

ASTROLABE SHIPPING LIMITED
CARGO BROKERAGE & HANDLING TERMS AND CONDITIONS

1. Application

- 1.1 These terms and conditions apply to all Services undertaken and provided by Astrolabe Shipping Limited (**Astrolabe**).
- 1.2 By instructing Astrolabe to provide Services (including use by the Customer of the Services), the Customer agrees to be bound by these terms and conditions.
- 1.3 The contract between Astrolabe and the Customer shall comprise Astrolabe's quotation (or if there is no quotation, any other documents or correspondence in which Astrolabe sets out the basis upon which it will provide Services to the Customer) and these terms and conditions (**Contract**).
- 1.4 These terms and conditions supersede and prevail over any terms and conditions in any document issued by the Customer purporting to have contractual effect.
- 1.5 These terms and conditions shall also benefit, and be enforceable, by any officers, employees, contractors, sub-contractors, or agent of Astrolabe.
- 1.6 In the event of any inconsistency between these terms and conditions and the terms and conditions of a Transport Document, these terms and conditions shall prevail.
- 1.7 Astrolabe may, in its discretion, refuse to provide Services to the Customer, or, suspend Services, or only agree to provide Services under special conditions.
- 1.8 Astrolabe may vary these terms and conditions from time to time without notice.

2. Definitions

"Carriage" means the transportation of Goods from the place of receipt to the place of delivery or any part of such transportation (including by any combined means of transport) and any incidental services, including handling.

"Carrier" means the carrier contracted to perform the Carriage of the Goods.

"Charges" includes freight, deadfreight, demurrage, detention, bunker adjustment costs, cartage, port dues / fees, agency or booking or management fees levied by Astrolabe, and any cost or expenses incurred by Astrolabe in the performance of the Services, but exclude the cost of insurance.

"Container" means any container, trailer, transportable tank, flat rack, pallet or other packaging or similar item used to carry, consolidate, store or package the Goods.

"Customer" means the company, entity or person acquiring Services from Astrolabe and includes the shipper, consignee, receiver, owner or bailor of the Goods or their agents or representatives.

“Dangerous Goods” means goods which are noxious, hazardous, explosive, radioactive, flammable or capable by their nature of causing damage to goods or property, or injury to persons, or are unlawful or illegal, or harbour or may harbour pests, vermin, or unwanted organisms.

“Force Majeure Event” has the meaning given to it at clause 14.1.

“Goods” means goods or cargo accepted by Astrolabe for the Services, and includes any Container not supplied by or on behalf of Astrolabe.

“Services” means services, including any incidental services, performed by Astrolabe for:

- (a) the procurement or arrangement of the Carriage of Goods;
- (b) the Carriage of Goods pursuant to clause 3.3 of these terms and conditions; or
- (c) such other services,

as are more specifically set out in the Contract.

“Transport Document” means any air waybill, bill of lading, sea waybill, warehouse receipt, consignment note or other document issued by a third party in relation to the Carriage of the Goods.

3. Services

- 3.1 Astrolabe carries on business as a customs and forwarding agent. Unless otherwise agreed in writing, it provides the Services to the Customer as an agent only.
- 3.2 Unless otherwise agreed in writing, Astrolabe’s obligations are limited to arranging Carriage of the Goods by a reputable Carrier for and on behalf of the Customer. It does not make any contract with the Customer for the Carriage of the Goods and is not the Carrier of the Goods. Any contract for the Carriage of the Goods shall be a contract between the Customer and the Carrier, unless otherwise stated.
- 3.3 Astrolabe may, in its discretion, issue a bill of lading, or other Transport Document, in which it is described as the Carrier. In that case, it shall be entitled to rely on the terms and conditions in that document. In the event of any inconsistency with these terms and conditions, the terms and conditions of that document (including all rights, limitations and exclusions of liability) shall prevail.
- 3.4 In performing the Services, Astrolabe may at any time and without notice to the Customer:
 - (a) Arrange or procure any means of transport whatsoever, by any route;
 - (b) Arrange or procure any means of storage;
 - (c) Authorise the transfer of the Goods from one conveyance to another including transshipment;
 - (d) Arrange unpacking and removal of Goods which have been stowed into a Container and arrange to forward them in any manner whatsoever;
 - (e) Arrange loading or unloading of the Goods at any place and store the Goods at any such place;

- (f) Comply with any orders or recommendations given by any government or authority or any person or body acting or purporting to act as or on behalf of such government or authority; and
 - (g) Take any other action Astrolabe considers in its sole discretion to be necessary in respect to the performance of the Contract.
- 3.5 Astrolabe will not declare the value of the Goods in a Transport Document unless instructed to do so in writing by the Customer.
- 3.6 Pending transportation and delivery, Astrolabe may arrange for the Goods to be warehoused or otherwise stored at any place at the sole discretion of Astrolabe, at the Customer's risk and expense.
- 3.7 At all times the Goods are at the Customer's risk.
- 3.8 Without prior notification and written agreement, Astrolabe will not deal with Goods with special requirements, including:
 - (a) Dangerous Goods;
 - (b) Goods which can only be carried or handled with a permit or licence;
 - (c) Any perishable goods or goods which require special handling or packaging; or
 - (d) Valuables of any kind.
- 3.9 If without prior notification and written agreement the Customer delivers for Carriage any Goods referred to in paragraph 3.8, or causes Astrolabe to arrange or procure Carriage of such Goods:
 - (a) Astrolabe shall not be liable for any loss or damage whatsoever arising out of its dealings with the Goods;
 - (b) The Customer shall be liable for all loss or damage whatsoever caused by, to or in connection with the Goods, however arising;
 - (c) The Customer shall indemnify and hold harmless Astrolabe and its contractors, sub-contractors, servants and agents against all penalties, claims, damages, costs and expenses whatsoever arising as a result; and
 - (d) In the case of goods referred to in paragraph 3.8(a), (b), and (c), the Goods may be destroyed or otherwise dealt with at the sole discretion of Astrolabe at the expense of the Customer, and without any liability to Astrolabe.
- 3.10 If Astrolabe agrees to arrange or procure the Carriage of Goods described in clause 3.8, the Customer shall provide all directions, documents and information relating to the Goods (including any relevant permits) necessary to enable Astrolabe and the Carrier to:
 - (a) comply with any applicable laws and regulations; and
 - (b) arrange for the Goods to be carried or handled safely and with proper care.

- 3.11 During performance of the Services Astrolabe may take images of the Goods to record the condition of the Goods before, during or after Carriage.

4. Customer's Obligations

- 4.1 The Customer authorises Astrolabe:

- (a) To act as its agent to enter into contracts for the Carriage of the Goods with a Carrier on the terms and conditions in any applicable Transport Document and to ratify such contracts; and
- (b) To take any actions that Astrolabe in its sole discretion considers are necessary, or in the Customer's interests, for the performance of the Services, including to enter into or vary contracts on behalf of the Customer, and agrees to ratify such contracts or variations

- 4.2 The Customer expressly warrants that:

- (a) It is the owner or the authorised agent of the owner of the Goods and enters into the Contract on its own behalf or as agent for the owner of the Goods and indemnifies Astrolabe against all claims by any other person for any loss or damage whatsoever arising out of or incidental to or in connection with the Services provided by Astrolabe.
- (b) It is authorised to accept and is accepting these terms and conditions (including where applicable, as agent for and on behalf of the owner of the Goods).
- (c) It has all necessary knowledge of the matters affecting the Carriage of the Goods, including its contractual and other obligations and the requirement to obtain the necessary insurances for the Carriage of the Goods.
- (d) All information provided to Astrolabe in relation to the Goods, including marks, weights, numbers, brands, contents, descriptions, and values are accurate and complete.
- (e) The Goods are fit to be carried and stored in the condition and packaging in which they are given to Astrolabe and the Goods have been properly and sufficiently packed and prepared to withstand the ordinary risks of Carriage having regard to their nature and destination.
- (f) Any Containers or other objects supplied by the Customer in or on which the Goods are stored, packaged or contained conform with any requirements of the consignee, the receiver of the Goods, or any relevant person or authority, or any applicable laws or regulations.
- (g) It will provide written directions to Astrolabe for the proper care of any Goods with special requirements (including dangerous, refrigerated, perishable or high value Goods).
- (h) It will provide adequate written delivery instructions to Astrolabe to enable effective delivery of the Goods.
- (i) It will:

- (i) Comply with any applicable law, regulation, order or requirement of any harbour, dock, airport, railway, shipping, customs, warehouse or other authority or corporation relating to the nature, condition and packaging of the Goods;
- (ii) Provide to Astrolabe all assistance, information and documents as may be necessary to enable Astrolabe and the Carrier to comply with such laws, regulations, orders or requirements; and
- (iii) Pay the Charges of Astrolabe incurred in complying with the provisions of any such law, regulation, order or requirement.

4.3 The Customer shall not tender any Dangerous Goods for Carriage without giving notice in writing and receiving Astrolabe's written agreement to accept such Goods for Carriage.

4.4 The Customer indemnifies and shall hold harmless Astrolabe from and against all:

- (a) Claims for loss or damage, customs duty, excise duty, sales tax, costs, fines or penalties which Astrolabe becomes liable to pay for any reason whatsoever in respect of the Goods unless such liability is due to the negligence of Astrolabe;
- (b) Loss, damage, fees and expenses arising or resulting from any inaccuracies or inadequacy in information provided by it to Astrolabe in connection with the Goods; and
- (c) Claims, losses, costs and expenses, penalties and fines, or any other liability whatsoever arising in the consequence of a breach by the Customer of any warranty, representation or obligation under the Contract.

4.5 The Customer acknowledges that Astrolabe or its contractors may take images of the Goods pursuant to clause 3.11. The Customer authorises the taking of such images.

5. Delivery

5.1 Goods will be deemed to have been delivered to the Customer when they are delivered to the address stipulated by the Customer for that purpose, or to the port of discharge or place of delivery (as applicable).

5.2 In all circumstances responsibility and liability for the Goods (if any) shall cease when they are delivered in accordance with this clause.

5.3 Any time for delivery given by Astrolabe is approximate only. Astrolabe does not undertake that the Goods shall arrive at the port of discharge or place of delivery at any particular time or to meet any particular market or use. Astrolabe shall have no liability whatsoever for any loss or damage resulting from delay in delivery, mis-delivery, or non-delivery of the Goods.

5.4 If the Customer fails or refuses to take delivery of the Goods at the time and place that delivery is to be effected, Astrolabe shall be entitled to give notice to the Customer to unpack the Goods and store the Goods at the risk and cost of the Customer. Such storage shall constitute delivery.

5.5 If the Customer fails to take delivery of the Goods within 30 calendar days of its becoming due or if in the reasonable opinion of Astrolabe they are likely to deteriorate, decay, become worthless or incur any charges in excess of their value or if the Goods are insufficiently addressed, marked or not identifiable, Astrolabe may, without notice and without any responsibility, arrange to sell or dispose of the Goods and apply any proceeds in reduction of any sums due to Astrolabe from the Customer.

5.6 The Customer shall indemnify Astrolabe for any costs, expenses, losses or liabilities that Astrolabe incurs or suffers as a consequence of the Customer's failure or delay in taking delivery, or to delivery for shipment, or to return a container after delivery, within the free time available.

6. Charges

6.1 Any quotations given by Astrolabe are based on the Charges applicable at the date of the quotation and any relevant rates of exchange, taxes, duties or any other costs, and on the latest available quotations from carriers utilised by Astrolabe.

6.2 Charges are deemed earned and are payable upon acceptance of the Goods by Astrolabe or a Carrier, whether or not the Goods are lost or damaged.

6.3 Astrolabe may calculate its Charges by weight, measurement or value, and may at any time reassess the Goods and charge additional Charges accordingly.

6.4 Where a Customer gives special instructions that Astrolabe's Charges are to be paid by a third party it shall be liable to pay the Charges if the third party does not pay Astrolabe within 7 calendar days of delivery, tendered delivery or where the Goods should have been delivered.

6.5 The Customer shall pay Astrolabe for Services in accordance with Astrolabe's invoice for the Charges.

6.6 All Charges shall be paid by the Customer in full on the due date stated in the invoice, without set-off, counterclaim, or deduction, whether Goods are damaged, or not delivered, Goods or vessel lost or not lost, and such Charges shall be non-refundable in all circumstances.

6.7 If any moneys due to Astrolabe for Services are unpaid for 14 calendar days from the due date stated in the invoice, Astrolabe may, at its discretion, charge the Customer interest at the rate of 4% per annum above the Official Cash Rate of the Reserve Bank of New Zealand, against the total balance outstanding.

6.8 Charges for the Services may at the absolute discretion of Astrolabe be quoted and/or charged in the currency of origin or destination or another currency based on the higher of mass, volume or value.

6.9 The Customer authorises Astrolabe in its absolute discretion to advance for the Customer any duties, taxes, or other disbursements for the Goods and undertakes to reimburse Astrolabe for such duties, taxes, or other disbursements. If it is necessary to make customs entry of Goods at any

place, the Goods shall be deemed to be consigned at that place to the Customer, the Carrier or any person the Carrier designates as customs consignee.

- 6.10 Astrolabe reserves the right to recover from the Customer any expenses, legal costs or debt collection agency fees incurred by it in the enforcement of any rights contained in these terms and conditions, including the recovery of outstanding amounts.
- 6.11 Without prejudice to any other rights it may have, if at any time payment of Charges are in arrears, Astrolabe shall be entitled: (i) to suspend performance of any of its obligations, until payment of outstanding amounts is made in full, without any liability to the Customer during the period of suspension; or (ii) to terminate the Contract (including following any period of suspension) on giving written notice to the Customer, without any liability to the Customer.

7. Lien

- 7.1 All Goods and documents relating to Goods shall be subject to a particular and general lien for moneys due in respect of such Goods or any other moneys due from the Customer to Astrolabe. If any moneys due to Astrolabe are not paid within 30 calendar days after notice has been given to the Customer that the Goods have been detained, they may be sold at the discretion of Astrolabe and at the expense of the Customer and the proceeds applied on account of such general or particular lien.
- 7.2 Notwithstanding any transfer of physical possession, the Goods are not released until all moneys owing have been paid to Astrolabe. In the event of any Goods for any reason being delivered without payment having been made in full, Astrolabe retains a lien on such Goods and may retake possession of them pending payment and may enter any premises for that purpose.

8. Insurance

- 8.1 Insurance of the Goods is the sole responsibility of the Customer.
- 8.2 Charges paid to Astrolabe do not include the cost of insuring the Goods.

9. Claims Handling

- 9.1 The Customer agrees that Astrolabe is not obliged to advise or assist the Customer or any other party to prepare or make a claim against a Carrier and accepts no liability for any loss or damage however caused. Astrolabe may agree in writing to provide advice or assistance and may invoice an additional charge for doing so.

10. Liability and Claims

- 10.1 In the event that Astrolabe is or is deemed to be the Carrier of the Goods under a contract compulsorily subject to any applicable national legislation or international convention governing the Carriage of the Goods, it shall be entitled to all rights, exceptions and limitations conferred on the Carrier. Further:

- (a) All Carriage which is or is deemed to be subject to the Contract and Commercial Law Act 2017 (**CCLA**) shall be performed on the basis of “at limited carrier’s risk” as defined in the CCLA, unless otherwise agreed in writing. The provisions of sections 274 to 281 of the CCLA shall not apply.
- (b) Where the Goods are subject to international sea carriage, Astrolabe shall have the benefit of any rights, exclusions of liability or limitations of liability contained in any bill of lading or waybill or other Transport Document issued in respect of the Goods, or conferred under any applicable national legislation or international convention governing the carriage of the Goods.

10.2 Subject to clause 10.1 and any other mandatory provision of law which may apply, Astrolabe shall not have any liability, howsoever caused or arising, in respect of claims for:

- (a) Any loss of or damage to Goods, including without limitation as a result of deterioration, destruction, delay in delivery, mis-delivery, or non-delivery; or
- (b) Any loss of or damage to Goods resulting from a Force Majeure Event.

10.3 In no circumstance shall Astrolabe be liable for any indirect, consequential, exemplary or special loss or damage or cost or expense whatsoever, including but not limited to loss of market, loss of profit, loss of revenue, or loss of use.

10.4 In all other cases, Astrolabe’s total liability for any claims for loss or damage is limited to the lesser of:

- (a) The cost of the Services; or
- (b) NZ\$2,000.

10.5 If clause 10.4 applies, Astrolabe’s maximum aggregate liability for all claims arising out of any one incident or occurrence shall be limited to NZ\$20,000.

10.6 Any Goods carried by air shall be subject to any applicable national legislation or international conventions (including any applicable Protocols or amendments).

10.7 Any claim for loss or damage must be notified in writing to Astrolabe within 7 calendar days of delivery of the Goods or the date upon which the Goods should have been delivered, failing which Astrolabe shall be discharged of any liability howsoever arising.

10.8 In any circumstance Astrolabe shall be discharged from all liability unless court proceedings are commenced in accordance with these terms and conditions within 9 months of delivery or the date upon which the Goods should have been delivered.

11. Legislation

11.1 The Customer acknowledges that the Services are both provided and acquired “in trade” for the purposes of the New Zealand Consumer Guarantees Act 1993 (**CGA**) and Fair Trading Act 1986

(FTA), and all warranties, conditions and other terms implied by the CGA or sections 9, 12A, 13 and 14(1) of the FTA are excluded from these terms and conditions to the fullest extent permitted by law. The parties acknowledge and agree that the exclusions contained in this clause are fair and reasonable.

11.2 Where any legislation applies to the Services:

- (a) The terms and conditions shall be read subject to any provision which is mandatory; and
- (b) Astrolabe shall be entitled to any rights, exclusions of liability or limitations of liability applicable under such legislation.

11.3 These terms and conditions are to be read subject to relevant statutory provisions having effect in New Zealand which by law cannot be excluded, restricted or modified. Any such term and condition of these terms and conditions, which is inconsistent with or repugnant to that legislation, shall be null and void to the extent (but no further) of such inconsistency or repugnance.

12. Sub-Contracting and Indemnity

12.1 Astrolabe shall be entitled to sub-contract on any terms the whole or part of the Services.

12.2 Any person providing the Services (other than Astrolabe) shall have the benefit of these terms and conditions as if they were expressly for his or her benefit and in entering into the Contract, Astrolabe does so as agent and trustee for such person.

12.3 If Astrolabe sub-contracts the whole or part of the Services to another person, the Services provided by Astrolabe are also subject to the terms and conditions of the contract between Astrolabe and that other person and Astrolabe shall have the benefit of all provisions benefiting that other person as if those provisions were expressly for the benefit of Astrolabe. In the event of and to the extent of any inconsistency between these terms and conditions and the terms and conditions of the contract between Astrolabe and the other person, these terms and conditions are paramount.

12.4 The Customer undertakes that no claim shall be made against any person (other than Astrolabe) performing the Services which seeks to impose liability in connection with the Goods, and shall indemnify and hold harmless Astrolabe and the person subject to the claim against the consequences.

13. Termination

13.1 Astrolabe may terminate the Contract at any time by giving written notice to the Customer:

- (a) If clauses 6.11 applies;
- (b) If the Customer is in material breach of the Contract; or
- (c) If the Customer is unable to pay its debts as they fall due, goes into receivership or liquidation, or ceases to carry on its business.

13.2 If Astrolabe elects to terminate the Contract under this clause, termination shall be without prejudice to any rights, powers or remedies it may have under these terms and conditions or at law, existing at the date of termination.

13.3 Either party may terminate the Contract by giving written notice to the other if a Force Majeure Event continues for a period exceeding 90 calendar days, in which case termination shall be without prejudice to any rights, powers or remedies it may have under these terms and conditions or at law, existing at the date of termination.

14. Force Majeure

14.1 For the purposes of this section, "Force Majeure Event" means a circumstance beyond a party's reasonable control, including, without limitation:

- (a) fire; flood; explosion; epidemic; riot; civil commotion; any strike; lockout or other industrial action; act of God; war; warlike hostilities or threat of war; terrorist activities; accidental or malicious damage; and
- (b) any prohibition or restriction by any government or other authority which affects the Contract and which is not in force on the date of the Contract.

14.2 Neither party shall be liable to the other, or be deemed to be in breach of the Contract, by reason of any delay in performing, or failure to perform, any of its obligations (other than payment obligations) under the Contract, if the delay or failure was due to a Force Majeure Event.

14.3 A party claiming to be unable to perform its obligations under the Contract (either on time or at all) due to a Force Majeure Event shall notify the other party of the nature and extent of the circumstances in question as soon as practicable, and shall take all reasonably practicable steps to mitigate the effect of the Force Majeure Event.

14.4 Inability to pay sums due under this Contract shall not be a Force Majeure Event.

15. Law

15.1 These terms and conditions shall be governed by and construed in accordance with New Zealand law.

16. Arbitration

16.1 Any dispute or difference arising out of or in connection with the Contract, or the subject matter of the Contract, including any question about its existence, validity or termination, shall be referred to and finally resolved by arbitration in New Zealand. The arbitration shall be conducted in accordance with the Arbitration Act 1996 or any re-enactment or amendment. The language of the arbitration shall be English. The seat of the arbitration shall be Auckland.

16.2 Notwithstanding the obligation to resolve any dispute in accordance with this clause, neither party is prevented from applying to a Court at any stage for such urgent, interim, injunctive or other relief that cannot be obtained through the arbitral process.

17. Privacy

17.1 Subject to the Privacy Act 1993 (if applicable), the Customer authorises Astrolabe to:

- (a) collect, retain and use information about you for the purposes of managing your account with us, including sending you statements and invoices, organising payment, assessing your credit worthiness, supplying services and goods to you; and
- (b) to disclose information about you:
 - (i) to any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to your obligations to us; or
 - (ii) to such persons as may be necessary or desirable to enable us to exercise any power or enforce or attempt to enforce any of our rights, remedies and powers under these Terms.

18. General

- 18.1 Any unlawful provision in these terms and conditions will be severed, and the remaining provisions will be enforceable, provided that the severance does not materially affect the purpose or intent of the Contract.
- 18.2 Astrolabe's rights, powers and remedies remain unrestricted and may be exercised without prejudice to every other right, power or remedy at any time. Each provision in these terms and conditions survives to the extent it is unfulfilled and does not merge on performance of another provision.
- 18.3 No delay or failure to act by Astrolabe shall be a waiver. No waiver by Astrolabe shall be effective unless it is in writing. A waiver of a breach is not a waiver of any other breach.
- 18.4 Any notice given pursuant to these terms and conditions from Astrolabe to the Customer may be given to the Customer either in person or posted, sent by fax or email to the Customer's last known postal or email address (or where the Customer is a company, to any of its directors). Notices given to Astrolabe pursuant to these terms and conditions must be sent by email to info@astrolabeshipping.com or post to PO Box 18157, Auckland 1743, New Zealand.