

STANDARD TERMS AND CONDITIONS

General

1. These standard terms and conditions (STCs) apply to all Services provided by the Company to the Customer.
2. By instructing the Company to provide Services (whether in writing or otherwise) the Customer agrees to be bound by these STCs.
3. These STCs shall prevail over any terms or conditions purported to be included by any document or contract used by the Customer.
4. The contract between the Company and the Customer shall comprise AHT's quotation (or any other document issued by AHT setting out the key terms upon which it is providing Services) and these STCs, and shall constitute the whole agreement between the parties. If there is any conflict between the terms of the quotation and these STCs, the terms of the quotation shall prevail.
5. The contract between the Company and the Customer can only be varied by an agreement in writing signed by an authorised signatory of each party.
6. If any term of the contract is or becomes unenforceable for any reason, the relevant term is to be considered to be modified to the extent necessary to remedy the unenforceability. If this is not possible, the provision is to be severed from the contract, without affecting the enforceability of any other term.
7. These STCs shall also benefit and be enforceable by the Company's Contractors, sub-contractors, employees, servants and agents.
8. The contract between the Company and the Customer will be governed by New Zealand law and will be subject to the exclusive jurisdiction of the New Zealand courts.

Definitions

"Act" means the Contract and Commercial Law Act 2017.

"Charges" includes freight, deadfreight, demurrage, detention, bunker adjustment costs, cartage, port, dues / fees, Customs and import dues and fees, the Company's agency or booking or management fees, and any cost or expense incurred by the Company in the performance of the Services, but excludes the cost of insurance.

"Company" means A. Hartrodt New Zealand Limited and its employees, officers, agents, servants and subsidiaries and related companies.

"Container" includes any container, trailer, transportable tank, flat rack or pallet, or any similar article of transport used to carry, consolidate, store or package the Goods.

"Contractor" means any person carrying, handling or storing the Goods for the Customer under a contract arranged by, or with the authority of, the Company as agent for the Customer.

"Customer" means any person acquiring Services from the Company and includes the shipper, consignee, receiver, owner or bailor of the Goods, their agents or representatives.

"Dangerous Goods" includes noxious or hazardous goods, explosives, poisons, corrosive, inflammable or radioactive substances, compressed gases, goods harbouring or likely to harbour or encourage vermin, borer or other pests, any goods likely either inherently, or due to their manner of packing, to cause damage to other goods or property or injury to persons, and any other goods, or substances which, in the opinion of the Company, are likely to cause damage to other goods or property or injury to persons.

"Force Majeure Event" means an event or circumstance beyond the reasonable control of the Company which results in or causes the failure of the Company to perform any of its obligations under the contract. Such events may include but are not limited to: mechanical breakdown of any equipment, weather conditions, strikes, lockouts, labour disputes or restraint of labour, act of God, war (whether declared or not), any act, regulation or restriction imposed by Government, riot or civil commotion, any pandemic or epidemic, or a failure by Contractors to perform their obligations due to a force majeure event as defined under the relevant contract.

"Goods" means the goods or other cargo the subject of instructions issued by the Customer to the Company and includes any container not supplied by or on behalf of the Company.

"Services" means all services supplied by the Company to the Customer and includes but is not limited to any advice or information provided to the Customer.

Services

9. All Services are provided by the Company as an agent only, unless expressly stated otherwise.
10. The Customer authorises the Company, as agent, to enter into contracts for the carriage, handling and storage of Goods and for any other matters the Company considers necessary for the purposes of performing the Services, and to entrust the Goods to any contractor or subcontractor, upon such terms as the Company sees fit. The Customer agrees that such terms will bind it as principal.
11. Subject to express instructions in writing given by the Customer, the Company may in its sole discretion choose the means, route and procedure to be followed in the carriage, handling and storage of Goods.
12. If the Company issues a document in which it is described as the carrier, the terms and conditions of the document (including all limitations and exclusions of liability) will to the extent of any inconsistency, prevail over these STCs.
13. The Company may refuse to provide Services to any person or entity in its sole discretion.
14. The Company may subcontract on any terms the whole or any part of the Services. If the Company subcontracts the whole or any part of the Services:
 - (a) The STCs shall also benefit, and be enforceable by, any subcontractor.
 - (b) The Services are also subject to the terms and conditions of the contract between the Company and the subcontractor, and the Company shall have the benefit of such terms and conditions. In the event of and to the extent of any inconsistency between these STCs and the terms and conditions of the contract between the Company and the subcontractor, these STCs prevail.
 - (c) The Customer undertakes that no claim shall be made against any subcontractor which attempts to impose any liability whatsoever in connection with the performance of the services by the Company.
15. Except under special arrangements made in writing in advance, the Company will not accept or deal with any Dangerous Goods. Any person delivering such goods to the Company or causing the Company to handle or deal with any such goods (except under special arrangements made in writing in advance) shall be liable for all resulting loss or damage and shall indemnify and hold the Company harmless against all claims, costs, damages, duties, expenses, fees, fines, losses, penalties, taxes or liabilities arising in connection with the Dangerous Goods and the goods may be destroyed or otherwise dealt with at the sole discretion of the Company or any other person in whose custody they may be at the relevant time, without any liability on the part of the Company. If such goods are accepted under arrangements made in writing in advance they may still be so destroyed or otherwise dealt with without any liability on the part of the Company if circumstances arise creating a risk of damage or injury over and above the inherent propensities of such goods.
16. The Company accepts all Goods for carriage, handling or storage on the basis that no refrigeration or other special or unusual arrangements will be made or required unless stipulated and agreed in writing by the Company in advance, notwithstanding that the Company may or should be aware from the nature of the Goods or their packaging that some arrangements should be or are in the usual course made for such Goods.
17. Any dates or times advised by the Company for the transport or delivery of Goods are estimates only and are not binding on the Company. The Company accepts no liability for delays in delivery.

Customer Obligations

18. The Customer warrants:

- (a) It is either the owner or the authorised agent of the owner of the Goods and by entering the contract with the Company it accepts these STCs for itself as well as for all other parties on whose behalf it is acting.
 - (b) That Goods are properly and adequately packed to withstand the usual risks of carriage, storage and handling having regard to their nature and destination.
 - (c) Any containers or other objects supplied by the Customer in or on which the Goods are stored, packaged, or contained conform with any requirements of the consignee, the receiver of the Goods, or any relevant person or authority, or any applicable laws or regulations.
 - (d) That all information provided to the Company, including descriptions, values, marks, weights, numbers, brands and other particulars appearing on the Goods or on any containers, packing material or shipping or other documents relating to the Goods, is correct and complete.
 - (e) It will provide written directions to the Company for the proper care of any Goods with special requirements.
 - (f) It will provide written delivery instruction to the Company to enable effective and efficient delivery of the Goods.
 - (g) It will comply with, and the Goods will comply with, all applicable laws, regulations and requirements of any country to, from, through or over which the Goods may be carried relating to the nature, packaging, labelling or carriage of the Goods, and will provide the Company with all assistance, documents and information necessary to enable the Company to comply with such laws, regulations and requirements and will pay any Charges incurred by the Company in this respect.
19. Without prior notification to, and agreement from the Company, it will not tender any:
 - (a) Dangerous Goods;
 - (b) goods which are unlawful to carry or handle, or which can only be carried or handled with a licence or permit;
 - (c) goods which are perishable or which require special handling or packaging; or
 - (d) valuables of any kind.
 20. If the Company agrees to deal with any goods described in clause 19, the Customer shall provide all necessary documents and information relating to the goods (including any relevant permits) to enable the Company to comply with any applicable laws and regulations and to arrange for the goods to be carried, handled or stored safely.
 21. If the Customer delivers any goods described in clause 19 or causes the Company to deal with such goods or arrange for them to be carried, handled or stored without prior notification and agreement:
 - (a) Neither the Company nor its Contractors or subcontractors shall have any liability for any loss of or damage to the goods whatsoever arising out of their dealings with the goods;
 - (b) The Customer shall be liable for all loss or damage whatsoever caused by, to or in connection with the goods;
 - (c) The Customer shall on written demand indemnify and hold the Company harmless from and against all claims, costs, damages, duties, expenses, fees, fines, losses, penalties, taxes or liabilities whatsoever arising as a result; and
 - (d) In the case of goods referred to in 19.(a) – (c), the goods may be destroyed or otherwise dealt with at the sole discretion of the Company or any Contractor or subcontractor at the cost and risk of the Customer, and neither the Company nor any Contractor or subcontractor shall have any responsibility.
 22. The Customer undertakes that it shall not bring claims against the Company's employees, servants or agents in respect of the performance by the Company of the Services, whether in tort or otherwise.
 23. With reference to clauses 10 and 14, the Customer will not do anything that would put the Company in breach of any such contracts or subcontracts.
 24. The Customer shall on indemnify and hold the Company harmless on written demand from and against all claims, costs, damages, duties, expenses, fees, fines, losses, penalties, taxes or liabilities whatsoever that the Company incurs or suffers resulting from a breach by the Customer of any warranty, representation or obligation under these STCs or by the Customer's negligent acts or omissions or breach by the Customer of any applicable law.

Delivery

25. The Goods shall be deemed to have been delivered when they are delivered to the address, port of discharge or place of delivery (as applicable) advised to the Company by the Customer for that purpose or when collected by the Customer.
26. If the Goods cannot be delivered as instructed or the Customer fails or refuses to take delivery of the Goods:
 - (a) the Company shall be entitled with no notice to arrange to unpack and store the Goods at the risk and cost of the Customer and such storage constitutes delivery under the contract; or
 - (b) if in the reasonable opinion of the Company the Goods are likely to deteriorate, decay, lose value or incur any charges in excess of their value, or if the Goods are insufficiently addressed, marked, or not identifiable, or if the Goods have not been accepted or collected within 30 calendar days from the date that delivery is to be effected, the Company may, without prejudice to any rights which it may have against the Customer, without notice and without any liability to the Customer, arrange to sell or dispose of the Goods and apply any proceeds in reduction of any sums due to the Company.
27. A communication from any agent or correspondent of the Company to the effect that the Goods cannot be delivered for any reason shall be conclusive evidence of that fact.
28. In all circumstances responsibility and liability for the Goods shall cease when they are delivered.
29. The Customer shall indemnify the Company on written demand from and against all claims, costs, damages, duties, expenses, fees, fines, losses, penalties, taxes or liabilities whatsoever that the Company incurs or suffers as a result of any failure by or delay in the Customer taking delivery or arranging for delivery to be taken of the Goods.

Charges

30. Quotations given, unless previously withdrawn, can only be accepted within seven days of the date of the quotation. After expiry of the quotation, it must be confirmed by the Company prior to acceptance
31. The Customer agrees to pay the Company's Charges, and any other costs and expenses provided for in these STCs or reasonably incurred by the Company in performing the Services, in accordance with the Company's invoice. The Company's Charges and any other costs and expenses incurred shall be deemed earned as soon as handling of Goods has occurred (whether by the Company or any Contractor or subcontractor).
32. Payment is due on the date stated in the Company's invoice. Payment must be made by the due date in full, without any deduction, claim, counterclaim or set-off, whether Goods are damaged or not delivered, Goods or vessel lost or not lost.
33. In addition to Charges, the Customer shall be liable for and pay any and all other duties, fines, penalties, port storage and transport charges, taxes, insurance costs and all other costs, expenses, losses or damages incurred relating to the Goods during performance of the Services, other than those specifically included in the agreed price stated in the quotation.
34. Where the price quoted is based upon freight rates, transport and packing costs, exchange rates, inspection fees, customs and import duties, landing charges, and other costs and charges relating to the Goods or the Services to be provided by the Company, the Company may pass on and charge to the Customer any extra cost as a result of any increases made after the date of quotation.

35. The Customer agrees that outside of the time allowed, all costs and expenses incurred for container detention, demurrage, hire, storage and waiting time shall be payable in full by the Customer and the Customer agrees to pay any interest or penalties that may be charged on an unpaid balance until payment is received by the Company in full.
36. The Company may in its discretion require the Customer to pay Charges in advance of performing the Services and the Company is under no obligation to incur or pay any costs or expenses of any kind unless the Customer has provided the Company sufficient funds to make such payments.
37. If a Customer gives a special instruction that Charges shall be paid by a third party, the Customer shall be liable to pay the Charges if the nominated third party does not pay the Charges within seven days of delivery or attempted delivery of the Goods, and the Customer shall pay those Charges to the Company within seven days of being notified of the third party's failure to pay.
38. Should payment not be made in full by the due date, the Customer shall pay interest on any amounts outstanding at a rate four percent above the Company's Bank's indicator lending rate from time to time calculated on a daily basis from the due date for payment until the date payment is received by the Company but without prejudice to the Company's other rights and remedies in respect of the Customer's default in failing to make payment on the due date. The Customer shall and does hereby indemnify the Company for all costs and expenses (including solicitor/client expenses) arising from any breach of this Agreement or the enforcement by the Company of its rights in respect of any such breach.
39. If at any time payment of amounts due from the Customer to the Company are in arrears, the Company may in its sole discretion and without any liability to the Customer:
 - (a) suspend any existing obligations of the Company until payment of the outstanding amount is made in full; and / or
 - (b) enforce any security or other rights of the Company under these STCs, or at law; and / or
 - (c) terminate the contract with immediate effect (including following any period of suspension) on giving written notice to the Customer.
40. The Customer authorises the Company to set-off, withhold or deduct without prior notice or demand any amount due or payable to the Company by the Customer under this Agreement or any other agreement from any payment made by the Company to the Customer in full or partial satisfaction of any amount owing to the Customer by the Company under this Agreement or any other agreement. For the avoidance of doubt, this right applies to any amount due or payable under any agreement relating to the supply of Goods and / or Services between the Company and Customer.
41. The Company is entitled to retain and be paid all brokerages, commissions, allowances and other remunerations retained by or paid to shipping and forwarding agents and insurance brokers.

Lien

42. All Goods (and documents relating to Goods) shall be subject to a particular and general lien and right of detention for any and all amounts due or payable to the Company by the Customer.
43. If any amounts due or payable to the Company are not paid within 14 calendar days after notice has been given to the Customer that a lien is being exercised in respect of the Goods and the Goods are being detained, they may be sold by auction or otherwise at the sole discretion of the Company and at the expense of the Customer, and the proceeds applied in or towards satisfaction of the amounts due.
44. Where the Company is entitled to sell or dispose of Goods pursuant to these STCs, any such sale shall not prejudice or affect the Company's right to recover from any person any balance due or payable to the Company in respect of any Services provided by it to the Customer or the cost of the detention and sale of the Goods.

Personal Properties Security Act 1999 (PPSA)

45. Without limiting anything else in these terms, the Customer acknowledges that:
 - (a) These terms create, in favour of the Company, a security interest in all Goods and documents relating to Goods, to secure the payment by the Customer to the Company of any amounts due to the Company by the Customer, or the consignee, consignor or owner, where in respect of such Goods or otherwise and whether or not such amounts are overdue for payment ("the Amount Owning"); and
 - (b) These terms will apply notwithstanding anything, express or implied, to the contrary contained in any purchase order (or its equivalent, whatever called) of the Customer; and
 - (c) The security interest shall continue until the Company gives the Customer a final release.
46. The Customer undertakes to:
 - (a) Promptly do all things, sign any further documents and / or provide any information which the Company may reasonably require to:
 - (i) enable the Company to perfect and maintain the perfection of its security interest (including by registration of a financing statement); and
 - (ii) enforce its security interest.
 - (b) Give the Company (addressed to the Financial Controller or equivalent) not less than fourteen (14) days prior written notice of any proposed change in the Customer's name and / or any other change in the Customer's details (including, but not limited to, changes in the Customer's address, facsimile number, trading name or business practice).
47. The Customer waives its right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest, in accordance with section 148 of the PPSA.
48. To the extent permitted by law:
 - (a) the Customer and the Company contract out of sections 114(1)(a), 133 and 134 of the PPSA; and
 - (b) the Customer waives its rights under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
49. The Customer agrees that the security interest has the same priority in relation to all amounts forming part of the amount owing, including future advances.

Insurance

50. Prices quoted will not include insurance. Insurance of Goods handled by the Company is always the responsibility of the Customer.

Force Majeure

51. Where the Company is unable, wholly or in part, by reason of a Force Majeure Event to carry out any obligation under the contract and the Company:
 - (a) gives the Customer written notice of the nature and expected duration of, and the obligation affected by, the Force Majeure Event; and
 - (b) uses all reasonable endeavours to:
 - (i) mitigate the effects of the Force Majeure Event on its obligations under this Agreement; and
 - (ii) perform its obligations under the contract despite the Force Majeure Event, that obligation is suspended so far as it is affected by the Force Majeure Event during its continuance.

52. If a Force Majeure Event continues for a period exceeding 30 calendar days, the Company may terminate the contract by giving written notice to the Customer.

Legislation

53. The Customer acknowledges that the Services are both provided and acquired "in trade" for the purposes of the New Zealand Consumer Guarantees Act 1993 (CGA) and Fair Trading Act 1986 (FTA), and that all warranties, conditions and other terms implied by the CGA or sections 9, 12A, 13 and 14(1) of the FTA are excluded from these STCs to the fullest extent permitted by law. The parties acknowledge and agree that the exclusions contained in this clause are fair and reasonable.
54. Where any national legislation of intentional convention compulsorily applies:
 - (a) The STCs shall be read as subject to any provision which is mandatory.
 - (b) Any term of these STCs which is inconsistent with or repugnant to that legislation or convention, shall be null and void to the extent (but no further) of such inconsistency or repugnance.
 - (c) The Company shall be entitled to any rights, immunities from or limitations of liability under such legislation or convention.

Liability

55. Any Services which are subject to the Act shall be performed at limited carrier's risk as defined in the Act.
56. Sections 284, 285, 286, 287, 288, 289, 290, 291 and 292 of the Act shall apply only to the extent that they extend or enlarge the Company's rights and powers in terms of the contract. Sections 274, 275, 276, 277, 278, 279, 280 and 281 shall not apply to this contract.
57. Subject to clause 55 and to any mandatory provision of law to the contrary, and without prejudice to the Company's rights under any other applicable provision in these STCs, the Company shall not be liable in contract, tort or otherwise for:
 - (a) The circumstances covered by clause 21 in relation to Dangerous Goods, unlawful or perishable goods and valuables.
 - (b) Any loss of or damage to Dangerous Goods, or loss of or damage to third party property caused by Dangerous Goods, due to their inherent nature and properties.
 - (c) Any loss of or damage to perishable Goods due to any failure or breakdown of machinery or plant, or shortage of power or labour.
 - (d) Any loss of or damage to Goods:
 - (i) Arising from deterioration or contamination;
 - (ii) Due to a delay in delivery, misdelivery or non-delivery;
 - (iii) Resulting from any act or omission of the Customer; or
 - (iv) Resulting from theft or burglary or any attempt (including whether by the Company's employees, servants or agents),nor shall the Company be liable for any related or costs, claims, duties, expenses, fees, penalties or taxes whatsoever.
 - (e) Arising out of or in connection with any information, instructions or services given or provided to any person whether in respect of the Goods or any other matter or thing.
58. In no circumstances shall the Company be liable for any consequential, indirect, exemplary or special loss or damages whatsoever, including but not limited to loss of bargain, loss of market, loss of profit, loss of revenue or loss of use.
59. In all other circumstances, the Company's total liability for any claims whether in contract, tort or otherwise is to the maximum extent permitted by law limited to the lesser of:
 - (a) NZ\$2000; or
 - (b) The cost of the Services; or
 - (c) The replacement value of the Goods at the time of any loss or damage.
60. The maximum aggregate liability of the Company for all claims arising out of any one incident or occurrence shall be limited to NZD2,650,000.00.
61. Notwithstanding any stipulated period for storage, any goods stored for the Customer shall be removed and any relevant document of title or entitlement to the Goods surrendered, upon the expiration of 21 days' notice in writing to remove Goods given by the Company and the Customer shall pay all storage and other charges to the date of such removal.
62. In the event of a document of title or entitlement to the Goods being issued by the Company in respect of any Goods stored with it the Company shall not be bound to deliver the Goods, except upon production of that document, although the Company may dispense with the production of that document upon the Customer furnishing such evidence as to ownership of the goods and the loss of the document as the Company may require and upon the Customer entering into or procuring such bond, guarantee or other security as the Company may require.
63. Any claim for loss of or damage to Goods must be notified in writing to the Company within seven days of delivery of the Goods or of the date upon which the Goods should have been delivered. In any event the Company shall be discharged from all liability whatsoever in connection with the provision of Services by the Company (including any claims under the Act) unless suit is brought and notice given within nine months of the provision of such Services or delivery of the Goods or when the Services should have been provided or the Goods should have been delivered.

Privacy

64. Subject to the Privacy Act 2020 (where it applies), the Customer authorises the Customer to:
 - (a) Collect, retain and use any information about the Customer for the purpose of checking or maintaining records as to creditworthiness or of supply of products or Services to the Customer or of marketing (including by email) to the Customer about Services that can be provided; and
 - (b) Disclose any information about the Customer to any other credit agency for purposes of debt collection, credit reference or notification of a default by the Customer.
65. The Customer has the right to request a copy of any information held about the Customer and to correct any incorrect information about the Customer held by the Company.

Termination

66. The Company may terminate the contract at any time by giving written notice to the Customer:
 - (a) if clauses 39 (non-payment) or 51 (Force Majeure) applies;
 - (b) if the Customer is in material breach of the contract; or
 - (c) if the Customer is unable to pay its debts as they fall due, goes into receivership or liquidation, or ceases to carry on its business.
67. If the Company elects to terminate the contract under this clause, termination shall be without prejudice to any rights, powers, or remedies it may have under the STCs or at law, existing at the date of termination.

Notices

68. Any notice given pursuant to the STCs from the Company to the Customer may be given to the Customer either in person or posted, sent by fax or email to the Customer's last known postal or email address (or where the Customer is a company, to any of its directors). Notices given to the Company pursuant to the STCs must be sent by email to hr.nz@hardrodt.com.