

# TERMS OF TRADE

## 1. WHERE THESE TERMS APPLY

- 1.1 The following general terms together with any delivery targets notified to you, consignment note and Price and Services Schedule (Terms) are the terms on which we will supply our services to you.
- 1.2 We recommend you seek legal advice about the Terms before engaging us and accepting them.
- 1.3 Purchase or use of any of our services by you constitutes acceptance of these Terms.

## 2. INTERPRETATION

2.1 In these Terms the following terms have the meanings specified:

Act the Contract and Commercial Law 2017.

CGA the Consumer Guarantees Act 1993.

- Dangerous Goods means goods listed in the IATA Dangerous Goods Regulations, any substance or article prescribed as Dangerous Goods for the purposes of the Hazardous Substances and New Organisms Act 1996 and associated regulations, any goods listed as such on our Website and any other goods as advised by us from time to time.
- Delivery has the meaning in clause 3.2.
- Delivery Services means delivery services you request us to provide and we agree to provide pursuant to these Terms, as contemplated by clauses 3.1 and 3.2.
- Event outside our control includes any delay in acceptance of any goods by an addressee; our inability to gain access to a delivery address; seizure or destruction of any goods by customs or any other regulatory or government authority; an act of God; earthquake, volcanic activity, flood, fire, storm or adverse weather condition; sabotage, riot, civil disturbance, epidemic, national emergency or act of war; governmental action; strike, lock-out, work stoppage or other industrial problem; traffic congestion; or delay in aircraft or other transport.
- Goods means goods you request us to deliver and/ or store.
- Logistics Services means storage and logistics services you request us to provide and we agree to provide pursuant to these Terms, as contemplated by clause 3.3. Member means any one of the companies in the PBT Group.
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- PBT Group means PBT Transport Limited, PBT Couriers Limited, PBT Bulk Limited and any related company (as defined in section 2(3) of the Companies Act 1993). Price and Services Schedule means a schedule or other document, including any sales maker proposal provided to you, containing price and/ or services information which is stated to be subject to these general terms and which we have provided to you.
- Prohibited Item means any item we advertise or list as a prohibited item on the Website or brochures from time to time.
- Services means the Delivery Services, Logistics Services and all other services you request us to provide and we agree to provide pursuant to these Terms.
- Unit has the meaning given to that term in clause 247 of the Act.
- Valuable includes any item listed as such on our Website (as amended from time to time) or otherwise advised by us from time to time, including but not limited to any coins, bank notes, traveller's cheque, stamp or voucher, any deed, document, negotiable instrument (including any bearer security, bill of exchange or uncrossed cheque), bond or share, any credit, debit or other bank card, any bullion, precious or semi-precious metal or stone, any gold or silver items, glass, any jewellery or watch, any collectible or antique, any painting or work of art, car parts, live plants, un-crated motorcycles, furniture, personal effects and household removals.
- We, our, us is the PBT Group.
- Website [www.pbt.co.nz](http://www.pbt.co.nz) or [www.pbt.com](http://www.pbt.com).
- You, you're is the applicant named in the attached application to open a credit account.

## 3. OUR RESPONSIBILITIES TO YOU

### Delivery Services

- 3.1 We will endeavor to deliver Goods correctly addressed to addresses within our delivery network within our delivery targets notified to you for the relevant service and otherwise

within a reasonable time. However, we do not guarantee delivery within these delivery targets to the maximum extent permitted by law.

3.2 Delivery occurs when your Goods are delivered to the relevant address unless we agree to obtain a signature at the delivery address (in which case delivery of the Goods will occur on collection of a signature unless the recipient authorises us to leave the Goods at the delivery address without collection of a signature) (Delivery).

### Logistic Services

3.3 We will provide Logistics Services, including (without limitation):

- (a) truck loading and unloading;
- (b) storage of Goods in our warehouse facilities as agreed by us from time to time;
- (c) stock on hand of confirmation (excluding full or partial stock take unless otherwise agreed by us);
- (d) order picking, processing and dispatch; and
- (e) customer reporting

Any additional services to those set out above may be requested by you and agreed by us on a case by case basis and subject to confirmation of the rates and charges that will apply (as advised by us from time to time).

3.4 When providing Logistics Services, we will ensure that all:

- (a) goods are stored in a clean and safe manner;
- (b) goods are not stored with any other products or items of whatever nature that might contaminate, taint or otherwise adversely affect or damage the Goods; and
- (c) identification marks, stickers and packaging is kept intact, so that Goods are readily identifiable.

## 4. YOUR RESPONSIBILITIES TO US

4.1 You must ensure all information given to us is correct and complete.

4.2 You must not give us any Goods that:

- (a) are inadequately or incorrectly packaged;
- (b) contain anything that is illegal or is capable, as packed, of causing injury or damage to any person or property;
- (c) contains cash;
- (d) is a Dangerous Good or Prohibited Item;
- (e) is Valuable, fragile or perishable; or
- (f) in respect of PBT Couriers, is longer than 2.1 metres in length.

If you give us any of the Goods referred to above for Delivery or storage, you agree that the carriage and storage of those Goods shall be at "owners risk" and we are not liable to pay any compensation to you for any loss or damage, or any delay in delivery of, those Goods (unless we have consented to carry or store it in accordance with clause 4.5).

4.3 It is your responsibility to check whether the Goods you are sending or storing comply with clauses 4.1 and 4.2. Our acceptance of any Goods does not release you from this obligation.

4.4 You acknowledge that we cannot ascertain the contents of any Goods given to us for Delivery or storage and we will not in any circumstances be deemed to be aware of the contents

4.5 Notwithstanding clause 4.2 above, we may, at our sole discretion, agree in writing to carry or store Goods which contain or are Dangerous Goods or Valuable, fragile or perishable items.

4.6 You must disclose to us in advance that your Goods contain Dangerous Goods or Valuable, fragile or perishable items. If we agree in writing to carry or store such Goods then any carriage or storage of such Goods will be at declared value risk. To the maximum extent permitted by law, our liability for loss or damage to Goods in such case is limited to \$250.00 including GST per unit of Goods.

4.7 In relation to the Logistics Services, you must:

- (a) use reasonable endeavours to provide accurate forecasts to us of expected storage and delivery volumes, based on the information you have at the time of forecasting, and notify us as soon as any forecast becomes materially out of date or inaccurate;
- (b) ensure all Goods are safely and securely packed in a proper way to withstand the ordinary risks of the services to be provided by us having regard to the specific nature of the Goods;
- (c) ensure that you and all your employees, agents and contractors comply with all relevant site rules and policies and the reasonable instructions of our personnel when visiting our warehouse facilities; and
- (d) comply with all applicable standards, laws and regulations relating to the Goods and their handling, storage and transportation.

### Right to inspect items

4.8 At any time we may:

- (a) open and inspect any Goods and refuse to accept any Goods for Delivery or storage for any reason; and

- (b) re-weigh, re-value or re-measure Goods and, where necessary, charge the higher applicable charges accordingly (including an administration fee).

4.9 Our decision as to the weight, value or measurement of any Goods is final.

## 5. PAYMENT FOR OUR SERVICES

5.1 You must pay for our services in accordance with the charges specified in:

- (a) for the Logistics Services, any current Price and Services Schedule that we provide to you in writing; and
- (b) or the Delivery Services and any other services:
  - (i) any current Price and Services Schedule that we provide to you in writing; or
  - (ii) our brochures or on our Website where no Price and Services Schedule has been provided, or the Price and Services Schedule provided has expired.

5.2 You must pay all goods and services tax and all other taxes payable in relation to the purchase or use of our services.

5.3 We will send you an invoice for our services from time to time. Unless we agree otherwise in writing, you must pay our invoice by the 20th of the month following the date of the relevant invoice.

5.4 We may charge you interest on the unpaid amount of any invoice at the overnight overdraft daily interest rate charged by our principal bank calculated daily and compounding monthly from the due date until the date you pay the unpaid amount.

5.5 Unless we agree otherwise in writing, you must not withhold any payment or make any setoff or deduction from any payment due. If you dispute any invoice or any part of any invoice, you must advise us of the reasons in writing within fourteen days of receipt of that invoice. We may at our sole discretion allow you to hold the disputed portion of an invoice pending determination of the dispute, provided that once the dispute is resolved you must within seven days of the date of determination or resolution of any disputed invoice, pay the amount of the disputed portion of the invoice as determined or agreed must be paid.

### Acknowledgments

5.6 If payment is overdue under any contract or arrangement between you and a Member every other Member may cancel or suspend credit and/or the supply of services under any contract or arrangement with you and retain possession of any Goods until you pay all outstanding payments.

### Cost

5.7 You will pay upon demand all expenses and costs (including legal costs on a solicitor and own client basis) incurred by us in relation to the collection of over-due monies or in the exercise of any of our rights or remedies under these Terms or any other contract or arrangement between you and a Member.

### General lien

5.8 All Goods shall, immediately upon coming into our possession, be subject to a particular and general lien and we may detain such Goods until you have fully paid all amounts you owe us under these Terms.

5.9 If payment is not received within thirty (30) days of the due date for payment, without prejudice to any other remedies available to us, we may, at our option:

- (a) remove any Goods and store them in such a place and in such manner as we think fit at your expense; or
- (b) sell any Goods or part thereof at your expense and on such terms as we think fit, and apply the proceeds in or towards payment of the outstanding amount; or
- (c) if we deem the Goods to be unsealable or dangerous, dispose of the Goods as we think fit, and in all cases without any liability to you.

### Security Interest

5.10 You agree that all Goods in our possession and all your present and future rights in relation to those Goods are subject to a security interest in our favour for the payment of all amounts owing, and the performance of all your obligations, under these Terms or any other contract between you and a Member.

5.11 You acknowledge that we may, at your cost, register our security interest in the Goods and all your present and future rights in relation to the Goods on the Personal Property Securities Register.

5.12 You must do all things and provide all information we require for the purpose of securing the Goods, the payment of all amounts owing and the performance of all your obligations under these Terms and any other contract between you and a Member. You shall not change your name or other details without first notifying us in writing at

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least 14 days before such change takes effect.

5.13 You:

- (a) agree that nothing in sections 114(1)(a) (to receive notice of sale of goods), 116 (to receive a statement of account), 120(2) (to receive notice of proposal to take goods), 133 (to reinstate security agreement) and 134 (limit on reinstatement) of the Personal Property Securities Act 1999 (PPSA) applies to these Terms or the security interest under these Terms;
- (b) waive all your rights under sections 121 (to object to proposal) and 132 (redemption of collateral) of the PPSA; and
- (c) waive your right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest under these Terms.

5.14 The terms accessions, financing statement, personal property, verification statement and security interest have the meanings given to them under the PPSA.

5.15 In addition to any of our rights we have under the PPSA, we shall have the right, as your agent, at any time while any amounts owing by you under these Terms or any other contract between you and a Member, remains outstanding to enter into the premises where Goods are stored and remove them without being responsible for any damage caused in doing so.

## 6. OUR LIABILITY

### Limitation of our Liability

6.1 Subject to any specific exclusions or limitations of liability in these Terms the provision of our Delivery Services and any Logistics Services performed pursuant to a contract of carriage under the Act, is "at limited carriers risk" as contemplated by the Act. Subject to clauses 4.2 and 4.6 and to the maximum extent permitted by law, our liability to you is limited to a maximum of \$2,000.00 including GST for the loss of or damage to a unit of Goods however the loss or damage arises (including as a result of negligence).

6.2 Subject to any specific exclusions or limitations of liability in these Terms, our liability for any claim relating to Logistics Services that are not performed pursuant to a contract of carriage under the Act, is limited to the manufactured or landed cost of the applicable Goods, less any insurance or salvage value actually realised by you.

### Exclusions of our Liability

6.3 We have no liability to you for any loss or damage in relation to our services to the extent that the loss or damage:

- (a) results from any event outside or control;
- (b) occurs after Delivery of the relevant Goods; or
- (c) results from any act or omission by you, including a breach of any of your obligations under these Terms or at law.

6.4 Subject to the provisions of the Act in respect of loss of or damage to Goods, and to the maximum extent permitted by law, we have no direct or indirect liability whatsoever (whether in contract, tort or otherwise) for any direct or indirect losses, penalties, damages, costs or expenses of any kind (including indirect or consequential loss) brought, claimed, suffered or incurred by you or any third party in connection with the carriage or storage of Goods or the provision of services by us however caused or arising and (without limiting the generality of the foregoing) whether caused intentionally or arising as a result of our negligence or otherwise.

6.5 You acknowledge and agree that if you are in trade and the services provided by us are acquired by you in trade, the provisions of the CGA together with any other conditions or warranties implied in these Terms by law are expressly excluded to the maximum extent permitted by law.

6.6 You acknowledge that we have provided specific warranties and remedies in relation to the services to be provided by us and therefore it is fair and reasonable to exclude the provisions contemplated by clause 6.5 or otherwise in these Terms.

### Notification of claims

6.7 We shall not be liable to you unless you have given us written notice of any claim giving full particulars of any alleged damage or loss within 7 days after Delivery or collection of the Goods (as the case may be). For loss or destruction of Goods, we must be notified in writing within 14 days after date of dispatch.

6.8 You may not bring any action against us unless that action is brought within six months of the date on which you gave us the relevant Goods for Delivery or storage.

6.9 The provisions of sections 274 to 281 (inclusive) of the Act do not apply to these Terms. Sections 284 to 292 (inclusive) of the Act shall apply to these Terms to the extent they extend or enlarge our rights and powers under these Terms.

6.10 We reserve the right to obtain salvage of any damaged

Goods prior to payment of any claim, and the payment of any such claim may be refused should the salvage not be available.

### Indemnity

6.11 You indemnify us and hold us harmless for all loss, liability, costs and expense (including legal expenses incurred on a solicitor and own client basis) incurred by us in respect of any action, suit, claim, demand, cost or expense arising as a result of any act or omission by you or your employees, agents, officers or contractors.

- (a) In breach of the warranties or obligations contained above; or
- (b) In breach of any applicable legislation (including the Privacy Act 1993), regulation, by-law, code, standard; or
- (c) Negligence on the part of any such person.

## 7. INSURANCE

7.1 You must insure and keep insured all Goods for their full insurable value while they are in our possession and while they are in transit to and from our warehouses. The insurance must cover the risks of loss or damage by all causes, including (without limitation) flood, fire, explosion, burglary, theft, terrorism, accident, pests and any events outside our control.

7.2 We undertake to maintain reasonable bailee liability and public liability insurance cover.

## 8. EVENTS OUTSIDE OUR CONTROL

8.1 We are not required to provide our services, or carry out any of our obligations referred to in these Terms, if it is not practical for us to do so because of an event outside our control.

## 9. ENDING OUR SERVICES

9.1 Either you or us may terminate any obligation we have to purchase or provide services under these Terms (as the case may be) by giving each other 30 days' notice in writing.

9.2 We may at any time, by giving you notice in writing, end any obligation we have to provide our services and terminate these Terms if you do not comply with any of your obligations to us under these Terms or you fail to, or are unable to, pay your debts when due, or you become insolvent or being a partnership, you dissolve the partnership or being a natural person you die.

## 10. PRIVACY

10.1 You consent to us collecting, using, disclosing and holding information about you for our business purposes including contacting you about products and services that may be of interest to you by email or using other contact details.

10.2 You consent to us collecting, using and holding general credit information about you and to us collecting such information from, and/or disclosing it to, any third party (including a credit or reporting agency) in connection with credit management and enforcement purposes (including making decisions regarding the provision of credit to you). We may credit check you and we may collect information from any person for this purpose.

10.3 You warrant that:

- (a) all personal information (including all information about your customers) you disclose to us has been collected by you and disclosed to us in accordance with the Privacy Act 1993;
- (b) each individual to whom such personal information relates has consented to us:
  - (i) collecting, using and holding information about them for our business purposes;
  - (ii) disclosing such personal information about them for our business purposes, including making such disclosure to you.

10.4 You indemnify and hold us harmless for all loss, liability, damage, costs and expense (including legal expenses incurred on a solicitor and own client basis) incurred by us in respect of any action, suit, claim, demand, cost or expense arising as a result of any act or omission by you or your employees, agents, officers or contractors:

- (a) in a breach of the warranties or obligations contained above; or
- (b) in breach of any applicable legislation (including the Privacy Act 1993), regulation, by-law, code, standard; or
- (c) that constitutes negligence on the part of any such person.

## 11. OTHER MATTERS

11.1 We may change these Terms and any of our prices or other terms contained in a Price and Services Schedule by giving you 30 days' notice containing the relevant changes.

11.2 Notice to us must be in writing, signed by you or your authorised representative, and sent to the following address (or such other address as we may specify in writing): The PBT Group, PO Box 12 732, Auckland, Attention: National Sales Manager.

11.3 We may transfer, subcontract or assign to a third party any of our rights and/or obligations under these Terms without your consent. You must not transfer, subcontract or assign your rights or obligations under these Terms.

11.4 These Terms are governed by and are subject to New Zealand law and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

11.5 You must keep all Price and Services Schedules, other pricing information and any service variations discussed and/or agreed with you strictly confidential. You must not disclose any of this information to any third party.

11.6 To the maximum extent permitted by law, these Terms constitute the entire agreement between us and you and supersede all prior agreements, understandings, negotiations, representations and discussions between us (whether oral or written) and you agree that, if you are in trade and the services provided by us are acquired by you in trade, sections 9, 12A and 13 of the Fair Trading 1986 are expressly excluded and you acknowledge that we have provided specific warranties and remedies in relation to the services to be provided by us and therefore in such circumstances it is fair and reasonable to contract out of such provisions.

11.7 If there is any inconsistency between the above general terms and the terms of any delivery targets notified to you, consignment note or any Price and Services Schedule, the above general terms shall prevail unless stated otherwise in writing.

CUSTOMER NAME:

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CUSTOMER SIGNATURE:

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DATE:

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