

STANDARD TERMS AND CONDITIONS OF SALE FOR FRESHA EXPORT LIMITED

1. **General Conditions**

All Goods sold by the Company are sold subject to the Terms and Conditions of Contract. Receipt by the Company of an order from the Buyer will be deemed to be acceptance of the Standard Terms, notwithstanding anything that may be stated to the contrary in the Buyer's enquiries or on the Buyer's orders. Acknowledgment by the Buyer of a Pro Forma Invoice in accordance with clause 3.1 of these Standard Terms will be deemed to be acceptance by the Buyer of the Terms and Conditions of Contract. All conditions and warranties implied by law in favour of the Buyer in relation to the Goods are expressly negated to the extent permitted by law.
2. **Interpretation**
- 2.1 These Standard Terms are entered into on behalf of and are intended to bind and ensure to the benefit of the Company and the Company's successors and assigns.
- 2.2 In these Standard Terms, in addition to any terms specifically defined herein:

"Buyer" means the purchaser under any contract for the purchase of any Goods from the Company (and if more than one Buyer), jointly and severally;

"Company" means Fresha Export Limited;

"Contract" means any contract or agreement between the Company and the Buyer pursuant to which the Company agrees to sell or supply Goods to the or to the order of the Buyer;

"Document" includes any message sent by facsimile or electronic transmission including attachments to any electronic transmission and all such documents shall be deemed to be "in writing";

"Electronic Transmission" includes any form of electronic transmission through the Internet and or World Wide Web of written messages and documents;

"Goods" means any goods which the Company agrees to sell or supply to the Buyer, including all goods which are the subject of any Contract;

"Invoice" means any invoice directed by the Company to the Buyer confirming:

 - (a) in any case in which the Buyer offers to buy Goods from the Company, that the Buyer's offer has been accepted by the Company; or
 - (b) in any case in which the Company has offered to sell Goods to the Buyer, that any Buyer's acceptance has been approved by the Company; and

AND may contain additional terms and conditions of the sale (e.g. price, quantity, type of Goods, method of payment, contract type, Port of discharge and expected dates of selling and discharge).

"Price" means the total sum payable to the Company by the Buyer for Goods supplied pursuant to the Terms and Conditions of Contract;

"PPSA" means the Personal Property and Securities Act 1999;

"Security Interest" means the security interest under the PPSA evidenced by and recorded in these Terms and Conditions of Contract;

"Terms and Conditions of Contract" means:

 - (a) the terms and conditions herein set out ("Standard Terms"); together with
 - (b) any applicable terms and conditions set out in:
 - (i) the credit account application form; and/or
 - (ii) the Pro Forma Invoice.
- 2.3 Headings are used as a matter of convenience only and shall not affect the interpretation of these Standard Terms.
- 2.4 References to "business day" mean any day of the week other than Saturday, Sunday or public holiday in Auckland, New Zealand.
3. **Formation of Contract**
- 3.1 A contract for the supply of Goods shall not be formed until the Company has sent to the Buyer an Invoice and the Buyer has acknowledged receipt (which may either be by a Document or by an act, such as payment of a deposit) without any attempt in the acknowledgment to change or amend the terms of the contract.
- 3.2 Any Document sent by the Company or any agent of the Company to the Buyer prior to the issue of an Invoice shall not be binding on the Company.
- 3.3 Where the Invoice specifies a delivery date or dates, this is an estimate only. Time is not of the essence unless expressly stated in the Invoice.
4. **Variation**

No instruction, stipulation, condition or variation to any Contract or the Terms and Conditions of Contract shall have any force or effect unless agreed to in writing by the Company and the Buyer.
5. **Conflicting Terms**
- 5.1 Where any conflict exists between the Standard Terms and/or terms and conditions in the credit account application form and/or the Invoice:
- 5.2 The terms and conditions in the Invoice shall prevail over any other conflicting terms and conditions but only in respect of the order to which it relates;
- 5.3 The terms and conditions in the credit account application form shall prevail over any other conflicting terms and conditions in the Standard Terms
6. **Shipment Terms**

Goods may be sold free on board ("FOB"); costs, insurance and freight ("CIF"); costs and freight ("CFR"), each as defined in Incoterms 2010 edition or on any other terms defined in Incoterms; or on such other basis, as may be agreed between the Company and the Buyer at the time of formation of the Contract, and as recorded on the Invoice. If no shipment terms are recorded on the Invoice the Goods shall be sold FOB.
7. **Price**
- 7.1 The Price contained in the Contract is based upon rates and costs as at the date of the Contract relating to the costs of materials, transport, labour, customs duty, insurance and other rates and costs. The Price shall be increased by the amount of any increase in the costs of any such items or any other factors due to circumstances beyond the control of the Company between the date of the Contract and the date of actual delivery of the Goods to the Buyer.
- 7.2 Unless otherwise expressly stated in the Invoice or implied by the shipment terms, the price does not include any applicable taxes, duties, freight and insurance and shall be the responsibility of the Buyer.
8. **Payment**
- 8.1 Payment of the Price will be made in accordance with agreed payment terms as noted on the credit account application form signed by the Buyer and/or the Invoice sent to the Buyer.
- 8.2 The Buyer shall not for any reason, withhold payment or make any deduction or set off from the Price.
- 8.3 If no other payment terms are agreed then payment is to be 100% of invoice upon receipt of the Invoice and prior to the Goods leaving the Company's premises. The Company may withhold delivery of any Goods pending receipt of the Buyer's payment in full.
- 8.4 Unless otherwise agreed in writing, all payments are to be by wire/SWIFT transfer in cleared funds to the Seller's nominated account and are not deemed to have been made until the Vendor has received notice of receipt from its Bank.
- 8.5 If the Company shall at any time deem the credit of the Buyer to be unsatisfactory, it may require that full payment by the Buyer be made of any outstanding amounts and suspend the performance of the Company's obligations under the Terms and Conditions of Contract with the Buyer until such amounts are paid in full, notwithstanding anything to the contrary in the Terms and Conditions of Contract. All costs and expenses of or incurred by the Company as a result (direct or indirect) of such suspension and any recommencement shall be payable by the Buyer upon demand. The Buyer agrees that the Buyer's credit account with the Company may be suspended or closed at the Company's discretion.
- 8.6 The Company may apply any payments received from or on behalf of the Buyer in the reduction of amounts owing in such order and manner as the Company thinks fit (despite any direction to the contrary and whether before or after the occurrence of an event of default).
- 8.7 Interest at 24% per annum calculated on a daily basis shall be payable on any moneys outstanding under the Terms and Conditions of Contract from the date payment was due until the date payment is received by the Company, but without prejudice to the Company's other rights in respect of non-payment or late payment.
- 8.8 The Buyer shall be liable to pay all expenses and legal costs of the Company (calculated as between solicitor and own client) in remedying any failure by the Buyer to make payment by the due date or any other breach by the Buyer of the Terms and Conditions of Contract, such expenses and costs being calculated up to the date of payment by the Buyer and/or remedying the breach of the Terms and Conditions of Contract by the Buyer.
9. **Delivery of the Goods**
- 9.1 Delivery shall be made at the place indicated in the Contract as the final destination or if no place is indicated, at the port of discharge. If the Buyer fails or refuses or indicates to the Company that it will fail or refuse to take or accept delivery, then the Goods shall be deemed to have been delivered when the Company was willing to deliver them.
- 9.2 The Company reserves the right to deliver the Goods by instalments on separate vessels, and in any such case each such instalment shall be regarded as a separate contract and payment made accordingly. Should the Company fail to deliver or make defective delivery of one or more instalments this shall not entitle the Buyer to repudiate the Contract.
- 9.3 Without prejudice to any other rights and remedies which it may have, the Company may charge storage, transportation and disposal expenses and may in addition receive from the Buyer any additional costs, charges and expenses incurred by it if the Buyer fails or refuses to take or accept delivery, then the Goods shall be deemed to have been delivered when the Company was willing to deliver them.
- 9.4 The Buyer shall give to the Company reasonable notice of the dates and times at which and the quantities in which the Goods to be delivered
- 9.5 The Company will endeavour to have the Goods delivered on the agreed delivery dates, but will not be held liable for late delivery. Late delivery does not entitle the Buyer to cancel any order or part order of the Goods.
- 9.6 Notwithstanding the Standard Terms, any claim for Goods damaged in transit or during unloading or for alleged short delivery of Goods, must be noted on the delivery docket at the time of delivery (as it pertains to damage) and notified to the Company within two days after the date of delivery (as it pertains to both damages and short delivery).
- 9.7 Within ten (10) business days after the receipt of such notice, the Company shall investigate the claim of shortages, defects or damage and inform the Buyer of its findings. At the sole discretion of the Company, the Company will deliver to the Buyer any such Goods (if any), to replace those Goods which were found by the Company to be missing, defective or damaged at the time of delivery or provide the Buyer with a credit for the value of such Goods.
10. **Risk and Title**
- 10.1 The risk in the Goods supplied by the Company to the Buyer shall pass to the Buyer in accordance with the shipment terms or as otherwise agreed in writing between the Company and the Buyer but the ownership in them shall not pass to the Buyer until the Buyer has paid for the same and discharged all outstanding indebtedness to the Company whatsoever. Receipt by the Company of any cheque or other bill of exchange or any promissory note shall not be deemed to be payment or conditional payment until the same has been honoured or cleared and until such time shall not prejudice or affect the rights, powers or remedies of the Company against the Buyer and/or the Goods.
- 10.2 The Company reserves all rights and remedies it may have under applicable law to recover the Goods sold and/or delivered to the Buyer if the Buyer does not pay for such Goods by the payment due date. This includes the right to divert Goods on the water, or to enter upon the Buyer's or other's premises and remove such Goods. Such rights are cumulative and not in substitution for any other rights that the Buyer may have in the circumstances.
- 10.3 Until payment in full of the Price for the Goods and all outstanding indebtedness to the Company has been paid and the Company has released the Security Interest:
 - (a) the Buyer shall separately store the Goods in such a way that it is clear that they are the property of the Company;
 - (b) the Buyer shall allow the Company to inspect any records, inventories and accounts of sale of goods; and
 - (c) in the event of a default in accordance with the Terms and Conditions of the Contract, the Buyer hereby irrevocably gives the Company, its agents and servants leave and licence without the necessity of giving any notice whatsoever to enter on and into any premises occupied by the Buyer to search for and remove any of the Goods supplied to or in which the Company has ownership as aforesaid or a Security Interest, without in any way being liable to the Buyer or any person or company claiming through the Buyer and if the Goods or any of them become accessions and are wholly or partially attached to or incorporated in any other property, the Company may disconnect or sever them in any way whatsoever as may be necessary to remove the Goods; and
 - (d) All costs, claims, proceedings, damages and expenses of or incurred by the Company as a result of any such action together with transportation and storage charges and legal costs (as between solicitor and own client) 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.
- 10.4 In the event that the Buyer is not purchasing the Goods for the Buyer's own use or the Goods are incorporated into other products of the Buyer, and until payment in full of the Price and all outstanding indebtedness has been made, the Buyer acknowledges and agrees as follows:
 - (a) in respect of Goods that are not purchased by the Buyer for the Buyer's own use, the Goods supplied are held by the Buyer as bailee to be sold by it as agent for and on behalf of the Company;
 - (b) if the Goods have been resold by the Buyer or incorporated into other products of the Buyer prior to payment in full of the outstanding indebtedness of the Buyer to the Company, then any book debts thus created in the proceeds of resale of the Goods or sale of the products of the Buyer that the Goods have been incorporated into shall be the property of the Company for an amount not more than such indebtedness, which shall be held in trust by

- the Buyer for the Company and the proceeds shall be placed in a separate bank account in such a way as to be identifiable as being to the beneficial ownership of the Company;
- (c) the Buyer shall not purport to assign the right to receive the book debts or proceeds of resale that are the property of the Company to any third party; and
- (d) the authority conferred on the Buyer by clause 10.4(a) may be revoked by written notice from the Company at any time if the Company deems the credit of the Buyer to be unsatisfactory or if the Buyer is in default in the performance of its obligations under the Contract or any other agreement between the Company and the Buyer and shall be deemed to be automatically revoked on the happening of any event of default described in these Standard Terms. If the authority conferred on the Buyer has been revoked, the Buyer shall cease to deal with the Goods and immediately deliver them to the Company and all transactions entered into by the Buyer in respect of the Goods after the withdrawal of the Buyer's authority shall be void. The Buyer must promptly advise the Company of any event of default or any action by third parties (including any of its creditors) affecting the Company's interest in the Goods.
- 10.5 The Company may bring an action for monies owed even where the ownership of the Goods has not passed to the Buyer.
- 10.6 The Buyer agrees that the Company shall have the right to complete and have registered a mortgage over any property owned by the Buyer (including any land acquired in the future) to secure monies owed by the Buyer, and the Company shall also have the right to register a caveat against any such property and the Buyer hereby irrevocably appoints the Company as the Buyer's attorney for the purpose of executing and perfecting such mortgage.
- 11. Limits of Company's liability**
- 11.1 The Company shall not be liable for any act or omissions whether by reason of negligence or otherwise in breach of the Terms and Conditions of Contract unless such breach is notified by the Buyer to the Company in accordance with the Company's claims procedure. The total liability of the Company for any loss, damage or injury arising directly or indirectly from any defect in or non-compliance of any of the Goods or any other breach of the Company's obligations shall in any case be limited, except where statutes expressly require otherwise, to the lesser of the invoiced purchase price of the Goods complained of, the cost of repairing or replacing the Defective Goods and/or the actual loss or damage suffered by the Buyer.
- 11.2 The Company shall not be liable in any event for any consequential, indirect or special damage, loss or injury of any kind suffered by the Buyer or any other person.
- 12. Default by Buyer**
- 12.1 Should the Buyer fail to tender due and punctual payment of the Price, then all amounts payable to the Company under all Contracts with the Buyer shall become immediately due and payable to the Company without further notice thereof and the Company may enforce the Security Interest in the Goods.
- 12.2 Further to clause 12.1 above, should the Buyer fail to tender due and punctual payment of the Price, or advise the Company that the Buyer is unable or unlikely to be able to make due and punctual payment of the Price by the due date, or advise the Company that the Buyer does not intend to tender due and punctual payment of the Price, the Company may forthwith, and without prejudice to any other rights and remedies it may have, exercise any one or more of the following rights. The Company may:
- (a) retain any documents of title to the Goods, and for avoidance of doubt it is agreed that the Company shall not be required to release documents of title to the Goods until such time as payment in full of the Price has been made;
- (b) give the Buyer notice in writing terminating the Contract and claim damages from the Buyer for all losses suffered by and costs incurred by the Company as a result of the termination including without limitation, packaging and re-packaging costs, storage and/or demurrage costs, export or other taxes and duties, freight costs, financing costs, loss of profits and any diminution in the value of the Goods due to price movements;
- (c) re-sell the Goods;
- (d) divert the Goods (at sea or on shore);
- (e) enter upon the premises where Goods or any part thereof are situated and take possession and remove the same without being responsible for any damage caused thereby.
- 12.3 If the Buyer commits any act of bankruptcy or, being an incorporated company, passes a resolution for winding up (except for the purposes of reconstruction), or a court makes a winding up order or a petition is filed in any court for winding up the Buyer, or the Buyer enters into any compromise or arrangement with creditors, or does any act which would render it liable to be wound up or have a receiver or a manager appointed over its property, the Company, without prejudice to any other right it has in law or equity may at its option, suspend or cancel the Contract in whole or in part without liability on the part of the Company, and to claim in the bankruptcy or liquidation for costs and expenses incurred in any loss of resale. Payment of Goods delivered up to the date of suspension shall immediately become due and payable and the Company may enforce the Security Interest in the Goods
- 12.4 If the event that the Company is eligible to exercise any remedy pursuant to this clause in respect of any Contract between the Company and the Buyer then the Company shall be able to exercise the same remedies in respect of any other uncompleted Contract then in existence between the Company and the Buyer.
- 12.5 In any of the foregoing events, the Company also reserves the right as agent of the Buyer to enter upon the land or premises where the Goods are situated without notice and take possession of and remove the Goods from the said land or premises at any time convenient to the Company and the Company shall not be responsible for any consequential loss or damage to the said land or premises or any person removing the same. The Buyer agrees to obtain all consents necessary to enable the Company to take possession of the Goods and indemnifies the Company against all liability in connection with such entry into the said land or premises and the taking possession and removal of the Goods. The Company may resell the Goods and any of the Goods in the possession of the Company and apply the proceeds in or towards payment of the Price.
- 12.6 All costs, claims, proceedings, damages and expenses of or incurred by the Company as a result of any such action contemplated by this clause 12 together with transportation, storage charges and legal costs (as between solicitor and own client) 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.
- 12.7 If the Company already has a perfected Security Interest in the Goods together with the proceeds of sale of the Goods, that Security Interest is continued under these Terms and Conditions of Contract. Otherwise, the Buyer grants to the Company a Security Interest in the Goods supplied to the Buyer. The Company's Security Interest covers the Goods together with proceeds of all kinds, to the value of all Goods that the Company has supplied to the Buyer whether or not those Goods have become accessions to other goods or processed or commingled into or mixed with other goods. The Goods subject to the Security Interest are as described on our invoices. Where the Goods have become mixed with other similar goods supplied by other persons, the Buyer grants a Security Interest in the mixed goods to the value of the Goods in the mixture that we have supplied to you but which have not yet been paid for. The Company's Security Interest also covers any other amounts owing to us including enforcement costs arising from the Buyer's breach of these Terms and Conditions of Contract.
- 13. Claims**
- 13.1 In the event of any claims by the Buyer alleging breach of the Terms and Conditions of Contract in respect of quality or quantity of the Goods, or other pre-shipment obligations on the part of the Company, the Buyer is required to follow immediately the claims procedures as laid down and advised by the Company to the Buyer from time to time.
- 14. Credit Limits**
- If the Buyer's account in respect of Goods ordered from the Company exceeds the credit limit set solely at the discretion of the Company, the Company shall have the right at its option to cancel the Contract in whole or in part without liability on the part of the Company.
- 15. Information**
- 15.1 The Buyer acknowledges that it has authorised the Company to:
- (a) collect information about the Buyer from any person; and
- (b) use any information it holds about the Buyer; and
- (c) disclose information about the Buyer to any person, in the course of the Company's business, including (but without limitation) credit assessment, debt collection and direct marketing activity.
- 15.2 If the Buyer is an individual, the Buyer is entitled under the Privacy Act 1993 to access and request the correction of any personal information which the Company holds about the Buyer.
- 16. Delay**
- 16.1 If any time for delivery of the Goods and Services or completion of the Contract or any part thereof is stated in the Contract, such time shall be approximate only and shall not be deemed to be of the essence of the Contract.
- 16.2 Notwithstanding any agreement as to the date of shipment, it is agreed that shipment may be suspended in whole or in part from time to time, and the Company shall not be liable for failure to deliver or any delay in delivery, in case of fire, accident, earthquake, flood, drought, crime, war, blockade, civil commotion, epidemic, strike, lockout or labour dispute (whether or not as to the Seller's works), shortage of fuel, power, raw material or labour, inability to procure stock, inability to obtain transport, delays in transit, rejection by regulatory authorities in country of destination, failure by the Buyer in performing its obligations hereunder, or any other event beyond the control of the Company, and such suspension shall not entitle the Buyer to cancel shipments under the Contract. If shipment is delayed by anything or any event as aforesaid for more than 30 days, the Company may at its option by notice to the Buyer rescind the Contract in which case the Buyer shall have no claim of any nature or kind against the Company.
- 16.3 If the supply or delivery of the Goods is delayed by reason of or as a result of any act, omission, default or request by or on behalf of the Buyer, the Company may without prejudice to its other rights and remedies require payment by the Buyer of such portion of the Price as represents the extent to which the Company has performed the Contract or carried out work required by the Contract up to the date such payment is required together with any expenses or additional costs incurred by the Company as a result of such delay continuing beyond a reasonable time and/or the Company may, without prejudice to its other remedies terminate the Contract.
- 17. Liability**
- 17.1 If the Buyer is a company then the directors of the Buyer or any other relevant person(s) who has signed the Personal Guarantee attached to and forming part of these Standard Terms will be personally liable in terms of the Personal Guarantee attached.
- 17.2 If the Buyer is a trust, then the trustees of that trust will be liable to the Company in their personal capacity unless their liability as (if applicable) professional trustees has been limited by written agreement with the Company.
- 17.3 If the Buyer is a partnership, then the partners who have signed the Personal Guarantee attached to and forming part of these Standard Terms will be personally liable in terms of the Personal Guarantee attached.
- 18. Waiver**
- 18.1 No failure by the Company to insist upon strict performance of the Contract, including any of the Terms and Conditions of Contract, or any delay in exercising any of its rights or remedies, constitutes a waiver or variation unless expressly agreed to in writing under the signature of the Company or an authorised officer of the Company.
- 18.2 Any written waiver or variation agreed to by the Company shall apply only to the specific Contract to which it relates, shall apply strictly in accordance with its terms, and shall not give rise to any other implied waiver or variation or exception of other waiver or variation.
- 19. Assignment**
- The Buyer may not assign all or any part of its rights or obligations under the Contract without the prior written consent of the Company, which may be given or withheld by the Company at its sole and absolute discretion. Any assignment of the Buyer's rights and obligations under any contract between the Buyer and the Company shall not release the Buyer from its obligations under the contract the Buyer remaining personally liable to perform the same.
- 20. Applicable law**
- Any agreement between the Buyer and the Company shall be governed by the laws of New Zealand and any dispute is subject to the non-exclusive jurisdiction of the New Zealand courts.
- 21. Exclusion of Vienna convention**
- The parties agree that notwithstanding the domicile of the Company and/or the Buyer and/or the applicable laws applying to the contract the Buyer and the Company expressly agree that the United Nations Convention of Contracts for the International Sale of Goods (1980) ("the Vienna Convention") shall not apply and no terms or conditions shall be implied into the contract by virtue of the Vienna Convention.
- 22. Consumer Guarantees Act**
- The Buyer represents that it is acquiring the Goods for the purposes of a business and accordingly the Consumer Guarantees Act 1993 or any amending or substituting legislation shall not apply. Nothing in these Terms and Conditions is intended to have the effect of contracting out of the provisions of the Consumer Guarantees Act 1993 or any amending or substituting legislation, except to the extent permitted by that Act and these terms are to be modified to the extent necessary to give effect to that intention.
- 23. Validity**
- In the event that any clause of the terms and Conditions of Contract is invalid or unenforceable under the laws of the relevant jurisdiction, that clause will be amended, but only to the extent necessary to make it valid and enforceable under those laws. If amendment is not possible that clause will be stricken from the Terms and Conditions of Contract, however the balance of the Terms and Conditions of Contract will continue in full force and effect.
- 24. Variation of Standard Terms**
- The Company reserves the right to change any of the Standard Terms. The Company will notify the Buyer of any such changes and the Buyer agrees that notification that there has been a change to the Standard Terms may be undertaken by notifying the Buyer of the fact of change and that the amended Standard Terms may be viewed on the Company's website. The Buyer agrees that upon notification of a change the Buyer shall be deemed to have read and agreed to the amended Standard Terms in respect of any subsequent contract entered into between the parties.
- 25. Communications between the parties**
- 25.1 Communication between the parties may be conducted by letter, facsimile or electronic transmission.
- 25.2 Subject to proof to the contrary, communications sent by facsimile or electronic transmission shall be deemed to have been received by the other party on the next business day after sending provided that the sending party can provide a transmission report showing successful transmission without error.
- Execution of a facsimile or electronic copy of a document and transmission from one party by facsimile or electronic transmission to the other or their representative is intended to bind the first party and will constitute a binding offer and/or acceptance and satisfy the requirements of Sections 9 to 27 of the Property Law Act 2007 and of the Electronic Transactions Act 2002.