

TIMARU CONTAINER TERMINAL LIMITED TERMS AND CONDITIONS

THE PROVISION OF SERVICES BY TIMARU CONTAINER TERMINAL LIMITED WILL BE UPON THE FOLLOWING TERMS AND CONDITIONS:

ANY USER TRANSACTING SUCH BUSINESS OR ENTERING ON TO TIMARU CONTAINER TERMINAL LIMITED'S PREMISES ARE DEEMED TO HAVE AGREED TO AND TO BE BOUND BY THESE TERMS AND CONDITIONS.

"User" means any person for whom TIMARU CONTAINER TERMINAL LIMITED provides or is to provide services hereunder or any employees, subcontractor or a representative of any one or more of the foregoing who requests TIMARU CONTAINER TERMINAL LIMITED to provide services, and the obligations and liabilities under these conditions of all or any such persons, if there be more than one, will be joint and several.

1 SERVICES TO BE PROVIDED BY TIMARU CONTAINER TERMINAL LIMITED

- 1.1 TIMARU CONTAINER TERMINAL LIMITED will provide berthage for the User's vessels at Timaru Container Terminal.
- 1.2 TIMARU CONTAINER TERMINAL LIMITED will provide services for the loading and/or discharging of vessels for the handling of cargo and containers for the transport of cargo and containers between the wharf and the marshalling area and all other services referred to in the Price Schedule provided for in clause 2.
- 1.3 Berthage will be subject to the absolute right of TIMARU CONTAINER TERMINAL LIMITED to require a vessel berthed at any wharf to be moved or relocated to another berth in the Port, or to vacate the allocated berth and to moor in the stream or harbour as directed and any such requirement will be carried out by the Master with the assistance of a pilot where necessary.
- 1.4 TIMARU CONTAINER TERMINAL LIMITED will use its best endeavours to provide a berth for the User's vessel on a date convenient to the User's sailing schedules but TIMARU CONTAINER TERMINAL LIMITED will be under no liability for the consequences direct or indirect (if any), if for any reason TIMARU CONTAINER TERMINAL LIMITED is unable to provide berthage as requested by the User.
- 1.5 Where TIMARU CONTAINER TERMINAL LIMITED provides tug, towage, line boat or similar services, such services will be subject to the UK Standard Conditions for Towage and Other Services (Revised 1986) as amended from time to time ("Towage Conditions") except that the expression "whilst towing" as defined in the Towage Conditions shall also include any time where the tug is approaching the Hirer's vessel for the purpose of towing, whether or not the tug is in a position to receive orders direct from the Hirer's vessel to commence pushing, holding, moving, escorting, or guiding the vessel or to pick up ropes or lines.
- 1.6 The User is deemed to be familiar with the Towage Conditions, however, TIMARU CONTAINER TERMINAL LIMITED will make the Towage Conditions available to the User on request.

2 PRICE SCHEDULE

Unless otherwise agreed in writing, the charges for services provided will be TIMARU CONTAINER TERMINAL LIMITED's Price Schedule of charges in force at the time of actual provision of the service. Particulars of such Price Schedule are available upon request. Payment for all services shall fall due at the time such services are provided.

3 PAYMENT FOR SERVICES AND PROVISION OF INFORMATION

- 3.1 Unless otherwise agreed in writing prior to the provision of the services requested, the terms of payment for services will be cash in full prior to the time of departure from the Port of the vessels to which services have been provided or, where services have not been provided in relation to a vessel, will be cash in full within seven days of the date of TIMARU CONTAINER TERMINAL LIMITED's invoice.
- 3.2 The User acknowledges that the personal information provided or obtained in support of any customer account will be held by TIMARU CONTAINER TERMINAL LIMITED and will be used for the following purposes:
 - (a) to determine eligibility and terms for the provision of credit to the User;
 - (b) supplying the User with goods and/or services (including information relating thereto);
 - (c) enforcing debts and other legal obligations owing to TIMARU CONTAINER TERMINAL LIMITED by the User; and
 - (d) disclosure to third parties (including credit agencies) associated with any of the foregoing purposes.

- 3.3 TIMARU CONTAINER TERMINAL LIMITED reserves the right to pass any account onto debt collection agencies at the cost of the customer following a written warning of the same.
- 3.4 The User will ensure that sufficient information is provided to TIMARU CONTAINER TERMINAL LIMITED to enable accurate and timely invoicing, including but not limited to: vessel details, consignee and shipper details, cargo movements, and cargo particulars and commodity details. This information must be provided to TIMARU CONTAINER TERMINAL LIMITED prior to, or within 24 hours after vessel departure.
- 3.5 The User originally instructing TIMARU CONTAINER TERMINAL LIMITED shall be primarily responsible for payment of all charges. Where there is a prior arrangement between TIMARU CONTAINER TERMINAL LIMITED and the User to on occasion undertake special invoicing requirements, including but not limited to on-charging other persons and/or split invoicing, these requirements must be communicated to TIMARU CONTAINER TERMINAL LIMITED prior to the vessel sailing. Where re-invoicing is required due to late, incorrect or insufficient communications of these requirements by the User, an administration fee will be applied up to 30 days following original invoice date, after which re-charges and other alterations will not be undertaken by TIMARU CONTAINER TERMINAL LIMITED and it shall be the responsibility of the User to pay all charges.
- 3.6 In the case of a dispute or query in respect of an invoiced amount, the User must contact TIMARU CONTAINER TERMINAL LIMITED within 30 days of the date of the invoice which gave rise to the dispute. The User may not withhold payment on an invoice in full due to a disputed portion of an invoice. The User may reasonably withhold the portion of the invoice in dispute until resolved, but must make payment for the balance of the invoice in accordance with clause 3 of these terms.

4 LIEN

- 4.1 In addition to any other rights of lien or retention, TIMARU CONTAINER TERMINAL LIMITED shall be entitled to have a lien on any cargo passing through or stored in TIMARU CONTAINER TERMINAL LIMITED's wharves or premises and any documents relating thereto for all sums payable to TIMARU CONTAINER TERMINAL LIMITED for provision of services and for the cost of recovering the same and for that purpose shall have the right to sell the goods by public auction or private treaty without notice to the User. If on sale the goods or proceeds fail to cover the amount due and the costs incurred then TIMARU CONTAINER TERMINAL LIMITED shall be entitled to recover the deficit from the User out of all cargo and containers presented to TIMARU CONTAINER TERMINAL LIMITED by the User in the future.
- 4.2 TIMARU CONTAINER TERMINAL LIMITED shall be entitled to retain possession of and prohibit from leaving its wharves any vessel until payment of all charges in respect of such cargo or vessel, or any previous cargo or vessel owned by the same person has been paid. For the purposes of this clause, cargo or vessels owned by a receiver of the owner or an associated person of the owner (as defined in Section OD8(3) of the Income Tax Act 2004) shall be deemed to be owned by the User.
- 4.3 As between TIMARU CONTAINER TERMINAL LIMITED and the persons liable to pay charges TIMARU CONTAINER TERMINAL LIMITED's lien and right to detain goods or vessels at law or hereunder shall apply notwithstanding that such goods may have left or never have been in TIMARU CONTAINER TERMINAL LIMITED's possession.

5 OBLIGATIONS AS TO CARGO

- 5.1 The User will ensure that all cargo and containers presented to TIMARU CONTAINER TERMINAL LIMITED are properly packed and labelled, are in every way safe for carriage by sea or road or rail, do not exceed their rated gross capacity, are in a fit and proper condition to be handled or otherwise dealt with in the normal course of business by the equipment and operating procedures usually employed by TIMARU CONTAINER TERMINAL LIMITED and comply with all applicable laws, orders, regulations or other requirements of a New Zealand government and all other local or government authorities whatsoever, and all requirements by any bills of lading applicable to any of the cargo and containers presented to TIMARU CONTAINER TERMINAL LIMITED.
- 5.2 The User will comply with any rules and directions made from time to time by TIMARU CONTAINER TERMINAL LIMITED in respect of the handling of dangerous, hazardous, and noxious goods and will also comply with any statute, statutory regulations or other legal requirement that may be in force whether prescribed by the New Zealand government or any international agency or institution, and also with rules, requirements or procedures set by owners of cargo as appropriate and in addition comply with all such procedures and rules as are considered current good operating practice.
- 5.3 The User will comply with the documentation and procedures in respect of all operations as required from time to time by TIMARU CONTAINER TERMINAL LIMITED.
- 5.4 The User undertakes not to arrive at the berth or wharf gate with any goods which are of a dangerous, inflammable, radioactive, or damaging nature without previously giving written notice of the nature of such goods to TIMARU CONTAINER TERMINAL LIMITED and marking the cargo and the container or other

covering on the outside as required by any laws or regulations which may be applicable indicating they require special care by TIMARU CONTAINER TERMINAL LIMITED.

- 5.5 If TIMARU CONTAINER TERMINAL LIMITED does not have knowledge of the arrival of goods of an inflammable, explosive, dangerous nature or character, TIMARU CONTAINER TERMINAL LIMITED shall not be liable and such goods can be destroyed or removed or rendered harmless without compensation to the User and the User shall indemnify TIMARU CONTAINER TERMINAL LIMITED against all loss, damage or expense arising out of such cargo being tendered for services to TIMARU CONTAINER TERMINAL LIMITED.
- 5.6 If any User fails to remove any containers or cargo from the wharves within the time allotted for free storage as detailed in TIMARU CONTAINER TERMINAL LIMITED's applicable Price Schedule then TIMARU CONTAINER TERMINAL LIMITED may at its sole and unfettered discretion handle, remove, store or otherwise deal with such containers and cargo at the entire risk and expense of the User. If such containers or cargo are unclaimed during a reasonable time, or whenever in TIMARU CONTAINER TERMINAL LIMITED's opinion the cargo will become deteriorated, decayed or worthless, TIMARU CONTAINER TERMINAL LIMITED may at its discretion and without notice to the User and without prejudice to any other rights which they may have hereunder and without any responsibility attaching to them, sell, abandon, or otherwise dispose of such cargo or containers solely at the risk and expense of the User.

6 LIABILITY REGIME

- 6.1 **Liabilities of TIMARU CONTAINER TERMINAL LIMITED:** TIMARU CONTAINER TERMINAL LIMITED shall not be liable for any losses, damages or other injuries suffered by any person (all of which are referred to as loss) except as follows:
- 6.1.1 if the loss was caused by the negligence of TIMARU CONTAINER TERMINAL LIMITED, its employees, agents or subcontractors (the proof of which negligence shall be on the claimant);
- 6.1.2 any liability shall be limited to physical loss and there shall be no liability for special, consequential or other loss;
- 6.1.3 such liability shall be subject to the provisions of clauses 6.2 (maximum liabilities of TIMARU CONTAINER TERMINAL LIMITED), 6.4 (exclusions of liability) and 6.6 (notification of claims).
- 6.1.4 all amounts of loss and damage referred to in this clause 6 including those referred to in the liability table are in New Zealand dollars and are GST inclusive.
- 6.2 **Maximum liabilities of TIMARU CONTAINER TERMINAL LIMITED:**
Subject to clause 7.2:
- 6.2.1 the maximum liability of TIMARU CONTAINER TERMINAL LIMITED to the User or any person claiming through the User ("maximum liability"); and
- 6.2.2 the maximum aggregate liability of all claims for loss or damage by whomsoever made arising out of any one event ("maximum aggregate liability"); and
- 6.2.3 the excess of any claim (which sum will be deducted from the amount payable by TIMARU CONTAINER TERMINAL LIMITED for any loss or damage) shall be in accordance with the liability table set out below:

LIABILITY TABLE

Loss/Damage	Maximum Liability	Maximum Aggregate Liability	Excess
User's vessels and equipment	Lesser of reasonable cost of repair or market value	\$200,000	\$1,000
Containers	Lesser of reasonable cost of repair or market value or:	\$100,000	\$300
	(i) refrigerated \$7,500	\$100,000	\$300
	(ii) insulated \$4,000	\$100,000	\$300
	(iii) other \$1,000	\$100,000	\$300
Cargo	(i) in a closed or sealed container \$5,000	\$75,000	\$300
	(ii) on board a vessel \$750 per manifest tonne or part thereof	\$50,000	\$300
	(iii) elsewhere \$1,000 per tonne or part thereof	\$50,000	\$300
Ancillary equipment	Lesser of reasonable cost of repair or market value of \$7,000	\$40,000	\$300

- 6.2.4 **Overall limit of liability NZ\$2,000,000.00:** TIMARU CONTAINER TERMINAL LIMITED will in no circumstances whatsoever be liable to pay any costs, charges, expenses, damages, compensation or any other moneys whatsoever for any injury or loss caused in any manner whatsoever to any person or property in respect of the sum claimed or the aggregate of sums claimed under whatsoever cause of action or entitlement including the negligence of TIMARU CONTAINER TERMINAL LIMITED, its employees, agents or subcontractors in respect of any one of the inter connected series of events, beyond the maximum aggregate sum of NZ\$2,000,000.00.

- 6.3 **User's liability:** The User will be liable for loss or damage caused to TIMARU CONTAINER TERMINAL LIMITED where such loss or damage is caused by the breach of these terms or the

negligence of the User, its employees, agents or subcontractors.

6.3.1 The User shall be liable for loss or damage caused to TIMARU CONTAINER TERMINAL LIMITED's container cranes where such loss or damage is caused by the negligence or fault of the User, its employees, agents or subcontractors, up to a maximum of \$NZ15,000,000 per crane.

6.3.2 TIMARU CONTAINER TERMINAL LIMITED shall bear the first \$NZ500 of any claim.

6.4 **Exclusions of liability:** Notwithstanding clauses 6.2 and 6.3 TIMARU CONTAINER TERMINAL LIMITED will not be liable in any circumstances whatsoever:

6.4.1 where the Towage Conditions so provide;

6.4.2 where any loss, damage, expense, accident or injury to any property or person has been caused wholly or principally by the failure of the User to comply with any of the conditions of this Agreement;

6.4.3 where any loss, damage, expense, accident or injury to any property or person has arisen or resulted from unseaworthiness caused by want of due diligence on the part of the User to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and all other parts of the ship in which cargo is carried fit and safe for their reception, carriage and preservation in accordance with the provisions of the International Hague Rules;

6.4.4 for any demurrage, delay or other costs of transportation of any kind howsoever caused including the negligence of TIMARU CONTAINER TERMINAL LIMITED, its employees, agents or subcontractors, but TIMARU CONTAINER TERMINAL LIMITED will make every reasonable endeavour by liaison with the User, and its carriers and others to achieve the orderly transportation of cargo and containers to and from Timaru Container Terminal;

6.4.5 to pay any costs, charges, expenses, damages, compensation or any other moneys whatsoever for any injury or loss arising out of a failure by any person, whether or not an agent, employee or subcontractor of TIMARU CONTAINER TERMINAL LIMITED to properly and adequately secure any cargo or container on any rail or road vehicle, and on any other form of transport;

6.4.6 for any costs, charges, expenses, damages, compensation or any other moneys whatsoever for any injury or loss arising from any failure to inspect containers, any failure to note or report damage thereto, (whether apparent damage or not) or any failure to take steps necessary to protect the contents of any container and TIMARU CONTAINER TERMINAL LIMITED undertakes no responsibility to inspect containers for damage or to report any damage to the User, but will make every reasonable endeavour to refer all apparent damage to containers to the User and to take any appropriate step necessary to protect the contents of any container noted to be damaged;

6.4.7 for indirect, special or consequential loss or damage howsoever caused including the negligence of TIMARU CONTAINER TERMINAL LIMITED, its employees, agents or subcontractors.

6.5 **User indemnifies TIMARU CONTAINER TERMINAL LIMITED where liability excluded or liability is in excess of limits:** The User hereby holds TIMARU CONTAINER TERMINAL LIMITED, its employees, agents and subcontractors, free and indemnified from and against all claims, suits, costs, charges, expenses (including all legal and Court expenses), damages, compensation or other moneys whatsoever ("the amount") in respect of all loss, damage, expense, accident or injury (whether direct, indirect, special or consequential) to the extent of the liability of TIMARU CONTAINER TERMINAL LIMITED, its directors, employees, agents and subcontractors for the amount that has been excluded under clause 6.5 or any other clause hereof and to the extent that the amount exceeds the maximum liability, maximum aggregate liability or overall limit on liability under clause 6.2.

6.6 **Notification of claims:**

6.6.1 For loss of or damage to cargo, TIMARU CONTAINER TERMINAL LIMITED would be liable only if notice in writing of any loss or damage is given to TIMARU CONTAINER TERMINAL LIMITED by the User at the time of the removal of the goods to the custody of the person entitled to delivery thereof, or, if the loss or damage be not apparent, within seven days of such time, and such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading issued on such cargo.

6.6.2 For all other loss, damage, expense, or accident or injury TIMARU CONTAINER TERMINAL LIMITED will be liable only if notice in writing is given to TIMARU CONTAINER TERMINAL LIMITED by the User within 30 days after the date when the loss, damage, expense, accident or injury occurred.

6.6.3 If no such notice is given within the above period any claim will be deemed waived and absolutely barred.

6.7 **Benefit of bill of lading and establishment of bills of lading:**

6.7.1 Without prejudice in any matter to the provisions and limitations contained in this Agreement, the User will incorporate in its bills of lading or other contracts of carriage to be issued on its cargo, or cargo carried or to be carried on any of the User's vessels a clause to the effect that TIMARU

CONTAINER TERMINAL LIMITED, its employees, agents and subcontractors will have the benefit of the provisions of any bill of lading or other contract of carriage and any limitation of liability provided therein and TIMARU CONTAINER TERMINAL LIMITED for itself, its employees, agents and subcontractors hereby accepts such benefit.

- 6.7.2 Where cargo or container is received by TIMARU CONTAINER TERMINAL LIMITED prior to the establishment of a bill of lading or other contract of carriage the benefit of the intended bill of lading or contract of carriage will apply in all respects (and in particular as set out in subclause 6.7.1 above) and will bind all persons interested in the cargo or container as though such bill of lading or contract of carriage had then been established.

6.8 User responsible for safe management:

- 6.8.1 Nothing in these conditions contained or implied will affect the User's responsibility or duty to exercise due diligence for the safe navigation and proper management of the vessel including, without prejudice to the generality of the foregoing, stowage, trim and stability and operations of berthing, mooring, unmooring and unberthing. Any pilot on a vessel shall be the servant of the master of the vessel while carrying out pilotage duties.
- 6.8.2 The User warrants to TIMARU CONTAINER TERMINAL LIMITED that it will at all times comply with its duties and obligations under the Acts and that it will not do or omit to do anything which breaches it or is likely to breach any duty or obligation under such Acts which is likely to result in enforcement proceedings or other penalties.
- 6.8.3 The User undertakes and warrants to TIMARU CONTAINER TERMINAL LIMITED that it will comply fully with all directions, requirements and instructions notified to it by TIMARU CONTAINER TERMINAL LIMITED, in respect of health and safety or in respect of any duties or obligations of any person under the Acts. The User acknowledges that this may include producing, on demand, evidence that it is satisfying its obligations under the said Acts.
- 6.8.4 If at any time the User becomes aware that it is in breach, or is likely to be in breach, of any such duty or obligation, the User agrees to immediately notify TIMARU CONTAINER TERMINAL LIMITED and follow all directions to avoid, remedy, or mitigate any such breach or anticipated breach.
- 6.8.5 The User will ensure that their agents, subcontractors and employees are aware of these conditions and will abide by them.

6.9 User environmental warranties:

- 6.9.1 The User warrants to TIMARU CONTAINER TERMINAL LIMITED that it will not do or omit to do anything or to use materials, substances or processes which breaches or is likely to breach any duty or obligation of the User or TIMARU CONTAINER TERMINAL LIMITED under the Resource Management Act 1991 and/or the Maritime Transport Act 1994 (including subsequent amendments) or which is likely to result in the issue of an abatement order or enforcement proceedings under the Resource Management Act 1991.
- 6.9.2 If at any time the User becomes aware that it is in breach, or is likely to be in breach, of any of the warranties in clause 6.9 the User agrees to immediately notify TIMARU CONTAINER TERMINAL LIMITED and follow all directions to avoid, remedy, or mitigate any such breach or anticipated breach.
- 6.9.3 The User will ensure that their agents, subcontractors and employees are aware of these conditions and will abide by them.
- 6.9.4 The User warrants to TIMARU CONTAINER TERMINAL LIMITED that it will comply with the Timaru District Plan and the Timaru Regional Plan (where applicable), coastal and all other relevant plans, regulations and/or statutes with respect to noise.
- 6.9.5 The User warrants to TIMARU CONTAINER TERMINAL LIMITED that it will comply with all other relevant statutes, bylaws, local authority and other regulations and statutes including but not limited to regulations and statutes relating to sound environmental practices in the handling of dangerous, hazardous or noxious goods.
- 6.9.6 The User agrees to indemnify TIMARU CONTAINER TERMINAL LIMITED from and against all losses, costs, expenses, claims, demands, liabilities, damages, actions and proceedings suffered by or commenced against TIMARU CONTAINER TERMINAL LIMITED which arise out of or in connection with the failure of the User, its agents, subcontractors or employees to comply with the provisions of clauses 6.8 and 6.9.
- 6.9.7 The User acknowledges that the provisions of clauses 6.8 and 6.9 shall not cast on TIMARU CONTAINER TERMINAL LIMITED any duty to supervise, check, or issue directions to the User and that the User is solely responsible for ensuring that the relevant laws are complied with.

- 6.10 **Notification of damage:** TIMARU CONTAINER TERMINAL LIMITED undertakes no responsibility to inspect containers for damage or to report any damage to the Line. While the TIMARU CONTAINER TERMINAL LIMITED will make every reasonable endeavour to refer all apparent damage to containers to the Line and to take any appropriate step necessary to protect the contents of any container noted to be damaged, it shall not be liable in any manner for any costs, charges, expenses, damages, compensation or any other monies whatsoever for an injury or loss arising from any failure to inspect containers, any failure to note or to report damage thereto (whether apparent damage or not), or any failure to take steps necessary to protect the contents of any container.

- 6.11 **The User undertakes to enforce restraints and indemnifies TIMARU CONTAINER TERMINAL LIMITED for liability in excess of limits:** The User undertakes to take all reasonable and prompt steps, if ever called upon by TIMARU CONTAINER TERMINAL LIMITED on any particular occasion, to enforce and uphold the express and implied conditions limiting the liability of the carrier to the merchant under the User's Bill of Lading and to prevent the merchant or anyone claiming through or in connection with the merchant imposing or attempting to impose on TIMARU CONTAINER TERMINAL LIMITED or any servant, agent or subcontractor of TIMARU CONTAINER TERMINAL LIMITED any liability whatsoever for loss, damage or delay to any container or cargo carried by the User and the User hereby indemnifies TIMARU CONTAINER TERMINAL LIMITED and any such servant, agent or contractor against the consequences of such claim.
- 6.12 **Removal of cargo from terminals:** If any cargo or container is not removed from the relevant Terminal within 30 days of deposit TIMARU CONTAINER TERMINAL LIMITED may request the User to take action to remove the container, and if the User fails to do so TIMARU CONTAINER TERMINAL LIMITED, after consultation with the User, handle, remove, warehouse or otherwise deal with such containers and / or cargo at the entire risk and expense (not including lost revenue) of the User and at its published tariffs for such services.
- 6.13 **Improper marking or inherent vice or quality of goods:** TIMARU CONTAINER TERMINAL LIMITED shall not be liable for improper or insufficient or erroneous marking or addressing of any goods or cargo or container, inherent vice or quality of goods.

7 GENERAL

- 7.1 The User will ensure that all subcontractors employed by it will co-operate with TIMARU CONTAINER TERMINAL LIMITED and will comply with the security and traffic and health and safety precautions required by TIMARU CONTAINER TERMINAL LIMITED at all times.
- 7.2 These conditions will be governed and interpreted in all respects in accordance with the laws of New Zealand and the parties hereto submit themselves to the exclusive jurisdiction of the New Zealand High Court.
- 7.2.1 In the case of all other disputes whether involving a claim for any monetary sum or otherwise to the decision of the High Court of New Zealand.
- 7.3 TIMARU CONTAINER TERMINAL LIMITED retains the right to nominate the service provider for all onboard labour services provided at its sole discretion.
- 7.4 All notices under these conditions will be given by personal delivery or by ordinary mail or facsimile transmission:
- 7.4.1 **To: Timaru Container Terminal Limited**
 Timaru Container Terminal Limited
 North Mole Central
 Marine Parade
 Timaru Port
 Timaru 7940
 PO Box 238
 Timaru 7940
 Facsimile: 0800 828 769
- 7.4.2 To the User at any of the User's last known places of business whether in New Zealand or elsewhere or at the address of the User's last known agent in New Zealand and will be deemed to have been received two days after despatch by mail or on the day of despatch by facsimile.
- 7.5 If the User is carrying on business, the User represents and warrants that it is purchasing the services provided by TIMARU CONTAINER TERMINAL LIMITED under these conditions solely for business purposes and TIMARU CONTAINER TERMINAL LIMITED and the User agree that nothing in the Consumer Guarantees Act 1993 shall apply to the provision of such services to the User.

8 MATTERS AFFECTING PERFORMANCE

If at any time the performance of the provision of services by TIMARU CONTAINER TERMINAL LIMITED is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage of whatsoever kind, whether or not the circumstances giving rise thereto existed or were anticipated at the time the provision for services was entered into, which cannot be avoided by the exercise of reasonable endeavours, TIMARU CONTAINER TERMINAL LIMITED, whether or not the services have commenced, may treat the performance of this contract as terminated or varied to such an extent as necessary to complete the services.

9 VARIATION OF TERMS

The terms of these standard conditions of provision of services may be varied by TIMARU CONTAINER TERMINAL LIMITED from time to time by TIMARU CONTAINER TERMINAL LIMITED altering them, and

posting them on its website (www.timarucontainerterminal.co.nz), such variations will be deemed effective and accepted by the User 30 days after the alterations are made irrespective of whether notice of such alterations is actually received.

10 CONTRACTS (PRIVITY) ACT 1982

For the purposes of Section 4 of the Contracts (Privity) Act 1982 all provisions in this standard conditions of provision of services providing for exemption from the liability for, and indemnities in favour of TIMARU CONTAINER TERMINAL LIMITED, its employees, agents are intended to be for the benefit of and enforceable by the employees and agents of TIMARU CONTAINER TERMINAL LIMITED, including any benefits imported into this Agreement pursuant to clause 6.7.

11 FORCE MAJEURE

11.1 Neither party shall be responsible for any complete or partial failure to perform or delay in performing or incorrect performance of any services, arising out of or contributed to by one or more of Act of God, storm, flood, fire or explosion, strikes, riots, civil commotions, lockouts, stoppages, restraints of labour of whatsoever nature or kind (whether actual or threatened), any other industrial or environmental action, war, civil war, hostilities, acts of terrorists, or any action or act whatsoever caused beyond the control of either party.

11.2 **Notice/Best Endeavours:** If a cause to which clause 11.1 applies arises, the party affected by the cause must immediately upon becoming aware of the cause, notify the other party in writing of the nature of, expected duration of, and the obligation affected by, the cause. Notwithstanding that any such cause arises, the affected party must use its best endeavours:

11.2.1 To mitigate the effects of the cause on that party's obligations under this Agreement; and

11.2.2 To perform that party's obligations on time despite the cause.

12 DEFINITIONS (for the purposes of this Agreement and the Price Schedules)

12.1 "Cargo" means any goods, merchandise or other property whatsoever whether or not within a container in respect of which TIMARU CONTAINER TERMINAL LIMITED provides or is requested to provide services hereunder.

12.2 "Consignee" means a person, firm or carrier to whom any goods are consigned.

12.3 "Container" means any article of transport, equipment (including lift, movable tank, flat or otherwise similar structure constructed to the specifications of an international standards organisation and having standards ISO means of top corner lifting).

12.4 "Dangerous" in respect of goods or cargo means goods or cargo, which, or the escape of which, could cause injury to persons, property or the environment and includes dangerous, hazardous or noxious cargo as defined, or in respect of which, particular care is required for in the Maritime Rules and/or in the International Maritime Organisation's Dangerous Goods Code and/or the Maritime Transport Act 1994 and/or any other relevant New Zealand legislation.

12.5 "Day" means the 24 hour period between midnight and midnight of any part thereof.

12.6 "Length overall" shall mean the length overall of the vessel and for the purposes of computing daily service charge shall include the length of wharf occupied by the vessel including any ramps used on the wharf.

12.7 "Person" includes companies and any other corporate bodies.

12.8 "Port" means the North Mole wharves at Timaru Port, and all their associated facilities owned by TIMARU CONTAINER TERMINAL LIMITED.

12.9 "Price Schedule" means TIMARU CONTAINER TERMINAL LIMITED's price schedule of charges in force at the date of provision of the services by TIMARU CONTAINER TERMINAL LIMITED and posted on the TIMARU CONTAINER TERMINAL LIMITED website.

12.10 "TIMARU CONTAINER TERMINAL LIMITED" means Timaru Container Terminal Limited and includes its employees, agents and subcontractors.

12.11 "Subcontracting" means direct or indirect subcontractors and their respective employees and agents.

12.12 "Tonnes" or "tonnage" in respect of vessels shall mean a tonnage according to a vessel's certificate of registration.

12.13 A reference to any enactment, regulation or rule ("Act") includes any amendments or substitutions of that Act.

- 12.14 "Acts" means all enactments regulations rules and requirements made by any Governmental or Local Authority and which govern the activities carried on by the TIMARU CONTAINER TERMINAL LIMITED or the User on or about the TIMARU CONTAINER TERMINAL LIMITED 's land or adjoining waterways, (including those necessary for TIMARU CONTAINER TERMINAL LIMITED to continue to operate as an international port), including but not limited to all Ministry of Agriculture and Fisheries requirements, the International Ship and Port Facility Security Code, the Resource Management Act 1991, the Building Act 2004, the Health and Safety in Employment Act 1992, the Maritime Security Act 2004, the Maritime Security Regulations 2004, the Customs and Excise Act 1996 and all similar legislation, regulations, rules, plans or similar and all statutes in amendment of or in substitution for, and all regulations, rules, plans or similar made under those Acts.
- 12.15 "User" means any person for whom TIMARU CONTAINER TERMINAL LIMITED provides or is to provide services hereunder or any employees, subcontractor or a representative of any one or more of the foregoing who requests TIMARU CONTAINER TERMINAL LIMITED to provide services, and the obligations and liabilities under these conditions of all or any such persons, if there be more than one, will be joint and several. Without limiting the generality of the foregoing the "User" will include the owner, lessee, charterer, operator, master or manager of any vessel, a road or rail carrier, a ship, stevedore or a combination of any two or more of those parties or the agent of any of the above or any person holding himself out to be such agent.
- 12.16 "Subcontractor" includes direct and indirect subcontractors and their respective servants, employees and agents.