

FREIGHTWAYS PNG LIMITED

STANDARD BUSINESS TERMS AND CONDITIONS OF TRADE

[1] The following definitions shall apply to these conditions:

"Customer" means the person or company for whom any business is done by Freightways PNG Limited (FWPNGLtd) or with whom any contract for the rendering of services by FWPNGLtd is made;

"Goods" means the cargo or articles or goods, perishable or otherwise, (including animals of any description) which the Customer or any other person has provided together with any other container or any other packaging, pallets or other storing device supplied to FWPNGLtd;

"Dangerous Goods" means all such Goods as are in fact or at law noxious, dangerous, hazardous, explosive, radioactive, inflammable, volatile or capable by their nature of causing damage or injury to other Goods or persons or animals or any other thing in which such dangerous goods are carried or stored, or any Goods which in the opinion of FWPNGLtd are likely to cause damage or injury to persons, other Goods or property;

"FWPNGLtd" means Freightways PNG Limited, PNG IPA registration number 1-140426210, or any business conducted under any registered or unregistered business name owned wholly or partly by Freightways PNG Limited;

"Perishable Goods" means any Goods which are subject to waste or deterioration or spoilage over a period of time or through contact with other Goods or elements;

"Valuables" includes bullion, bank notes, cash, currency, bonds, negotiable instruments or securities of any kind whatsoever, rare or precious metals or stones or objects made thereof, plate, jewelry, valuable works of art or other precious or rare objects of any kind whatsoever.

[2] All and any business undertaken by FWPNGLtd is transacted subject to the conditions hereinafter set out, and all and any agreement between FWPNGLtd and its Customers shall be deemed to be subject to these conditions. When these conditions apply to or form part of an air waybill issued by FWPNGLtd in its capacity as a contracting party for air transportation, it is agreed that the transportation to the airport of departure and from the airport of arrival does not constitute part of the contract of air carriage. As far as FWPNGLtd takes over the arrangement of performance of such services, this is done under a separate contract, which is subject to these terms and conditions and (to the extent only to which these terms and conditions do not or cannot exclude or modify the operation of any applicable legislation) to that legislation.

[3] No servant or agent of FWPNGltd has any authority to add or to vary these conditions, unless such addition or variation is confirmed in writing and signed by a duly authorized representative on behalf of FWPNGltd.

[4] The use of Customers' own forms shall be no derogation of these conditions.

[5] FWPNGltd is a forwarding agent and general logistics service provider, except as hereunder provided, acts solely as an agent in performing and securing services for the Customer and entering into contracts on the Customer's behalf with other persons. Except as hereunder provided, FWPNGltd is not a carrier or Common Carrier and does not make or purport to make any contract for the carriage, storage, packing and handling of Goods with the Customer. Whenever FWPNGltd is instructed to undertake or arrange transport, storage, packing, handling or any other services, it is hereby authorized to entrust the Goods or arrangements to third parties subject to the third parties' contractual conditions and the Customer shall be bound by such conditions and shall indemnify FWPNGltd against any claims arising out of their acceptance.

[6] Where FWPNGltd is or is deemed to be a carrier under a contract subject to legislation compulsorily applicable thereto, FWPNGltd shall be entitled to all rights immunities exceptions and limitations conferred on the carrier by virtue of such legislation and these conditions shall be void to the extent that they are inconsistent with such rights, immunities, exceptions and limitations, but no further.

[7] Customers entering into a transaction of any kind with FWPNGltd expressly warrant that they are either the owners of Goods or property the subject matter of the transaction or that they are the authorized agents of the owners of the Goods or property the subject matter of the transaction. If the Customer is the owner of the Goods or property, then it accepts these conditions by entering into the transaction. If the Customer is the authorized agent of the owner of the Goods or property then, by entering into the transaction, it expressly warrants that it is authorized to accept these conditions and enter into the transaction on behalf of the owner and it further expressly warrants that it accepts these conditions not only for itself but also as agent for and on behalf of the owner of the Goods or property and all other persons who are or may hereafter become interested in the Goods. The Customer shall indemnify FWPNGltd in respect of any breach of the warranties contained herein.

[8] FWPNGltd shall be entitled to enter into contracts:

- (a) for the carriage of Goods by any route or by any means; and
- (b) for the storage, package or handling of the Goods by any person at any place or places and for any length of time and to do such acts as may be necessary or incidental thereto at the absolute discretion of FWPNGltd and to depart from the Customer's instructions in any respect if, in the opinion of FWPNGltd, it is necessary or desirable to do so.

[9] FWPNGltd reserves to itself complete freedom in respect of means, route and procedure to be followed in the handling, packaging, storing and transportation of Goods and instructions by a Customer as to these matters whether expressed or implied and whether oral or written shall be deemed to be for guidance by way of suggestions only.

[10] The Customer hereby expressly authorizes FWPNGltd to do such acts and enter into such contracts as are referred to in clause 8 and clause 9 hereof on behalf of the Customer so as to bind the Customer by such acts and contracts in all respects notwithstanding any departure from the Customer's instructions as aforesaid.

[11] The Customer hereby indemnifies FWPNGltd for any fees, costs or claims arising out of any contracts referred to in clause 8 and clause 9 hereof.

[12] Quotations are given on the basis of immediate acceptance and subject to the right of withdrawal or revision. If any changes occur in the rates of freight, insurance premium or other charges applicable to the Goods or property the subject of the transaction, whether before or after the transaction is entered into, quotations and charges shall be subject to revision to amounts determined by FWPNGltd in its discretion and with or without notice. FWPNGltd may charge freight by weight, measurement or value, and may at any time re-weigh or re-value or re-measure or require the Goods to be re-weighed, re-valued or re-measured and charge proportional additional freight accordingly.

[13] Customers and consignees shall be liable for and shall indemnify FWPNGltd against all duties, taxes, payments, fines, expenses, losses, damages (including physical damage) and liabilities whether or not arising out of the negligence of FWPNGltd, its servants or agents, suffered or incurred by FWPNGltd in the performance of its obligations hereunder, including any liability to indemnify any other person against claims made against such other person by the Customer or owner or consignee. Without limiting this clause 13, Customers and consignees shall be liable for and shall indemnify FWPNGltd against any liability for goods and services tax levied under the *Tax System (Goods and Services Tax) Act* or similar act currently in place as amended and any other goods and services tax, value added tax, consumption tax or tax of similar effect levied from time to time.

[14] By entering into the transaction, the Customers and consignees of any Goods and their agents shall be deemed to be bound by and to warrant the accuracy of all descriptions, values and other particulars furnished to FWPNGltd for customs, consular and other purposes and they undertake to indemnify FWPNGltd against all losses, damages, expenses and fines arising from any inaccuracy or omission, even if such inaccuracy or omission is not due to negligence.

[15] Freight shall be considered earned whether the Goods are delivered to the Customer or consignee or not, and whether damaged or otherwise. Under no circumstances will any payment for freight be refunded.

[16] Where Goods are consigned:

- (a) on terms that they shall be paid for on delivery and, if for any reason, payment is not made in full; or
- (b) on terms that FWPNGltd shall only deliver the Goods to the consignee on production of a Forwarders Certificate of Transport, House Bill of Lading, Air Waybill, delivery order or similar document, and owing to the failure to demand such a document the Goods are delivered to the consignee before it has paid for them in full, then FWPNGltd may, at its absolute discretion, reimburse the Customer with the amount of payment not so made, whereupon the Customer shall, on request, assign to FWPNGltd by an instrument in writing the whole of the Customer's title to or interest in the Goods and the right to receive payment there for, and shall co-operate fully with FWPNGltd in enforcing all rights so assigned.

[17] Notwithstanding any agreement or arrangement between the Customer and a consignee to the contrary, the Customer shall remain liable to FWPNGltd for any charges in respect of any transaction until such charges have been satisfied or the balance of any charges which shall remain at any time unpaid.

[18] FWPNGltd shall not be liable to recognize any agreement between any Customer and a consignee in respect of the payment of FWPNGltd's charges.

[19] No insurance will be effected by FWPNGltd or by any of its contractors or subcontractors except upon express instructions given in writing by the Customer at or before the consignment of the Goods and then only at the Customer's cost as to premium and excess (if any). All insurances effected by FWPNGltd are subject to the usual exceptions and conditions of the policies of the insurance company taking the risk. FWPNGltd shall not be under any obligation to effect a separate insurance on each consignment but may declare it on any open or general policy. Should the insurers dispute their liability for any reason, the insured shall have recourse against the insurers only and FWPNGltd shall not be under any responsibility or liability in relation thereto notwithstanding that the premium upon the policy may not be at the same rate as that charged by FWPNGltd or paid to FWPNGltd by its Customer.

[20] FWPNGltd shall not be obliged to arrange for Goods to be carried, stored or handled separately from the Goods of other Customers.

[21] FWPNGltd shall not be obliged to make any declaration for the purpose of any statute or contract as to the nature or value of any Goods or as to any special interest in delivery unless required by law or expressly instructed by the Customer in writing and:

(a) In the case of Goods having a value exceeding the units of account contained in article 4 rule 5 of Schedule 1 of the *Sea Carriage of Goods Act 1951* the value will not be declared or inserted in the Bill of Lading for the purpose of extending the carrier's liability except upon express instructions given in writing by the Customer.

(b) In the case of carriage by air, no optional declaration of value to increase the air carrier's liability under the *Civil Aviation (Carriers' Liability) Act (or similar current act enforce)* or any of the schedules thereunder will be made except upon express instructions given in writing by the Customer.

(c) In all other cases, where there is a choice of tariff rates according to the extent of the liability assumed by carriers, warehousemen or others no declaration of value (where optional) will be made for the purpose of extending liability and the Goods will be forwarded or dealt with at the Customer's risk or other minimum charges unless express instructions in writing to the contrary are given by the Customer.

[22] Pending forwarding and delivery, Goods may be warehoused or otherwise held at any place or places at the sole discretion of FWPNGltd at the Customer's risk and expense.

[23] The Customer and/or consignees and their agents shall be liable for any duty, tax, impost, excise or outlays of whatsoever nature levied by the authorities at any port or place for or in connection with the Goods and for any payments, fines, expenses, loss or damage made, incurred or sustained by FWPNGltd in connection therewith, and the Customer undertakes to indemnify FWPNGltd in respect of any of the aforementioned matters even if any such payments, fines, expenses, loss or damage arises by reason of the negligence of FWPNGltd, its servants or agents.

[24] FWPNGltd shall not be liable under any circumstances for any loss, damage or expense arising from or in any way connected with marks, weight, numbers, brands, contents, quality or description of any Goods.

[25] FWPNGltd shall not in any circumstances be liable for indirect or consequential loss and/or damages arising from wastage, spoilage or the deterioration of any Goods or of the loss of market for any Goods or for any other damages arising from or attributable to delay in forwarding or in transit or failure (not amounting to willful negligence) to carry out the instructions given to it.

[26] FWPNGltd shall not be liable to the Customer or consignee for loss or damage caused by any failure to carry out or negligence in carrying out the Customer's instructions or by any failure to perform or negligence in performing FWPNGltd obligations under the contract to which these conditions apply whether or not the same occurs in the course of performance by or on behalf of the Customer of the contract or in events which are in the contemplation of FWPNGltd and/or the Customer or in events which are foreseeable by either of them or in events which could constitute a fundamental breach of the contract or a breach of a fundamental

term, unless such loss or damage is due to the willful neglect or default of FWPNGltd or its servants provided that any liability of FWPNGltd shall in every case be limited in amount to the sum of Twenty Papua New Guinea Kina (20.00 PGK) in respect of all Goods entrusted to FWPNGltd's care in any one consignment whether or not there has been any declaration of value of the Goods or of any of them by the Customer for the purpose of carriage or otherwise. In particular, and without limiting the foregoing, FWPNGltd shall not be liable for any injury or sickness (including fatal injury or sickness) to any animal, or for any loss sustained by the sender of the animal or any other person however arising, including from any defect in any vehicles (including an airplane) in which the animal is carried, or caused in the loading or unloading of any animal into or out of any such vehicle or in handling any animal.

[27] Perishable Goods which are not taken up immediately upon arrival or which are insufficiently addressed or marked or otherwise not identifiable, may be sold or otherwise disposed of without any notice to the Customer or consignees of the Goods and payment or tender of the nett proceeds of any sale after deduction of charges shall be equivalent to delivery.

[28] Without prejudice to any other clause of these conditions, FWPNGltd may charge additional amounts for each call it makes until delivery is accomplished in circumstances in which the Customer or consignee is not in attendance at the address provided for delivery of the Goods during normal trading hours.

[29] Except under special arrangements previously made in writing, FWPNGltd will not accept transactions relating to noxious, dangerous, hazardous or inflammable or explosive Goods or any Goods likely to cause damage. Any person delivering such Goods to FWPNGltd or causing FWPNGltd to handle or deal with any such Goods except under special arrangement previously made in writing shall be liable for all loss or damage caused thereby and shall indemnify FWPNGltd against all penalties, claims, damages, costs and expenses arising in connection therewith and the Goods may be destroyed or otherwise dealt with at the sole discretion of FWPNGltd or any other person in whose custody they may be at the relevant time. If such Goods are accepted under arrangements previously made in writing, they may nevertheless be so destroyed or otherwise dealt with if they become dangerous to other Goods or property. The expression "Goods likely to cause damage" includes Goods likely to harbor or encourage vermin or other pests.

[30] Except under special arrangements previously made in writing FWPNGltd will not enter into transactions relating to Valuables and will not accept any liability whatever for any such Goods.

[31] The inherent characteristics of certain commodities make it impossible for them to be carried by air without endangering the safety of aircraft, passengers or crew. However, some Goods of dangerous nature can be accepted for carriage provided

the quantity is restricted to within given limits, and packing conforms to specifications laid down in the current edition of the IATA Dangerous Goods Regulations/ICAO Technical Instructions. The airline's agreement to accept dangerous cargo must be obtained before the consignment is delivered. A Customer's declaration for Dangerous Goods, in duplicate, on the form appropriate to the danger involved, as required by the current IATA Dangerous Goods Regulations, must accompany every consignment of dangerous cargo, worded as follows: "I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and classified, packed, marked and labelled, and are in all respects in the proper condition for transport by air according to the applicable International and National Government Regulations."

[32] Subject to the preceding clauses, FWPNGltd shall not be liable to the Customer for loss of or damage to the Goods resulting from:

- (a) fire, water, explosion, theft, however arising;
- (b) any other cause, unless such loss or damage is proved to be due to the willful neglect or default of FWPNGltd's or its own servants.

[33] FWPNGltd shall not be liable in any circumstances for acts of negligence or the consequences thereof irrespective of whether those acts are performed by FWPNGltd, its employees, agents or sub-contractors and irrespective of whether those acts are of commission or omission on the part of FWPNGltd, its employees, agents or sub-contractors.

[34] FWPNGltd shall not be liable in any circumstances for loss of life or personal injury or loss or damage to any person or persons where such loss of life or personal injury or loss or damage is caused or contributed to by any Goods owned or controlled by the Customer.

[35] Without prejudice to the preceding clauses hereof, any claim by the Customer against FWPNGltd shall be made in writing and notified to FWPNGltd:

- (a) in the case of damage to Goods, within 14 days of delivery thereof;
- (b) in the case of delay in delivery or non-delivery, within 14 days of the date when the Goods should have been delivered; and
- (c) in any other case, within 14 days of the event giving rise to the claim.

Any claim not made and notified as aforesaid shall be deemed to be waived and absolutely barred. No claim of any kind shall be made against any servant or agent of FWPNGltd on any grounds whatsoever. No claim of any kind shall be made against any parent, subsidiary or associated company of FWPNGltd or against any forwarding agent employed by FWPNGltd or against any of their respective servants or agents on any grounds whatsoever. "**Claim**" shall include, but not be limited to, any action, proceedings or resort to arbitration or a court of law.

[36] (a) Except where FWPNGltd is instructed in writing to pack the Goods, the Customer warrants that all Goods have been properly and sufficiently packed and prepared for transit and shall indemnify FWPNGltd against any loss or damage which occurs by reason of the insufficiency of the packaging or preparation for transit of the Goods by the Customer, its servants or agents.

(b) In circumstances in which FWPNGltd has been requested by the Customer to pack Goods, FWPNGltd shall not be liable for any loss or damage whatsoever which occurs to the Goods even if any such loss or damage occurs when FWPNGltd is required to load or unload any liquids, substances or any commodities or products into bulk tanks, vessels, drums or containers whether or not any such packaging, loading or unloading takes place in transit, whilst the Goods are held in store or at any other time whilst the Goods are in the custody or possession of FWPNGltd.

(c) It is the responsibility of the Customer to ensure that any container, packaging or pallet which is delivered with the Goods and which is required to be returned is returned within the time stipulated and no later than five working days from the date of receipt by the Customer, its servants or agents. The Customer hereby indemnifies FWPNGltd for any loss or damage occurring to, or occasioned by, any container, packaging or pallet for which FWPNGltd may be liable.

[37] FWPNGltd shall have a general lien and a particular lien on any and all Goods or documents relating to any and all Goods in their possession for any and all sums due at any time from the Customer, and shall be entitled to sell or dispose of such Goods or documents at the expense of the Customer and apply the proceeds in or towards the payment of such sums on 28 days' notice in writing to the Customer notwithstanding the fact that the Goods or documents thereby sold or disposed of do not relate to the sum or sums due to FWPNGltd. Without limiting this clause 37, the Customer indemnifies FWPNGltd against all solicitor-client legal costs incurred by FWPNGltd for any reason in respect of these conditions and any contract hereunder, and the general and particular lien hereunder shall be available to cover all such costs incurred by FWPNGltd.

[38] FWPNGltd shall be entitled, at the expense of the Customer, to sell or dispose of:

(a) on 21 days' notice in writing to the Customer or, where despite reasonable efforts the Customer cannot be traced, after the Goods have been held by FWPNGltd for 90 days: all Goods which, in the opinion of FWPNGltd, cannot be delivered either because they are insufficiently or incorrectly addressed or because they are not collected or accepted by the consignee or for any other reason; and

(b) without notice: Perishable Goods (including animals) which are not taken up immediately on arrival or which are insufficiently or incorrectly addressed or marked or which in the opinion of FWPNGltd would be likely to perish in the course of the carriage, storage or handling.

[39] (a) Every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, deference and immunity of whatsoever nature applicable to FWPNGltd or to which FWPNGltd is entitled hereunder shall also be available and shall extend to protect:

- (i) FWPNGltd's parent, subsidiary or associated companies;
- (ii) FWPNGltd's sub-contractors;
- (iii) every servant or agent of FWPNGltd and of persons or organizations referred to in (i) and (ii) above;
- (iv) every other person (other than FWPNGltd) by whom the carriage or any part thereof is performed or undertaken; and
- (v) all persons who are or might be vicariously liable for the acts or omissions of any person falling within (i), (ii), (iii) and (iv) hereof (other than FWPNGltd) and for the purpose of this clause FWPNGltd is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and each of them, and all such persons and each of them shall, to this extent, be or be deemed to be parties to this contract.

(b) The Customer undertakes that no claim or allegation shall be made, whether by the Customer or any other person who is or may hereafter be interested in the Goods, against any person (other than FWPNGltd) by whom (whether as sub-contractor, principal, employer, servant, agent or otherwise) the carriage or any part thereof is performed or undertaken which imposes or attempts to impose upon such person any liability arising out of negligence on the part of such person and if such claim or allegation should nevertheless be made to indemnify FWPNGltd and the person against whom such claim or allegation is made against the consequences thereof. Without prejudice to the foregoing and for the purpose of this clause FWPNGltd is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and each of them, and all such persons and each of them shall, to this extent, be or be deemed to be parties to this contract.

[40] It shall be the responsibility of both the Customer and of the consignee at all times and in all circumstances to ensure that any container or containers or other packaging of the Goods and any pallet or pallets which are delivered with the Goods and which are required to be returned to the owner of the containers, packaging or pallets or the nominee of the owner are returned within the time required for such return by the owner or nominee and no later than five working days from the date of receipt. FWPNGltd accepts no liability for the loss, damage or delayed return of any containers, packaging or pallets whatsoever, which may come into or pass through the possession of FWPNGltd where FWPNGltd, the Customer or the consignee holds the containers, packaging or pallets as Lessee, Bailee, Licensee or by any other means whatsoever and the Customer and the consignee shall fully indemnify FWPNGltd for any damage occurring to any container, packaging or pallet for which FWPNGltd may be liable.

[41] Any certificate of a director or secretary of FWPNGltd for the time being or any other person properly authorized by FWPNGltd shall be conclusive evidence as to any matter so certified.

[42] All agreements between FWPNGltd and the Customer shall be governed by the law of the Independent State of Papua New Guinea and all disputes referred to the exclusive jurisdiction of the Papua New Guinea courts.

[43] These conditions shall not apply to the extent that they are inconsistent with the provisions of the *Trading Act 1949*.

[44] In performing its obligations under this contract, FWPNGltd shall follow the guidelines of the relevant freight network of which both parties are members. In the absence of such membership, FWPNGltd shall follow the guidelines and regulations of IFC8/WCA.

[45] FWPNGltd shall comply with applicable maritime law and United Nations regulations concerning shipping, logistics, cargo lien, and general shipping practices.

*** END OF DOCUMENT ***