

DEUGRO (NEW ZEALAND) LTD. (Reg. no 174492)
STANDARD TRADING CONDITIONS OF CONTRACT



A. Definitions and Application

1 In these conditions the following words shall have the following meanings:-

"Company" Deugro (NZ)Limited, trading under these conditions and shall include, unless otherwise stated, its servants, agents and sub-contractors.

"Consignee" the Person to whom the goods are consigned.

"Customer" any Person at whose request or on whose behalf the Company undertakes any business or provides advice, information or Services

"Dangerous Goods" includes any Goods which are or may become dangerous either to the Goods themselves (i.e. of a damaging or destructive nature) or to human life or the safety of any Transport Unit utilized by the Company in order to fulfil its obligations to the Customer.

"Goods" the cargo to which any business under these conditions relates

"Hague Rules" means the International Convention for the Unification of certain rules relating to Bills of Lading signed at Brussels on 25th August 1924

"Instructions" means a statement of the Customers specific requirements.

"Person" natural person(s) or any body or bodies corporate.

"SDR" are Special Drawing Rights as defined by the International Monetary Fund.

"Principal" meaning the Company performs any carriage, handling or storage of Goods but only to the extent that the carriage, handling or storage is performed by the Company itself or its servants and the Goods are in the actual custody and control of the Company, or to the extent that the Company expressly agrees in writing to act as a principal, or to the extent that the Company is held by a court of law to have acted as principal.

"Services" means the whole of the Services provided by the Company to the Customer and all matters necessarily related to the provision of the Services or incidental to the provision of the Services.

"Transport Unit" packing case, pallets, container, trailer, tanker, or any other device used whatsoever for and in connection with the carriage of Goods by land, sea or air.

"Owner" the Owner of the Goods or Transport Unit and any other Person who is or may become interested in them

"Warsaw Convention" means the Convention for the Unification of Certain Rules Relating to International Carriage by Air dated 12 October 1929 as amended

"COGA" Carriage of Goods Act 1979

2 (A) Subject to sub-paragraph **(B)** below, all and any activities of the Company in the course of business, whether gratuitous or not, are undertaken subject to these conditions.

2 (B) If any legislation, to include regulations and directives, is compulsorily applicable to any business undertaken, these conditions shall, as regards such business, be read as subject to such legislation, and nothing in these conditions shall be construed as a surrender by the Company of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation, and if any part of these conditions be repugnant to such legislation to any extent, such part shall as regards such business be overridden to that extent and no further.

3 The Customer warrants that he is either the Owner, or the authorised agent of the Owner and, also, that he is accepting these conditions not only for himself, but also as agent for and on behalf of the Owner.

4 Where a document bearing a title of or including “bill of lading” (whether or not negotiable), or “waybill” is issued by or on behalf of the Company and provides that the Company contracts as carrier, the provisions set out in such document shall be paramount in so far as such provisions are inconsistent with these terms and conditions.

5 Any variation, cancellation or waiver of these terms and conditions (or any of them) must be in writing signed by an officer of the Company. Notice is hereby given that no other person has or will be given any authority whatsoever to agree to any variation, cancellation or waiver of these terms and conditions.

6 The Company acts as an agent and never as a principal when providing services in respect of or relating to customs requirements, taxes, insurance, licenses, consular documents, certificates of origin, inspection, certificates and other similar services.

7 The Company is not a common carrier and accepts no liability as such. The Company reserves the right to accept or refuse to perform any services in relation to the Goods at its discretion.

B. The Company

8 (A) Subject to clauses 16 and 17 below, the Company shall be entitled to procure any or all of the services as an agent, or, to provide those services as a Principal.

8 (B) The Company reserves to itself full liberty as to the means, route and procedure to be followed in the performance of any Service provided in the course of business undertaken subject to these conditions.

9 When the Company contracts as a Principal for any Services, it shall have full liberty to perform such Services itself, or, to subcontract on any terms whatsoever, the whole or any part of such Services.

10 (A) When the Company acts as an agent on behalf of the Customer, the Company shall be entitled, and the Customer hereby expressly authorises the Company, to enter into all and any contracts on behalf of the Customer as may be necessary or desirable to fulfil the Customer’s instructions, and whether such contracts are subject to the trading conditions of the parties with whom such contracts are made, or otherwise.

12 (A) Subject to sub-clause **(B)** below, the Company:

(i) has a general lien on all Goods and documents relating to Goods in its possession, custody or control for all sums due at any time to the Company from the Customer and/or Owner on any account whatsoever, whether relating to Goods belonging to, or Services provided by or on behalf of the Company to the Customer or Owner. Storage charges shall continue to accrue on any Goods detained under lien;

(ii) shall be entitled, on at least [28] days’ notice in writing to the Customer, to sell or dispose of or deal with such Goods or documents as agent for, and at the expense of, the Customer and apply the proceeds in or towards the payment of such sums;

(iii) shall, upon accounting to the Customer for any balance remaining after payment of any sum due to the Company, and for the cost of sale and/or disposal and/or dealing, be discharged of any liability whatsoever in respect of the Goods or documents.

12 (B) When the Goods are liable to perish or deteriorate, the Company's right to sell or dispose of or deal with the Goods shall arise immediately upon any sum becoming due to the Company, subject only to the Company taking reasonable steps to bring to the Customer's attention its intention to sell or dispose of the Goods before doing so.

13 The Company shall be entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by, or paid to, freight forwarders.

14 (A) Should the Customer, Consignee or Owner of the Goods fail to take delivery at the appointed time and place when and where the Company is entitled to deliver, the Company shall be entitled to store the Goods, or any part thereof, at the sole risk of the Customer or Consignee or Owner, whereupon the Company's liability in respect of the Goods, or that part thereof, stored as aforesaid, shall wholly cease. The Company's liability, if any, in relation to such storage, shall be governed by these conditions. All costs incurred by the Company as a result of the failure to take delivery shall be deemed as freight earned, and such costs shall, upon demand, be paid by the Customer.

15 (B) The Company shall be entitled at the expense of the Customer to dispose of or deal with (by sale or otherwise as may be reasonable in all circumstances):-

(i) after at least [28] days' notice in writing to the Customer, or (where the Customer cannot be traced and reasonable efforts have been made to contact any parties who may reasonably be supposed by the Company to have any interest in the Goods) without notice, any Goods which have been held by the Company for [90] days and which cannot be delivered as instructed; and

(ii) without prior notice, any Goods which have perished, deteriorated, or altered, or are in immediate prospect of doing so in a manner which has caused or may reasonably be expected to cause loss or damage to the Company, or third parties, or to contravene any applicable laws or regulations.

16 (A) No insurance will be effected except upon express instructions given in writing by the Customer and accepted in writing by the Company, and all insurances effected by the Company are subject to the usual exceptions and conditions of the policies of the insurers or underwriters taking the risk. Unless otherwise agreed in writing, the Company shall not be under any obligation to effect a separate insurance on the goods, but may declare it on any open or general policy held by the Company.

16 (B) Insofar as the Company agrees to effect insurance, the Company acts solely as agent for the Customer, and the limits of liability under clause [37] of these conditions shall not apply to the Company's obligations under clause 16.

17 (A) Except under special arrangements previously made in writing by an officer of the Company so authorised, or made pursuant to or under the terms of a printed document signed by the Company, any instructions relating to the delivery or release of the Goods in specified circumstances (such as, but not limited to, against payment or against surrender of a particular document) are accepted by the Company, where the Company has to engage third parties to effect compliance with the instructions, only as agents for the Customer.

17 (B) Despite the acceptance by the Company of instructions from the Customer to collect freight, duties, charges, dues, or other expenses from the Consignee, or any other Person, on receipt of evidence of proper demand by the Company, and, in the absence of evidence of payment (for whatever reason) by such Consignee, or other Person, the Customer shall remain responsible for such freight, duties, charges, dues, or other expenses.

17 (C) The Company shall not be under any liability in respect of such arrangements as are referred to under sub-clause (A) and (B) hereof save where such arrangements are made in writing, and in any event, the Company's liability in respect of the performance of, or arranging the performance of, such instructions shall not exceed the limits set out in clause [37] of these conditions.

18 Advice and information, in whatever form it may be given, is provided by the Company for the Customer only. The Customer shall indemnify the Company against all loss and damage suffered as a consequence of passing such advice or information on to any third party.

19 Without prior agreement in writing by an officer of the Company so authorised, the Company will not accept or deal with Goods that require special handling regarding carriage, handling, or security whether owing to their thief attractive nature or otherwise including, but not limited to bullion, coin, precious stones, jewellery, valuables, antiques, pictures, human remains, livestock, pets, plants. Should any Customer nevertheless deliver any such goods to the Company, or cause the Company to handle or deal with any such goods, otherwise than under such prior agreement, the Company shall have no liability whatsoever for or in connection with the goods, howsoever arising.

20 Except pursuant to instructions previously received in writing and accepted in writing by the Company, the Company will not accept or deal with Dangerous Goods, nor with Goods likely to harbour or encourage vermin or other pests, nor with Goods liable to taint or affect other Goods. If such Goods are accepted pursuant to a special arrangement, but, thereafter, and in the opinion of the Company, constitute a risk to other goods, property, life or health, the Company shall, where reasonably practicable, contact the Customer in order to require him to remove or otherwise deal with the goods, but reserves the right, in any event, to do so at the expense of the Customer.

21 Where there is a choice of rates according to the extent or degree of the liability assumed by the Company and/or third parties, no declaration of value will be made and/or treated as having been made except under special arrangements previously made in writing by an officer of the Company so authorised as referred to in clause [37(D)].

22 (A) The Company shall be entitled but under no obligation, to depart from the Customer's instructions in any respect if in the opinion of the Company there is good reason to do so in the Customer's interest and it shall not thereby incur any additional liability.

22 (B) The Company may at any time comply with the orders or recommendations given by any Authority. The responsibility and liability of the Company in respect of the Goods shall cease on the delivery or other disposition of the Goods in accordance with such orders or recommendations.

22 (C) The Company shall be entitled (but under no obligation) at any time to inspect the Goods and for this purpose to open or remove any Transport Units.

22 (D) If at any time the Company reasonably considers that carriage of the Goods should not be undertaken or continued or only continued after effecting measures considered necessary by the Company or by incurring additional risk or expense, the Company shall be entitled to (i) abandon the carriage of the Goods or to effect such measures and incur such additional expenses as may be necessary in order to enable the carriage to be effected or further effected; and (ii) be reimbursed by the Customer for the cost of all such measures and additional expense incurred.

23 If at any time the performance of the Company's obligations, in the opinion of the Company or any person whose services the company makes use of, is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage whatsoever and which cannot be avoided by reasonable endeavors by the Company or such other person, the Company may, on giving notice in writing to the Customer or Owner or without notice where it is not reasonably possible to give such notice, treat the performance of its obligations as terminated and place the Goods or any part of them at the Customer or Owner's disposal at any place which the Company may deem safe and convenient, whereupon the responsibility of the Company in respect of the Goods shall cease immediately and absolutely. The Customer shall be responsible for any additional costs of carriage to and delivery and storage at such place and all other expenses incurred by the Company.

C. The Customer

24 (A) The Customer warrants:

1. That it is either the Owner or the authorised agent of the Owner of the Goods and that it is authorised to accept these terms and conditions, not only for itself, but also as agent for and on behalf of the Owner of the Goods.
2. that the description and particulars of any Goods or information furnished, or services required, by or on behalf of the Customer are full and accurate, and
3. that any Transport Unit and/or equipment supplied by the Customer in relation to the performance of any requested service is fit for purpose, and

24 (B) that all Goods have been properly and sufficiently prepared, packed, stowed, labelled and/or marked, and that the preparation, packing, stowage, labelling and marking are appropriate to any operations or transactions affecting the Goods and the characteristics of the Goods.

24 (C) that where the Company receives the Goods from the Customer already stowed in or on a Transport Unit, the Transport Unit is in good condition, and is suitable for the carriage to the intended destination of the Goods loaded therein, or thereon, and

24 (D) that where the Company provides the Transport Unit, on loading by the Customer, the Transport Unit is in good condition, and is suitable for the carriage to the intended destination of the Goods loaded therein, or thereon.

25 Without prejudice to any rights under clause [20], where the Customer delivers to the Company, or causes the Company to deal with or handle Goods of a dangerous or damaging nature, or Goods likely to harbour or encourage vermin or other pests, or Goods liable to taint or affect other goods, whether declared to the Company or not, he shall be liable for all loss or damage arising in connection with such Goods, and shall indemnify the Company against all penalties, claims, damages, costs and expenses whatsoever arising in connection therewith, and the Goods may be dealt with in such manner as the Company, or any other person in whose custody they may be at any relevant time, shall think fit.

26 The Customer undertakes not to tender for transportation any Goods which require temperature control without previously giving written notice of their nature and particular temperature range to be maintained and, in the case of a temperature controlled Container stuffed by or on behalf of the Customer, further undertakes that the Container has been properly pre-coded or preheated as appropriate, that the Goods have been properly stuffed in the containers and that its thermostatic controls have been properly set by the Customer. If the above requirements are not complied with the Company shall not be liable for any loss of or damage to the Goods cause by such non-compliance.

27 The Customer undertakes that no claim shall be made against any director, servant, or employee of the Company which imposes, or attempts to impose, upon them any liability in connection with any services which are the subject of these conditions, and, if any such claim should nevertheless be made, to indemnify the Company against all consequences thereof.

28 The Customer shall save harmless and keep the Company indemnified from and against:-

29 (A) all liability, loss, damage, costs and expenses whatsoever (including, without prejudice to the generality of the foregoing, all duties, taxes, imposts, levies, deposits and outlays of whatsoever nature levied by any authority in relation to the Goods) arising out of the Company acting in accordance with the Customer's instructions, or arising from any breach by the Customer of any warranty contained in these conditions, or from the negligence of the Customer, and

29 (B) without derogation from sub-clause **(A)** above, any liability assumed, or incurred by the Company when, by reason of carrying out the Customer's instructions, the Company has become liable to any other party, and

29 (C) all claims, costs and demands whatsoever and by whomsoever made or preferred, in excess of the liability of the Company under the terms of these conditions, regardless of whether such claims, costs, and/or demands arise from, or in connection with, the breach of contract, negligence or breach of duty of the Company, its servants, sub-contractors or agents, and

29 (D) any claims of a general average or salvage nature which may be made on the Company and shall forthwith provide such security as may be required by the Company and in a form acceptable to the Company accordingly.

30 (A) The Customer shall pay to the Company in cash, or as otherwise agreed, all sums when due, immediately and without reduction or deferment on account of any claim, counterclaim or set-off.

30 (B) When the Company is instructed to collect freight, duties, charges or other expenses from any person other than the Customer, the Customer shall remain responsible for these amounts and shall pay these amounts on receipt of evidence of demand and non-payment by such other person when due.

30 (C) On all amounts overdue to the Company, the Company shall be entitled to interest, calculated at 4 per cent above base rate of The Bank of New Zealand applicable during the period that such amounts are overdue.

30 (D) The Company shall have liberty to include all costs incurred, both incidentally to and as a consequence of the recovery of all overdue funds, including but not limited to all debt recovery charges, to the balance of the Customer's final account.

30 (E) The Customer shall be liable for and pay to the Company any costs or expenses the Company may incur and for any loss or damage suffered, either directly or indirectly, by the Company as a result of the Company relying upon the description and particulars provided by the Customer or by reason of any illegal, incorrect or insufficient marking, numbering or addressing of the Goods.

D. Liability and Limitation

31 The Company shall perform its duties with a reasonable degree of care, diligence, skill and judgment.

32 The Company shall be relieved of liability for any loss or damage if, and to the extent that, such loss or damage is caused by:-

33 (A) strike, lock-out, stoppage or restraint of labour, the consequences of which the Company is unable to avoid by the exercise of reasonable diligence; or

33 (B) any cause or event which the Company is unable to avoid, and the consequences of which the Company is unable to prevent by the exercise of reasonable diligence

34 Except under special arrangements previously made in writing by an officer of the Company so authorised, the Company accepts no responsibility with regard to any failure to adhere to agreed departure or arrival dates of Goods.

35 Except in so far as otherwise provided by these terms and conditions, the liability of the Company hereunder, howsoever arising, and notwithstanding that the cause of loss or damage may be unexplained shall not exceed the following:

36 (A) In respect of all claims arising out of the provision of any Services ,other than those claims subject to sub-clause (B) below, whichever is the least of:

1. NZ\$500.00, or
2. Where Goods are lost, damaged, misdirected or misdelivered, NZ\$2.00 per gross kilogram of the Goods lost, damaged, misdirected or misdelivered.

36 (B) In respect of claims for delay where not excluded by the provisions of these terms and conditions, the amount of the Company's charges in respect of the Goods delayed.

36 (C) The Company shall not in any circumstances whatsoever be liable for indirect or consequential loss such as (but not limited to) loss of profit, loss of market, or the consequences of delay or deviation, however caused.

36 (D) On express instructions in writing declaring the commodity and its value, received from the Customer and accepted by the Company, the Company may accept liability in excess of the limits set out in sub-clauses (A) to (C) above upon the Customer agreeing to pay the Company's additional charges for accepting such increased liability. Details of the Company's additional charges will be provided upon request.

37 (A) Any claim by the Customer against the Company arising in respect of any service provided for the Customer, or which the Company has undertaken to provide, shall be made in writing and notified to the Company within 14 days of the date upon which the Customer became, or ought reasonably to have become, aware of any event or occurrence alleged to give rise to such claim, and any claim not made and notified as aforesaid shall be deemed to be waived and absolutely barred, except where the Customer can show that it was impossible for him to comply with this time limit, and that he has made the claim as soon as it was reasonably possible for him to do so.

37 (B) Notwithstanding the provisions of sub-paragraph (A) above, the Company shall in any event be discharged of all liability whatsoever and howsoever arising in respect of any service provided for the Customer, or which the Company has undertaken to provide, unless suit be brought and written notice thereof given to the Company within nine months from the date of the event or occurrence alleged to give rise to a cause of action against the Company.

E. Terms relating to the Specific use of Containers as a Transport Unit

38 (A) If a Container has not been packed or stuffed by the Company, the Company shall not be liable for loss of or damage to the contents if caused by:

1. The manner in which the Container has been packed or stuffed.
2. The unsuitability of the contents for carriage in containers, unless the Company has approved the suitability.
3. The unsuitability or defective condition of the Container provided that where the Container has been supplied by or on behalf of the Company this paragraph (iii) shall only apply if the unsuitability or defective condition arose (a) without any negligence on the part of the Company or (b) would have been apparent upon reasonable inspection by the Customer or Owner or person acting on behalf of either of them.
4. The Container not being sealed at the commencement of the Carriage, except where the Company has agreed to seal the Container.

38 (B) The Customer shall defend, indemnify and hold harmless the Company against all liability, loss, damage, costs and expenses arising from one or more of the matters covered by (A) above.

38 (C) Where the Company is instructed to provide a Container, in the absence of a written request to the contrary, the Company is not under an obligation to provide a Container of any particular type or quality.

38 (D) Where a Container is supplied to the Customer by or on behalf of the Company, following delivery of the Goods in the Container the Customer remains responsible for returning the empty Container with interiors brushed and clean to the place designated by the Company, its servants or agents, within the time prescribed by the Company. Should the Container not be returned within the prescribed time, the Customer shall be liable for any demurrage, loss or expenses which may arise from such non return.

38 (E) Whether or not a Customer supplies or is supplied with a Container, the customer shall be responsible to comply with all local in international regulations relating to the loading thereof including, when applicable declarations required by SOLAS/VGM including weight verification certificates thereunder.

F. Special Terms relating to the Company acting as Principal

Where the Company contracts as principal for the performance of the Services, the Company undertakes to perform, or in its own name to procure, the performance of the Services subject to the provisions of these terms and conditions.

39 Where the Company contracts as a principal and sub-contracts the performance of its services and it can be proved that the loss of or damage to or in respect of the Goods arose or was caused whilst the Goods were in the care or custody of the sub-contractor, the Company shall have the full benefit of all rights, limitations and exclusions of liability available to such sub-contractor in the contract between the Company and such sub-contractor and in any law, statute or regulation and the liability of the company shall not exceed the amount recovered, if any, by the Company from such sub-contractor. Where the liability of the company is governed by the mandatory provisions of the (COGA) Carriage of Goods Act 1979 the Company's liability shall be at "limited carrier's risk" and the amount of such liability calculated accordingly.

40 Notwithstanding other provisions in these terms and conditions, if it can be proved where the loss of or damage to the Goods occurred, the Company's liability shall be determined by the provisions contained in any international convention or national law, the provisions of which:

1. cannot be departed from by private contract, to the detriment of the claimant, and
2. Would have applied if the claimant had made a separate and direct contract with the actual provider of the particular service in respect of that service or stage of carriage where the loss or damage occurred and received as evidence thereof any particular document which must be issued if such international convention or national law shall apply.

41 Notwithstanding other provisions in these terms and conditions, if it can be proved that the loss of or damage to the Goods occurred at sea or inland waterway and the provisions of clause 42 do not apply, the Company's liability shall be determined by the Hague Rules. Reference in the Hague Rules to carriage by sea shall be deemed to include reference to carriage by inland waterways and the Hague Rules shall be construed accordingly. The limit of liability under the Hague Rules shall be deemed to be NZ\$100.00 per package or unit provided always that the total liability of the Company shall not exceed NZ\$500.00 hereunder.

42 Notwithstanding the provisions of clause 40 if the loss of or damage to the Goods occurred at sea or on inland waterways, and the Owner, Charterer or operator of the vessel establishes a limitation fund, the liability of the Company shall be limited to the proportion of the said limitation fund allocated to the Goods.

43 Air Carriage: If the Company acts as a principal in respect of a carriage of Goods by air, the following notice is hereby given:

1. If the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to cargo; and
2. Agreed stopping places are those places (other than the places of departure and destination) shown under requested routing and/or those places shown in carriers' timetables as scheduled stopping places for the route. The address of the first carrier is the airport of departure.

44 Both to Blame Collision Clause: The current Both-to-Blame Collision Clause as adopted by BIMCO is incorporated in these terms and conditions.

45 U.S.A. / Canada Clause:

45 (A) With respect to the transportation within U.S.A. or Canada, the responsibility of the Company shall be to procure transportation by carriers (one or more) and such transportation shall be subject to such carrier's contracts and tariffs and any law compulsorily applicable. The Company guarantees the fulfilment of such carrier's obligations under their contracts and tariffs.

45 (B) If and to the extent that the provisions of the Harter Act of the U.S.A. 1893 would otherwise be compulsorily applicable to regulate the Company's responsibility for the Goods during any period prior to loading on or after discharge from the vessel on which the Goods are to be or have been carried, the Company's responsibility shall instead be determined by the provisions of these terms and conditions, but if such provisions are found to be invalid such responsibility shall be determined by the provisions in the Carriage of Goods by Sea Act of the U.S.A. approved 1936.

G. Miscellaneous

46 Any notice served by post shall be deemed to have to be given on the third day following the day on which it was posted to the address of the recipient of such notice last known to the Company.

47 The defenses and limits of liability provided in these terms and conditions shall apply in any action against the Company whether such action is founded in contract or tort or otherwise.

48 If any legislation is compulsorily applicable to any of the Services, these terms and conditions shall, as regards such Services, be read as subject to such legislation and nothing in these terms and conditions shall be construed as a surrender by the Company of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation and if any part of these terms and conditions be repugnant to such legislation to any extent such part shall as regards such Services be overridden to that extent and no further.

49 Headings of clauses or groups of clauses in these terms and conditions are for indicative purposes only.

H. Jurisdiction and Law

50 These conditions and any act or contract to which they apply shall be governed by New Zealand law and any dispute arising out of any act or contract to which these Conditions apply shall be subject to the exclusive jurisdiction of the New Zealand courts.