

## Conditions of Storage

All services undertaken by the Company shall be subject to the following conditions.

### 1. Definitions

**Charges** means the Company's quoted charges for services, any alternative charges agreed by the Company in writing, any taxes or other government charges applicable to the services and any other amounts payable under the Contract or these conditions.

**Company** means Polarcold Stores Limited or any related company (as defined by the Companies Act 1993) which has entered into the contract with the owner and the officers, employees, agents and subcontractors of the Company.

**Conditions** means these conditions of storage as amended by the Company from time to time.

**Contract** means these conditions or any other written agreement which sets out the terms upon which the services are provided to the owner the owner and which shall include these conditions unless expressly agreed otherwise.

**Force Majeure Event** means anything outside the Company's reasonable control including fire, storm, flood, earthquake, lightning, explosion, accident, road or rail closures, rail derailment, wharf delays, war, terrorism, sabotage, epidemic, quarantine restriction, labour Company's dispute or shortage, act or omission of any third person or public authority.

**Goods** means the goods received from the owner or on the owner's behalf.

**Laws** means New Zealand laws, regulations, guidelines, codes, standards or policies that apply to the services.

**Owner** means the person contracting with the Company, whether as principal or as agent for another.

**PPSA** means the Personal Property Securities Act 1999. Terms defined in the PPSA have the same meaning where used in these conditions.

**Procedures** means the Company's procedures, policies, guidelines, codes and requirements

**Services** means all services provided by the Company in respect of the goods

**Subcontractor** means any person or entity engaged by the Company to provide services for the goods and any person who is an employee, agent or subcontractor of that person.

**Working Day** means any day between 0800 hours and 1630 hours which is not a Saturday, Sunday or public holiday under the Holidays Act 2003;

**Working Hour** means any hour during a working day;  
In the case of conflict between these conditions and any other terms of contract, the other terms of contract shall prevail.

### 2. The Company's responsibilities

2.1 The Company will:

- (a) provide the Services with all reasonable care, skill and diligence;
- (b) work in a co-operative manner with the Owner;
- (c) comply with all Laws;
- (d) ensure that its staff are trained to provide the Services in an efficient and productive manner and to at least the standard of a reasonable and prudent operator providing similar services.

- 2.2 The Company may change the premises from which it provides the Services at any time.
- 2.3 The Company may refuse to accept any Goods that are damaged or contaminated.
- 2.4 The Company relies on the details supplied by the Owner but does not admit their accuracy or completeness and any signature by a Company representative is only an acknowledgement of the number of items picked up or received by the Company.
- 2.5 The Services commence when the Company receives the Goods.
- 2.6 The Company gives no warranty or undertaking as to the method of stacking to be used by it, or as to the height or size of stacks, or the distance from the ceiling, walls or doors of the room or chamber, or the use of dunnage in the creation of stacks, nor that Goods will be segregated from goods of a different nature, whether belonging to the same owner or not.
- 2.7 The Company can:
  - (a) open and inspect the Goods at any time without notice to the Owner to determine their nature, condition, ownership or destination;
  - (b) carry, store, handle, remove, assemble, erect, pack, unpack, load, unload or consolidate the Goods with others;
  - (c) do anything appropriate including selling, disposing of or destroying Goods if the Goods appear to be deteriorating and are likely to become offensive; or if they are in or are about to enter a dangerous state and such action is necessary to avoid the threat of harm to persons or property;
  - (d) subcontract the whole or any part of its Service; and
  - (e) complete any documents required to comply with any Laws.
- 2.8 The Company contracts as agent and trustee for its employees, agents and subcontractors who also have the benefit of the contract with the Owner to the same extent as if they are parties to it.
- 3. **Owner's warranties**  
The Owner warrants:
  - (a) It is either the owner or the authorised agent of the owner of the goods and has authority to enter into the contract;
  - (b) It has fully and accurately described the Goods and their value;
  - (c) It will comply with all laws; and
  - (d) The Goods are fit to be carried and stored in accordance with the Contract in the condition and packed in the manner in which they are tendered for the Services.

#### 4. Owner's obligations

- 4.1 The Owner or its agent must:
- (a) provide the Company with all necessary documentation for the Services;
  - (b) comply with all applicable procedures and ensure that the Goods comply with all the Company's applicable procedures;
  - (c) if requested by the Company, do all things and execute all documents necessary or that the Company requires to give full effect to the Contract.
- 4.2 The Owner indemnifies the Company against any cost or liability the Company incurs, pays or has to pay in dealing with any claim against the Company for loss or damage to property or illness, injury or death, to the extent caused:
- (a) by the Goods or the Owner's breach of the contract;
  - (b) by the Owner's breach of any warranty; or
  - (c) by a negligent or unlawful act or omission or wilful misconduct of the Owner or any person acting for the Owner

and there is no need for the Company to suffer loss or damage before enforcing this right of indemnity.

- 4.3 The Owner must ensure that it and its employees, agents and contractors when on the Company's premises comply with all relevant site rules and policies and the reasonable instructions of Company personnel.
- 4.4 Subject to the terms of the Contract the Goods are and remain at all times at the Owner's risk and are and remain at all times the Owner's property.
- 4.5 The Company will not effect or maintain any insurance policies in respect of the Owner's goods.

#### 5. The Company's charges

- 5.1 The Company will invoice the Owner on a calendar month basis no later than 5 Working Days after the close of each calendar week. The Owner will pay each invoice on or before the 20th day of the month following the date of invoice, unless otherwise specified by the Company. Charges must be paid in full and without set off or deduction.
- 5.2 The Owner must pay the charges if any other person nominated to pay the charges doesn't do so.
- 5.3 The Owner must also pay:
- (a) The Company's cost to comply with any laws or requirements of any market, harbour, dock, railway, airline, shipping, excise, customs or warehouse authority not included in the Company's charges;
  - (b) any excise, customs duty or applicable tax or similar charge (including any fine or penalty) imposed by government, or by any regional or other authority;
  - (c) any costs, charges or disbursements incurred for any reason by the Company in performing the services (including any demurrage and detention costs arising other than as a result of the Company's default); and
  - (d) any other charges specified in the Contract.

- 5.4 The Company may at its sole discretion fix or impose any reasonable administration or special charges to cover the cost of addressing special requests by the Owner.
- 5.5 The Company's charges do not include goods and services tax unless expressly stated to do so, and such tax is payable in addition to any applicable charges.
- 5.6 If the Owner requires paper invoices to be posted, an administration charge may apply. There is no charge for the provision of electronic invoices or statements.
- 5.7 The Owner must examine each account invoice and notify the Company within seven (7) days of the date of such invoice of any alleged error(s). After such period, the invoice will be deemed for all purposes to be correct and no claim to the contrary may be brought against the Company.
- 5.8 If payment is not made in accordance with the terms of clause 5.1, the Company may in its sole discretion:
- (a) charge default interest at the rate of 5% over its normal bank overdraft interest rate from time to time (whether or not the Company's account is in overdraft at any material time), on any amount not paid by the due date, calculated from the due date of each invoice until the date the Company receives payment in full;
  - (b) charge the Owner all costs incurred by the Company in the collection of any overdue amount including, without limitation, all legal costs on a solicitor/client basis and any collection agency charges incurred by the Company, up until the date of payment;
  - (c) withdraw or change any terms of credit in place with the Owner; and
  - (d) suspend or refuse to deliver any further Goods to the Owner or perform any Services for the Owner until any default under the Contract has been remedied.

Any payment received by the Company will first be applied in reduction of interest and any costs incurred by the Company under this clause. The remaining balance of any such payment will then be applied to reduction of any other amounts outstanding to the Company

- 5.9 The charges will be reviewed by the Company on each anniversary of the commencement date of the Contract or the Company's provision of the services ("Review Dates"). The Company may by 30 days' written notice to the Owner change the charges. Unless agreed otherwise, the new charges will be effective from the applicable Review Date.
- 5.10 Notwithstanding anything else in the contract or these conditions, the Company may at any time give the Owner one month's written notice that the Company has reviewed the charges and new charges will apply where the Company considers that:
- (a) any changes in the Owner's work practices (including the volume, type, composition or nature of the Owner's goods or the services the Owner has requested) have materially affected the Company's costs of providing the Services;
  - (b) there is a material change in any of the components of the Company's costs of providing the Services; or

- (c) any new or increased tax, duty, charge or levy imposed by Government or by any other authority or any changes to the applicable law or any procedure or practice of any applicable authority or regulatory body that alters or varies the method or the Company's costs of providing the Services.
- 5.11 Any written quote which the Company gives in respect of the Services will remain open for a period of 30 days. The Company will not be bound by quotes unless they are in writing.
- 6. Limitations and exclusions on the Company's liability to the owner**
- 6.1 Subject to clauses 6.2 – 6.7 below, the Company will be liable for any damage to, loss of or discrepancy in the Owner's Goods where the damage, loss or discrepancy occurs whilst the Goods are in the Company's possession at the Company's premises and is caused directly by the Company's negligent act or omission. The maximum amount of the Company's liability shall be \$250,000 for any one loss or any series of losses arising out of the same event.
- 6.2 The Company will not be liable for damage, loss or discrepancy in the Owner's Goods where such damage, loss or discrepancy was:
- caused or contributed to by ordinary loss in the weight or volume, ordinary shrinkage or leakage, ordinary wear and tear, insufficient and/or unsuitable packing or any design, manufacturing or packaging fault or defect in the Goods; or
  - caused by leakage or discharge or cross contamination of any nature from any of the Owner's other Goods;
  - caused by delay, inherent vice, a force majeure event, electrical or mechanical derangement or because the Owner or the Owner's agent overloaded or incorrectly loaded the transport vehicle;
  - not reasonably apparent upon receipt of the Goods by the Company; or
  - not notified to the Company in writing by the Owner within 7 days after the Goods are despatched from the Company's premises.
- 6.3 The Company will not be liable for damage, loss or discrepancy in the Goods to the extent that the damage, loss or discrepancy is contributed to by the Owner's negligence or contributed to by the Owner's breach of any of the Owner's obligations under the Contract.
- 6.4 For any claim for damage to, loss of or discrepancy in the Goods, the value of any claim will be calculated at the Owner's manufactured or landed cost of the applicable Goods and excludes the value of all salvage obtained or reasonably obtainable.
- 6.5 Unless and to the extent that clause 6.1 applies, the Goods are at the Owner's risk at all times and the Company excludes all liability to the Owner or any other person for, and the Owner indemnifies the Company against any claim by any person about any loss, damage, misdelivery, delay, deterioration, contamination, the Company's failure to deliver the Goods or perform the Services, and whether arising because of breach of contract, bailment, tort including negligence (including negligent advice), the Company's wilful act or omission or breach of statutory duty.
- 6.6 To the maximum extent permitted by law, the Company excludes all liability to the Owner or any other person for any indirect, economic, special or consequential loss or damage including but not limited to loss of revenue, profit, production, loss of business, anticipated savings or claims by the Owner or the Owner's customer, even if the Company knows they are possible or otherwise foreseeable.
- 6.7 Where the Owner is acquiring the Services for business purposes, none of the rights or remedies provided under the Consumer Guarantees Act 1993 will apply. Furthermore, all other warranties and obligations on the Company's part implied by statute, general law, international convention or custom are expressly excluded to the fullest extent permitted by law.
- 7. Transportation of Goods**
- 7.1 Where the Company provides any carriage of goods services to the Owner, the Carriage of Goods Act (the "Act") and the general conditions of carriage of the Company's carrier will apply to those services. Where there is any inconsistency between the Contract, the general conditions of carriage of the carrier and the Act, the terms of the Contract and the general conditions of carriage (in that order) will prevail to the extent permitted by law.
- 7.2 Where the Goods are to be carried at limited carrier's risk, the Company will pay the Owner the cost price of the lost or damaged Goods to the maximum amount as provided in section 15(1) of the Act (including GST, where applicable) per unit of Goods that are lost or damaged.
- 7.3 Where the Goods are to be carried on owner's risk terms, the Company will pay no compensation if the goods are lost or damaged, unless the Company intentionally loses or damages them.
- 7.4 The provisions of Sections 18 to 20 of the Carriage of Goods Act 1979 shall not apply.
- 7.5 The Company and the Owner agree that the Act does not apply to the Company's warehousing, pick and pack or container vanning or devanning operations, and the Owner warrants that it will not make any allegation against the Company to the contrary.
- 8. Force Majeure**
- 8.1 If the Company cannot carry out an obligation under the Contract either in whole or in part because of a Force Majeure Event, the Company's obligations under the Contract will be suspended for the duration of the event or waived to the extent applicable.

## 9. Lien

9.1 The Company shall have a general and particular lien over all Goods and documents relating to the Goods in which the owner have an interest, and which at any time and for any reason come into the Company's possession or the possession of the Company's agents or subcontractors, for all sums that are owed to the Company by the Owner, whether or not overdue for payment and whether or not the Goods in the Company's possession are those to which the debt relates. The lien claimed by this clause is additional to and not in substitution for any other lien right that may be available to the Company at common law, and is not to be interpreted as abrogating the Company's common law rights in any way. The Company reserves the right to elect, where necessary, whether to rely on the lien rights conferred by this clause 9.1 or any rights available to the Company at common law.

## 10. Personal Property Securities Act 1999

- 10.1 The Owner grants to the Company a security interest ("Security Interest") in the Goods and all other personal property of the Owner from time to time in the Company's possession ("Property") as security for the payment of all amounts due or which become due on any account to the Company by the Owner or any other person interested in the Property.
- 10.2 On or at any time after the Company becomes entitled to terminate the Contract (whether the Company has terminated or not):
- (a) the Security Interest will become immediately enforceable;
  - (b) all amounts then due and unpaid to the Company by the Owner will, without notice (where the law permits), become immediately due and payable and the Owner will immediately pay such amounts; and/or
  - (c) the Company may enforce the Security Interest by exercising rights which are exercisable after the Security Interest becomes enforceable.
- 10.3 After the Security Interest becomes enforceable, the Company (in addition to any powers granted at law or otherwise), to the maximum extent permitted by law, have the power to do anything in respect of the Property that the Owner could do. Without limitation of those powers, the Company may store the Property (at the Owner's risk and expense), open any package and sell all or any of the Property as the Company thinks fit (including on a deferred payment or vendor finance basis).
- 10.4 The Owner undertakes that it will not change its name without notifying the Company in writing of the proposed name change and the new name at least seven days before the change takes effect.
- 10.5 The rights conferred on the Company as a chargeholder by law are in addition to the rights conferred by the Contract and, to the extent permitted by law, may be exercised by the Company.
- 10.6 The Owner waives its rights to receive a copy of any verification statement in relation to the Security Interest and agrees, to the extent permitted by law, that as between itself and the Company:
- (a) sections 114(1)(a), 133 and 134 of the PPSA will not apply;

(b) the Owner will have none of the rights referred to in sections 116, 120(2), 121, 125, 129 and 131 of the PPSA; and

(c) where the Company has rights in addition to, or existing separately from, those in Part 9 of the PPSA, those rights will continue to apply and, in particular, will not be limited by section 109 of the PPSA.

10.7 The Owner will, whenever requested by the Company and at the Owner's cost, do or cause to be done anything for more satisfactorily protecting the Property and Security Interest and priorities provided for in these conditions and/or for assisting in the execution or exercise by the Company of any right.

## 11. Claims

11.1 Any action against the Company in respect of a claim for loss or damage to Goods will be absolutely barred unless proceedings are brought and served on the Company within six months from the date when the Goods were delivered (or collected) or should have been delivered (or collected), as the case may be.

## 12. Dispute resolution

12.1 If a dispute arises out of or about the Contract (Dispute), a party must comply with this clause 12 before starting arbitration or court proceedings (except proceedings for interlocutory relief). A party claiming a Dispute has arisen must give the other party notice setting out details of the Dispute. During the 14 days after a notice is given under this clause (or longer period if the parties to the Dispute agree in writing), each party must make reasonable efforts to resolve the Dispute amicably by good faith discussions between the parties' Contract representatives and if necessary senior management.

12.2 If the parties cannot resolve the Dispute within that period, they must refer the Dispute to a mediator for mediation under the terms of LEADR New Zealand Incorporated, if one of them requests.

12.3 If the parties to the Dispute cannot agree on a mediator within seven days after a request under clause 12.2, the chairman of LEADR New Zealand Incorporated or the chairman's nominee will appoint a mediator. Each party to a Dispute must pay its own costs of complying with this clause and must equally pay the costs of any mediator.

12.4 A party to a Dispute may terminate the dispute resolution process by giving notice to each other after it has complied with clauses 12.1-12.3.

12.5 If a party to a Dispute breaches clauses 12.1 – 12.3, the other party does not have to comply with those clauses in relation to the Dispute.

## 13. Termination

13.1 The Company may terminate any Contract or the Services at any time by giving the Owner 7 days' written notice.

13.2 The Owner agrees to make arrangements to collect all Goods held by the Company on the Owner's behalf on or before the date of expiry or termination of any Contract or the Services, failing which the Company shall be authorised to pack, load and deliver all Goods held on the Owner's behalf at the Company's standard rates, to the Owner. The Owner shall make payment for any packing, loading and delivery in accordance with this clause within 14 days of the date of invoice.

**14. Other matters which affect the Contract**

14.1 If a condition or part of a condition is unenforceable, it must be severed from and does not affect the rest of the Contract.

14.2 The Company is not bound by any waiver, discharge or release of a condition or any agreement which changes the Contract, unless it is in writing and signed by or for the Company.

14.3 The contract records the entire understanding relating to the matters dealt with in the contract and the owner does not rely on any other representations, warranties or statements regarding the nature, characteristic or quality of the services provided by the Company.

14.4 The contract prevails over the terms and conditions in any document provided or used by the owner or the sender, the receiver and any other person having an interest in the goods and purporting to have contractual effect.

14.5 The Company may amend these conditions from time to time without notice. The conditions applicable to the services are the conditions current at the time at which the goods are accepted by the Company.

14.6 The owner authorises the Company to collect any information the Company considers relevant to assessing the owner's creditworthiness or financial position. The owner also authorises the Company to supply any information the Company obtains in relation to providing services to the owner for any purpose associated with the Company's operations or marketing. Any information the Company obtains may be disclosed to any of the Company's related companies.

14.7 Neither party will disclose to any person any information concerning the contract and any subject matter to which it relates (except as may be required by law or the rules of any stock exchange) without the prior written approval of the other party.

14.8 A party must not make any public announcement about the Contract without the approval of the other party, including as to the content and form of the announcement.

14.9 Nothing in the contract creates or evidences any partnership, joint-venture, agency or employer/employee relationship between the owner and the Company.

14.10 A reference to any law includes any statutory modification, substitution or re-enactment of it.

14.11 The laws of New Zealand apply to the Contract and the owner must bring any proceedings against the Company in a court in New Zealand.

Company: \_\_\_\_\_

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Date: \_\_\_\_\_

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Effective: 8 May 2015