

TERMS & CONDITIONS OF TRADE

1. DEFINITIONS

- 1.1 "Big Chill Distribution Ltd" shall mean Big Chill Distribution Ltd or Big Chill Distribution Limited incorporating Auckland Chilled Freight, or any agents or employees thereof.
- 1.2 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing products and services from Big Chill Distribution Ltd.
- 1.3 "Services" shall mean all freight and transport services and warehousing & storage of goods provided by Big Chill Distribution Ltd to the Customer.
- 1.4 "contract" means the contractual arrangement between Big Chill Distribution Ltd and the Customer and includes any accepted quotation, these terms and conditions and Big Chill Distribution Ltd's terms of credit where credit is extended to the Customer.
- 1.5 "Price" shall mean the cost of the Services as agreed between Big Chill Distribution Ltd and the Customer and includes all disbursements eg charges Big Chill Distribution Ltd pay to others on the Customer's behalf subject to clause 4 of this contract.
- 1.6 "Act" means the Carriage of Goods Act 1979 and any modification or substituted act therefore.
- 1.7 "Customer's products" shall mean any goods belonging to the Customer or which the Customer contracts with Big Chill Distribution Ltd to store and /or transport and carry.

2. ACCEPTANCE

- 2.1 Any instructions received by Big Chill Distribution Ltd from the Customer for the supply of Services shall constitute a binding contract and acceptance of the terms and conditions contained herein.

3. COLLECTION AND USE OF INFORMATION

- 3.1 The Customer authorises Big Chill Distribution Ltd to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any Services provided by Big Chill Distribution Ltd to any other party.
- 3.2 The Customer authorises Big Chill Distribution Ltd to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the Customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

4. PRICE

- 4.1 Where no price is stated in writing or agreed to orally the Services shall be deemed to be sold at the current amount as such Services are sold by Big Chill Distribution Ltd at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Services that is beyond the control of Big Chill Distribution Ltd between the date of the contract and delivery of the Services. Big Chill Distribution Ltd reserves the right to alter the price because of circumstances beyond its control such as (and not by way of limitation) where Big Chill Distribution is subjected to an increase in Government levies (e.g. Road User Charges) and Big Chill Distribution reserves the right to pass these on to the Customer by way of an increase in rates or and/or price.
- 4.3 Rates submitted or the price may be subject to change in the event of Force Majeure e.g. road closures, natural disasters, road diversions, strikes or lockouts. If such an event does take place, Big Chill Distribution Ltd will contact the Customer and notify them of these changes.
- 4.4 Big Chill Distribution Ltd reserves the right to charge a Fuel Adjustment Factor ("FAF").
- 4.5 If the price is disputed notice in writing must be given to Big Chill Distribution Ltd as soon as possible, but in all cases prior to the due date for payment. Any undisputed amount or amounts on account of the price are to be paid by the due date for payment.
- 4.6 All rates quoted by Big Chill Distribution are exclusive of GST. The Customer is responsible for paying all applicable GST and each invoice will specify the GST payable.

5. PAYMENT

- 5.1 Unless it has been agreed by Big Chill Distribution Ltd with the Customer that payment for Services shall be made in full on or before the 20th day of the month following the date of the invoice ("the due date") then payment for services shall be made in full on or before seven (7) days following the date of the invoice ("the due date").
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.3 Any expenses, disbursements and legal costs incurred by Big Chill Distribution Ltd in the enforcement of any rights contained in this contract shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 5.5 Where the Customer fails to comply with the terms of payment Big Chill Distribution shall not be liable for any damage or deterioration to the Customer's Products and may withhold delivery until payment is made in full.
- 5.6 Big Chill Distribution Ltd may require the deposit of a sum equivalent to the price charged for its Services or any lesser sum determined by Big Chill Distribution Ltd as a deposit on account of the fill price.

6. QUOTATION

- 6.1 Where a quotation is given by Big Chill Distribution Ltd for Services:
 - 6.1.1 Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue; and
 - 6.1.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;
 - 6.1.3 Big Chill Distribution Ltd reserves the right to alter the quotation because of circumstances beyond its control such as (and not by way of limitation) where Big Chill Distribution is subjected to an increase in Government levies (e.g. Road User Charges) and Big Chill Distribution reserves the right to pass these on to the Customer by way of an increase in rates or and/or price.
- 6.2 Where Services are required in addition to the quotation the Customer agrees to pay for the additional cost of such Services.

7. RISK

- 7.1 All Services provided by Big Chill Distribution Ltd to the Customer are a contract of carriage at "limited carriers risk" pursuant to section 8 of the Carriage of Goods Act 1979.

- 7.2 The time agreed for delivery shall not be an essential term of the contract, unless agreed in writing between the parties.

- 7.3 Big Chill Distribution Ltd shall not be liable for damage to the Customer's products caused through any inherent defect in the Customer's products or through improper or inadequate packing, storage or containment, or labelling or marking when the goods are delivered by the Customer to Big Chill Distribution Ltd.

8. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999) & CARRIERS LIEN

- 8.1 For the better securing of the Customer's obligations under this Agreement the Customer grants to Big Chill Distribution Ltd a security interest in terms of the Personal Property Securities Act 1999 ("the Act") in all of the Customer's Products stored and transported by Big Chill Distribution Ltd under this Agreement and their proceeds and anything to which they have been attached or incorporated.
- 8.2 On the request of Big Chill Distribution Ltd the Customer shall promptly execute any documents and do anything else required by the Big Chill Distribution Ltd to ensure that the security interest created under this Agreement constitutes a first ranking perfected security interest over the Products and their proceeds including providing any information Big Chill Distribution Ltd reasonably requires to complete a financing statement or financing change statement and shall complete the Customer's debtor details in the Debtor Schedule which the Customer warrants are true and correct in all respects. The Customer waives any right to receive a copy of a verification statement under the Act.
- 8.3 The Customer will pay to Big Chill Distribution Ltd all costs, expenses, and other charges incurred, expended or payable by Big Chill Distribution Ltd in relation to the filing of a financing statement or financing change statement in connection with this Agreement and security agreement.
- 8.4 The Customer and Big Chill Distribution Ltd agree that nothing in sections 114(1)(a), 117(1)(c), 133 and 134 of the Act shall apply to this Agreement and security agreement and Big Chill Distribution Ltd may exercise any power to take possession of and/or sell any collateral over which it has a security interest even if Big Chill Distribution Ltd does not have priority over other secured parties having a security interest in the same collateral, and sections 109 and 111 of the Act shall not apply to the extent that they are inconsistent with the foregoing.
- 8.5 The Customer and Big Chill Distribution Ltd also agree that the rights of the Customer as debtor in sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the Act shall not apply to this Agreement and security agreement.
- 8.6 The Customer acknowledges that it has received a copy of this Agreement and security agreement and in particular that the terms contained in this Agreement constitute a security agreement for the purposes of the Personal Property Securities Act 1999.
- 8.7 The Customer warrants that it shall not charge nor grant any security interest in the Products stored and transported by Big Chill Distribution Ltd under this Agreement and security agreement in any way, nor grant any interest in the Products to any other person except the Big Chill Distribution Ltd during the currency of this Agreement or at any time the Customer is in possession of and/or entitled to possession of the Products pursuant to this Agreement and security agreement.
- 8.8 The Customer gives irrevocable authority to Big Chill Distribution Ltd to enter any premises occupied by the Customer or on which Services are situated at any reasonable time after default by the Customer or before default if Big Chill Distribution Ltd believes a default is likely and to remove and repossess any Services and any other property to which Services are attached or in which Services are incorporated. Big Chill Distribution Ltd shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. Big Chill Distribution Ltd may either resell any repossessed Services and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Services and credit the Customer's account with the invoice value thereof less such sum as Big Chill Distribution Ltd reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.
- 8.9 The following shall constitute defaults by the Customer:
 - 8.9.1 Non payment of any sum by the due date.
 - 8.9.2 The Customer intimates that it will not pay any sum by the due date.
 - 8.9.3 Any of the Customer's Products are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize any of the Customer's Products.
 - 8.9.4 Any of the Customer's Products in the possession of the Customer are materially damaged while any sum due from the Customer to Big Chill Distribution Ltd remains unpaid.
 - 8.9.5 The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets.
 - 8.9.6 A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.
 - 8.9.7 Any material adverse change in the financial position of the Customer.

- 8.10 Big Chill Distribution Ltd has a carriers Lien over the Customer's products for all charges due by the Customer (whether in respect of those products or otherwise) and under section 23 of the Act, in default of payment, may exercise the lien in terms of the Act.

9. LIABILITY

- 9.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Big Chill Distribution Ltd which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on Big Chill Distribution Ltd, Big Chill Distribution Ltd's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 9.2 Except as otherwise provided by clause 9.1 Big Chill Distribution Ltd shall not be liable for:
 - 9.2.1 Any loss or damage of any kind whatsoever, arising from the supply of Services by Big Chill Distribution Ltd to the Customer, including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Services provided by Big Chill Distribution Ltd to the Customer; and
 - 9.2.2 The Customer shall indemnify Big Chill Distribution Ltd against all claims and loss of any kind whatsoever however caused or arising from any freight or transport and warehousing & storage of goods services and without limiting the generality of the

foregoing of this clause whether caused or arising as a result of the negligence of Big Chill Distribution Ltd or otherwise, brought by any person in connection with any matter, act, omission, or error by Big Chill Distribution Ltd its agents or employees in connection with the Services, and

9.2.3 To the Customer or any other party for any delay in delivery to any consignee but Big Chill Distribution Ltd shall use its best endeavours to carry any Customer's products as soon as practicable after acceptance of them from the Customer for carriage and delivery.

9.3 The Customer is liable for any additional costs or loss or damage caused to Big Chill Distribution Ltd where the cost or damage is attributable wholly or in part to the nature, packaging or containment of the Customer's products on acceptance of delivery by Big Chill Distribution Ltd.

10. CONSUMER GUARANTEES ACT

10.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Services from Big Chill Distribution Ltd for the purposes of a business in trade in terms of section 2 and 43 of that Act.

11. MISCELLANEOUS

11.1 Big Chill Distribution Ltd shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.

11.2 Failure by Big Chill Distribution Ltd to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations Big Chill Distribution Ltd has under this contract.

11.3 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

11.4 The client shall not assign all or any of its rights or obligations under this contract without the written consent of Big Chill Distribution Ltd.

11.5 The Act shall apply to this Contract where it involves the carriage of the Customer's products except where there is an express provision to the contrary.

11.6 Big Chill Distribution Ltd reserves the right at any time and from time to time to vary or add to these terms and conditions of trade with effect from the date of notification to the Customer.

11.7 Big Chill Distribution Ltd may charge freight by weight, measurement, or value and may at any time re-weigh, re-measure or revalue the Customer's products or require them to be re-weighed, revalued or re-measured and charge proportional freight accordingly.

11.8 All rates of carriage and other charges contained in any price list, quotation, proposal confirmation or other material submitted to the Customer may be withdrawn or varied at any time prior to acceptance of any order placed by the Customer. Big Chill Distribution Ltd also reserves the right to increase any such charges contained in the rates of carriage confirmation or otherwise forming part of the contract by written notification to the Customer with effect fourteen (14) days after the written notification.

11.9 The Customer's products shall comply with the requirements of any applicable law relating to their nature, labelling and packing and carriage of goods and the expenses and charges of Big Chill Distribution Ltd in complying with the provisions of any such law or with any order or requirement thereunder or with the requirement of any harbour, dock, railway, shipping, customs, excise duty, taxation, warehouse or other authority or company and the expenses, charges, levies or fines arising out of any breach of any applicable law shall be paid by the Customer.

11.10 The Customer's products shall be properly and safely packaged and labelled and fully and accurately described in writing in the contract or consignment note.

11.11 This contract shall be governed by and construed in accordance with the laws of New Zealand and the parties expressly submit to the exclusive jurisdiction of the New Zealand Courts.

12. Guarantee

12.1 Where these Terms & Conditions of Trade have been accepted and signed by a company or an incorporated Society, the directors who sign below, also sign as guarantors. Each such director jointly and severally guarantees all of the Customer's obligations herein. Such guarantee is unconditional and irrevocable and given in consideration of Big Chill Distribution Ltd agreeing to perform the Services for the Customer at the request of each guarantor. Each guarantor agrees that if, for any reason, the Customer does not pay any invoice on the due date for payment, then such guarantors shall pay the relevant amount together with any interest owing thereon immediately upon demand being made by Big Chill Distribution Ltd. As between each guarantor and Big Chill Distribution Ltd, each guarantor is liable under this guarantee as a principal debtor and not as a surety.