



Provida (A division of Davis Trading Company Ltd)
 27 Sheffield Street, Te Rapa, Hamilton
 PO Box 20 115, Te Rapa, Hamilton
 Phone (07) 849 2800 Fax (07) 849 4633

Account Application - Terms and Conditions of Trade – Provida (a Division of Davis Trading Company Limited)

Trading Name of Business			
Services:			
● Sale of Goods – Terms and Conditions set out in Schedules 1 and 2			
● Freight Services – Terms and Conditions set out in Schedules 1 and 3			
● Storage Services – Terms and Conditions set out in Schedules 1 and 4			
Postal Address		Physical Address	
City		City	
Post Code		Post Code	
Phone		Phone	
Limited Liability Companies (Complete only if a registered company)		Sole Proprietors/Partnerships (Complete if you are NOT a company)	
Registered Company Name		Owners Full Name	
Trading Name (if different)		Owner Home Address	
Company Number			
NZ Business Number (NZBN)			
Year Established		Share Capital	
Address of Registered Office			
Clear copy of Photo ID must be supplied.		Driver's License:	
		Passport:	
Bank			
Branch			
Accountant (if external; address & phone no. please)		Phone:	
Clear copy of Photo ID must be supplied. Driver's License and/or Passport			
Owner Home Phone No.		Mobile:	
()			
EVERYONE TO COMPLETE THIS SECTION			
CREDIT REFERENCES			
We authorise Provida, a division of Davis Trading Company Limited to undertake at any time any credit checks necessary to determine suitability and ongoing suitability of the applicant as an account holder.			
Company		Contact Name	
1			
2			
3			
		Position	
		Phone No.	

Directors Names, Home Addresses and Home Phone Numbers
Director 2:
Guarantor details
Guarantors Full Name:
Address:
Email:
Phone No:

Director 1:
Director 3:
Payment Terms:

Unless the context otherwise requires, the provisions of the Common Terms set out in Schedule 1 shall apply to each of the respective Terms and Conditions of each Service made available from time to time by the Company to Customer and the respective Terms and Conditions set out in the Schedules shall apply to the respective Services provided by the Company to the Customer.

Each party signing this document acknowledges it has received a copy of the Account Application and Schedules 1, 2, 3 and 4.

Signed for and on behalf of the customer	Signed by Guarantor in the presence of	Signed for and on behalf of Provida, a division of Davis Trading Ltd
Signature	Signature of Witness	Signature
Name	Name of Witness	Name
Position	Occupation of Witness	Position
Date:	City/ Town of residence	Date:
	Date:	

SCHEDULE 1 COMMON TERMS

1. Definitions and Interpretations

The meanings of terms used in this document are set out below:

Term	Meaning
Account Application	means the account application form signed by the Customer and Guarantor
Act	means the Contract and Commercial Law Act 2017, as amended from time to time
Business Day	means a day of the week other than: (a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, and Labour Day; and (b) a day in the period commencing on 25 December and ending on 2 January in the following year; and (c) if 1 January falls on a Friday, the following Monday; and (d) if 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday; and (e) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday.
Company	means Davis Trading Company Limited trading as "Provida" or "Davis Foods" or "Davis Food Ingredients" or "Davis Trading" and its subsidiaries, servants, employees, agents, contractors and sub-contractors
Common Terms	means these terms set out in this Schedule 1
CGA	means Consumer Guarantees Act 1993, as amended from time to time.
Customer	means the person to whom the Company provides any Service from time to time, which includes without limitation: the " <i>Buyer</i> ", "you", "your" (as defined in Schedule 2); a " <i>Freight Payer</i> " (as defined in Schedule 3); the "Customer" (as defined in Schedule 4); and in each case includes permitted successors and permitted assignees
Guarantor	means jointly and severally, any person named as a guarantor on and signing the Account Application
PPSA	means the Personal Property Securities Act 1999, as amended from time to time
Services	means the freight carrier services, the storage services, the cold store storage services, the sale of goods and the online ordering services provided from time to time by the Company to the Customer, and Service shall mean any one of those Services
Terms and Conditions	Means, as the case may be, the terms and conditions for a Service being set out in Schedule 2 (in respect of the sale of goods and online ordering); or Schedule 3 (in respect of freight carrier services); or Schedule 4 (in respect of storage services), in each case incorporating these Common Terms.

- (a) Headings and bold type are for convenience only and do not affect the interpretation of this document.
- (b) The singular includes the plural and the plural includes the singular.
- (c) Words of any gender include all genders.
- (d) A reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this document.
- (e) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- (f) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.
- (g) A reference to a party to a document includes that party's successors and permitted assignees
- (h) A reference to a document includes any agreement in writing, or any certificate, notice, deed, instrument or other document of any kind.
- (i) No rule of construction (including the contra proferentem rule which requires ambiguous clauses to be construed against the party that drafted them) applies to the disadvantage of a party because that party (or its relevant advisor) was responsible for the preparation of these Common Terms of the Terms and Conditions relating to of any Service or any part of them;

2. Incorporated definitions and terms

Unless the context requires otherwise, words and phrases defined in the Act and PPSA have the same meaning when used in the Terms and Conditions of any applicable Service.

3. Common Terms incorporated

These Common Terms shall be deemed incorporated into the Terms and Conditions of each Service.

4. Inconsistency

If there is any inconsistency between the provisions of these Common Terms on the one hand and the Terms and Conditions of any applicable Service on the other, the Terms and Conditions of the relevant Service prevails to the extent of that inconsistency.

The provisions of these Common Terms shall apply to Freight Services Terms and Conditions, the Storage Terms and Conditions and the Sale of Goods Terms and Conditions as if more fully set out within each of those documents.

5. Warranty

- a. The Customer and each Guarantor warrant to the Company:
 - i. that if it is a corporation it is duly incorporated or registered (or taken to be registered) and validly existing under the applicable companies laws;
 - ii. it has power and authority to enter into and perform its obligations under the relevant Terms and Conditions applicable to the Service being provided by the Company;
 - iii. it has taken all necessary action to authorise the execution, delivery and performance of the relevant Terms and Conditions;
 - iv. all information and details provided to the Company are true and correct;
 - v. it has not withheld from the Company any information known to it (having made due enquiry) which is material to the decision of the Company to enter into the Terms and Conditions and provide the Services.

6. Change of Control

- a. The Terms and Conditions for each Service are an exclusive contract between the Company and the Customer to facilitate the provision of the Services.
- b. If there is to be any change in the Customer's legal or beneficial ownership the Customer must not less than 10 Business Days before that change occurs notify the Company in writing of the details of the proposed change, including relevant details of the change in ownership and the date of the ownership change.
- c. The Company will then arrange for a new Account Application form and guarantees to be completed and evaluated by the Company.
- d. Failure by the Customer to notify the Company of any change in its legal or beneficial ownership will result in the continuation of the liability of the Customer and any Guarantor for the ongoing Services and related costs incurred after the date of the change in legal or beneficial ownership of the Customer. The liability of the Customer and any Guarantor shall continue until the Company has been advised of the change in legal or beneficial ownership and new Terms and Conditions and guarantees have been entered into which are acceptable to the Company.

7. Contracting out of PPSA

- a. The Customer and Company agree that the Customer shall have no rights under, or by reference to, sections 114(1)(a), 133 and 134 of the PPSA. The Customer contracts out of, waives its rights and agrees not: to receive a statement of account under section 116 of the PPSA; to receive a copy of any verification statement in respect of any financing statement or financing change statement registered under the PPSA; to receive a statement of account under section 116 of the PPSA; to receive a notice of the Company's proposal to retain any of the Goods under section 120 (2) of the PPSA; to object to the Company's proposal to retain any of the goods under section 121 of the PPSA; to have the goods damaged when the Company (or any person on its behalf) removes an accession under section 125 of the PPSA; to be reimbursed for damage caused when the Company (or any person on its behalf) removes an accession under section 126 of the PPSA; to receive notice of removal of an accession under section 129 of the PPSA; to apply to the court for an order concerning the removal of an accession under section 131 of the PPSA.

8. No Assignment

- a. Neither the Customer nor the Guarantor shall assign or transfer any of their respective rights or obligations under this document and the Terms and Conditions applicable to any Services. The Company may assign all or part of its rights and benefits under this document and the Terms and Conditions applicable to any Services without the consent of the Customer or Guarantor.
- b. If the Customer purports to assign, transfer, or novate this document and/or the Terms and Conditions applicable to any Services to any third party, the Company shall be entitled to cancel or vary the Terms and Conditions applicable to any Service at its sole discretion within five Business Days of receiving notice of, or becoming aware of such assignment, transfer or novation and the Customer shall indemnify the Company in respect of any costs, liability or damages.

9. Governing Law

- a. The Terms and Conditions applicable to each of the Services shall be governed by New Zealand law.

10. Counterparts

- a. This document may be executed in any number of counterparts each of which shall be deemed an original but all of which together shall constitute one and the same document. A signed copy of this Account Application transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy for all purposes.

11. Entire Agreement

- a. This document, together with any orders or other communications, constitutes the entire agreement between the Company and the Customer.

12. Variation and Termination

- a. The Company may at any time and from time to time by advising the Customer vary these Common Terms and/or vary the Terms and Conditions any Service.
- b. The Terms and Conditions relating to any Services can be terminated by either party giving at least one month's written notice to the other. Despite any such notice the Customer shall remain liable to the Company for all costs outstanding as at the date of termination.

13. Notices

- a. Any notice to be given under this document or pursuant any Terms and Conditions of any Service shall be given in writing to the address for the relevant party recorded on the Account Application.
 - b. A notice shall be deemed to be received:
 - i. if delivered by hand, on the date of delivery;
 - ii. if sent by post within New Zealand, on the 3rd Business Day after posting;
 - iii. if sent by post from or to an address outside of New Zealand, on the 5th Business Day after posting;
 - iv. if sent by fax, at the time of transmission; and
 - v. if sent by email:
 - 1. between 9am to 5pm (local time in the place of receipt) on a Business Day (**Business Hours**), at the time of transmission;
 - 2. outside of Business Hours, at 9am on the following Business Day, provided that the sender did not receive an out of office message or an "undeliverable message" or other failure to deliver notification, and the sender is able to produce a printed copy of the email which evidences that the email was sent to the email address of the recipient
- provided that, if the delivery or receipt is on a day which is not a Business Day in the place of intended receipt or is after 5.00pm (addressee's time), it is deemed to have been received at 9.00am on the next Business Day in that place.

14. Indemnity

- a. The Customer agrees to indemnify the Company for all costs (including on a lawyer and own client basis), losses, damages, expenses and claims incurred or sustained as a result of or in connection with any breach of this document or the Terms and Conditions applicable to any Service by the Customer, including but not limited to all costs (including on a lawyer and own client basis), losses, damages, expenses and claims incurred or sustained as a result of or in connection with any incorrect or misleading information given or provided to the Company.

15. Set-Off

- a. The Customer and Guarantor each irrevocably authorise the Company (without prior notice or demand and despite any settlement of account or other matter) at any time to set off against any debt or liability of the Company to the Customer or Guarantor any part of moneys which may be owed by the Customer or Guarantor to the Company, and to apply any credit balance ("**Credit Balance**") to which the Customer or Guarantor is at any time beneficially entitled (whether in the name of the Company or the Customer or Guarantor alone or jointly or otherwise) in satisfaction of any debt or liability of the Customer or Guarantor to the Company under this document or the Terms and Conditions applicable to any Services, and to break any deposit for this purpose, and if any amount is contingently due or is not quantified, to retain and withhold repayment of all or any part of any Credit Balance pending such amount becoming due or quantified or set off all or any part of any Credit Balance up to the maximum liability that may at any time be or become owing by the Customer or Guarantor to the Company or partly the one and partly the other as determined by the Company at its sole discretion.
- b. Notwithstanding anything in these Common Terms or the Terms and Conditions applicable to any Service, while the Customer's obligations to the Company (whether absolute or contingent) remain outstanding and unsatisfied, the Customer is not entitled to use any Credit Balance to set off, delay or withhold payment of any moneys due to the Company.

16. Privacy Act 1993

- a. The Customer and Guarantor each consent to the Company obtaining from time to time such information and making such enquiries about either of them from any source, including credit reference agencies and companies, in relation to the Services to be provided and disclosing information about either of them to credit reference agencies, sureties or assignees or anyone who is considering becoming a surety or assignee. A person has the right to access personal information (within the meaning of the Privacy Act 1993) held by the Company and to request correction of any errors in that information.

17. Force Majeure

- a. **Conditions of force majeure:** Neither party is in breach of this document or the Terms and Conditions of any Service for any failure to perform or for any delay in performing any of its obligations where such failure or delay is caused by an act of God, fire, flood, act of government or state, war, civil commotion, hostilities, commotions, embargo, prevention from or hindrance in or difficulty in obtaining any raw materials, energy or other supplies, labour disputes of whatever nature, strike, lockout, shortage of labour, failure or delays by suppliers or contractors, legislative, government or other prohibitions or restrictions or any other reason beyond the control of either party.
- b. **Modification of force majeure:** If either party is unable to perform its duties and obligations under the Terms and Conditions of any Service as a direct result of any such reasons that party must give immediate written notice to the other of such inability stating the reason.
- c. **Suspension of Terms and Conditions:** The operation of the Terms and Conditions relating to that Service will be suspended during the period (and only during the period) in which the reason continues. Immediately upon the reason ceasing to exist the party relying upon it must give written advice to the other of this fact.
If the reason continues for a period of more than 60 Business Days and substantially affects the commercial basis of the Terms and Conditions of that Service the parties agree to consult together for the purposes of agreeing what action should be taken in the circumstances and, if appropriate, must negotiate in good faith to amend and modify appropriately the provisions and terms of the Terms and Conditions of such Services as necessary to deal with the reason for the inability to perform.
If such negotiations are unsuccessful, the party not claiming relief under this clause has the right to terminate the terms and conditions of such Services upon giving 20 Business Days written notice of such termination to the other party.

18. Consumer Guarantees Act 1993

- a. If the Customer acquires any Service for business purposes, the CGA will not apply.
- b. If the Customer is a consumer under the CGA, to the extent that the Customer's rights under the CGA have not been excluded under clause 15 a, nothing in these terms will affect the rights of the Customer under the CGA.

19. Severance

- a. If any term contained in these Common Terms or in the Terms and Conditions of the relevant Service is illegal, invalid or unenforceable for any reason whatsoever including, but without limitation, legislation or other provisions having the force of law or any decision of any court or other body or authority having jurisdiction, such term will be deemed to be deleted on condition that if either party considers that any such deletion substantially affects or alters the commercial basis of upon which the Service is undertaken it may give notice in writing to the other to terminate the Service immediately.

20. Disputes

- a. If a dispute should arise between the parties then:
 - i. the parties must attempt to resolve the dispute between themselves, including by referring to the Chief Executives of each party; and
 - ii. if the parties have not resolved the dispute within 10 Business Days of referral to the Chief Executives; then either party may refer the dispute to mediation.
- b. If a dispute is referred to mediation, then:
 - i. there shall be a single mediator appointed by agreement between the parties, provided that if the parties cannot agree then the mediator shall be appointed by the Chair of LEADR NZ Inc;
 - ii. the mediator shall determine the procedure to be followed;
 - iii. the parties shall pay the fee of the mediator in equal shares; and
 - iv. each party shall meet its own costs in relation to the mediation.
 - v.

21. Electronic Communication

- a. Any communication between the parties or notice required to be given may be met by giving the required information in electronic form, whether by means of an electronic communication or otherwise.

22. General

- a. The failure by the Company to insist on performance of any provision of this agreement is not a waiver of its right at any later time to insist on performance of that or any other provision in the Contract

23. Guarantee

- a. In consideration of the Company agreeing to open a credit account and making available from time to time the Services to the Customer, the Guarantor (and if more than one, jointly and severally) unconditionally and irrevocably:
 - i. guarantees to the Company:
 - 1. the due and punctual payment by the Customer of all amounts now or hereafter payable by the Customer to the Company for Services which the Company has provided; and
 - 2. the observance and performance of the Customer's obligations under the Terms and Conditions applicable to the Services provided by the Company; and
 - ii. indemnifies the Company against loss incurred by the Company from a breach in the due and punctual payment of moneys owed to the Company from time to time by the Customer.
- b. The Guarantor is liable under this guarantee as if it were the sole principal debtor and not merely a surety. The Guarantor agrees that no indulgence, granting of time, waiver or forbearance to sue or any other thing whereby the Guarantor would be released as a surety or otherwise shall in any way release the liability of the Guarantor under this guarantee. The Guarantor agrees that this guarantee and indemnity will be a continuing guarantee and indemnity and will remain in full force and effect until all payments now or at any time hereafter payable by the Customer to the Company have been paid in full, including payments which are subsequently avoided or affected in any way, whether under any statutory provision or otherwise, so as to deprive the Company of the full benefit of such payment.
- c. In the event of the Customer being in default in paying the Company the full amount of any amounts due to the Company, the Company has the right to call up the joint and several guarantees of any person who has guaranteed , to make full settlement of the amount of the debt due including interest and debt collection costs, without giving any regard to the immediacy or extent of any future payments that may be payable by the Customer.

SCHEDULE 2

Terms and Conditions for the sale of Goods (including online ordering)

These Terms and Conditions together with the Common Terms form the basis on which the Company sells Goods to the Buyer. Any invoice or other document evidencing or describing any Goods is incorporated into the Contract. Each sale of Goods shall be made on the terms of this Contract, unless a variation to the terms of this Contract is expressly authorised to the Buyer in writing by a director of the Company.

1. Orders

When an order has been accepted by the Company, that order cannot be cancelled by the Buyer except with the written consent of the Company. The Company may, prior to delivering any Goods pursuant to an order, determine not to fulfill the order if it has genuine concerns as to the creditworthiness of the Buyer.

2. Specifications

Specifications and samples contained or referred to in, or submitted with, the Contract or any quotation, or any catalogues or other publications maintained or issued by the Company, are estimates only. Unless otherwise expressly agreed in writing, it is not a condition of the Contract that the Goods will correspond precisely with such specifications and samples, and customary tolerances, or in the absence of customary tolerances, reasonable tolerances, shall be allowed.

3. Taxes and duties

Goods and services tax, and other taxes and duties in connection with the sale of the Goods to the Buyer, are not included in the price and shall be the responsibility of the Buyer. Where the payment of such taxes or duties is the responsibility of the Company at law, the price shall be increased by the amount of such taxes or duties.

4. Freight

The Company will determine the method of freight used to deliver the Goods to the Buyer. Unless the parties agree otherwise, the Buyer will pay all costs associated with the delivery of the Goods.

5. Delivery and risk

The Company must deliver the Goods to the place specified by the Buyer.

The Company reserves the right to deliver the Goods by installments. Each installment shall be effected pursuant to the terms of this Contract.

The Company shall not be liable for failure to deliver the Goods on or before any date. The Buyer is required to accept any Goods regardless of whether the Company fails to deliver the Goods on or before any date.

The risk of any loss of, or damage or deterioration to, Goods supplied by the Company shall be borne by the Company until the Goods have been unloaded at the place specified by the Buyer, at which time the risk shall pass to the Buyer, unless the Goods are unloaded by the Buyer, in which case the risk shall pass to the Buyer on commencement of the unloading of the Goods.

6. Payment Terms

Unless otherwise agreed in writing, the Buyer will pay cash on delivery for Goods supplied. Where the Company and the Buyer agree in writing that the Buyer will pay for Goods supplied at some point after delivery of the Goods, the Buyer will pay for Goods supplied on or before the end of the period so agreed unless the invoice for the Goods, or part of it, is genuinely disputed by the Buyer. If the Buyer does dispute all or any part, of an invoice, the Buyer shall immediately give notice to the Company of the dispute, and shall pay, in accordance with the foregoing sentence, the undisputed portion of any invoice. Following resolution of any dispute, the Buyer shall immediately pay any further sum due.

Where the Company and the Buyer agree in writing that the Buyer will pay for Goods supplied at some point after delivery of the Goods, the Company and the Buyer may also agree the manner in which payments shall be made by the Company including, but not limited to payment by Direct Debit from the Buyer's bank account.

Notwithstanding any agreement made between the Company and the Buyer in relation to the timing and method of payment for Goods supplied under the Contract, the Company reserves the right to alter the timing and method of payment by agreement with the Buyer or failing agreement to require payment in cash on delivery of the Goods.

The Company reserves the right to charge interest at a rate of 2% per month on any moneys outstanding under the Contract from the date payment is due until the date payment is received by the Company.

7. Warranties

The Goods will meet all warranties expressly provided in writing by the Company to the Buyer in respect of the Goods. If any Goods fail to meet such a warranty, the Company's liability for such failure shall be limited, at the discretion of the Company, to either:

- (a) refunding the purchase price for the Goods to the Buyer; or
- (b) repairing or replacing those Goods.

No responsibility will be accepted for any defective Goods or any under supply of Goods, unless the Company receives reasonable notice of that defect or under supply within 7 days of delivery.

The Buyer acknowledges that it is acquiring the Goods for the purpose of a business, and the parties agree that the Consumer Guarantees Act 1993 shall have no application to the sale of Goods to the Buyer.

8. Consumer Guarantees Act 1993

The Buyer shall, in relation to the supply of any Goods by the Buyer, contract out of the provisions of the Consumer Guarantees Act 1993 to the extent that the Buyer is entitled to do so under that Act.

The Buyer shall not, in relation to the supply of any Goods by the Buyer, give or make any undertaking, assertion or representation in relation to the Goods without the prior written approval of the Company.

9. Liability

The Company shall not be liable for any loss of profits, or any consequential, indirect or special loss, damage or injury of any kind whatsoever, suffered by the Buyer arising directly or indirectly from any breach of any of the Company's obligations arising under or in connection with the Contract, from any cancellation of the Contract, from any negligence, misrepresentation or other act or omission on the part of the Company, its servants, agents or contractors, or from any other cause whatsoever.

Notwithstanding anything contained in this Contract, the liability of the Company, whether in contract or pursuant to any cancellation of the Contract or in tort or otherwise, in respect of all claims for loss, damage or injury arising directly or indirectly from any breach of any of the Company's obligations arising under or in connection with the Contract, from any cancellation of the Contract, from any negligence, misrepresentation or other act or omission on the part of the Company, its servants, agents or contractors, or from any other cause whatsoever, shall not exceed the price (exclusive of goods and services tax, and other taxes and duties) of the Goods supplied by the Company to the Buyer under the Contract.

10. Title to the Goods and the Company's Security Interests

Title in the Goods will at all times remain the property of the Company until payment for the Goods, and payment of all other monies from time to time owed by the Buyer to the Company, has been made to the Company in full. To better secure the Buyers obligations to make payment for the Goods the Buyer hereby grants the Company the following security interests:

- (a) A Purchase Money Security Interest in the Goods and/or in any product into which the Goods are incorporated, and/or in any proceeds or revenue or book debt and the like derived from any sale or other form of commercial exploitation of the Goods, to secure payment for the Goods; and
- (b) A security interest in all present and future acquired property of the Buyer, including inventory, to secure both the purchase price of the Goods and to secure any other monies already owed by the Buyer to the Company.

11. Default

If the Buyer defaults in the due payment of any moneys payable to the Company, whether under the Contract or otherwise, or if the Buyer is in default in the performance of its obligations under the Contract or any other contract between the Company and the Buyer or if the Buyer shall commit any act of bankruptcy, enter into any composition or arrangement with its creditors or (in the case of a company) do any act which would render it liable to be wound up or if a resolution is passed or proceedings commenced for the winding up of the Buyer or if a receiver shall be appointed over all or any of its assets, or if any Goods are at risk, the Company, without prejudice to any other right it has at law or in equity, may, at its option, suspend or terminate the Contract, and payment for the Goods delivered and work performed up to the date of such suspension or termination and any other moneys payable hereunder shall immediately become due and payable. In any of the foregoing events, the Company shall not be responsible for, or liable for, any damage caused in enforcing its security interest in the Goods. All costs and expenses of or incurred by the Company as a result of any action taken by the Company in enforcing its security interest in the Goods together with transportation and storage charges shall be payable by the Buyer upon demand. Any suspension of the Contract by the Company shall not prevent it terminating the Contract during the period of suspension.

The Company shall have the right to enter the Buyer's premises, and take back possession of any Goods, if any sums are outstanding to the Company. The Buyer will meet the costs of such repossession.

At any time after a default occurs, the Company may (whether or not the Company has exercised any other right) appoint any person to be a receiver of all or any of the Goods. In addition to, and without limiting or affecting any other powers and authorities conferred on a receiver (whether under the Receiverships Act 1993 or at law or otherwise), a receiver has the power to do all things in relation to the Goods as if the receiver has absolute ownership of the Goods.

12. Conflict

These Terms and Conditions are paramount, and, to the extent that there is any conflict between any provision of them and any invoice, quotation or other document evidencing or describing any Goods, these terms and conditions will prevail. Further, if there is any other document or arrangement, including any document of the Buyer, which conflicts with the Contract, the Contract shall prevail. Subject to the warranties expressly stated in these terms and conditions, in relation to the Contract, all terms, conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise (whether of a like nature or not) and whether express or implied by law, trade custom or otherwise which are not expressly included in writing in the Contract (including without limitation, those implied pursuant to Part 3 of the Contract and Commercial Law Act 2017) are to the maximum extent permissible by law expressly excluded.

General

In these terms and conditions for the sale of Goods:

“**Buyer**” means the person, firm, company or other entity buying the Goods from the Company.

“**Common Terms**” means the common terms and conditions which are applicable to these Terms and Conditions for the sale of Goods which have been previously been provided to the Buyer.

“**Contract**” means these terms and conditions, the Common Terms together with any and every invoice or other document evidencing or describing any Goods.

“**the Company**” means Davis Trading Company Limited and any of its subsidiaries or trading entities.

“**Goods**” means all goods or other property which are supplied by the Company to the Buyer.

The terms “**after-acquired property**”, “**at risk**”, “**default**”, “**inventory**”, “**lease**”, “**perfected**”, “**proceeds**”, “**purchase money security interest**”, “**rights**”, “**security interest**” and “**sell**” have the respective meanings given to them under, or in the context of, the PPSA.

The Company's Terms and Conditions for Online Ordering

These Terms and Conditions are to be read in conjunction with the Common Terms, our standard Terms and Conditions for Goods and Account Applications. References to "you", "your" mean the Buyer. References to "we", "us", "our" mean the Company.

Please read this carefully. By submitting an order on this web site you are agreeing to the terms that appear below which will apply to any purchase made on this web site. To place orders using this web site you must be a registered customer of the Company.

1. Purchase Contract

All purchases made on this web site are governed by these Terms and Conditions at any time although the Terms and Conditions governing any given purchase will be those in effect at the date of your order. We reserve the right and at our sole discretion to amend these Terms and Conditions at any time. If you order goods after we have published any changes you will be bound by those changes. Accordingly, you should check prior to each order to ensure that you understand the precise terms and conditions applicable to your purchase. We will notify you by email to the email address you have provided to us as soon as possible to confirm receipt of your order and will email/phone you again to advise if there are any discrepancies. Our acceptance of your order will take place upon despatch of the product(s) ordered and at this point the purchase contract will be made and we will supply the goods to you in accordance with these Terms and Conditions and our standard Terms and Conditions.

2. Pricing and Availability

The prices quoted on our website are your contract prices. These are updated each night. Prices in your contract at the time the Company receives your order are the prices you will be invoiced at.

Products are subject to availability and prevailing market conditions. We may limit the quantities of goods (particularly goods on special offer) supplied to any one customer.

Product descriptions should only be used as a guide and Provida, reserves the right to vary them without notice.

All prices are quoted in New Zealand currency.

The prices displayed are GST exclusive, unless otherwise stated. GST shall be payable by you on all Goods ordered.

Prices are indicative and may change without notice. The actual price is calculated & invoiced at delivery.

We may charge a small delivery charge on delivered orders under a specified order value (ex GST). There may be additional charges for delivery to some locations or of specialised items.

3. Delivery

Delivery will be made to the address specified by you when you place your order online.

It is your responsibility to ensure that an appropriate person is available at the delivery address at all times during the agreed date. All goods must be signed for on delivery by an adult aged 18 years or over.

If no one is at the address when delivery is attempted the goods will be returned to us at your cost. Any redeliveries shall be at your cost. Any goods ordered via our website, will remain the property of the Company.

All goods remain the property of Company until payment has been made in full and has been received in full by us.

4. Order Error

Orders must be checked and signed for at time of delivery. Claims for shortages, damages or incorrect goods must be notified to your local branch quoting your customer code and order number within 24 hours of delivery. Our liability will be limited to the price of damaged Goods not delivered or incorrectly delivered and the cost of delivery.

5. Returns

Goods may not be returned without a collection note.

6. Availability of service

The online service may be unavailable at certain times to allow us to maintain and upgrade the website. Although we will always endeavour to inform customers in advance of any service unavailability, this cannot be guaranteed. We reserve the right to alter or withdraw the service at any time and also reserve the right to refuse the service to any customer without giving a reason

7. Password/Account Security

At the time of your registration we will issue you with a password. You are responsible for maintaining the confidentiality of your password and account and any activities that may occur within your account. We shall not be liable to any person for any loss or damage which may arise as a result of any failure by you to protect your password or account.

Choose a password that is not easily guessed or identified as relating to you, or is an obvious combination of letters & numbers. Do not make your password known to any other person(s).

As a user of this web site you agree:

To order products in accordance with the instructions on this site and not misuse the site in any way.

That you are a person authorised by one of our registered customers to use this site for ordering on their behalf.

That you are financially liable for products ordered via your web account.

That you will pay for the products invoiced as per your normal terms and conditions and credit terms as a customer.

Cookies

Cookies are small text files that web sites can send to your computer. A cookie can be thought of as an internet user's identification card, which tells a web site when the user has returned. Cookies are not computer programs, and cannot read other information saved on your hard drive. They cannot be used to disseminate viruses, or get a user's e-mail address etc. They only contain and transfer to the web site as much information as the users themselves have disclosed to that web site.

Cookies make the interaction between users and web sites faster and easier. Without cookies, it would be very difficult for a web site to allow a visitor to fill up a shopping trolley or to remember the user's preferences or registration details for a future visit. The company website uses cookies to allow customers to move from one part of the web site to another and to add items to the shopping trolley without having to login repeatedly. It also allows us to give you accurate information about your account and order history.

Applicable laws. The governing law shall be New Zealand Law. If you choose to access our online ordering web site from other locations you do so of your own initiative and you are responsible for compliance with applicable local laws. You may not use the materials in this Site in violation of New Zealand laws and regulations.

SCHEDULE 3

Terms and Conditions for Freight Services

1) GENERAL

In these Terms and Conditions, unless the context otherwise requires:

- a) **"Common Terms"** means the common terms and conditions which are applicable to these Terms and Conditions for freight services which have been previously been provided to the Freight Payer.
- b) **"ELO"** means the Company's Environmental Load-Out Area, being the Company's temperature-controlled loading and freight marshalling areas.
- c) **"Freight"** and **"Goods"** means **"goods"** as defined in Part 5 of the Act carried by the Company at the request of the Freight Payer.
- d) The Freight is carried in conjunction with the distribution of the Company's own food goods & related goods.
- e) **"Freight Payer"** means any person at whose request or on whose behalf the Company provides a Freight carrier service.
- f) All Freight carrier services provided by the Company to the Freight Payer are sold subject to these Terms and Conditions.
- g) The Company's Freight carrier services is based on freighting temperature controlled chilled and frozen food products.
- h) The Company provides a Freight carrier service directly to manufacturers and sellers of Freight (the **"Owner"**), for delivery of their Freight to retail outlets and processors **"End Consignee."** In this context the Owner of the Freight is also the Freight Payer. The Company accepts for delivery Freight from line haul carriers **"Freighter"** who are separately contracted to the Owner for the line haul part of the Freight function.
- i) The Company also provides the same service to line haul freighters of similar Freight where the "Freighter" is the Freight Payer to the Company, and the line haul freighter charges the Owner of the Freight for both the line haul Freight and the Company's Freight service.
- j) Where the Company defines and charges for the Freight unit and the description of the unit is pallet, carton, carton tie, bin, crate, poly bin, pail, or other unit of description, then each unit is deemed to be one unit.

2) CONTRACT OF CARRIAGE

Each contract of carriage of Freight is subject to:

- a) the Act;
 - b) the provisions of the Common Terms;
 - c) these Terms and Conditions for freight services;
 - d) any other agreement between the Company and the Freight Payer; and
- unless otherwise agreed in writing, each contract of carriage of Freight shall be *"at limited carrier's risk"* pursuant to the Act.

3) ACCEPTANCE BY COMPANY OF FREIGHT FOR DELIVERY

- a) Subject to the other provisions of these Terms and Conditions, Goods are accepted for carriage by the Company at the time the Company collects the Goods for delivery or when the Company receives delivery of Goods into its premises.
- b) The Freight Payer shall ensure that all packaging of Goods collected or received for delivery by the Company shall:
 - (i) clearly state if they need to be chilled or frozen and if so at what temperature; and
 - (ii) include a packing slip or invoice containing sufficient details so as to clearly:
 - (A) identify the type and quantity of Goods; and
 - (B) state the gross weight of the Goods and their cubic meter volume;and all packaging, pallets and other such items in which Freight is packed or stored are deemed to form part of the Freight for the purposes of assessing the weight and measurement of the Freight and calculating the charges payable by the Freight Payer.
- c) The Company when it receives delivery of Freight into its ELO for delivery to End Consignee as a complete unit, i.e. a stretch/shrink wrapped pallet or similar multiple unit, accepts no responsibility as to count, composition of individual units or quality of the packaging or the Freight in the individual units within the multiple unit, either on acceptance into the Company's dispatch area, within the dispatch function or on delivery to the End Consignee.
- d) The Company when it receives delivery of Freight into its ELO of a multiple unit of freight for breaking down into deliveries of individual units, for delivery to End Consignee; the Company accepts the freight as a multiple unit subject to subsequent count and verification of the narrated description of the units of freight or document attachments to the individual units being delivered to the End Consignee.
- e) The Company accepts no responsibility as to count or composition of individual units or quality of the packaging or the freight in the individual units or any discrepancies between the Owners description either noted on the Freight or appended document attachments and the actual contents of the Freight.
- f) Where the Company uplifts Freight for return to the Company's ELO for transshipment on either its own vehicles or by other Freighters, or where Freighters deliver Freight for uplift by other Freighters the same terms and conditions as set out in clauses 3(c), 3(d) and 3(e) above will apply with the same effect.
- g) The Company undertakes to advise the Freight Payer within 24 hours of determining any discrepancy of count or delivery description, as between the Owner's or Freight Payer's documentation and the Freight delivered to the Company's ELO.
- h) The Owner of the Freight either directly, or via the Freight Payer if not the Owner, must advise the Company in writing prior to the Company taking delivery of any Freight of its requirements in respect of temperature levels and controls for any cool chain procedures from acceptance into the Company's ELO through to delivery to End Consignee. If this requirement is not fulfilled the Company will not accept any claims for damage arising from temperature variations. The Company reserves the right to check the temperature of freight by probe-testing or such other means as the Company may determine.
- i) All or part of any Freight carrier service to be undertaken by the Company may be fulfilled by the Company engaging or entrusting the Freight to its authorised subcontractors ("subcontractors") on such terms as are agreed between the Company and its subcontractors. The Freight Payer acknowledges that in carrying out any Freight carrier service on behalf of the Company, subcontractors have the right to rely on the benefit of these Terms and Conditions.
- j) If through no fault of the Company, the Freight needs to be stored by the Company for longer than 24 hours after it is collected by or delivered to the Company, then the Company may charge the Freight Payer a reasonable storage charge.

4) DELIVERY AND ACCEPTANCE OF PRODUCT TO END CONSIGNEE

- a) On the Company making a delivery of Freight, the End Consignee shall be required by the Company, before passing possession of the Freight, to sign the Company's delivery manifest and accept delivery of the Freight as well as accepting the transfer to the End Consignee of the Freight delivery documents which accompany the Freight. Any variation advised by the End Consignee as between the Goods delivered and those detailed on the Company's manifest and or Owners delivery documentation shall be recorded on the Company's manifest.
- b) Where the Owner of the Freight requires their delivery docket to be signed by the End Consignee and returned to the Owner either directly or indirectly through the Freight Payer if not the Owner, the Company reserves the right to charge a separate rate for this additional service.
- c) The Company shall not be liable or responsible for any loss, damage, expense and or consequential loss incurred by the End Consignee as a result of non-supply, damage to, or delay in the dispatch or delivery of the Freight. The Company may deliver the Freight in more than one delivery.
- d) Without affecting the Company's other rights, the Company may suspend supply and delivery of the Freight to the End Consignee if the Freight Payer is in default in making any payments due to the Company.
- e) Where the End Consignee has allowed the Company access to premises either by providing keys or any other method where the End Consignee is not present to open the premises in order to effect delivery the Company will not be liable for any loss or damage to the Freight, the premises or contents of the premises, occurring as a result or attributed to the Company having access to the premises irrespective of fault or whether the End Consignee was present when the Freight was delivered.
- f) Where the End Consignee has allowed the Company to deliver to unattended premises or in circumstances where they are otherwise unable to sign the manifest/delivery documents, then the Freight Payer and or Owner of the Freight, accepts as between the Owner of the Freight and End Consignee, that the Company has made delivery to the same extent as if the End Consignee had signed the manifest/delivery documents. The Company's delivery staff member will sign the manifest/delivery document and this will be accepted by the End Consignee as proof of delivery.
- g) Where the Company on delivering Freight to an End Consignee in accordance with the Freight Payer's or Owner's generalised documentation, is advised by the End Consignee for any reason that the Freight (or packing slip or invoice) is unacceptable, the Company reserves the right to charge the Freight Payer for both the Freight delivery and separately for the return of the Freight and the redelivery at another time of the Freight to the End Consignee.
- h) Where the Company has been requested by the Owner of the Freight either directly or via the Freight Payer, if not the Owner of the Goods, to uplift Freight previously delivered to an End Consignee, the Company will charge the Freight Payer for this service at the Company's rates for this service.
- i) Where the Company in good faith delivers Freight to the End Consignee and the Freight is accepted for delivery by person or persons on behalf of the End Consignee who is / are perceived by the Company's driver as having the authority to accept the Freight, the Company accepts no responsibility should any dispute subsequently arise as to the authority or otherwise of the persons accepting the product or their compliance with the End Consignee's in house acceptance procedures.
- j) The Company scans copies of all delivery manifests and the Owner of the Goods, either directly if the Freight Payer, or indirectly via the Freightier if the Freight Payer, accepts that an electronic copy of a delivery manifest if duly completed, constitutes proof of delivery.
- k) The Company on request will provide proof of delivery to the Freight Payer/Owner up to three months after delivery of product to an End Consignee.
- l) The Company on effecting Freight delivery to an End Consignee is frequently subjected to temperature checks of the Freight by an End Consignee. If the Company is of the view that the End Consignee's temperature checking equipment or methods is giving misleading readings or the End Consignee is making a temperature rejection that is inconsistent with the Owner's advised limits or Ministry for Primary Industries standards for particular types of Freight, the Company reserves the right to charge for both the Freight and the return of the Freight and accepts no claim from the Freight Payer/Owner in respect of the Freight delivery under dispute.

5) LOSS OR DAMAGE TO FREIGHT

- a) The Company is not in the business of freighting fragile products and all Freight delivered to the Company for freighting to an End Consignee must be labelled correctly and the contents packaged in a suitable manner to be handled, stacked, transported by truck and unloaded at an End Consignee's premises. The Company will not accept any claims for damage if the Freight is inadequately packaged. The Company does not provide special handling for packages bearing "fragile", package orientation markings or any similar markings. This provision also applies to any Freight packaged in glass.
- b) Any claims made by Freight Payer/ Owner against the Company for Freight damaged in the course of the Freight function, lost or not signed for by the End Consignee, are limited by the Act and must not exceed the value of the cost of the Goods value of the Freight invoiced / charged to the End Consignee. The Company may require verification of the cost of the Goods and this must be supplied by the Freight Payer/Owner. Information supplied in order to validate any claim under this clause will be treated in the strictest confidence. The Company does not accept any consequential loss arising from damage, loss of Freight or failure to prove delivery of the Freight. All claims (other than for proof of delivery) will not be considered as a claim unless notified to the Company within 48 hours of the Company's delivery to the End Consignee.

6) HAZARDOUS, NOXIOUS OR ODEROUS FREIGHT

- a) The Company is not in the business of freighting hazardous freight.
- b) The Company reserves the right to refuse to accept Freight where the Company is of the opinion that the Freight may contaminate other Freight or the Company's own food goods; or if such Freight is perceived by either other Owners of Freight, End Consignee's or Buyers of the Company's product to have a potentially deleterious effect.
- c) The Company's has the right to refuse carriage for any person, or any type or class of Freight, for any reason without explanation.

7) PRICES

- a) Freight will be invoiced at the Company's quoted prices to the Freight Payer for individual or multiple packaging units. Refer Appendix A for Freight Rates.
- b) Should the Freight Payer present to the Company Freight for delivery and the size, weight, location of End Consignee, degree of difficulty in handling the Freight is considered by the Company to be significantly different from the previously agreed unit description of freight handled by the Company for the Freight Payer, the Company reserves the right to deliver the product and charge a Freight rate that it considers reasonable in comparison to other Freight carried for the Freight Payer or other Freight Payers. In such circumstances the Freight Payer, if dissatisfied with the price charged must formally advise the Company to negotiate a revised rate for such units of Freight.
- c) The Company, at its discretion, reserves the right to assess and charge any fuel charge, road user charge, earthquake surcharge or any other charges imposed on the Company or its Freight operations by law without notice, and the Freight Payer agrees to pay all charges or surcharges as the Company may determine.
- d) All prices are subject to change without prior notice.
- e) All prices are subject to the addition of Goods and Services Tax and any other taxes or duties that may apply.

8) PAYMENT

- a) The Company produces one invoice for each Freight Payer for each day that it makes a delivery and prepares at the end of the month a statement of transactions for the month. Payment of the total amount on the Freight statement is due on the 20th of the month following the delivery month.
- b) Where the Company has accepted a claim by the Freight Payer for whatever reason a credit will be issued for the amount determined by the Company as appropriate.
- c) Disputed accounts: - If any part of a Freight Invoice is in dispute the undisputed portion of the invoice shall be payable in accordance with these Terms and Conditions.
- d) Payment of the amount due as per the Freight statement shall be made in full and without set off by the Freight Payer for any claims it may have that have not been credited by the Company within the terms agreed between the Company and the Freight Payer.
- e) The Company reserves the right to charge interest on any amounts unpaid in terms of the agreed terms of payment between the Company and the Freight Payer at the rate of 2% for the first and for each and any subsequent calendar month or part thereof that any amount due for payment remains unpaid.
- f) Failure by the Freight Payer to make payment to the Company on due date will constitute a default under these Terms and Conditions and the Company will be entitled to immediately exercise all or any of its remedies in respect of the default.
- g) Where the Company is a purchaser of the Freight Payer's products and or services the Company shall be entitled to apply as a set off any amounts owing by the Company to the Freight Payer against any unpaid amounts owing by the Freight Payer to the Company.
- h) Receipt by the Company of any cheque shall not be deemed payment until the cheque has been honoured and cleared by the Company's bankers.
- i) The Freight Payer agrees to pay the Company's debt collection agency costs and/or costs and expenses on a solicitor client basis incurred as a result of the failure of the Freight Payer to pay in full the Freight Payer's account with the Company in accordance with these Terms and Conditions.
- j) On agreeing to these Terms and Conditions, the Freight Payer agrees that all existing invoices from the Company for freight unpaid as at the date of signing are retrospectively covered by these Terms and Conditions.

9) OWNERSHIP/CARRIER'S LIEN /RECOVERY OF FREIGHT COSTS

- a) Where the Freight Payer is the Owner of the Freight and the Owner has failed to pay any amount owed to the Company, the Company will be entitled to exercise a lien over the Freight to withhold from delivery and sell any Freight held by the Company and apply the proceeds towards amount owed.
- b) Where the Freight Payer is the Freightier and the Freightier has failed to pay any amount owed to the Company the Company will be entitled to exercise a lien over the Freight and to withhold from delivery any Freight held by the Company delivered by the Freightier in default and negotiate directly with the Owner of the Freight for settlement of the Company's account with the Freight Payer.
- c) The Freight Payer accepts, without recourse, that the Owner of the Freight, to obtain access to the Owners Freight held by the Company because of the Freighters default as Freight Payer, and/or to protect the Owners distribution chain, is entitled to pay the Company up to the extent of the amount owed to the Company including interest by the Freight Payer, but limited to the extent of any amounts owed by the Owner to the Freight Payer and to apply set off against the amount owed by the Owner to the Freight Payer.
- d) The Freight Payer accepts that while the Owner of the Freight may not be party to these Terms and Conditions, that when the Freight Payer is in default in settling the Company's accounts in accordance with these Terms and Conditions, the Company shall be entitled to divulge any aspect of these Terms and Conditions to the Owner of the Freight and the Owner of the Freight shall be entitled to act on this clause as if they had been party to the clause. This clause has equal effect on third parties in the event of any form of insolvency of the Freight Payer.

10) RISK

- a) Risk in the Goods shall pass to the Buyer when the Freight is delivered to the agreed place of delivery.
- b) No claim for damage to the Freight delivered or claim regarding the Freight including invoicing and delivery will be accepted by the Company unless notified to the Company within 48 hours of delivery date.
- c) The Company will not be insuring the Goods. Insurance of the Goods is the sole responsibility of the Freight Payer.

11) LIABILITY OF COMPANY

This contract shall be a contract for carriage "*at limited carriers risk*" as defined in the Act with the Carrier's liability limited as set out in the Act for such contracts unless either:

- (a) The Freight Payer or their agent has signed a written document relating to the carriage of the Goods containing a statement in the following terms:
"These goods are to be carried "*at owner's risk*". This means that the carrier will pay no compensation if the goods are lost or damaged unless the carrier intentionally loses or damages them".
Such contract for carriage will be a contract for carriage "*at owner's risk*" under which the Company shall not be liable for the loss of or damage to any Goods except where the loss or damage is intentionally caused by the Company; or
 - (b) The Freight Payer or their agent has signed a written document relating to the carriage of the Goods containing a statement that the contract for carriage is "*on declared terms*" in which case the Company will be liable for the loss of or damage to any Goods in accordance with the specific terms of the contract.
- In either a contract for carriage "*at owner's risk*" or a contract for carriage "*on declared terms*" (but subject to any applicable limitation or qualification in the Act or the contract):
- (c) The Company shall not be under any liability, howsoever caused or arising and (without limiting the generality of the foregoing) whether caused or arising as a result of the negligence of the Company or otherwise for any damage to, loss, deterioration, misdelivery, delay in delivery or non-delivery of the Goods (whether the Goods are or have been in the possession of the Company or not) nor for any instructions, advice, information or service given or provided to any person, whether in respect of the Goods or any other thing or matter, nor for any consequential or indirect loss, loss of market or consequences of delay; and
 - (d) The Freight Payer indemnifies the Company against all claims of any kind whatsoever, howsoever caused or arising and (without limiting the generality of the foregoing) whether caused or arising as a result of the negligence of the Company or otherwise, brought by any person in connection with any matter or thing done or said or omitted by the Company in connection with the Goods.

The Company shall not be under any liability, howsoever caused or arising and whether caused or arising as a result of the negligence of the Company or otherwise for any damage to, loss, deterioration, misdelivery, delay in delivery or non-delivery of the Goods (whether the Goods are or have been in the possession of the Company or not) due to the inadequate labelling of the Goods including but not limited to labelling referring to the nature of the Goods or the delivery address.

The Freight Payer undertakes not to make any claim against any employee, agent or subcontractor of the Company which attempts to impose upon any of them any liability whatsoever in connection with the Goods and, if any such claim should nevertheless be made, the Freight Payer indemnifies the Company and any such employee, agent or subcontractor against all consequences thereof.

If the Freight Payer provides the Company incorrect gross weight details and/or dimensions of the Goods to be carried and as a consequence the Company commits an overloading offence or infringement offence under any applicable laws or rules and suffers or incurs any fine, penalty, charge or cost, the Freight Payer agrees to indemnify and hold harmless the Company in respect of such fine, penalty, charge or cost and any consequential losses or costs suffered or incurred (or likely to be suffered or incurred) by the Company.

12) BAILMENT OF GOODS

From the date on which the responsibility of the Company ceases as provided by section 258 of the Act, the Company may hold the Goods if undelivered as bailee and shall be entitled to storage fees at normal rates charged by the Company and as bailee shall not be under any liability for any loss or damage to the Goods however caused, or in its discretion return the Goods to the Freight Payer at the risk and expense of the Freight Payer. (The provisions set out above for recovery of interest and costs on outstanding Freight shall apply also to storage fees which remain unpaid seven days after demand for payment has been made.)

The Freight Payer should hold adequate insurance for Goods should this situation transpire.

13) SECURITY INTEREST

- a) Without prejudicing the priority of the Company's carrier's lien pursuant to the Act, where the Freight Payer is the owner of the Freight the Freight Payer agrees that, for the purposes of the PPPSA, that the Company has a security interest in the Freight for unpaid accounts plus interest. The Freight Payer agrees to sign any document required for the Company to perfect the Freight Payer's security interest under the PPSA and authorises the Company to sign any such documents as the Freight Payer's attorney. Nothing in this clause limits or affects the Company's entitlement to and the priority of a carrier's lien in accordance with the provisions of the Act.

15) MATTERS BEYOND YOUR CONTROL

- a) The Company is not responsible for any defect or failure in the Freight, or the acts or omissions of, any third party. In addition, the Company is not liable for any delay in providing Freight, or for any loss, damage or deterioration to any Freight delivered to the Company, where the same arises due to a cause beyond the Company's reasonable control. In no case will liability extend beyond the value of the Freight.

SCHEDULE 4

Terms and Conditions for the Storage of Goods for Customers (“Customer”)

1. Formation of Contract

These Terms and Conditions of storage apply to all goods (“**Goods**”) stored with the Company. Presentation of Goods to the Company constitutes acceptance by the Customer of these Terms and Conditions, which are subject to:

- a) the provisions of the Common Terms;
- b) these Terms and Conditions for the storage of Goods for Customers;
- c) any other agreement between the Company and the Customer.

“**Common Terms**” means the common terms and conditions which are applicable to these Terms and Conditions which have been previously been provided to the Customer.

2. Charges Rates and Terms

Charges, storage rates, terms of payment and term of storage will be as agreed with the Customer from time to time or otherwise as agreed prior to receipt of Goods or commencement of storage and in the absence of agreement at the prevailing rates charged by the Company. Refer Appendix B for storage rates.

All amounts, unless otherwise stated are exclusive of Goods and Services Tax which is payable by the Customer.

3. Receipt of Goods

All Goods are received into storage on the basis that the quality, quantity, contents and condition of the Goods are unknown to the Company. Where particulars of the Goods are noted on any receipt issued by the Company such particulars are those supplied by the Customer and are for the purpose of identification only.

4. Business Hours

Goods will be accepted for storage and can be uplifted in normal working hours. Any Goods to be delivered or uplifted outside normal working hours or on statutory holidays will require special arrangements to be made by the Customer with the Company and may incur additional charges.

5. Stated Weights

Goods shall be accepted by the Company at stated weights and the Company accepts no responsibility for such weights or for any alleged change in weight during storage.

6. Tallies

All Goods shall be tallied by the Company into and out of storage. If the Customer is not present at the time of receipt or delivery of the Goods, the tally of the Company shall be accepted as final.

7. Customer's Warranty and Indemnity

The Customer warrants:

- (a) that the Goods are owned by the Customer and that the Customer has the full right, power and authority to store the same with the Company.
- (b) that the Goods are and shall remain free of any harmful or objectionable matter or odor or infestation and do not contravene any Hazard Analysis and Critical Control Points (“HACCP”) requirements or present any potential fire risk which may prejudicially affect other goods in the Company warehouse.

The Customer indemnifies and shall keep indemnified the Company in respect of all actions, proceedings, claims, demands, liabilities, any losses, loss of profits, loss of revenue, consequential loss, payments and legal expenses which may arise or be incurred by or on behalf of the Company as a result of storing the Customer's Goods with the Company.

8. Customer May Inspect

At reasonable times and with a minimum of 24 hours' notice or less, by mutual agreement, and within the Company's normal business hours, the Customer may inspect the Goods held in storage and check their condition provided that any costs or expenses incurred by the Company as a result, are borne by the Customer.

9. Handling of Goods

The Goods shall be stored in and removed from the Company's warehouse by the Company's employees and employees or agents of the Customer shall not enter into the Company warehouse without prior approval.

10. No Obligation on the Company to Inspect

The Company is under no obligation to inspect the Goods in its possession nor to ascertain the condition of the Goods held in storage nor to report any known condition of the Goods in storage.

11. Disposal of Deteriorating Goods

Notwithstanding clause 10, if the Company is, at any time, of the opinion that the condition of the Goods is such that they may threaten or adversely affect the condition of other Goods or property in storage then the Company may remove those Goods without prior notice to or the consent of the Customer and may deal with them as it sees fit at the expense of the Customer, provided, however, that the Company will use reasonable endeavours to notify the Customer.

12. Security Interest

The Customer grants the Company a security interest over all Goods stored by the Customer with the Company as security for any money owing by the Customer to the Company on any account whatsoever including the costs of enforcing this security interest. This security interest applies to all Goods even if the outstanding charges do not relate to those Goods. The Company has the right to withhold delivery of any goods until all charges payable by the Customer have been made if payment is not made by the due date. The Customer shall indemnify the Company against any costs, claims or actions arising out of, either directly or indirectly the enforcement of the security interest granted under this clause. The Customer confirms that it is not prohibited from granting the security interest referred to in this clause and has not granted any party a security interest in the stored Goods which would have priority.

13. Sales of Goods after Customer's Default

If any storage charge or other charge or expense payable by the Customer to the Company is unpaid for 28 days after the date or dates upon which it fell due for payment or if the Customer does not take delivery of the Goods at the date of termination of storage in accordance with these conditions whether by expiration of time or otherwise or if the Customer has not removed the Goods in terms of and within the period specified in clause 14 (time for this purpose being of the essence) and paid all charges and expenses to which the Company is entitled then the Company may, (subject to complying with all laws and without prejudice to any other right or remedy which it may have) remove the Goods from its cold store warehouse storage and sell the same in such manner and on such terms as the Company may deem fit. The Company may apply the proceeds of sale to any money owing by the Customer to the Company on any account whatsoever including the cost of effecting such sale.

14. Notice to Remove Goods

Notwithstanding any fixed term and/or specified volume agreed to between the Company and the Customer, the Company reserves the right at any time to require the Customer by notice in writing to remove the Goods or any part thereof from the Company's warehouse within the period specified in such notice.

15. Liability of the Company

To the maximum extent permitted by law, the Company, together with its subsidiaries, affiliates or any third parties involved in the provision of the storage services shall not have any liability to the Customer (whether in contract, tort, negligence, bailment, waste or otherwise), for:

- (a) any loss of profits, loss of revenue, damage, decay, deterioration or destruction of the Goods or for any other loss, damage, or harm of any type;
- (b) any consequential or indirect or direct loss however arising whether during storage or otherwise, for any reason whatsoever; or
- (c) any incidental, indirect, exemplary, punitive or consequential damages; or
- (d) any loss, injury or damage in respect of the Goods stored whether by way of destruction, fire, theft, store flood, earthquake, tempest or water or negligence or alleged negligence;
- (e) any act or omission of the Company or its employees or agents or
- (f) any loss from any cause whatsoever;
- (g) any act of God,

and without prejudice to the generality of the foregoing the Company shall not be liable for any loss, injury or damages howsoever arising from:

- (a) non-delivery or delayed delivery of the Goods stored; or
- (b) any variations in temperatures or wrong temperatures, sweating, evaporation, leakage shrinkage, deterioration, fermentation, wasting, decay, putrefaction, contamination, vermin strikes; or
- (c) any lockout, shortage of labour, defect in or breakdown of plant or premises or resulting from or contributed to by any circumstances outside the reasonable control of the Company.
- (d)

16. Limitation of Liability of the Company and Notification of Claims

If notwithstanding any provisions of these conditions the Company shall be under any liability (howsoever arising) to the Customer or to any persons whether such liability be in contract, tort, negligence, bailment, waste or otherwise and notwithstanding any relief or remedy to which the Customer or any other person may have been entitled at law or in equity, the extent of any such liability shall at all times be limited to an amount equal to the contracted price payable by the Customer to the Company for the storage services.

17. Insurance

The Customer agrees to insure the Goods stored, either externally or by their own internal insurance arrangement, and keep Goods stored insured for their full value against all risks and the Company shall not be liable for any loss suffered by the Customer as a result of the Customer's failure to take out adequate insurance or make adequate provision for insurance pursuant to this clause.