

TERMS OF TRADE

Terms effective for all and any new business conducted from 1 am 24 March 2007

1. General: All services provided by Cunningham Gill Limited (hereafter the Company) to or for the Customer (being defined as including the exporter, importer, sender, receiver, owner, consignor or consignee or on behalf of any of them) shall be governed by the terms and conditions herein. These terms and conditions shall apply in preference to the Customer's own terms and conditions and the use of the Company's services is deemed to be acceptance of these terms and conditions. These terms and conditions shall prevail if conflicting with any airwaybill, bill of lading, seaway-bill, warehouse receipt, consignment note, contract of carriage, ship's delivery order or other document by or to the Company.

2. Quotations: Quotations are issued on the basis that they are for immediate acceptance unless otherwise stated in the quotation and is subject to withdrawal, revision or cancellation in particular but without limitation for unavailability of service. The quotation is further subject to changes for rates of freight, insurance or other charges applicable to the goods and is exclusive of any local Duties and Taxes at destination and exclusive of any charges by the Ministry of Agriculture and Fisheries (MAF) including fumigation and exclusive of any additional extraneous charges that may be incurred. The quote is based upon weights and measures supplied by the Customer and is subject to confirmation (and change) prior to shipping. If any changes arise as a result of information not supplied or incorrectly supplied to the Company, the quotation can be increased accordingly. The quotation may also be subject to another party's terms and conditions and if so, the Customer will be taken to accept those. For the Company's quote to be valid, the Quote Reference must be noted on all documents when the orders are placed.

3. Selection of services: The Company is authorised to select carriers, forwarders, customs agents, agents, brokers and others (hereinafter referred to as 'third parties') as required to transport, store handle and deal with the goods in any manner whatsoever, all of whom will be considered to be agents of the Customer, and the goods may be entrusted to such third parties subject to their usual conditions including as to limitations of liability for loss damage expense and delay. When such goods are in the custody, possession or control of such third parties the Company shall be under no liability or have any responsibility in relation to the goods whatsoever. The Company may use or arrange at its sole discretion any means of transport or storage, transfer from one conveyance to another, unpack, remove or repack goods or parts thereof, proceed by any route in its discretion and the Customer shall be deemed to have authorised the Company to so act.

4. Authorisations: The Customer shall provide written advice to the Company of the names of personnel authorized to place orders on the Customer's behalf and shall advise in writing if any such authority is withdrawn. The Customer shall be solely responsible for the supervision of the use of the Company's services and absent specific written advice of authorized personnel, the Company shall have no obligation to enquire into the authority of any person placing orders. In addition, unless the Company has received and accepted in writing specific written instructions from the Customer, the Company has absolute freedom in choosing the means, route and procedure to be followed in the handling, transportation and delivery of the goods. Advice by the Company to the Customer that a particular party has been selected to perform services with respect to the goods is not to be construed as an undertaking that the particular party selected will render such services.

5. Insurance issues: In the absence of any written instruction from the Customer accepted in writing by the Company, the Company will not arrange any marine, fire, theft or other insurance on any goods and the Company will not be liable for any loss or damage resulting from the failure to arrange or effect any insurances. If the Company accepts an instruction to arrange insurance, it acts as the Customer's agent and any insurance will be subject to the terms and conditions of the Insuring party. The Company shall incur no liability whatsoever in relation to this clause.

6. No credit: The Customer shall be obliged to pay for the Company's services in cash, electronic funds transfer or telegraphic transfer immediately upon invoicing. The Company does not provide credit services or facilities unless separately agreed in writing and approved in writing to the Customer by a director of the Company. No goods will be delivered or services supplied in the absence of any previously arranged credit facility until all charges have been paid. Where credit facilities have been agreed the Customer agrees to be solely liable to the Company for any variations in exchange rates and all and any other costs and expenses between the time relevant invoices are raised and the time that payment is made and shall make payment strictly in accordance with the agreed terms. These terms and conditions shall apply in addition to any other terms agreed with the Company.

7. Disbursements: The Customer shall ensure that it has put the Company in cleared funds to meet any duties, taxes, charges or other disbursements arising, incurred or to be incurred in relation to the services. The Company shall not be obliged to but is authorised to incur any expense, guarantee payment, or advance any monies on behalf of the Customer in connection with any transaction. No advance of monies by the Company on behalf of the Customer which has failed to put the Company in funds, shall constitute a waiver to this clause and the Company shall be under no liability resulting from a failure or refusal incur any obligation on behalf of the Customer on any other occasion or at all.

8. Other charges: The company may issue invoices charged to Customs Agents or other parties for account of their principals and if such invoices are issued the customs agent or other party by accepting delivery of the invoice and any documentation attached to it becomes jointly and severally liable with his principal for payment of the charges invoiced and also for any storage or other charges relating to the goods which may accrue subsequent to the issue of the invoice whether covered by a supplementary invoice issued by the Company or not.

9. Currency: Invoices issued for import freight charges are calculated in New Zealand currency for the convenience of the Customer only and represent amounts due in the respective overseas currency. The Company reserves the right to vary the amount shown in New Zealand Currency to reflect differences in exchange rates between the date the invoice is issued and the date such invoice is paid. This amendment may be made by issue of a supplementary invoice. The Customer has the option to pay import freight collect and other charges in the currency of the document of carriage but such payment must be made prior to delivery of the goods concerned. If the Customer does not exercise the right to pay in the respective foreign currency, the New Zealand Dollar amounts shown on the original and any supplementary invoices become the amount due and shall be paid by the Customer in full without dispute or deduction.

10. Supplementary invoicing: The Company may issue supplementary invoices in order to correct calculation errors or for any other reason and such invoices once issued will be subject to these and conditions notwithstanding the payment or non-payment of any other invoices previously or subsequently issued for the same transaction. Any sum payable under the invoice shall be due for immediate payment.

11. Payments free and clear: All and any sums due by the Customer to the Company and/or invoiced by the Company to the Customer and without limiting the generality of the foregoing, whether they be for the Company's own fees, disbursements, charges, taxes, duties of whatsoever or for those of third parties, shall be paid immediately by the Customer. Payment shall be made in full and free of any set-off, counterclaim, claim, cross claim, dispute or demand whatsoever and whether or not such relates to the Company's services or any services, acts, omissions or conduct of any third parties.

12. Brokerage and Commissions: The Company is entitled to and may retain and be paid all brokerages, commissions, allowances and other remuneration customarily retained by or paid to customs, shipping and forwarding agents and brokers whether declared or not. The Customer agrees that such may be retained by the Company as part of or incidental to the services it provides.

13. Delivery: Goods consigned to the order of any party will not be accepted for carriage by air and if imported will not be delivered unless satisfactory written or other authority is produced and the Company will not be liable for any loss or damage however caused resulting from any refusal to deliver goods in the absence of such authority. If it is necessary to make customs entry of Goods at any place, the Goods shall be deemed to be consigned at that place to the Customer, the carrier of any person the carrier designates as the customs consignee. In addition:

- a) if the Customer does not take delivery of the goods or any part thereof when called upon by the Company, the Company shall be entitled without any notice to the Customer to arrange for the Goods or any part thereof to be un-stowed and/or arrange for storage of the goods or part thereof and such shall be at the sole cost and risk of the Customer; and
- b) if the Customer fails to take physical delivery of the goods or part thereof within 30 days of the Company so acting under a), or if in the sole opinion of the Company the goods or part thereof are likely to deteriorate, decay or become worthless or incur any charges in excess of their value, or they are insufficiently labelled as to delivery the Company may without prejudice to any other rights or remedies it may have, sell or dispose of the goods and use any proceeds to meet any sums payable to the Company;
- c) notwithstanding b), the Company shall have no duty or obligation to act to minimise or avoid any loss or potential loss to the Customer, the goods being at their sole risk and responsibility.

14. Claims handling: The Company is not obliged to advise or assist the Customer or any other person to make or prepare a claim against a Carrier or any other person in connection with the services. If the Company elects to provide any assistance to the Customer or on the Customer's behalf, it shall be entitled to charge the Customer for that assistance.

15. Agency: The Company may, if it deems it necessary, handle goods as an agent and shall be under no liability for the acts or omissions of its principal. The Company shall be so authorised to do all things necessary that in its sole opinion are required. The Company shall not be liable for any consequences arising from its compliance with the instructions of its principal.

16. Lien: In addition to and without limiting any rights it may have to a lien under the Carriage of Goods Act 1979, the Company shall have may exercise a Lien on all property and documents related thereto in its possession custody or control or en route for all claims for charges expense or other disbursements or fees incurred by or to the Company in connection with any shipments for the Customer or any services provided to the Customer at any time and should any amount owing by the Customer be unpaid after thirty (30) days for its payment the Company shall have the right to sell the goods at auction or so much thereof as shall be necessary to satisfy such lien and apply the net proceeds of the sale to the payment of the amount due to the Company. Any surplus from such sale shall be transmitted to the Customer, and the Customer shall have no claim against the Company for any loss or damage suffered by it as a result of the Company's exercise of it's rights under this clause.

17. Customer indemnity/warranty: The Customer will indemnify the Company from all claims for loss or damage (whether direct or indirect and whether physical or economic), injury or death, customs duty, excise duty, costs, fines, penalties or any other matter whatsoever against the Company. The Customer shall pay the Company on demand whether or not the sum so claimed has been paid by the Company or not.

18. Dangerous goods: The Customer shall not tender any dangerous goods for carriage or storage without providing the Company with all necessary documents to permit the carriage of such goods on the mode or modes of transport expected. Likewise, the Customer shall ensure that all appropriate labelling and packing is in order for carriage on the mode or modes of carriage. The Customer warrants that they will not submit for carriage any goods that are illegal to export or import.

19. Failure to comply: If payment in full of any amount payable by the Customer is not made when due, or the Customer breaches any of its other obligations to the Company, then the Company may without prejudice to and in addition to any other rights or remedies exercise all or any of the following rights:

- (a) delay delivery of any Goods or supply of any Services until the matter is resolved to the Company's satisfaction;
- (b) suspend or cancel (in whole or in part) this agreement or any other contract between them by written notice to the Customer;
- (c) recover from the Customer, all amounts for any damage, losses, costs or expenses (including actual legal costs and expenses) arising from the default or non-performance by the Customer;
- (d) Charge, and the Customer must pay default interest at the rate of 18% per annum (calculated on a daily basis until the sum is paid in full) and all actual legal costs and other costs and expenses incurred by or on behalf of the Company in enforcing or defending all or any of its rights.

20. Force Majeure: The Company is not liable for any failure or delay in performing any obligation if it is due to a cause reasonably beyond the control of the Company and it has used its best endeavors to perform on time despite the cause.

21. Limitation of liability: All business is handled in New Zealand subject to the conditions of the Carriage of Goods Act 1979 at "Owners Risk". This means that the company will not be liable for any loss or damage to goods unless it intentionally loses or damages them. Without limiting the foregoing, to the extent allowed by law, the Company has no liability (whether statutory, in contract or tort (including negligence), or howsoever) to the Customer or any of its agents or employees for any physical, direct or indirect damage, economic loss of any kind, any other loss or costs (including legal and lawyer/client costs) caused or contributed to by the Company or any of its agents or employees in respect of any goods and/or services supplied or any quotation or estimate given. The Company also has no responsibility or liability for any delays in delivery of goods or services nor for dangerous good(s) or any contaminant, ozone depleting or hazardous substance in or emitted by any good or relating to any packing or labeling failures by or on behalf of the Customer or from the failure of the Customer to meet its obligations. To the extent allowed by law, every warranty or condition or guarantee implied by custom or law upon the Company is hereby excluded. If, notwithstanding the foregoing, the Company shall be found to have any liability it is agreed that any liability will not exceed the price of the services purchased from the Company, with such price being exclusive of all sums paid on behalf of the Customer. This limitation shall apply notwithstanding that the Company or any representative of the Company may have signed or does sign any documentation relating to the goods, including without limitation any declaration of delivery that the goods were free from defect (or similar declaration).

22. Amendments: The Company may from time to time amend these terms and conditions. The Customer agrees that the amended terms shall be effective upon being advised on the Company website and are deemed accepted, by the Customer transacting any business after the date of posting. The deemed time for posting shall be 1 am of the day on which the terms are updated on the Company Website. Aside from the foregoing, no servant or agent of the Company has any authority to vary any of these terms and conditions. Any variation can be agreed to only by an officer of the Company and in writing.

23. Severability: Each term and condition herein is severable from the other and if for any reason any terms or conditions are invalid or unenforceable at law or equity, then all other terms and conditions shall remain in full force and effect.

24. Law and Jurisdiction: These terms and conditions are governed by and shall be construed in accordance with the laws of New Zealand. The parties agree to submit to the non-exclusive jurisdiction of the Courts of New Zealand and any proceedings against the Company must be filed in Auckland.