

TERMS AND CONDITIONS (Warehousing)

These Terms apply to the warehousing and storage of Goods by Booth's for the Customer and do not apply to any other service provided by Booth's for the Customer, including the domestic or international carriage of Goods. Words capitalised in these Terms are defined in **clause 22.1**.

1 BINDING CONTRACT

- 1.1 The Contract for Services between the Customer and Booth's is comprised of these Terms, the Schedule of Services and any Purchase Order provided by the Customer to Booth's from time to time, unless Booth's and the Customer have agreed in writing to contract on a different basis.
- 1.2 The Customer is deemed to have accepted the Contract by providing a Purchase Order to Booth's or by providing Goods to Booth's for the Services.
- 1.3 The Contract is binding on Booth's and the Customer.

2 LENGTH OF CONTRACT

- 2.1 The Contract between the Customer and Booth's will start on and from the earlier of the date that the Customer provides a Purchase Order to Booth's for the Services or the date that the Customer provides Goods to Booth's for the Services and will continue until terminated in accordance with clause 18 of these Terms or by law.

3 FEES

- 3.1 Booth's fees for the Services will be charged at the prevailing rates for such services from time to time, as notified by Booth's to the Customer. The Schedule of Services record Booth's rates as at the start of the Contract and Booth's may review its rates from time to time, at Booth's discretion.
- 3.2 Unless otherwise agreed in writing, Booth's fees are exclusive of GST, which will be charged to the Customer at the prevailing rate.
- 3.3 Booth's may charge the Customer for any disbursements or other costs and expenses incurred by Booth's in providing the Services to the Customer in accordance with the Contract.

4 PAYMENT

- 4.1 The Customer must pay all invoices on the 20th of the month following the date of the invoice without any deduction or set-off, by direct payment to Booth's or as Booth's may otherwise direct. The Customer must not withhold, defer or set-off payment on account of any claim or counter claim.
- 4.2 Booth's may require the Customer to pay a deposit before Booth's accepts the Customer's Goods.
- 4.3 If the Customer fails to pay any amount payable on or before the due date for payment then:
 - (a) Booth's may charge interest on overdue payments on a daily basis at a rate of 5% per annum above the then current official cash rate;
 - (b) Booth's may withhold or delay the release of the Goods until all overdue payments are paid in full; and

- (c) any costs incurred by Booth's in connection with any recovery action taken in respect of unpaid money shall be payable by the Customer on demand.

4.4 Any costs or expenses incurred by Booth's in recovering any outstanding monies including debt collection agency fees and legal fees shall be paid by the Customer.

4.5 If the Customer defaults on any payment or commits any act of bankruptcy or any act which would render it liable to be wound up, Booth's may cancel any Purchase Order without prejudice to any other rights it may have, and payment for all completed Purchase Orders will immediately become due and payable.

5 CREDIT APPROVAL

5.1 Booth's reserves the right to conduct a credit check of the Customer, and the Contract is subject to Booth's remaining satisfied as to credit risk.

5.2 If, in the opinion of Booth's, the credit of the Customer becomes impaired, Booth's reserves the right to suspend performance or cancel any Purchase Order, re-evaluate all payment terms, require full or partial payment, or require assurance of the Customer's ability to perform its obligations under the Contract. Any exercise of rights by Booth's under this clause is without prejudice to any pre-existing obligations of the Customer.

6 PROVISION OF SERVICES

6.1 Booth's will use reasonable endeavours to provide the Services:

- (a) in accordance with these Terms and the Schedule of Services provided by Booth's to the Customer;
- (b) with due care and skill; and
- (c) in compliance with the Health and Safety at Work Act 2015 and the Consumer Guarantees Act 1993.

6.2 The Services shall not include quality control for the Goods unless requested by the Customer. Booth's may elect to provide this additional chargeable service at its sole discretion, but otherwise shall not check the quality of the Customer's Goods during the provision of the Services.

6.3 Booth's may, at its discretion, move the Goods to and from different storerooms or areas within the Warehouse or from one Booth's Warehouse to another Booth's Warehouse in the same locality.

6.4 Booth's gives the Customer no warranty or undertaking of any kind in relation to any of the following matters:

- (a) the method of stacking, or the height or size of any stacks;
- (b) the distance of the Customer's Goods from any ceilings, walls or doors of the Warehouse; or
- (c) the segregation of the Customer's Goods from any other goods.

6.5 Booth's has absolute discretion to decline to provide any Services not specifically itemised in the Schedule of Services.

7 RISK

7.1 Goods will be stored in the Warehouse at the Customer's risk.

7.2 The Customer must adequately insure the Goods against loss, damage, destruction or theft while in storage in the Warehouse. Goods must be insured in the name of the Customer, on an all risks basis.

8 FORCE MAJEURE

8.1 Booth's provision of the Services may be subject to change in the event of a Force Majeure Event. In these circumstances, Booth's will not be liable for failure to perform the Services, and Booth's will notify the Customer as soon as possible of the Force Majeure Event and its impact on the provision of the Services.

9 LIABILITY

9.1 The Customer acknowledges that, to the extent permitted by law, Booth's is not liable for any loss, damage or deterioration of the Customer's Goods or for any other loss suffered by the Customer in connection with or as a result of performance or non-performance by Booth's of the Services.

9.2 In no event or circumstances shall Booth's be liable to the Customer or any other party (whether in contract, tort, including negligence, or otherwise) for any indirect or consequential loss, damage or costs, including but not limited to loss of revenue, profits or opportunity or any damages for which the Customer may become liable, caused or contributed to by any omission or delay by Booth's in providing the Services or errors in the packaging or labelling of goods or any packing error.

9.3 Notwithstanding the limitation of Booth's liability in this clause 9, in the event that a Court finds Booth's to be liable for any loss or damage suffered by a Customer, the Customer acknowledges and agrees that Booth's liability will be limited to any payments made by the Customer to Booth's during the 3 months preceding the event giving rise to the liability.

10 INDEMNITIES

10.1 The Customer indemnifies Booth's against all actions, proceedings, claims, damages, losses and costs which Booth's may suffer, incur or sustain as a result of, or arising directly or indirectly from:

- (a) any Goods stored by Booth's for the Customer;
- (b) any breach by the Customer of the Contract; and
- (c) the negligence of, or error by, Booth's, its agents, or employees, in connection with the Services.

11 WARRANTIES

11.1 The Customer warrants and represents to Booth's that:

- (a) the Customer is the owner of, or otherwise has the right to be in possession of, all Goods stored by the Customer with Booth's; and
- (b) none of the Goods held by Booth's on behalf of the Customer are Dangerous Goods or are otherwise illegal, have been obtained illegally, or are irreplaceable items.

12 INSURANCE

12.1 Booth's will hold and maintain the following insurances:

- (a) public liability insurance (to the value of \$10,000,000 per occurrence);
- (b) bailee's liability insurance; and

- (c) any other insurance required by law.

13 CUSTOMER ACCESS

- 13.1 The Customer may, at reasonable times during Booth's business hours and upon at least 48 hours' prior written notice to Booth's, inspect the Customer's Goods while they are in the Warehouse. Booth's will provide reasonable access to the Warehouse for the Customer or its authorised representatives to inspect the Customer's Goods.
- 13.2 The Customer will comply with all health and safety and security protocols and procedures implemented by Booth's for the protection of persons, goods and property within the Warehouse.

14 CUSTOM AND EXCISE ACT 2018

- 14.1 If Booth's and the Customer have agreed in writing that the Customer's Goods will be stored in an Customs-controlled area within the Warehouse, then the provisions in this clause 14 apply to the Services provided by Booth's to the Customer.
- 14.2 Booth's will use reasonable endeavours to:
 - (a) keep and maintain its license of the Customs-controlled area within the Warehouse; and
 - (b) comply, to the minimum extent required by law, with the Custom and Excise Act 2018 when providing the Services to the Customer.

15 HAZARDOUS GOODS

- 15.1 Booth's reserves the right to refuse to provide the Services to the Customer of any Goods that are deemed hazardous, illegal (including those Goods which have been obtained illegally), or unsuitable for storage in its Warehouse unless agreed with the Customer in writing.
- 15.2 Booth's will not accept or deal with any Dangerous Goods, except where Booth's and the Customer have made special arrangements in writing.
- 15.3 If the Customer delivers or causes Dangerous Goods to be handled or dealt with by Booth's without prior special arrangements in writing, the Customer:
 - (a) will be liable for all loss or damage caused by or in connection with those Dangerous Goods however caused or arising; and
 - (b) indemnifies Booth's against all actions, proceedings, claims, damages, losses and costs which Booth's may suffer, incur or sustain as a result of, or arising directly or indirectly from the Dangerous Goods, and

Booth's may, in its discretion, destroy or otherwise deal with the Dangerous Goods at the cost and expense of the Customer. Any costs incurred by Booth's under this clause 15 will be payable by the Customer as a debt due on demand.

16 LIEN

- 16.1 The Customer grants Booth's a lien over the Goods, any documents relating to the Goods and any other property of the Customer in the possession or control of Booth's for all amounts owing by the Customer to Booth's pursuant to the Contract, including all charges, debts and liabilities in connection with the Services, together with charges, debts and liabilities owing by the Customer to Booth's in respect of any other goods or services provided by Booth's to the Customer.

16.2 The Customer acknowledges that the lien in clause 16.1 above is a security interest for the purposes of the Personal Property Securities Act 1999.

16.3 The Customer undertakes to:

- (a) do all acts and provide Booth's on request all information Booth's requires to register a financing statement or financing change statement on the personal property securities register; and
- (b) advise Booth's immediately in writing of any proposed change in the Customer's name or other details for the purposes of its financing statement and/or the personal property securities register.

17 CONFIDENTIALITY

17.1 Each party undertakes to maintain the confidentiality of the Confidential Information of the other party, and will not at any time (whether during or after the Contract):

- (a) disclose the other party's Confidential Information to any person;
- (b) use the Confidential Information of the other party for any purpose other than to fulfil its obligations under the Contract; or
- (c) make a public statement or advertisement about the relationship between Booth's and the Customer, other than with the prior written consent of the other party.

18 TERMINATION

18.1 The Contract will terminate:

- (a) on the date agreed between the Customer and Booth's; or
- (b) upon not less than one month's written notice by one party to the other.

18.2 On termination:

- (a) the Customer's account and all fees must be paid in full in cleared funds at least 24 hours prior to collection of the Goods; and
- (b) unless agreed otherwise with Booth's, the Customer must collect its Goods, at its cost, from the Warehouse where the Customer's Goods are stored.

18.3 Booth's will use reasonable endeavours to ensure the Customer's Goods are ready for collection on their date for collection under clause 18.1 above.

18.4 Booth's may terminate the Contract with immediate effect by notifying the Customer in writing for any breach of the Terms which cannot be remedied or which (if it can be remedied) the Customer fails to remedy within 5 Working Days after receiving a request from Booth's to do so.

18.5 Booth's reserves the right to remove and dispose of any Goods remaining in the Warehouse 10 Working Days after termination, at the expense of the Customer. The Customer must pay Booth's the agreed fees for the removal and disposal of the Goods from the Warehouse.

19 GOVERNING LAW

19.1 The Contract shall be governed by and construed in accordance with the laws of New Zealand.

19.2 Any disputes arising out of or in connection with the Contract shall be subject to the exclusive jurisdiction of the Courts of New Zealand.

20 VARIATIONS AND ADDITONS TO THESE TERMS

20.1 Booth's may from time to time by written notice to the Customer vary, add to, or repeal the conditions covered by these Terms, or may substitute any fresh conditions. Such variation, addition, or substitution will be binding on the Customer 10 Working Days after the date of delivery of the notice.

21 NO ASSIGNMENT

21.1 The Customer is not entitled to assign or transfer any of its rights or obligations under the Contract without Booth's prior written consent.

22 INTERPRETATION

22.1 **Definitions:** In these Terms, unless the context otherwise requires:

Booth's means Booths Logistics Limited (company number 8296561), and, unless the context provides otherwise, includes the subsidiaries, agents, employees and sub-contractors of Booth's;

Confidential Information means all information of any kind, whether or not it is in tangible or documentary form, and whether or not marked or identified as being confidential or any of its business affairs and includes information relating to:

- (a) the business operations, business strategies, marketing plans, products and technologies of the Customer;
- (b) the business operations, business strategies, marketing plans and technologies of Booth's; and
- (c) the customers of the Customer's, who purchase the Goods;

Contract means the binding contract for the Services between the Customer and Booth's, which is comprised of these Terms, the Schedule of Services and any Purchase Order provided by the Customer to Booth's from time to time;

Customer means the person requesting the provision of the Services;

Dangerous Goods includes firearms, noxious, dangerous or inflammable Goods or any Goods likely to cause damage, or which it is unlawful to store;

Force Majeure Event means an act of God, extreme weather event, terrorism, strike, pandemic, lock out or other industrial action, war, riot, insurrection, vandalism or sabotage, and any other cause beyond a party's reasonable control;

Goods means goods presented to Booth's by the Customer at any time for the Services;

GST means good and services tax in terms of the Goods and Services Tax Act 1985 or any equivalent legislation, at the rate prevailing from time to time, including any tax levied in substitution for that tax;

Purchase Order means a written order for Services issued by the Customer to Booth's setting out the relevant details of the Services required;

Schedule of Services means the schedule of services provided by Booth's to the Customer at the start of the Contract;

Services means the services provided by Booth's to the Customer for the warehousing and storage of Goods and related activities;

Terms means these terms and conditions, as varied, added to otherwise amended from time to time;

Warehouse refers to the facilities owned or operated by Booth's for the Services, where the Goods are stored from time to time; and

Working Day means any day of the week other than Saturdays, Sundays, national statutory holidays and any day between the dates of 24 December and 5 January (inclusive) in any year.

22.2 In these Terms, unless the context requires otherwise:

- (a) references to the "Customer" includes the Customer's:
 - (i) successors and permitted assigns; and
 - (ii) employees, contractors, subcontractors, agents, representatives and invitees;
- (b) headings are for ease of reference only;
- (c) the words "includes" or "including" do not imply any limitation;
- (d) a "person" includes any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, estate, government, agency of state, municipal authority or statutory body, whether or not having separate legal identity; and
- (e) "written" or "in writing" includes in relation to words, figures and symbols includes all modes of presenting or reproducing those words, figures and symbols in a tangible and visible form in any medium (including electronic).