

SPARK GLOBAL LOGISTICS' TERMS OF TRADE

This agreement sets out the terms under which Spark Global Logistics NZ Ltd NZBN 9429052495045 (**Spark Global Logistics, we, us, our**) provides services to you or the Spark Global Logistics which you represent (the **Client, you, your**).

You will be taken to have accepted these terms and conditions if you sign these terms and conditions or otherwise indicate your assent, or if you order, accept or pay for any services provided by Spark Global Logistics after receiving or becoming aware of these terms.

1 PROPOSAL

- (a) These terms will apply to all the Client's dealings with Spark Global Logistics, including being incorporated in all agreements, quotations or orders under which Spark Global Logistics is to provide services to the Client (each a **Proposal**) together with any additional terms included in such Proposal (provided such additional terms are recorded in writing).
- (b) In the event of any inconsistency between these terms and conditions and any Proposal the clauses of these terms and conditions will prevail to the extent of such inconsistency, except that any "Special Conditions" (being terms set out and described as such in a Proposal) will prevail over the other terms of this agreement to the extent of any inconsistency.
- (c) A Proposal shall be valid as an offer to provide Services for thirty (30) days from the Date of Issue. A Proposal shall become a binding Contract from the moment the Client accepts the Proposal.

2 SERVICES

In consideration for the payment of the Fees, Spark Global Logistics will provide the Client with services set out in a Proposal (**Services**).

Unless otherwise agreed, Spark Global Logistics may, in its discretion:

- (a) not commence work on any Services until the Client has paid any Fees or deposit payable in respect of such Services; and
- (b) withhold delivery of Services until the Client has paid the invoice in respect of such Services.

3 DELIVERY METHODS AND SUBCONTRACTING

- (a) Spark Global Logistics may carry the Goods or have the Goods carried or on-forwarded or provide the Services:
 - (i) by any method or mode of transport which Spark Global Logistics in its absolute discretion deems fit and notwithstanding any instructions (written or oral) that the Goods be carried by any particular method or in any particular way; and
 - (ii) by any subcontractor or agent and Spark Global Logistics is authorised by the Client to contract either in its own name or in the Client's name with any subcontractor and any such contract may be made on any terms, including terms which exclude or limit the subcontractor's liability in respect of the Goods and the Services.
- (b) Each subcontractor and agent engaged by Spark Global Logistics to carry the Goods shall be entitled to the benefit of these terms and conditions as if the Client had directly entered into an agreement containing these terms and conditions with the subcontractor or agent in place of Spark Global Logistics.

4 FREIGHT, OTHER CHARGES AND CHANGES

- (a) Spark Global Logistics reserves the right to increase the Fees set out in a Proposal to reflect the rates current from time to time by weight, measurement or value of the Goods. The Spark Global Logistics may at any time and from time to time re-weigh, re-measure or revalue the Goods and charge additional Fees accordingly.
- (b) If Spark Global Logistics incurs any additional costs throughout the shipping process including but not limited to customs charges, quarantine charges, packing, fumigation, documentation, additional labour, transportation or charges for waiting times, such costs will be payable by the Client immediately upon receiving an invoice for such costs.
- (c) The Client must pay additional charges for changes to Services or Tonnage requested by Client (whether in writing or verbally) which are outside the scope set out in the relevant Proposal (**Changes**). Unless otherwise agreed:
 - (i) Changes will be charged on a time and materials basis, at Spark Global Logistics' standard hourly rates; and
 - (ii) Spark Global Logistics may at its discretion extend or modify any delivery schedule or deadlines for the Services as may be reasonably required by such Changes.

5 PAYMENT

5.1 FEES

The Client must pay to Spark Global Logistics Fees in the amounts, at the times and using the payment methods set out in the Proposal or as otherwise agreed.

5.2 INVOICES

Unless otherwise agreed:

- (a) if Spark Global Logistics issues an invoice to the Client, payment must be made by the time(s) specified on such invoice; and
- (b) in all other circumstances, the Client must pay for all goods and services within 2 days of receiving an invoice for amounts payable.

5.3 LATE PAYMENT

If the Client fails to pay any amounts due to the Spark Global Logistics under an invoice by the specified due date, the Spark Global Logistics retains the right, without limiting any other rights under this Agreement, to charge the Client interest at a rate of 10% per annum on the outstanding amount. However, before applying this interest, the Spark Global Logistics will provide the Client with a written notice giving an additional 7 days to complete the payment. If payment is still not received by the end of this 7-day grace period, interest will accrue from the expiration of that period until the date the full payment is received by Spark Global Logistics.

5.4 EXPENSES

Any third party costs (excluding Spark Global Logistics' direct subcontractors) incurred by Spark Global Logistics in the course of performing the Services may be billed to the Client, unless specifically otherwise provided for in the Proposal.

5.5 GST

Unless otherwise indicated, amounts stated in a Proposal do not include GST. In relation to any GST payable for a taxable supply by Spark Global Logistics, the Client must pay the GST subject to Spark Global Logistics providing a tax invoice.

5.6 CARD SURCHARGES

Spark Global Logistics reserves the right to charge credit card surcharges in the event payments are made using a credit, debit or charge card (including Visa, MasterCard or American Express).

5.7 LIEN

All Goods supplied by the Client to Spark Global Logistics will be subject to a general lien for any moneys payable by the Client under this agreement. Without limiting any of Spark Global Logistics' other rights under this agreement, if any amounts have been outstanding for a period of 26 weeks, Spark Global Logistics will give the Client 28 days' written notice of its intention to sell any or all of the Goods by public auction or, if that is not reasonably practicable, by a private arrangement and apply the net proceeds in satisfaction of the amount due.

6 TIMING AND ESTIMATED DELIVERY DATES

- (a) The Client acknowledges and agrees that the Estimated Delivery Date, and any other schedules the parties may agree on in respect of the Services (**Schedules**) are estimates only.
- (b) Spark Global Logistics will use its best efforts to meet these Schedules, however these are subject to change if unforeseen complexities or Force Majeure Events (as that term is defined in clause 18(a)) arise and Spark Global Logistics will not be liable for being unable to meet any Schedules. In these cases, Spark Global Logistics will use its best efforts to minimise the impact of such changes.
- (c) Spark Global Logistics reserves the right to revise the Schedules in the event that the delay is caused by the Client's failure to meet its obligations under this agreement.

7 PROPERTY OWNERSHIP

The Client warrants that:

- (a) the Client is the owner of any Goods or is the authorised agent of the owner of the Goods; and
- (b) the Client is the owner or has obtained necessary permissions from the owners of the properties located at the Pick-up Address and/or Delivery Address or other address nominated by the Client for pick-up or delivery (**Premises**) for the Services to be performed at the Premises.

Spark Global Logistics may require the Client to produce evidence that the Client is compliant with this clause 7 prior to commencing any Services.

8 COLLECTION, LOADING, UNLOADING AND DELIVERY OF GOODS

8.1 TONNAGE

- (a) The Client warrants that the Goods do not exceed the Tonnage specified in a Proposal; and
- (b) The Client acknowledges and agrees that additional charges will apply if the Goods exceed the Tonnage specified in a Proposal.

8.2 DANGEROUS GOODS, UNBALANCED CONTAINERS

- (a) The Client warrants that:
 - (i) unless otherwise agreed in writing, the Goods do not include any firearms or any items that are dangerous, corrosive, highly combustible, explosive, noxious or likely to attract pests (**Dangerous Goods**); and
 - (ii) the Goods are not loaded into a container in an unbalanced way causing the container to be unsafe, dangerous or not in compliance with the relevant laws (**Unbalanced Container**).

8.3 NATURE OF GOODS AND COMPLIANCE

The Client warrants that it has complied with all laws, regulations, codes and standards relating to the nature, packaging, labelling or carriage of the Goods and that the Goods are packed in a manner adequate to withstand the ordinary risks of carriage having regard to their nature.

8.4 INDEMNITY FOR BREACH

The Client agrees to indemnify the Spark Global Logistics for any losses, claims, expenses, damages and liabilities (including any fines, taxes, fees or costs) which arise out of or in connection with the Tonnage being over that specified in a Proposal, any Unbalanced Container, any Dangerous Goods or a breach of a warranty contained in clause 8.3.

8.5 ACCESS AND ALLOCATED LOADING HOURS

- (a) On the Pick Up Date or on the date when Spark Global Logistics is delivering the Goods to the Client (as agreed by the parties), the Client, or the Client's authorised representative must:
- (i) be present at the Premises and, if reasonably requested by Spark Global Logistics, remain there while the Services are being carried out;
 - (ii) provide access to all personnel, equipment and vehicles reasonably required to carry out the Services;
 - (iii) ensure that the Premises are safe for the Services to be performed, which includes but is not limited to access to the Premises being dry enough to enable the loading or unloading of a container onto a truck;
 - (iv) ensure that all the Goods are loaded or unloaded during the Allocated Loading Hours; and
 - (v) if the Client breaches this clause 8.5, or if Spark Global Logistics determines, acting reasonably, that it is unsafe to load or unload the Goods, Spark Global Logistics will be entitled at its option to:
 - (A) cancel the Services and charge the Client for the costs already incurred by Spark Global Logistics in providing the Services; and/or
 - (B) store the Goods at a warehouse, in which case the Client will have to bear the costs of such storage; and/or
 - (C) unload the Goods at the Premises at the Client's risk.

8.6 DELIVERY

Where Spark Global Logistics is authorised to deliver the Goods at the Premises, Spark Global Logistics shall be presumed to have successfully delivered the Goods if Spark Global Logistics or its subcontractor or agent obtains from any person at the Premises a receipt or signed delivery docket for the Goods.

8.7 COLLECTION BY CLIENT

Where the Client is responsible for collection of Goods at a nominated destination and fails to do so within the time specified by Spark Global Logistics, the Client shall pay to Spark Global Logistics such storage costs as Spark Global Logistics may specify.

9 RIGHT TO INSPECT

Spark Global Logistics shall be entitled to open any container in which the Goods are placed or packaged to inspect the Goods for the purpose of determining the nature of the contents, ownership or destination of the Goods where a consignment note or other identifying document or mark is lost, missing destroyed or defaced, or where Spark Global Logistics has reason to believe the Goods are Dangerous Goods.

10 STORAGE

Where, as part of the Services, Spark Global Logistics provides storage services to the Client, the following terms will apply.

- (a) Unless the storage fees are set out in a Proposal, the additional charges that will apply for the storage services must be agreed between the parties in writing.
- (b) If a Force Majeure Event (as that term is defined in clause 18(a)) occurs, Spark Global Logistics will be entitled to store the Goods in a storage facility at the Client's cost.
- (c) Spark Global Logistics may move the Goods from one storage facility to another at its discretion at no extra cost to the Client. Spark Global Logistics will notify the Client, if it moves the Goods to another storage facility within a reasonable time of the proposed move date.
- (d) Upon the Client's request, Spark Global Logistics may grant the Client access to inspect the stored Goods. Additional charges may apply for the access and inspection of Spark Global Logistics' storage facility.
- (e) The Client must remove the Goods from the storage facility in which they are stored within 28 days of Spark Global Logistics issuing the Client a written direction.

11 DAMAGE

- (a) While Spark Global Logistics takes great care when providing the Services, freight services can and sometimes do occasion damage to goods being transported and other property. Such damage is inherent in moving goods that were not designed to be moved. Where damage to the Client's Goods and/or Premises occurs, Spark Global Logistics will not be liable for such damage.
- (b) For the avoidance of doubt, where the Client incurs costs repairing any damage to the Goods occasioned during the provision of the Services, whether by employing third parties to conduct repairs or otherwise, Spark Global Logistics will not be liable for such costs.

12 INSURANCE

- (a) The Client acknowledges that any insurances Spark Global Logistics may not cover the Client's Goods and/or Premises and Spark Global Logistics will have no obligation to insure the Client's Goods and/or Premises under this agreement.
- (b) The Client is strongly encouraged to take out adequate insurance to cover all potential damage that could arise from their receipt of the Services.
- (c) The Client must not do or permit anything to be done which may make Spark Global Logistics' Insurances invalid or able to be cancelled or which may increase Spark Global Logistics' insurance premiums.

13 ACCREDITATIONS

Unless otherwise agreed, Spark Global Logistics retains the right to describe the Services and reproduce, publish and display any deliverables in Spark Global Logistics' portfolios and websites, and other media for the purposes of recognition of service excellence or professional advancement, and to be credited with the provision of the Services in connection with such uses.

14 CONFIDENTIALITY

Except as contemplated by this agreement or a Proposal, a party must not and must not permit any of its officers, employees, agents, subcontractors or related companies to use or to disclose to any person any confidential information disclosed to it by the other party without its prior written consent.

This clause does not apply to:

- (a) information which is generally available to the public (other than as a result of a breach of these terms or another obligation of confidence);
- (b) information required to be disclosed by any law; or
- (c) information disclosed by Spark Global Logistics to its subcontractors, employees or agents for the purposes of performing the Services or its obligations under this agreement.

15 WARRANTIES

- (a) To the maximum extent permitted by applicable law, all express or implied representations and warranties not expressly stated in this agreement are excluded.
- (b) Nothing in this agreement is intended to limit the operation of the *Consumer Guarantees Act 1993 (CGL)*. Under the CGL, you may be entitled to certain remedies (like a refund, replacement or repair) if there is a failure with the goods or services we provide.

16 LIABILITY

16.1 LIABILITY

- (a) To the maximum extent permitted by law and subject to clause 16.1(b), the total liability of each party in respect of loss or damage sustained by the other party in connection with this agreement is limited to the amount paid by the Client to the Spark Global Logistics under the most recent Proposal.
- (b) Clause 16.1(a) does not apply to the Client's liability in respect of loss or damage sustained by the Spark Global Logistics arising from the Client's breach of:
 - (i) Clause 4
 - (ii) clause 7; or
 - (iii) Clause 8.3.

16.2 CONSEQUENTIAL LOSS

To the maximum extent permitted by law, neither party will be liable for any incidental, special or consequential loss or damages, or damages for loss of data, business or business opportunity, goodwill, anticipated savings, profits or revenue in connection with this agreement or any goods or services provided by the Spark Global Logistics, except:

- (a) in relation to a party's liability for fraud, personal injury, death or loss or damage to tangible property; or
- (b) to the extent this liability cannot be excluded under the *Consumer Guarantees Act 1993 (Cth)* or by law.

17 TERMINATION

17.1 TERMINATION FOR CONVENIENCE

Either party may terminate this agreement for convenience by providing at least 30 Business Days' notice to the other party.

17.2 TERMINATION FOR BREACH

- (a) Either party may terminate this agreement immediately by written notice if there has been a Breach of this agreement.
- (b) A "**Breach**" of this agreement means:
 - (i) a party considers the other party is in breach of this agreement and notifies that other party;

- (ii) the other party is given 10 Business Days to rectify the breach; and
 - (iii) the breach has not been rectified within 10 Business Days or another period agreed between the parties in writing.
- (c) Spark Global Logistics may also terminate this Agreement immediately by written notice if:
- (i) the Client becomes insolvent or is subject to any form of external administration;
 - (ii) there is persistent or repeated non-payment by the Client; or
 - (iii) Spark reasonably believes that continuing to provide services may cause damage to its business, reputation, or operations.

17.3 EFFECT OF TERMINATION

Upon termination of this agreement, each party must:

- (a) Spark Global Logistics will refund any amounts paid in advance by the Client for goods or services not provided as at the effective date of termination, excluding any non-refundable deposits or expenses already incurred by Spark Global Logistics;
- (b) comply with all obligations that are by their nature intended to survive the end of this agreement, including without limitation clauses 5; 5.7; 8.4; 11; 14; 15; 15(b); 18; 20 and 21.
- (c) The Client must pay Spark Global Logistics for all services performed up to the date of termination, including any reasonable demobilisation, administrative, or disengagement cost;
- (d) if the Client terminates this agreement in accordance with clause 17.1, the Client must also pay Spark Global Logistics' genuine pre-estimated losses resulting from the early termination, including any non-recoverable third-party costs or disbursements incurred by Spark Global Logistics in anticipation of continuing the Agreement.

17.4 SURVIVAL

Any clause that by its nature would reasonably be expected to be performed after the termination or expiry of this agreement or any Proposal will survive and be enforceable after such termination or expiry.

18 DISPUTE RESOLUTION

- (a) If an issue between the parties arises under this agreement that cannot be resolved day-to-day, the parties will make genuine efforts in good faith to participate cooperatively in mediation, at equal shared expense of the parties.
- (b) The parties will conduct mediation through the New Zealand Dispute Resolution Centre (**NZDRC**) and in accordance with the NZDRC's Guidelines for Commercial Mediation (as current at the time of the dispute).
- (c) The parties will follow the mediator's recommendations on the extent of mediation required, and when to stop mediation if the issue cannot be resolved.
- (d) If mediation does not resolve the issue, the parties must:
 - (i) if they haven't already done so, engage independent legal representation at their own expense to understand the strength of their arguments; and
 - (ii) based on that advice, if settlement is not achieved, participate in arbitration (or other dispute resolution mechanism agreed in mediation) through the NZDRC at equal shared expense.
- (e) The parties will follow the binding outcome of arbitration (or other agreed mechanism).
- (f) Either party may at any time during this process make an offer for settlement. The parties acknowledge and agree it is in their best interests to properly consider all genuine

settlement offers. The parties will use best endeavours to avoid litigation and reach a prompt settlement.

- (g) The process in this clause does not apply where a party requires an urgent injunction.

19 FORCE MAJEURE

- (a) If a party (**Affected Party**) becomes unable, wholly or in part, to carry out an obligation under this agreement or a Proposal (other than an obligation to pay money) due to Force Majeure Event, the Affected Party must give to the other party prompt written notice of:
- (i) reasonable details of the Force Majeure Event; and
 - (ii) so far as is known, the probable extent to which the Affected Party will be unable to perform or be delayed in performing its obligation.
- (b) Subject to compliance with clause 19(a), the relevant obligation will be suspended during the Force Majeure Event to the extent that it is affected by the Force Majeure Event.
- (c) The Affected Party must use its best endeavours to overcome or remove the Force Majeure Event as quickly as possible.
- (d) For the purposes of this agreement, a '**Force Majeure Event**' means any:
- (i) act of God, lightning strike, meteor strike, earthquake, storm, flood, landslide, explosion or fire;
 - (ii) strikes or other industrial action outside of the control of either party; and
 - (iii) war, terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic or pandemic; or
 - (iv) any decision of a government authority in relation to COVID-19, or any threat of COVID-19 beyond the reasonable control of the Affected Party, to the extent it affects the Affected Party's ability to perform its obligations.
- but only where such events or circumstances:
- (v) are beyond the reasonable control of the Affected Party;
 - (vi) are not caused or contributed to in whole or in part by a breach by the affected party of this agreement,
- and the following will be taken not to be a Force Majeure Event:
- (vii) any failure or inability to pay any Fees; and
 - (viii) any act or omission of a Client (except where that act or omission was caused by a Force Majeure Event).

20 NOTICES

- (a) A notice or other communication to a party under this agreement must be:
- (i) in writing and in English; and
 - (ii) delivered via email to the other party, to the email address specified in this agreement, or if no email address is specified in this agreement, then the email address most regularly used by the parties to correspond regarding the subject matter of this agreement as at the date of this agreement (**Email Address**). The parties may update their Email Address by notice to the other party.
- (b) Unless the party sending the notice knows or reasonably ought to suspect that an email was not delivered to the other party's Email Address, notice will be taken to be given:
- (i) 24 hours after the email was sent, unless that falls on a Saturday, Sunday or a public holiday in the state or territory whose laws govern this agreement, in which case the notice will be taken to be given on the next occurring business day in that state or territory; or

- (ii) when replied to by the other party,
whichever is earlier.

21 GENERAL

21.1 GOVERNING LAW AND JURISDICTION

This agreement is governed by the law applying in New Zealand. Each party irrevocably submits to the exclusive jurisdiction of the courts of New Zealand and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

21.2 AMENDMENTS

This agreement may only be amended in accordance with a written agreement between the parties.

21.3 WAIVER

No party to this agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

21.4 SEVERANCE

Any term of this agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity and enforceability of the remainder of this agreement is not limited or otherwise affected.

21.5 JOINT AND SEVERAL LIABILITY

An obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally.

21.6 ASSIGNMENT

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior written consent of the other party.

21.7 COUNTERPARTS

This agreement may be executed in any number of counterparts. Each counterpart constitutes an original of this agreement and all together constitute one agreement.

21.8 COSTS

Except as otherwise provided in this agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this agreement.

21.9 ENTIRE AGREEMENT

This agreement embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of this agreement.

21.10 INTERPRETATION

- (a) **(singular and plural)** words in the singular includes the plural (and vice versa);
- (b) **(gender)** words indicating a gender includes the corresponding words of any other gender;
- (c) **(defined terms)** if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

- (d) **(person)** a reference to “person” or “you” includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;
- (e) **(party)** a reference to a party includes that party’s executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) **(this agreement)** a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
- (g) **(document)** a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (h) **(headings)** headings and words in bold type are for convenience only and do not affect interpretation;
- (i) **(includes)** the word “includes” and similar words in any form is not a word of limitation;
- (j) **(adverse interpretation)** no provision of this agreement will be interpreted adversely to a party because that party was responsible for the preparation of this agreement or that provision; and
- (k) **(currency)** a reference to \$, or “dollar”, is to New Zealand currency, unless otherwise agreed in writing.