

# STANDARD TERMS AND CONDITIONS FOR TRANSPORT AND STORAGE SERVICES

V: 1/11/22



## 1. Definitions

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1.1 The following definitions apply in these terms and conditions:

**Act** means the Contract and Commercial Law Act 2017, as amended.

**Actual Carrier** has the meaning set out in the Act.

**Agreement** means a legally enforceable contract between Us and You, for the provision of Freight Services and/or Storage Services.

**Business Day** means a day (other than Saturday or Sunday or public holiday) on which registered banks are open for general banking business in Auckland, New Zealand.

**Consignment Note** means Our consignment note or any other document (including in electronic form) containing similar information, satisfactory to Us, which relates to the carriage of Goods.

**Charges** means Freight Charges and/or Storage Rates and all other charges expressly set out in these Terms and Conditions.

**Consequential Loss** includes a claim for any indirect or consequential loss or for any loss of revenue, profits, goodwill, business or anticipated business, anticipated savings or for any business interruption, loss of data, or other indirect or consequential loss or damage whether or not that loss was, or ought to have been, contemplated by the party in breach.

**Contracting Party** means the person who has entered into an Agreement with Us for the Freight Services.

**COVID Event** means any circumstances where any of Our employees, subcontractors or agents have been infected with, or any of Our warehouses, pallets, vehicles or other property have been contaminated by, COVID-19 or any variants of that virus and includes (without limitation) any disruption of Our ability to provide the Services due to the foregoing.

**Freight Charges** means the charges payable by You to Us for Freight Services as defined at clause 4.

**Freight Services** means the freight services provided by Us for the transport of Goods for You in accordance with the Consignment Note.

**Freight Service Terms** means the terms under the heading Freight Service terms in these Terms and Conditions.

**General Terms** means the terms under the heading General Terms in these Terms and Conditions.

**Goods** has the meaning set out in the Act.

**Limited Carriers Risk** has the meaning set out in the Act.

**Receiver** means the person named on a Consignment Note to whom the Goods are to be consigned and, in the absence of a named person, means the person to whom the Sender intends to consign the Goods and includes that person's agent.

**Related Company** has the meaning given to that term in section 2(3) of the Companies Act 1993, but with that meaning extended by reading section 2(3) of the Companies Act as if "company" included any body corporate (wherever incorporated or formed).

**Resolution Institute** means the New Zealand branch of the Resolution Institute (company number 4771939).

**Sender** means the person named on the Consignment Note as the sender and, in the absence of a named person, means the person who has requested the Freight Services and includes that person's agent.

**Services** means the Freight Services and/or Storage Services.

**Storage Facility** means the premises used by Hall's Group Limited and any of its Related Companies for storage.

**Storage Rates** means the rate quoted by Us for the provision of Storage Services or if no quote is given or requested the standard amount charged by Us for the provision of Storage Services.

**Storage Services** means the storage of Goods in Our depot or elsewhere, whether in transit or otherwise.

**Storage Service Terms** means the terms under the heading Storage Service terms in these Terms and Conditions.

**Temperature Controlled Goods** means Goods which are required to be kept at a constant temperature or within a range of temperatures in order to prolong its useful life.

**Terms and Conditions** means these standard terms and conditions, as amended from time to time.

**Unit of Goods** has the meaning set out in the Act.

**We, Our and Us** means Hall's Group Limited.

**You and Your** means Our customers and includes the consignor, consignee, Contracting Party, Sender, Receiver, the owner of the Goods and their respective agents, principals or employees as the case may be.

## 2. How these Terms and Conditions apply

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2.1 These Terms and Conditions apply to all Services provided by Us to You unless and to the extent We have entered into a written Agreement that excludes the application of any or all (during its term) of these Terms and Conditions. To the extent any conflict arises between the Agreement and these Terms and Conditions between the Contracting Party (only) and Us, the written Agreement shall apply.

2.2 The General Terms shall apply to all Services used by You, and in addition where we provide:

- a. Freight Services, the Freight Service Terms shall apply; and/or
- b. Storage Services, the Storage Service Terms shall apply.

## 3. Privacy

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3.1 You authorise Us to collect, retain and use any information about You in accordance with the Privacy Act 1993 for the purpose of assessing Your creditworthiness. This includes disclosing any information about You, whether collected by Us from You directly or obtained by Us from any other source, to any other credit reporting agency for the purpose or obtaining a credit reference, debt collection or notifying a default by You.

## 4. Charges

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4.1 The Charges shall be:

- a. as set out in any Agreement;
- b. as otherwise agreed or quoted in writing prior to Our receipt of the Goods; or
- c. in the absence of any agreement under clause 4(a) or 4(b), at the then prevailing rates charged by Us.

## 5. Quotes

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5.1 Any written quote from Us will remain open for acceptance by You for a period of 20 days from the date of issue. We will not be bound by any quote unless it is in writing.

## 6. Payment

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6.1 The Contracting Party is responsible for payment of the Charges by the due date.

6.2 If the Contracting Party is the consignor then any special instruction given by the Contracting Party to the effect that the consignee will pay the Charges does not relieve the Contracting Party from its obligations to pay the Charges if the consignee does not pay the Charges by the due date.

6.3 Payment of the Charges shall be due before provision of the Services unless: (i) We, in our sole discretion, otherwise agree in writing to accept payment of the Charges after the provision of the Services; and (ii) You hold an account with Us, in which case payment shall be due no later than 20 days of the date of the invoice.

6.4 If You fail to pay an amount owing to Us on the due date We may charge You interest at the 30 day BKBM rate plus 5% calculated daily and compounding monthly from the due date until the date it is paid in full.

6.5 From the date which Our responsibility for the Goods ceases as provided by section 258 of the Act, We may:

- a. hold the Goods if undelivered as bailee and shall be entitled to additional Charges at Our normal rates; and
- b. We shall not be liable for any loss or damage to the Goods howsoever caused or We may return the Goods to You at Your risk and expense.

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## 7. Lien

- 7.1 All Goods shall be subject to a particular and general lien for all moneys due by You to Us and the lien will continue until You have paid all money owing to Us.
- 7.2 The provisions of sections 285 to 291 inclusive, of the Act shall apply in respect of such lien as if it were a statutory lien arising pursuant Act.
- 7.3 If any moneys due to Us are not paid within 20 days after notice has been given to You that the Goods have been detained by Us, the Goods may be sold at Our discretion and at Your expense and the proceeds applied on account of such general or particular lien.
- 7.4 Notwithstanding any transfer of physical possession of the Goods, the Goods are not released until all moneys owing have been paid to Us. In the event of any Goods being delivered to You without payment having been made in full, We retain a lien on such Goods and may retake possession of them pending payment and may enter any premises for that purpose.

## 8. Insurance

- 8.1 You warrant and represent to Us that You hold comprehensive insurance for the Goods at all times to the full value of the Goods whilst they are in Our possession. We will not be liable for any loss suffered by You as a result of Your failure to adequately insure the Goods.

## Freight Service Terms

### 9. Weight and Measurement of Goods for Freight Services

- 9.1 We have the right to check the weight and measurement of Your Goods at any time and alter any Consignment Note accordingly. The cost to Us of carrying out the check will be charged to You if the weight or measurement of the Goods, as determined by the check, exceeds Your declared weight or measurement of the Goods.
- 9.2 All packaging, pallets and other such items in which Goods are packed or stored are deemed to form part of the Goods for the purposes of assessing the weight and measurement of the Goods and calculating the Charges payable by You.

### 10. Packing and Condition of Goods

- 10.1 When You send Goods with Us You warrant that the Goods:
  - a. comply with all laws and regulations relating to the nature, packaging, labelling, storage or carriage of those Goods;
  - b. are properly and securely packed in such a manner as to ensure that they are safe for transport and able to withstand the ordinary risks of storage and carriage by any vehicle, having regard to its nature; and
  - c. are suitably labelled and addressed to enable Us to effect delivery without delay.
- 10.2 You hereby agree to indemnify Us against all loss (including Consequential Loss), damage and expenses arising or resulting from Your failure to comply with clause 10.1.

### 11. Loading of Vehicles

- 11.1 If You load the Goods on Our vehicles You are liable for all loss, damage and claims suffered or incurred by Us which arise directly or indirectly from Your failure to load a vehicle in accordance with instructions or guidelines given by Us or if You load a vehicle in any manner which would be considered unsafe or dangerous by a reasonable and prudent consignor.

### 12. Damage to Equipment

- 12.1 You are liable for all loss or damage to any Goods or any equipment or property (whether in Your possession or otherwise) belonging to Us or Our Related Companies, customers, employees, contractors, representatives or agents

or any Actual Carrier or their employees representatives or agents, where such loss or damage is caused directly or indirectly by any act or omission by You (regardless of whether You are negligent or at fault or not) or any failure by You to comply with these Terms and Conditions.

## Storage Service Terms

### 13. Access to Goods in Storage

- 13.1 If the Goods are being stored, they shall be placed in and removed from Our Storage Facility by Our employees and You and Your servants, agents and employees shall not enter into Our Storage Facility without the express approval, on each occasion, of Our manager subject to any conditions or terms nominated by Our manager.
- 13.2 You may inspect Your Goods held in storage in order to check their condition with Our prior written, during normal business hours provided that You first give reasonable notice and You comply with Our reasonable directions including paying any costs or expenses incurred by Us on demand.
- 13.3 We may refuse You access to Your Goods where You owe us moneys due, whether or not a formal demand for such moneys has been made.

### 14. Receipt of Goods for Storage

- 14.1 Goods that are accepted by Us for storage at the Storage Facility may only be collected by You, on any Business Day during Our normal operating hours. Any Goods to be delivered outside Our operating hours or on a non-Business Day must be by special arrangement only. Such arrangements may be subject to an additional charge in Our sole discretion.
- 14.2 We are deemed not to know the contents of any container, nor the condition, quality or nature of such contents, nor the suitability of any containers for storage.
- 14.3 We are under no obligation to inspect the Goods, packaging or any container or material in which they are stored or to report on the condition of the Goods.
- 14.4 Goods are received at stated weights or volumes and We accept no responsibility for any alleged change of weight or for any alleged change of weight volume or condition of the Goods during storage.
- 14.5 All Goods shall be clearly and distinctively and indelibly labelled and branded by You.
- 14.6 All Goods will be recorded by Us into the Storage Facility. If You or Your representative are not present at the time of receipt, Our record will be final.
- 14.7 We may at Our discretion move all or any part of the Goods stored in Our Storage Facility to any other part of Our Storage Facility or to any other facility that We or a Related Company operates without notifying You.

### 15. Notice to remove Goods

- 15.1 We reserve the right to require You by written notice to remove the Goods or any part of them from Our Storage Facility within the period specified in the notice (time being of the essence).
- 15.2 If:
  - a. you have not removed Your Goods pursuant to a notice under clause 15.1 and paid all Charges owing to Us; and/or
  - b. You do not take delivery of the Goods at the date of termination of storage,

then We may, without prejudice to any other right or remedy We may have, remove Your Goods from Our Storage Facility and sell or dispose of the Goods in such manner and on such terms as We think fit and apply the proceeds to any money owing to Us on any account, including an account relating to other Goods and the costs of any such sale.

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## General Terms

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### 16. Temperature Controlled Goods

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- 16.1 We will not be liable for any loss or damage sustained or incurred as a result of Temperature Controlled Goods being stored or carried at any incorrect temperature if You fail to advise Us in writing of the temperature range at which such Goods should be stored or carried, prior to the time that the Goods are accepted by Us.
- 16.2 We reserve the right to check the temperature of Temperature Controlled Goods at any time by such means as We determine appropriate. If You do not permit such testing, then We shall have no liability to You in the event that the Temperature Controlled Goods are damaged as a result of being stored or carried at an incorrect temperature.

### 17. Dangerous Goods

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- 17.1 We will not accept any noxious, dangerous, hazardous, flammable or unlawful Goods.

### 18. Right to Decline

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- 18.1 We may refuse to provide Services or refuse to accept Goods for any reason without explanation or to impose any restrictions or conditions on You before accepting Your Goods.

### 19. Your obligations

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- 19.1 You must provide Us with the following information in writing prior to Us accepting Your Goods for storage or carriage:
- a complete and accurate description of the Goods to be stored or carried including marks, numbers, quantity, weight and/or volume;
  - location, time and date of pick-up and/or delivery; and
  - any special requirements including the required temperature range for the Goods.

### 20. Your warranties

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- 20.1 You warrant to Us:
- that You have undisputed rights to property in or possession of all Goods stored and carried with Us; and
  - that any Goods stored or carried are and will remain free from any harmful or objectionable matter, substance or odour which may prejudicially affect any other Goods and will be liable for any damage to any such other Goods or losses arising from such breach of this warranty.

### 21. Limited Liability

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- 21.1 In respect of any warranties, conditions or terms imposed on Us by law, Our liability is limited to the maximum extent permitted by law.
- 21.2 We and Our employees, Related Companies, contractors, agents or servants will under no circumstances be responsible or liable to You or to any other person in contract, tort, bailment or otherwise for any loss, damage, decay, deterioration, or destruction of the Goods or for any other loss, damage or harm including any Consequential Loss, however caused.
- 21.3 We will not be liable for any loss or damage to the extent that such loss or damage:
- arises directly or indirectly from, or is contributed to by, incorrect information provided by You or Your failure to comply with these Terms and Conditions or any Agreement;
  - arises from circumstances beyond Our control;
  - arises in connection with:
    - any of Your Goods being contaminated with or tainted by COVID-19 or any variants of that virus while in Our possession or otherwise in the course of the Us providing the Services;
    - Your business being in any way affected by reason of us suffering a Covid Event; or
    - Us providing Services to You in circumstances

- where we have suffered a Covid Event;
  - for any amount exceeding the lesser of proven damaged or the sum provided under section 259 of the Act.
- 21.4 We will not be liable for any loss of profits/opportunity (whether directly or indirectly flowing from the cause of the loss) or any indirect or Consequential Loss or damage of any kind.
- 21.5 All Freight Services will be provided at *Limited Carriers Risk* and will be subject to section 256 of the Act
- 21.6 We are not liable for any loss or damage arising from what We reasonably believe to be Our compliance with any laws or government regulations, orders or requirements, or arising from Your failure to comply with any such laws or regulations.
- 21.7 The limitations in this clause 21 shall apply:
- for the benefit of any of our Related Companies and its servants, agents, sub-contractors and Actual Carriers;
  - where We are acting as agent, trustee or servant for any other person; and
  - for any other person with whom we may arrange to carry out any of our obligations.
- 21.8 Notwithstanding any provision of these Terms and Conditions, if We are under any liability to You or to any other person then Our total maximum liability shall be limited to the contracted price for the Services.

### 22. Notice of claim and limitation of actions

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- 22.1 In relation to any claim:
- We will not have any liability to You unless written notice of a claim, giving reasonable particulars of the event giving rise to the claim and any alleged damage or loss, is received within 7 days from date of delivery or in cases of non-delivery 14 days from the dispatch date.
  - No action or claim may be brought against Us (whether for loss of or failure to deliver all or part of the Goods, damage to all or part of the Goods, or otherwise) unless such claim or action is brought within six months of the date on which the cause of action arose.
- 22.2 Sections 274 to 281 inclusive of the Act shall not apply to these Terms and Conditions.

### 23. Joint and Several Liability

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- 23.1 If more than one person signs this form or any other credit application form, both or all will be jointly and severally liable to Us for all obligations in respect of such form.

### 24. Force Majeure

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- 24.1 For the purposes of this clause a "force majeure event" means an event arising from any cause reasonably beyond Our control that prevents Us from carrying out Our obligations to You including but not limited to:
- cyber warfare, cyber attacks, ransomware attacks or cyber sabotage;
  - war, hostilities (whether war is declared or not), invasions, acts of foreign enemies, civil war, sabotage or piracy;
  - rebellion, terrorism, revolution, insurrection, military or usurped power, riots, civil commotion or disorder;
  - operation of the forces of nature such as earthquakes, hurricanes, lightning, typhoons or volcanic activity;
  - outbreaks of disease, epidemics or quarantine;
  - instances of exceptionally adverse weather;
  - acts of government authority, whether lawful or unlawful;
  - damage, theft or burglary;
  - any failure of plant and equipment or power outages;
  - strikes, lock-outs, other industrial disputes or any other shortage of labour; or
  - any other cause or causes beyond the Our reasonable control.
- 24.2 For the avoidance of doubt, We are in no way required to settle any strike, lock-out or other industrial disturbance.
- 24.3 If We suffer a force majeure event then no failure or omission by Us to carry out or observe any of Our obligations to You shall give rise to any claim against Us or be deemed a breach of these Terms and Conditions.

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## 25. No Waiver

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- 25.1 A failure by Us to exercise or delay in exercising any right or remedy under these Terms and Conditions will not operate as a waiver of that right or remedy. Any such waiver will not constitute a waiver of any subsequent or continuing right or of any other provision in these Terms and Conditions.

## 26. Review

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- 26.1 We reserve the right to review these Terms and Conditions at any time. If, following any such review, there is to be any change in the Terms and Conditions, that change will take effect from the date on which We notify You of such change.

## 27. Subcontracting

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- 27.1 We may subcontract to any third party all or any part of Our obligations to supply the Services to You.

## 28. Assignment

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- 28.1 We may assign Our rights and obligations under these Terms and Conditions. You may not assign Your rights or obligations under these Terms and Conditions.

## 29. Notices

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- 29.1 Any notice required to be given by Us shall be sufficiently given by email, ordinary post or courier, or by personal delivery to the addresses on Our records.

## 30. Termination

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- 30.1 An Agreement will terminate on the expiry date stated in that Agreement.
- 30.2 Where no expiry date exists, an Agreement may be terminated by Us by giving no less than one month's written notice.
- 30.3 A Party may terminate an Agreement with immediate effect by written notice if the other Party:
- is in breach of a material obligation under the Agreement or the Term and Conditions and fails to remedy that breach within 10 Business Days of receiving notification from the other Party; or
  - becomes insolvent, bankrupt, is liquidated, is placed in voluntary administration or has a receiver appointed in any part of its business; or
  - any event set under clause 24 occurs and the other Party is unable to perform its obligations for more than 60 days.
- 30.4 Any termination or expiry of an Agreement will be without prejudice to the rights and remedies of either Party against the other which have arisen up until the date of termination or expiration.
- 30.5 If an Agreement is terminated, You must immediately pay Us all amounts owing to Us.

## 31. GST

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- 31.1 You will pay to Us goods and services tax on all Charges unless otherwise expressly agreed in writing by Us. Goods and services tax is payable in addition to any Charges.

## 32. No set-off

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- 32.1 You are not entitled at any time to set-off any moneys owed by You to Us.
- 32.2 We are entitled at all times to set off any moneys owed by Us to You.

## 33. Transfer

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- 33.1 If You transfer Your interest in the Goods or in any part of them You will not be relieved of any liability or duty arising under these

Terms and Conditions. You must notify Us immediately if any such transfer occurs and We reserve the right to cancel or vary the terms of the agreement with You.

## 34. Consumer Guarantees Act 1993

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- 34.1 You acknowledge and agree that You are in trade and the Services are acquired by you in trade, the provisions of the Consumer Guarantees Act 1993 are therefore excluded to the maximum extent permitted by law.

## 35. General Indemnity

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- 35.1 You agree to indemnify Us against all costs (including legal costs on a solicitor and client basis), damages, losses, claims and expenses suffered or incurred by Us which arise:
- directly or indirectly caused by Your default or negligence;
  - from any breach or failure by You to comply with these Terms and Conditions or any other applicable Agreement; or
  - out of any third party claim including any claim arising from Us detaining or repossessing Goods.

## 36. Resolution of Disputes

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- 36.1 If any dispute arises you agree to firstly attempt to resolve the dispute by negotiation between You or Your representative and Ours.
- 36.2 If the dispute cannot be resolved by negotiation then, if We elect, the dispute must be referred to mediation before any court proceedings are issued, except where urgent interlocutory relief is sought. If a mediator cannot be agreed on by You and Us then the mediator will be appointed by the Resolution Institute.
- 36.3 We may also elect for the matter to be referred to arbitration with an independent arbitrator. If We cannot agree with You on the appointment of an arbitrator then the arbitrator will be appointed by the Arbitrators' and Mediators' Institute of New Zealand Inc or its successor and the provisions of the Arbitration Act 1996 shall apply accordingly.

## 37. Governing Law

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- 37.1 These Terms and Conditions and any Agreement will be governed by and construed in accordance with the laws of New Zealand. The Parties submit to the exclusive jurisdiction of the courts of New Zealand in relation to all disputes arising out of or in connection with these Terms and Conditions and any Agreement.