



Hiab Transport Limited
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 351A West Coast Road, Glen Eden, AUCKLAND 0602
 Phone: (09) 813 1177
 Email: accounts@hiabtransport.co.nz
 Web: www.hiabtransport.co.nz

CREDIT ACCOUNT APPLICATION

To Be Completed By Applicants - Please complete all sections and read the Terms and Conditions overleaf or attached.

Client Details: <input type="checkbox"/> Individual <input type="checkbox"/> Sole Trader <input type="checkbox"/> Trust <input type="checkbox"/> Partnership <input type="checkbox"/> Company <input type="checkbox"/> Other:				
Full or Legal Name:				
Trading Name: <i>(If different from above)</i>				
Physical Address:			Postcode:	
Billing Address:			Postcode:	
Email Address:				
Phone No:		Fax No:		Mobile No:
Personal Details: <i>(please complete if you are an Individual)</i>				
D.O.B.:			Driver's Licence No.:	
Business Details: <i>(please complete if you are a Sole Trader, Trust, Partnership, Company or Other – as specified)</i>				
Company Number:			Date Incorp. <i>(current owners)</i> :	
Nature of Business:			GST No: <i>(if applicable)</i>	
Paid Up Capital: \$		Estimated Monthly Purchases: \$		Credit Limit Required: \$
Principal Place of Business is: <input type="checkbox"/> Rented <input type="checkbox"/> Owned <input type="checkbox"/> Mortgaged <i>(to whom)</i> :				
Directors / Owners / Trustee <i>(if more than two, please attach a separate sheet)</i>				
(1) Full Name:			D.O.B.:	
Private Address:			Postcode:	
Driver's Licence No.:		Phone No.:		Mobile No.:
(2) Full Name:			D.O.B.:	
Private Address:			Postcode:	
Driver's Licence No.:		Phone No.:		Mobile No.:
Account Terms: <input type="checkbox"/> 20 Days <input type="checkbox"/> 7 Days <input type="checkbox"/> Other:				
Purchase Order Required? <input type="checkbox"/> YES <input type="checkbox"/> NO			Accounts to be emailed? <input type="checkbox"/> YES <input type="checkbox"/> NO	
Accounts Email Address:				
Accounts Contact:			Phone No.:	
Bank and Branch:			Account No.:	
Trade References: <i>(please provide companies that are willing to do trade references)</i>				
Name:		Address:		Phone / Fax / Email:
1.				
2.				
3.				

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS (overleaf or attached) of Hiab Transport Limited which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein.

SIGNED (CLIENT):

Name:
 Position:
 Date:

SIGNED (HIAB):

Name:
 Position:
 Date:

OFFICE USE ONLY				
Account / Ref. No.	CREDIT LIMIT	APPROVED BY	DATA INPUTTED	DATE
	\$			/ /

1. Definitions

- 1.1 **“Charges”** shall mean the Charges payable (plus any Goods and Services Tax (“GST”) where applicable) for the Services, as agreed between HIAB and the Client, subject to clause 7 of this Contract.
- 1.2 **“Client”** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting HIAB to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.3 **“Consignee”** means the person to whom the Goods are to be delivered by way of the Services.
- 1.4 **“Contract”** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.5 **“Cookies”** means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including personal information) specific to a particular client and website and can be accessed either by the web server or the client’s computer. **If the Client does not wish to allow Cookies to operate in the background when using HIAB’s website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.6 **“Goods”** means any cargo, together with any container, packaging, or pallet(s), to be moved from one place to another by way of the Services.
- 1.7 **“HIAB”** means Hiab Transport Limited, its successors and assigns.
- 1.8 **“Services”** means all Services provided by HIAB to the Client (including, but not limited to, anything done or to be done in relation to the Goods, or the provision of any services ancillary to the Goods such as moving, storing or leaving the Goods at any warehouse, yard, terminal, wharf or other place or area, loading or unloading the Goods from any vehicle, vessel or other conveyance, stowing or packing the Goods, or fumigating, transhipping, or otherwise handling the Goods, or anything else done in relation thereto, including the offering of any advice or recommendations).
- 1.9 **“Sub-Contractor”** means and includes:
- (a) railways or airways operated by the Commonwealth or any state or any other country or by any corporation; or
 - (b) any other person or entity with whom HIAB may arrange for the carriage or storage of any Goods the subject of the Contract; or
 - (c) any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in sub-clauses (a) and (b).

2. Acceptance

- 2.1 The parties acknowledge and agree that:
- (a) they have read and understood the terms and conditions contained in this Contract; and
 - (b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts, Services provided by HIAB.
- 2.2 These terms and conditions are to be read in conjunction with HIAB’s quotation, consignment note, agreement, airway bills, manifests, or any other forms as provided by HIAB to the Client. If there are any inconsistencies between these documents, then the terms and conditions contained in this document shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Services on credit shall not take effect until the Client has completed a credit application with HIAB and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Services request exceeds the Client’s credit limit and/or the account exceeds the payment terms, HIAB reserves the right to refuse delivery.
- 2.6 Every special instruction to the effect that the Charges shall be paid by the Consignee shall be deemed to include a stipulation that if the Consignee does not pay the said charges within the specified date for payment, then the Client shall be liable for, and shall pay to HIAB, the said charges, together with an account transfer fee.
- 2.7 These terms and conditions may be meant to be read in conjunction with HIAB’s Hire Form and where the context so permits, the terms ‘Services’ shall include any supply of Equipment, as defined therein.
- 2.8 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Authorised Representatives

- 3.1 Unless otherwise limited as per clause 3.2, the Client agrees that should the Client introduce any third party to HIAB as the Client’s duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Services, and/or any variation thereto, on the Client’s behalf (such authority to continue until all requested Services have been completed or the Client otherwise notifies HIAB in writing that said person is no longer the Client’s duly authorised representative).
- 3.2 In the event that the Client’s duly authorised representative as per clause 3.1 is to have only limited authority to act on the Client’s behalf then the Client must specifically and clearly advise HIAB in writing of the parameters of the limited authority granted to its representative.
- 3.3 The Client specifically acknowledges and accepts that it will be solely liable to HIAB for all additional costs incurred by HIAB (including HIAB’s profit margin) in providing any Services, or variation/s thereto, requested by the Client’s duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

4. Errors and Omissions

- 4.1 The Client acknowledges and accepts that HIAB shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by HIAB in the formation and/or administration of this Contract; and/or

- (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by HIAB in respect of the Services.
- 4.2 If such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of HIAB; the Client:
- (a) shall not be entitled to treat this Contract as repudiated nor render it invalid; but
 - (b) shall not be responsible for any additional costs incurred by HIAB arising from the error or omission.
- 5. Change in Control**
- 5.1 The Client shall give HIAB not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by HIAB as a result of the Client's failure to comply with this clause.
- 6. Credit Card Information**
- 6.1 HIAB will:
- (a) keep the Client's personal details, including credit card details for only as long as is deemed necessary by HIAB;
 - (b) not disclose the Client's credit card details to any third party; and
 - (c) not unnecessarily disclose any of the Client's personal information, except in accordance with the Privacy Act (clause 27) or where required by law.
- 6.2 The Client expressly agrees that, if pursuant to this Contract, there are any unpaid Charges, other amounts due and outstanding by the Client, any Equipment (or any part of them) supplied on hire that are lost or damaged or any other additional charges are due from the Client which were not known at the time of the return of the Equipment, HIAB is entitled to immediately charge the Client's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Client pursuant to the terms of this Contract.
- 7. Charges and Payment**
- 7.1 At HIAB's sole discretion the Charges shall be either:
- (a) as indicated on invoices provided by HIAB to the Client in respect of Services provided; or
 - (b) as calculated by HIAB's set hourly Charges and kilometre rates, weight, measurement or value of the Goods as at the date of provision of the Services, according to HIAB's current pricelist; or
 - (c) HIAB's estimated price (subject to clause 7.2 and 7.3) which shall not be deemed binding upon HIAB as the actual Charges can only be determined upon completion of the Services. HIAB undertakes to keep the Client informed should the actual Charges look likely to exceed the original estimate; or
 - (d) HIAB's quoted Charges (subject to clauses 7.2 and 7.3) which shall be binding upon HIAB provided that the Client shall accept in writing HIAB's quotation within five (5) days.
- 7.2 HIAB may, by giving notice to the Client, increase the Charges of the Services to reflect any increase in the cost to HIAB beyond the reasonable control of HIAB (including, without limitation, foreign exchange fluctuations, or increases in taxes, customs duties, insurance premiums, or warehousing costs).
- 7.3 HIAB may charge freight by weight, measurement or value, and may at any time re-weigh, or re-value or re-measure or require the Goods to be re-weighed, or re-valued or re-measured and charge proportional additional freight accordingly.
- 7.4 At HIAB's sole discretion, a reasonable non-refundable deposit may be required.
- 7.5 Time for payment for the Services being of the essence, the Charges will be payable by the Client on the date/s determined by HIAB, which may be:
- (a) on delivery of the Goods;
 - (b) by way of instalments in accordance with HIAB's payment schedule;
 - (c) twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by HIAB.
- 7.6 Payment may be made by electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and HIAB.
- 7.7 Receipt by HIAB of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then HIAB's ownership or rights in respect of the Services shall continue.
- 7.8 The Client acknowledges and agrees that the Client's obligations to HIAB for the supply of Services shall not cease until:
- (a) the Client has paid HIAB all amounts owing for the particular Services; and
 - (b) the Client has met all other obligations due by the Client to HIAB in respect of all contracts between HIAB and the Client.
- 7.9 HIAB may in its discretion allocate any payment received from the Client towards any invoice that HIAB determines and may do so at the time of receipt or at any time afterwards. On any default by the Client HIAB may re-allocate any payments previously received and allocated. In the absence of any payment allocation by HIAB, payment will be deemed to be allocated in such manner as preserves the maximum value of HIAB's Purchase Money Security Interest (as defined in the PPSA) in respect of the Services provided.
- 7.10 The Client shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to the Client by HIAB nor to withhold payment of any invoice because part of that invoice is in dispute.
- 7.11 Unless otherwise stated the Charges does not include GST. In addition to the Charges the Client must pay to HIAB an amount equal to any GST HIAB must pay for any provision of Services by HIAB under this Contract or any other agreement. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Charges. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Charges except where they are expressly included in the Charges.

8. Provision of the Services

8.1 All Goods are carried or transported, and any other services are performed, by HIAB subject only to these conditions, and HIAB reserves the right to refuse the carriage or transport of Goods for any person, corporation or body, and the carriage or transport of any class of Goods at its discretion.

8.2 Freight Forwarding

(a) the Client authorises HIAB (in its discretion at any time without notice to the Client) to:

- (i) license or sub-contract all or any part of its rights and/or obligations, entering into contracts and arranges with any third party to perform or carry out the Services (or any part thereof). In so engaging such third parties, HIAB has or will represent to such third parties that the terms of this Contract, including the benefit of any terms conferred upon HIAB, shall extend to such third parties in providing their goods and/or services;
- (ii) deviate from the usual, customary, intended or advertised route (whether or not the nearest and/or most direct and/or customary) or manner of carriage of Goods that may be deemed reasonable or necessary in the circumstances, including stay at any place whatsoever once or more often in any order backwards or forwards and/or store the Goods at any such place for any period whatsoever;
- (iii) the Client shall be bound by the terms of any consignment note, air waybill or other contractual document which HIAB may receive for the Goods, or for any package, unit or container in which the Goods may be packed, whether by the Client, HIAB, or any other person.

8.3 Except to the extent that any of the Services require HIAB to act as a freight forwarder, HIAB shall act as a forwarding agent only.

8.4 HIAB's charges shall be considered earned as soon as the Goods are loaded and despatched.

9. Client-Packed Containers

9.1 Subject to any written special instructions to the contrary:

- (a) the Client is solely responsible for the safe and proper packaging of the Goods (including the manner in which the Goods have been packed, the suitability of the Goods for carriage or manner or packaging and/or the condition of the packaging, etc.) and for any loss suffered or incurred by any person (including the Client) through any such failure;
- (b) HIAB is not obliged to pack the Goods or to provide any plant, power or labour required for loading and/or unloading of the Goods.

10. Client's Responsibility

10.1 The Client expressly warrants, represents, confirms and/or acknowledges that:

- (a) HIAB has relied upon the Client accurately labelling and fully and accurately describing the Goods in writing (including name, nature and value of all articles subject to special rates of carriage or of a noxious, dangerous, hazardous or inflammable nature or capable of causing damage or injury to any other goods, or property or to any persons or animals (and additional freight charges shall be paid on such articles if deemed necessary by HIAB), weight, measure, standard, strength, quantity, quality, figures and dimensions). Accordingly, HIAB accepts no liability for any discrepancy that may arise with the description;
- (b) HIAB has relied upon the Client's skill in properly and safely packing, securing and preparing the Goods, and that the Client has complied with all applicable laws and regulations (including those relating to the packing, carriage, storage, customs clearance, delivery of other services in respect of the Goods, etc.) and shall furnish such information and provide such documents as may be necessary to comply with such laws and regulations;
- (c) the Client is either the owner or the authorised agent of the owner of any Goods or property that is the subject matter of this Contract, and by entering into this Contract the Client accepts these terms and conditions for the Consignee as well as for all other persons on whose behalf the Client is acting;
- (d) the Goods are fit for carriage, having undertaken due and careful enquiry the Goods are not dangerous, illegal, hazardous and do not contain any substance resulting in risks not readily apparent from the Client's description of the Goods;
- (e) the person handing over the Goods to HIAB is authorised to sign and accept these terms and conditions;
- (f) it is the Client's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery.

10.2 In the event that the Goods are found to be noxious, hazardous, inflammable, explosive or likely to cause damage, thereby a failure by the Client to comply with clause 10.1 shall render the Client liable for any loss or damage caused to, or by, the Goods, and acceptance of the Goods by HIAB without discovery of any such defect or lack, shall not exclude or diminish any liability on the part of the Client.

10.3 For the purposes of this Clause 10, the expression "likely to cause damage" includes Goods likely to harbour or encourage vermin or other pests or which fall within the definitions of "hazardous" or "dangerous" goods in any legislation governing carriage by rail, road, sea or air in New Zealand.

10.4 In the event that the Goods are found to be noxious, hazardous, inflammable, explosive or likely to cause damage:

- (a) the Client, and any person delivering the Goods to HIAB, or causing HIAB to handle or deal with the Goods, shall be liable for any loss or damage caused by the Goods or by their nature, and shall indemnify and keep indemnified HIAB against all loss, damages, claims and costs incurred by HIAB in connection therewith, and
- (b) the Goods may be destroyed or otherwise dealt with as determined by HIAB in its absolute discretion at the expense of the Client or by any other person in whose custody they may be at the relevant time also at the expense of the Client, and neither HIAB nor any such other person shall incur any liability whatsoever to the Client in relation to any action taken by them concerning the Goods.

11. Nomination of Sub-Contractor

11.1 The Client hereby authorises HIAB (if it should think fit to do so) to arrange with a Sub-Contractor for the carriage of any Goods that are the subject of the Contract. Any such arrangement shall be deemed to be ratified by the Client upon delivery of the said Goods to such Sub-Contractor, who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as HIAB. In so far as it may be necessary to ensure that such Sub-Contractor shall be so entitled HIAB shall be deemed to enter into this Contract for its own benefit and also as agent for the Sub-Contractor.

12. HIAB's Servants or Agents

- 12.1 The Client undertakes that no claim or allegation shall be made against any servant or agent of HIAB which attempts to impose upon any of them any liability whatsoever in connection with the Goods and, if any such claim or allegation should nevertheless be made, to indemnify HIAB and any such servant or agent against all consequences thereof.
- 12.2 HIAB shall have no liability, implied or otherwise, in respect of COD payments which may be collected by any of its servants or agents on behalf of the Client or any of its clients when making deliveries, and if, notwithstanding this clause, any such liability does attach to HIAB, then the Client will indemnify HIAB in respect of any such liability.

13. Charges Earned

- 13.1 HIAB's Charges shall be considered earned in the case of Goods for carriage as soon as the Goods are loaded and dispatched from the Client's premises.

14. Demurrage

- 14.1 The Client will be and shall remain responsible to HIAB for all its proper Charges incurred for any reason. A charge may be made by HIAB in respect of any delay in excess of thirty (30) minutes in loading or unloading occurring other than from the default of HIAB. Such permissible delay period shall commence upon HIAB reporting for loading or unloading. Labour to load or unload the vehicle shall be the responsibility and expense of the Client or Consignee.

15. Consignment Note

- 15.1 It is agreed that the person delivering any Goods to HIAB for carriage or forwarding is authorised to sign the consignment note for the Client.

16. Delivery

- 16.1 HIAB is authorised to deliver the Goods at the address given to HIAB by the Client for that purpose and it is expressly agreed that HIAB shall be taken to have delivered the Goods in accordance with this Contract if at that address HIAB obtains from any person a receipt or a signed delivery docket for the Goods.
- 16.2 In the event HIAB is unable to deliver the Goods due to the Consignee not being in attendance at the delivery address during normal trading hours:
- (a) an additional charge may be made (at HIAB's current rates) for each attempt for re-delivery until delivery is accomplished;
 - (b) HIAB may hold the Goods as bailee, and shall be entitled to receive storage fees (at HIAB's current rates), and as bailee shall not be under any liability for any loss of, or damage to, the Goods, howsoever caused, while in the possession of HIAB; and
 - (c) HIAB may (at HIAB's sole discretion) return the Goods to the Client at the risk and expense of the Client.
- 16.3 HIAB may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this Contract.
- 16.4 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery for the purposes of this Contract.
- 16.5 Any time specified by HIAB for the delivery of Goods is an estimate only and HIAB will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that HIAB is unable to deliver the Goods as agreed solely due to any action or inaction of the Client then HIAB shall be entitled to charge the Client any additional costs incurred by HIAB as a direct consequence of any resultant delay or rescheduling of the delivery.

17. Conditions of Storage

- 17.1 HIAB will prepare an inventory of Goods received for storage and will ask the Client to sign that inventory. The Client will be provided with a copy of the inventory. If the Client signs the inventory or does not do so and fails to object to its accuracy within seven (7) days of receiving it from HIAB, then the inventory will be conclusive evidence of the Goods received. The inventory will disclose only visible items and not any contents unless the Client ask for the contents to be listed, in which case HIAB will be entitled to make a reasonable additional charge.
- 17.2 HIAB is authorised to remove the Goods from one warehouse to another without cost to the Client. HIAB will notify the Client of the removal and advise the address of the warehouse to which the Goods are being removed not less than five (5) days before removal (except in emergency, when such notice will be given as soon as possible).
- 17.3 The Client is entitled upon giving HIAB reasonable notice to inspect the Goods in store, but a reasonable charge may be made by HIAB for this service.
- 17.4 Subject to payment for the balance of any fixed or minimum period of storage agreed the Client may require the Goods to be removed from the store at any time on giving HIAB not less than five (5) working days' notice. If the Client gives HIAB less than the required notice HIAB will still use their best endeavours to meet the Client's requirements but shall be entitled to make a reasonable additional charge for the short notice.
- 17.5 The Client agrees to remove the goods from storage within twenty-eight (28) days of a written notice of requirement from HIAB to do so. In default, HIAB shall provide the Client with written notice of HIAB's intention to SELL ALL OR ANY OF THE GOODS by public auction or, if that is not reasonably practicable by private treaty within two (2) months of such notice being issued, apply the net proceeds in satisfaction of any amount owing by the Client to HIAB in accordance with Section 288 of the Contract and Commercial Law Act 2017.

18. Loss or Damage

- 18.1 This Contract is "at limited carrier's risk". Subject to any statutory provisions imposing liability in respect of the loss of or damage to the Goods (including but not limited to, chilled, frozen, refrigerated or perishable goods):
- (a) HIAB shall not be under any liability for any loss or damage suffered by HIAB, Client (or any third party) as a result of:
 - (i) the Client contravening clause 10;
 - (ii) any latent defect or inherent vice or natural deterioration or wastage of the Goods or packaging;

- (iii) seizure under legal process; or
- (iv) saving, or attempting to save, life or property in peril.
- (b) HIAB shall not be under any liability for any consequential or indirect loss, loss of market or consequences of delay; and
- (c) the Client will indemnify HIAB against all claims of any kind whatsoever, howsoever caused or arising brought by any person in connection with any matter or thing done, said or omitted by HIAB in connection with the Goods.

19. Insurance

19.1 The Client acknowledges that:

- (a) the Goods are carried and stored at the Client's sole risk and not at the risk of HIAB; and
- (b) HIAB is under no obligation to arrange insurance of the Goods and it remains the Client's responsibility to ensure that the Goods are insured adequately or at all; and
- (c) under no circumstances will HIAB be under any liability with respect to the arranging of any such insurance and no claim will be made against HIAB for failure to arrange or ensure that the Goods are insured adequately or at all.

20. Claims

20.1 Notwithstanding clauses 18 and 19 in the event that the Client believes that they have any claim against HIAB then they must lodge any notice of claim for consideration and determination by HIAB within thirty (30) days (as set out in Section 274 of the of the Contract and Commercial Law Act 2017) from the actual date of delivery or the anticipated date of delivery in the event of non-delivery or the removal or destruction of the Goods. HIAB will respond to that notice of claim within ten (10) days (as set out in Section 275 of the Contract and Commercial Law Act 2017) of receipt of the notice and will take all reasonable steps to resolve the matter. In the event that the Client is not satisfied with the resolution provided, the Client may commence court proceedings or arbitration proceedings to resolve the dispute.

20.2 The failure to notify a claim within the time limits under clause 20.1 is evidence of satisfactory performance by HIAB of its obligations.

21. Carrier's Lien

21.1 HIAB shall have a right to take a particular and general lien on any Goods the property of the Client or a third party owner which are in the possession or control of HIAB (and any documents relating to those Goods) for all sums owed at any time by the Client or a third party owner to HIAB (whether those sums are due from the Client on those Goods or documents, or on any other Goods or documents), and HIAB shall have the right to sell such Goods or cargo by public auction or private treaty after giving written notice to the Client. HIAB shall be entitled to retain the sums due to it, in addition to the Charges incurred in detention and sale of such Goods or cargo, from the proceeds of sale and shall render any surplus to the entitled person.

21.2 Notwithstanding clause 21.1 nothing shall prejudice HIAB's rights to use any of HIAB's other rights and remedies contained in this Contract to recover any outstanding Charges or fees payable in respect of the Goods that were not recovered out the sale of the Goods in accordance with clause 21.1 and no exception shall be taken upon the grounds that the Charges realised is less than the full market value of the Goods.

22. Consumer Guarantees Act 1993 and the Fair Trading Act 1986

22.1 This Contract is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Client is contracting within the terms of a trade/business (which cases are specifically excluded).

22.2 HIAB shall be under no liability whatsoever for loss or damage to Goods unless;

- (a) the Client provides written notice to HIAB detailing the alleged damage, and that such written notice shall be received by HIAB within thirty (30) days after the delivery of the Goods; or
- (b) in the case where the Goods have been lost in transit then the Client shall be required to provide written notice detailing the alleged loss within thirty (30) days of the date of dispatch of the Goods.

22.3 HIAB agrees to abide by the provisions of the Fair Trading Act 1986.

23. Personal Property Securities Act 1999 ("PPSA")

23.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA, and creates a security interest in:

- (a) all Goods being transported, carried or handled by HIAB, over which HIAB invokes a lien; and
- (b) all the Client's present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to HIAB for Services – that have previously been provided and that will be provided in the future by HIAB to the Client in invoices rendered from time to time.

23.2 The Client undertakes to:

- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which HIAB may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, HIAB for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby;
- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Services in favour of a third party without the prior written consent of HIAB.

23.3 Unless otherwise agreed to in writing by HIAB, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.

23.4 The Client shall unconditionally ratify any actions taken by HIAB under clauses 23.2 to 23.3.

23.5 Subject to any express provisions to the contrary (including those contained in this clause 22.3), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

24. Security and Charge

24.1 In consideration of HIAB agreeing to supply Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, and the Client grants a security interest in all of its present and after-acquired property, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.

24.2 The Client indemnifies HIAB from and against all HIAB's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising HIAB's rights under this clause.

24.3 The Client irrevocably appoints HIAB and each director of HIAB as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 24 including, but not limited to, signing any document on the Client's behalf.

25. Default and Consequences of Default

25.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at HIAB's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

25.2 If the Client owes HIAB any money the Client shall indemnify HIAB from and against all costs and disbursements incurred by HIAB in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, HIAB's collection agency costs, and bank dishonour fees).

25.3 Further to any other rights or remedies HIAB may have under this Contract, if the Client has made payment to HIAB, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by HIAB under this clause 25 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.

25.4 Without prejudice to HIAB's other remedies at law HIAB shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to HIAB shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to HIAB becomes overdue, or in HIAB's opinion the Client will be unable to meet its payments as they fall due; or
- (b) the Client has exceeded any applicable credit limit provided by HIAB;
- (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

26. Cancellation

26.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions the other party may suspend or terminate the provision of Services to the other party. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.

26.2 If HIAB, due to reasons beyond HIAB's reasonable control, is unable to deliver any Goods to the Client, HIAB may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered, by giving written notice to the Client. On giving such notice the Client shall repay to the Client any sums paid in respect of the Charges. HIAB shall not be liable for any loss or damage whatever arising from such cancellation.

26.3 The Client may cancel delivery of the Goods, or the provision of the Services, by written notice served within twenty-four (24) hours of placement of the order. Failure by the Client to otherwise accept delivery of the Goods and/or Services shall place the Client in breach of this Contract.

27. Privacy Policy

27.1 All emails, documents, images or other recorded information held or used by HIAB is "**Personal Information**" as defined and referred to in clause 27.3 and therefore considered confidential. HIAB acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines as set out in the Act. HIAB acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by HIAB that may result in serious harm to the Client, HIAB will notify the Client in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Client by written consent, unless subject to an operation of law.

27.2 Notwithstanding clause 27.1, privacy limitations will extend to HIAB in respect of Cookies where the Client utilises HIAB's website to make enquiries. HIAB agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:

- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage and traffic; and
- (c) reports are available to HIAB when HIAB sends an email to the Client, so HIAB may collect and review that information ("collectively Personal Information")

If the Client consent to HIAB's use of Cookies on HIAB's website and later wish to withdraw that consent, the Client may manage and control HIAB's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.

27.3 The Client authorises HIAB or HIAB's agent to:

- (a) access, collect, retain and use any information about the Client;
 - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.

- (b) disclose information about the Client, whether collected by HIAB from the Client directly or obtained by HIAB from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 27.4 Where the Client is an individual the authorities under clause 27.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 27.5 HIAB will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 27.6 The Client can make a privacy complaint by contacting HIAB via e-mail. HIAB will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.

28. Service of Notices

- 28.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 28.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

29. Trusts

- 29.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not HIAB may have notice of the Trust, the Client covenants with HIAB as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust, the trustees and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust or from the Trustees of the Trust as the case maybe to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust, the trustees and or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
 - (c) the Client will not during the term of the Contract without consent in writing of HIAB (HIAB will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust fund or trust property.

30. General

- 30.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect HIAB's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 30.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of Auckland, New Zealand.
- 30.3 Subject to the CGA, the liability of HIAB and the Client under this Contract shall be limited to the Charges.
- 30.4 HIAB may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent provided the assignment does not cause detriment to the Client.
- 30.5 The Client cannot licence or assign without the written approval of HIAB.
- 30.6 HIAB may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of HIAB's sub-contractors without the authority of HIAB.
- 30.7 The Client agrees that HIAB may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for HIAB to provide Goods to the Client.
- 30.8 Where HIAB is unable, wholly or in part, by reason of any fact, circumstance, matter or thing beyond the reasonable control of HIAB, including but not limited to, any act of God, war, terrorism, strike, civil commotion, lock-out, general or partial stoppage, restraint of labour, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc. ("**Force Majeure**") to carry out any obligation under this Contract and HIAB gives the Client prompt notice of such Force Majeure with reasonably full particulars thereof and, insofar as is known, the probable extent to which it will be unable to perform or be delayed in performing that obligation and uses all reasonable diligence to negate or remove that Force Majeure as quickly as possible, that obligation is suspended, so far as it is affected by Force Majeure, during the continuance thereof. The requirement that any Force Majeure shall be negated or removed with all reasonable diligence shall not require the settlement of strikes, lockouts or other labour disputes, or claims or demands by any government on terms contrary to the wishes of HIAB. This clause does not apply to a failure by the Client to make any payment due to HIAB, following cessation of a Force Majeure.
- 30.9 In the event that either party shall be rendered totally, or partially, unable to carry out their obligations under this Contract by reasons or causes beyond their reasonable control, that party shall be excused from performing their obligations during the continuance of any disability

Hiab Transport Limited – Terms and Conditions

so caused, provided that the party concerned advises the other party in writing of its inability within seven (7) days after becoming aware of its inability to perform its obligations by reason of such cause.

- 30.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.