose the same without our prior written consent. For clarity, confidential information includes any new Intellectual Property and prices.

21. COSTS

- 21.1 You must pay our costs (including legal costs, as between solicitor and client) of and incidental to the enforcement or attempted enforcement of our rights, remedies and powers under these Terms of Trade.

22. CREDIT INFORMATION

- 22.1 You consent to us and any financier or credit-rating agency making enquiries of and obtaining any information about your financial standing and creditworthiness.

23. TERMINATION

- 23.1 Either party may terminate these Terms of Trade by giving one month's written notice to the other party.

24. JURISDICTION

- 24.1 These Terms of Trade are governed by and construed in accordance with the current laws of New Zealand and the parties agree to submit to the non-exclusive jurisdiction of the Courts of New Zealand for any disputes or proceedings arising out of or in connection with these Terms of Trade.

25. ASSIGNMENT

- 25.1 You must not subcontract or assign any of your rights, powers or obligations under these Terms of Trade.

26. DISPUTES

- 26.1 Any claim or dispute arising under these Terms of Trade shall be determined by arbitration under the Arbitration Act 1996 if the parties are unable to resolve such dispute themselves within one (1) month of the dispute arising. However, nothing in this clause prevents either party from taking immediate steps to seek any equitable relief before the New Zealand Courts.

27. **FORCEMAJEURE**

- 27.1 If we have given you a time frame for completion of the Work, unless agreed in writing to the contrary such time frame is approximate only and is not deemed to be of the essence of the contract.
- 27.2 We shall not be liable for delay or failure to perform the Work if the cause of delay or failure is beyond our control.

28. **DEFINITIONS**

- 28.1 In these Terms of Trade:
"Dangerous Goods" means goods which are in fact in law noxious, dangerous, hazardous, explosive, radioactive, flammable or capable by their nature of causing damage or injury to other goods, any persons, animals or property.
"Intellectual Property" includes all intellectual property rights (including without limitation copyright, patent and design rights, drawings, documents, data, ideas, procedures and calculations).
"Work" means our performance of services for you as described on the Customer Form provided by us to you.

28.2

- The rule of construction known as the contra proferentem rule does not apply to these Terms of Trade.
- 28.3 Words importing the singular include the plural and vice versa.
- 28.4 Headings are for convenience only and do not form part of, or affect the interpretation of, these Terms of Trade.
- 28.5 References to a party include that party's successors, personal representatives, executors, administrators and permitted assigns.
- 28.6 References to a statute include references to:
- a. regulations, orders, rules or notices made pursuant to that statute;
 - b. all amendments to that statute and those regulations, orders, rules or notices, whether by subsequent statute or otherwise; and
 - c. any statute passed in substitution of that statute.
- 28.7 References to "us" include our employees, contractors and agents.

For Office Use Only:		
Checked By:		
Name: _____	Signature: _____	Date: _____
Approved By:		
Name: _____	Signature: _____	Date: _____