

## QUBE PORTS NZ LIMITED - STANDARD TERMS AND CONDITIONS

### INTRODUCTION

These standard terms form the basis of our agreement with you and apply to all Services except as separately and expressly agreed by us in writing. Our agreement with you will also include any applicable Services Letter.

Unless we have expressly agreed in writing with you not to do so without your consent, we may amend these standard terms at any time. When we do this we will provide you with a copy of the amended standard terms. The amendments will vary our agreement with you and will apply after the date we provide the amended terms to you. Your use of the Services after that date will constitute your acceptance of the amendments.

### INTERPRETATION

In this agreement, unless the context requires otherwise:

**Charges** means our charges (exclusive of GST, unless stated otherwise) for the Services, as set out in the Services Letter(s), and which may include fixed charges, usage charges, additional fees and/or one-off fees.

**Dangerous Goods** means any articles or substances which are, or may become, a risk to health, safety, property or the environment and includes, without limitation, articles or substances so classified, specified or listed in any applicable laws, regulations or international conventions relating to dangerous or hazardous goods.

**QUBE PORTS NZ, we and us** means QUBE PORTS NZ Limited and includes its directors, officers, employees, agents and subcontractors.

**Port** means the port that we use to provide the Services to you and to other customers.

**Port Operator** means any entity with whom we have entered into an agreement or arrangement (directly or indirectly) for the use of the Port.

**Payment Date** means 10 Working Days following the date of each invoice we send to you or as otherwise agreed in writing.

**PPSA** means the Personal Property Securities Act 1999.

**Property** means all Your Cargo and all other goods or other property of yours in our possession as part of our provision of services to you in accordance with this agreement and any Services Letter or other correspondence between the relevant parties detailing any such Property from time to time.

**Service** means all or part of a service which we have agreed to provide to you and **Services** has a corresponding meaning.

**Services Letter** means a letter or other correspondence from us to you describing a Service, the Charges and any additional terms applying to that Service and which evidences our final written agreement in respect of a Service.

**Working Day** means a day on which registered banks are open for business in Tauranga other than Saturdays, Sundays and applicable public holidays.

**You** means the person or entity who enters into an agreement with us for the performance of Services, whether as principal or as agent for another, and where you are an agent, includes both you and the principal and in all cases includes also your employees, contractors and agents.

**Your Cargo** means the cargo which is the subject of the Services, and includes any carton, container, pallet or other item used to pack or consolidate the cargo.

In interpreting this agreement:

- (a) references to either party include its respective successors in title and permitted assigns; and
- (b) a reference to any date which is not a Working Day, will be deemed to be a reference to the next Working Day.

Headings in this agreement do not affect their interpretation.

**1. QUOTATIONS**

Any quotation provided by us is an invitation to treat and does not constitute a contractual offer. We may vary or withdraw a quote at any time.

**2. COMMENCEMENT OF SERVICES**

We will begin providing Services to you at the time that we together agree in writing or, if no time is agreed, within a reasonable time.

**3. OUR COMMITMENT TO YOU**

We will:

- (a) ourselves or through our related entities, provide the Services to you with reasonable care and skill. We will use all reasonable efforts to ensure that the Services are reliable at all times although we do not guarantee that the Services will be continuous or fault free;
- (b) ensure that all work that we perform in connection with the provision of the Services is carried out by competent and suitably qualified personnel and in a professional manner; and
- (c) endeavour to remedy any fault or deficiency with the Service relative to the standard in (a) above which is caused by us within a reasonable time and at our own cost.

**4. YOUR COMMITMENT TO US**

You agree:

- (a) not to interfere with our provision of the Services;
- (b) to indemnify us against any loss or damage that occurs to any equipment owned or used by us whether or not used in the provision of the Services where such loss or damage is caused or contributed to by you, or by any person acting on your behalf (including any vessel owner);
- (c) to ensure that all information you provide us is accurate, complete and provided in a timely manner so as not to impede or delay the provision of the Services;
- (d) to provide us with all information that we reasonably require to carry out the Services or which might adversely affect the provision of the Services by us or others (including any Port Operator or user);
- (e) that you will obtain any third party authorisation, license, permit or consent that we may reasonably require in connection with the provision of the Services; and
- (f) to follow our instructions about the use of the Services and ensure that everyone who uses, or benefits from, our provision of Services to you also meets your responsibilities when using the Services. You agree to keep us protected against any legal action taken against us and to meet any losses we may incur as a result of such use of the Services. You are responsible if anyone else, whether authorised by you or not, uses or misuses the Services that we provide to you.
- (g) that you will comply in all respects with all health and safety rules, codes and procedures notified by us or, where applicable, by any Port Operator, and with all instructions given to you regarding or in any way related to health and safety. You may be required to attend site induction or other safety meetings or briefings, or site training sessions. You agree that failure to comply with this clause will result in you or Your Cargo being removed from any site which is under our control or that of a Port Operator, and being barred from any future presence on such site.

**5. CHARGES, INVOICING AND PAYMENT**

5.1 Our Charges for the Services and the basis of those Charges are set out in our Services Letter or otherwise as notified to you in writing from time to time. Except where we agree in writing not to amend our Charges, these may be amended by us upon notification to you.

5.2 We will invoice you for the Services at intervals applicable to the Service.

5.3 You agree to pay each invoice on or before the Payment Date without set-off, counterclaim or deduction.

5.4 If any invoiced amount remains unpaid after the Payment Date we may charge you interest on the outstanding amount at the rate of 5% above our bank overdraft rate (as set from time to time), whether or not our account is in overdraft at any given time. Interest will be calculated daily from the Payment Date until the date of payment in full. You agree to pay any reasonable expenses (including solicitor and own client costs) we incur in collecting any money that you owe to us or in exercising any of our other legal rights. You must advise us when you change your address.

5.5 Acceptance by us of a part payment shall not amount to a waiver of our right to be paid the full amount due.

5.6 All recharged items will be subject to an administration fee.

## 6. DISPUTED ACCOUNTS

- 6.1 If you believe that an invoice contains a mistake you must contact us as soon as possible and we will investigate. This does not relieve you of the obligation to pay the invoice.
- 6.2 If we agree that there is a mistake, we will correct the invoice as soon as reasonably possible. If the mistake led to an overpayment by you, we will refund or credit to you the overpaid sum as soon as is possible.

## 7. OUR EQUIPMENT

Ownership of our equipment remains with us at all times.

## 8. YOUR CARGO

- 8.1 Our express agreement is required for the provision of any Services in respect of the following items, none of which may be tendered to us without a full declaration being made as to their nature and all matters relevant to the provision of the Services and, where Dangerous Goods are involved, full compliance with clause 8.2 below: Documents, goods in prepaid wallets, satchels or envelopes, appliances with electrical components, computers, jewellery, pictures or picture frames, appliances with electrical components, computers, jewellery, pictures or picture frames, porcelain china, ceramic items, crystal, marble or enamel goods, goods the production, sale, import or export of which is prohibited by laws, dangerous goods, glass (including bottles and their contents), windscreens, car panels, precious stones or metals, currency or negotiable instruments, produce, liquids, perishable goods, floor or wall tiles, fragile goods, regulated waste, cigarettes or goods under bond. Where we agree to provide Services in respect of any of the listed items, such Services will be provided entirely at your risk in all respects, and we shall have no liability whatsoever and howsoever caused (including through our negligence) for any loss, damage, expense, liability or otherwise in relation to or connected with the same. You agree to indemnify us against any loss, liability, damage or expense that we may incur as a result of your breach of any of the provisions of this clause 8.
- 8.2 Where we agree to accept Dangerous Goods, they must be packed, labelled and provided to us in accordance with all laws and regulations applicable to the carriage or handling of such goods and in accordance with any procedures, guidelines or codes of practice specified by us, including the provision by you of all required paperwork and information regarding the goods.
- 8.3 You agree to follow our reasonable instructions about modifications that you may need to make to Your Cargo so that you can use the Services.
- 8.4 Notwithstanding anything else in this agreement, if Your Cargo causes an interruption or delay in the operation of a Service then you will, if we ask you to, pay us the reasonable costs of restoring that Service, or to compensate us for the delay.

## 9. INSURANCE

You are responsible for insuring the Cargo. We will not insure the Cargo on your behalf. You must also insure against public liability risks to the sum of \$10 million and must produce to us evidence of such insurance upon our request.

## 10. PORT OPERATORS AND OTHER SUPPLIERS

We have certain obligations towards Port Operators, agents and suppliers. Those persons (and their officers, employees, contractors and agents) will not be liable to you or anyone else for any claims, costs, damages, losses or other liabilities of any kind arising in any way from the Services or from your use of those Services and the Port, including (without limitation) your access to and use of any Port. This clause creates a right that other Port Operators, agents and suppliers can enforce, whether as a defence or otherwise.

## 11. SUSPENSION

We may suspend provision of the Services at any time if you breach this agreement, including where you have failed to pay any amount by the Payment Date, or where the nature or the stowage of any Cargo poses an unacceptable risk to any person. We will not be liable to you for any direct or indirect claims, losses, costs, damages, expenses or other liabilities incurred or sustained and which arise directly or indirectly as the result of any suspension of this agreement by us in accordance with this clause 11.

## 12. TERMINATION

- 12.1 Except where we agree in writing to a specific fixed service term, we may at any time give you 20 Working Days' notice in writing of our intention to stop providing any Service or terminate our agreement with you.
- 12.2 Notwithstanding clause 12.1 we may terminate our agreement with you immediately where:

- (a) you commit a material breach of the agreement which is incapable of being rectified;
- (b) you commit a material breach which is not rectified within 10 Working Days of written notice of that breach having been given to you by us;
- (c) in any 12 month period we have given you three notices of material breach of the agreement;
- (d) a receiver, administrator or manager of any or all of your assets is appointed;
- (e) you or any of your director(s) or principal(s) go into liquidation, bankruptcy or receivership (or it appears that any of these events is likely to happen); or
- (f) you are removed from the Companies Register.

### 13. CONSEQUENCES OF TERMINATION

13.1 If this agreement is terminated, then without prejudice to any other rights we may have:

- (a) we will discontinue the Services;
- (b) clauses 4-7, 9, 10, 14-27 (inclusive), together with other provisions of this agreement which are required to give effect to those clauses, will remain in effect; and
- (c) subject to any lien or other security interest to which we are entitled, each party must immediately return to the other any information, Cargo or any other item which is in its possession and which belongs to the other party.

13.2 We will not be liable to you for any direct or indirect claims, losses, costs, damages, expenses or other liabilities incurred or sustained and which arise directly or indirectly as the result of the termination of this agreement by us in accordance with clause 12.

### 14. LIEN

We are entitled to a general and particular lien over all your Cargo, any documents relating to your Cargo and any other property belonging to you that is or that comes into our possession for all sums payable to us whether or not any such sums is overdue for payment and whether or not the goods in our 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 that may be available to us at common law, and is not to be interpreted as abrogating our common law rights in any way. We reserve the right to elect, where necessary, whether to rely on the lien rights conferred by this clause 14 or any rights available to us at common law.

### 15. CONFIDENTIALITY AND PUBLICITY

15.1 Each party agrees not to reveal any information concerning this agreement or information provided under it to any third party, other than:

- (a) as required to perform its obligations or exercise its rights under this agreement;
- (b) as required by law;
- (c) to give effect to the purpose for which the information was provided;
- (d) where the information is already in the public domain (but not where it is in the public domain as a result of a breach of this clause); or
- (e) with the other party's written consent.

15.2 Each party agrees not to issue any press release or public announcement concerning this agreement without the other party's prior written approval.

### 16. INTELLECTUAL PROPERTY RIGHTS

All rights to intellectual property relating to our Services (including any improvements or changes) belong to us or to our licensors or third party suppliers, and are retained by us when we provide the Services to you. These intellectual property rights include, but are not limited to, all copyright, trade mark and design rights relating to the Services.

### 17. LIABILITY

17.1 Where Part 5 of the Contracts and Commercial Law Act 2017 applies to any Service, except where clause 8 applies, such Service shall be carried out at limited carrier's risk and our liability shall be limited accordingly.

17.2 You acknowledge that you are acquiring any Services for the purposes of a business in terms of section 43(2) of the Consumer Guarantees Act 1993 and that you will not assert or attempt to assert any rights or claims against us under the provisions of that Act and that the Consumer Guarantees Act 1993 does not apply to the Services. You further acknowledge that as between the parties:

- (a) it is fair and reasonable that the parties are not bound by section 9, section 12A or section 13 of the Fair Trading Act 1986 in accordance with section 5D of that Act; and
  - (b) all other warranties and obligations on our part implied by statute, general law, international convention or custom are expressly excluded to the fullest extent permitted by law.
- 17.3 Any liability that we may have to you in respect of any claim for damage, loss or injury in respect of any Services shall be limited, at our sole option, to the refunding of the original cost of the individual Service that gave rise to the claim, the re-supply of the Service or the cost of re-supplying the Service. Under no circumstances whatsoever will we be liable to you in tort (including negligence), contract or otherwise for any economic loss, loss of profit, loss of savings, loss of anticipated profit or savings, or for any indirect, special or consequential loss or damage however caused, or for delay, demurrage, losses arising from negligent advice, and whether any claimed loss arises in relation to the supply or non-supply of any Services, any breach by us of this agreement or otherwise.
- 17.4 You will indemnify us against all loss, damage, expense or liability incurred by us (including without limitation all sums paid to compromise or settle claims, proceedings and actions out of court) or brought by any person in connection with:
- (a) any use by you of the Services other than in the manner contemplated by this agreement; or
  - (b) any failure by you to meet your obligations under this agreement.
  - (c) any breach by you of your obligations under clauses 8.1 or 8.2.
- 17.5 You will reimburse us on demand for any expenses, disbursements and legal costs incurred by us in the enforcement of any of our rights under this agreement (including any reasonable solicitor's fees and debt collection agency fees) where our enforcement of those rights is as a result of your non-compliance with any of your obligations under this agreement.
- 17.6 You acknowledge that you have not relied on any representation by us as to the fitness for purpose, suitability or features of any Service, except where such representations are recorded in this agreement.
- 17.7 Apart from the warranties expressly given to you in this agreement, all other warranties, express or implied, are excluded (to the extent permitted by law).
- 17.8 We have no liability to you for any loss of or damage to goods if it is caused by ordinary loss in weight or volume, shrinkage, ordinary leakage, ordinary wear and tear, insufficient and/or unsuitable packing or preparation, delay, inherent vice, a force majeure event, electrical or mechanical derangement. We will also have no liability to you in respect of any advice that we give you or, where we undertake vessel management services, for the direct or indirect consequences of using information provided to us by you or others which is found to be inaccurate or incomplete.
- 18. DISPUTE RESOLUTION**
- 18.1 If any dispute arises out of this agreement, neither party is to commence proceedings relating to the dispute (except where urgent interlocutory relief is sought) unless that party has first complied with this clause 18.
- 18.2 A party claiming a dispute has arisen is to give written notice to the other party specifying the nature of the dispute. On receipt of that notice, the parties will use all reasonable endeavours to resolve the dispute by discussion, negotiation or other informal means.
- 18.3 If the parties do not resolve the dispute within 10 Working Days of the receipt of the notice then either party can, by writing to the other, require that the dispute be referred to mediation. The mediation must be conducted by a mediator agreed by the parties, or failing agreement between the parties, the current President of the New Zealand Law Society will select the mediator and determine the mediator's fee.
- 18.4 Unless the parties agree otherwise, the mediator's fee and any other costs associated with the mediation will be shared equally between the parties unless the mediator determines otherwise, but the parties will be responsible for their own costs in preparing for and participating in the mediation (such as travel and legal representation costs).
- 19. PERSONAL PROPERTY SECURITIES ACT 1999**
- 19.1 Capitalised terms in this clause 19 that are otherwise not defined in this agreement have the meaning given to them in the PPSA.

- 19.2 You grant to us a Security Interest in all Property as security for the payment of all amounts due, or which become due, on any account to us by you or any other person interested in the Property.
- 19.3 On or at any time after we become entitled to terminate this agreement (whether we have terminated or not):
- (a) the Security Interest will become immediately enforceable;
  - (b) all amounts then due and unpaid to us by you will, without notice (where the law permits), become immediately due and payable and you will immediately pay such amounts; and/or
  - (c) we may enforce the Security Interest by exercising rights which are exercisable after the Security Interest becomes enforceable.
- 19.4 After the Security Interest becomes enforceable, we (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 you could do. Without limitation to those powers, we may store the Property (at your risk and expense), open any package and sell all or any of the Property as we think fit (including on a deferred payment or vendor finance basis).
- 19.5 You undertake that you will not change your name without notifying us in writing of the proposed name change and the new name at least seven days before the change takes effect.
- 19.6 The rights conferred on us 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 us.
- 19.7 You waive your rights to receive a copy of any verification statement in relation to the Security Interest and agree, to the extent permitted by law, that as between you and us:
- (a) sections 114(1)(a), 133 and 134 of the PPSA will not apply;
  - (b) you will have none of the rights referred to in sections 116, 120(2), 121, 125, 129 and 131 of the PPSA; and
  - (c) where we have rights in addition to, or existing separately from, those in Part 9 of the PPSA, those rights will continue to apply.
- 19.8 You will, whenever requested by us and at your cost, do or cause to be done, anything for more satisfactorily protecting the Property and Security Interest and priorities provided for in this agreement and/or for assisting in the execution or exercise by us of any right.

## 20. CLAIMS

- 20.1 Claims must be notified to us within 24 hours of you becoming aware of any loss or damage and you must provide to us all information necessary for us to be able to investigate the same, including access to the Cargo by us or our appointed surveyor. Where notice is not given to us within the 24 hour period, we shall have no liability in respect of any loss or damage and no action may be brought against us in respect of the same.
- 20.2 You have a duty to mitigate your loss by taking such steps by way of sale, repair, dumping or otherwise as is appropriate to the nature of the goods. Where we accept a claim, no payment will be made until the loss has been mitigated and the final claim value (after deduction of salvage, where obtained) has been calculated.
- 20.3 Any claim against us shall be absolutely barred unless the dispute resolution process set out in this agreement has been completed without resolution and proceedings brought against us within six months from the date of the Services to which the claim relates.
- 20.4 The provisions of sections 274 to 281 of the Contracts and Commercial Law Act 2017 shall not apply.

## 21. NOTICES

- 21.1 Any notice given pursuant to this agreement must be in writing and be delivered, or sent by post or email to the other party's contact address, as set out below.

By post:

QUBE PORTS NZ Limited  
PO Box 4169  
Mt Maunganui

By email: [Commercial@QUBE.co.nz](mailto:Commercial@QUBE.co.nz)

You:

As set out in the relevant Services Letter.

21.2 Any such notice will be deemed to be validly given:

- (a) in the case of delivery, when received;
- (b) in the case of posting, on the second Working Day following posting; or
- (c) in the case of email, on receipt of delivery confirmation.

**22. ENTIRE AGREEMENT, VARIATION AND CONFLICT**

22.1 This agreement and any applicable Services Letter contain all of the terms, representations and warranties made between the parties and supersedes all prior discussions and agreements covering the subject matter of this agreement.

22.2 No variation or waiver of any provision of this agreement shall be recognised or binding on us unless it is in writing and signed by our authorised representative.

22.3 If there is any inconsistency between the terms contained in this agreement and in the Services Letter(s), the terms in the Services Letter(s) will take precedence.

**23. ASSIGNMENT**

23.1 You may not assign all or any of your rights or obligations under this agreement without our written consent.

23.2 We may assign our rights and obligations under this agreement without your consent. After notice of assignment has been given to you we shall have no further liabilities or obligations and shall be fully discharged from the same.

**24. FORCE MAJEURE**

Notwithstanding any other provision in this agreement, we will not be liable for failing to meet any of our obligations under this agreement where that the failure was caused by an act of God or other circumstance beyond our reasonable control including strikes or other labour disturbance. In those circumstances, we will give you such advance notice as is reasonably possible and will endeavour to ensure that suspensions or restrictions of Services take place at times of least inconvenience to you.

**25. NON-WAIVER**

If we delay or fail to enforce any of our rights or remedies under this agreement, this will not constitute a waiver by us of that or any other right or remedy available to us

**26. TERMS SEPARATELY BINDING**

Each term of this agreement is separately binding. If for any reason either party cannot rely on any term, all other terms remain binding.

**27. JURISDICTION**

This agreement is governed by the laws of New Zealand. Subject to clause 18 the parties agree to submit to the non-exclusive jurisdiction of the courts of New Zealand.