

1. Definitions

- 1.1 **"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.
- 1.2 **"PUKEKOHE HIAB TRANSPORT"** means Pukekohe Hiab Transport Limited, its successors and assigns.
- 1.3 **"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 Pukekohe Hiab Transport 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).
- 1.4 **"Customer"** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting Pukekohe Hiab Transport to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
 - (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.5 **"Consignee"** means the person to whom the Goods are to be delivered by way of the Services.
- 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 **"Services"** means all services provided by Pukekohe Hiab Transport to the Customer (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, transshipping, or otherwise handling the Goods, or anything else done in relation thereto, including the offering of any advice or recommendations.
- 1.8 **"Equipment"** means all Equipment including any accessories supplied on hire by Pukekohe Hiab Transport to the Customer (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by Pukekohe Hiab Transport to the Customer.
- 1.9 **"Minimum Hire Period"** means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by Pukekohe Hiab Transport to the Customer.
- 1.10 **"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 Customer does not wish to allow Cookies to operate in the background when using Pukekohe Hiab Transport's website, then the Customer 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.**
- 1.11 **"Charges"** shall mean the Charges payable (plus any Goods and Services Tax ("GST") where applicable) for the Services, as agreed between Pukekohe Hiab Transport and the Customer, subject to clause 5 of this Contract.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for, or accepts, Services provided by Pukekohe Hiab Transport.
- 2.2 These terms and conditions are to be read in conjunction with Pukekohe Hiab Transport's quotation, consignment note, agreement, airway bills, manifests, or any other forms as provided by Pukekohe Hiab Transport to the Customer. 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 Customer acknowledges that the supply of Services on credit shall not take effect until the Customer has completed a credit application with Pukekohe Hiab Transport 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 Customer's credit limit and/or the account exceeds the payment terms, Pukekohe Hiab Transport reserves the right to refuse delivery.
- 2.6 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. Errors and Omissions

- 3.1 The Customer acknowledges and accepts that Pukekohe Hiab Transport 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 Pukekohe Hiab Transport 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 Pukekohe Hiab Transport in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of Pukekohe Hiab Transport; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

4. Change in Control

- 4.1 The Customer shall give Pukekohe Hiab Transport not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, change of trustees, or business practice). The Customer shall be liable for any loss incurred by Pukekohe Hiab Transport as a result of the Customer's failure to comply with this clause.

5. Charges and Payment

Pukekohe Hiab Transport Limited – Terms and Conditions of Cartage

- 5.1 At Pukekohe Hiab Transport's sole discretion the Charges shall be either;
- (a) as indicated on invoices provided by Pukekohe Hiab Transport to the Customer in respect of Services provided; or
 - (a) Pukekohe Hiab Transport's estimated Charges (subject to clauses 5.2 and 5.3). The final Charges can only be ascertained upon completion of the Services. Variances in the estimated Charges of more than 10% will be subject to Customer approval before proceeding with the Services.
- 5.2 Pukekohe Hiab Transport may, by giving notice to the Customer, increase the Charges of the Services to reflect any increase in the cost to Pukekohe Hiab Transport beyond the reasonable control of Pukekohe Hiab Transport (including, without limitation, foreign exchange fluctuations, or increases in taxes, customs duties, insurance premiums, or warehousing costs).
- 5.3 Pukekohe Hiab Transport 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.
- 5.4 At Pukekohe Hiab Transport's sole discretion, a non-refundable deposit may be required.
- 5.5 Time for payment for the Services being of the essence, the Charges will be payable by the Customer on the date/s determined by Pukekohe Hiab Transport, which may be:
- (a) on delivery of the Goods;
 - (b) by way of instalments in accordance with Pukekohe Hiab Transport's payment schedule;
 - (c) twenty (20) days following the end of the month in which a statement is posted to the Customer'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 Customer by Pukekohe Hiab Transport.
- 5.6 Payment may be made by electronic/on-line banking, or by any other method as agreed to between the Customer and Pukekohe Hiab Transport.
- 5.7 Receipt by Pukekohe Hiab Transport 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 Pukekohe Hiab Transport's ownership or rights in respect of the Services shall continue.
- 5.8 The Customer acknowledges and agrees that the Customer's obligations to Pukekohe Hiab Transport for the supply of Services shall not cease until:
- (a) the Customer has paid Pukekohe Hiab Transport all amounts owing for the particular Services; and
 - (b) the Customer has met all other obligations due by the Customer to Pukekohe Hiab Transport in respect of all contracts between Pukekohe Hiab Transport and the Customer.
- 5.9 Pukekohe Hiab Transport may in its discretion allocate any payment received from the Customer towards any invoice that Pukekohe Hiab Transport determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer Pukekohe Hiab Transport may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Pukekohe Hiab Transport, payment will be deemed to be allocated in such manner as preserves the maximum value of Pukekohe Hiab Transport's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 5.10 The Customer shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to the Customer by Pukekohe Hiab Transport nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.11 Unless otherwise stated the Charges does not include GST. In addition to the Charges the Customer must pay to Pukekohe Hiab Transport an amount equal to any GST Pukekohe Hiab Transport must pay for any provision of Services by Pukekohe Hiab Transport under this Contract or any other agreement. The Customer must pay GST, without deduction or set off any other amounts, at the same time and on the same basis as the Customer pays the Charges. In addition, the Customer 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.

6. Freight Forwarding

- 6.1 Except to the extent that any of the Services shall be actually performed by Pukekohe Hiab Transport, Pukekohe Hiab Transport shall act as a forwarding agent only. Pukekohe Hiab Transport shall be entitled, to enter into contracts on behalf of and as agent for the Customer and without notice to the Customer, for the carriage of the Goods by any route, means and carrier, for the storage, packing, trans-shipment, unloading, loading or handling of the Goods by any person at any place and for any length of time, and for such other matters as in the opinion of Pukekohe Hiab Transport may be necessary or desirable to the performance of the Services. The Customer hereby appoints Pukekohe Hiab Transport the agent of the Customer for the purpose of entering into any contract, upon such terms and conditions, as Pukekohe Hiab Transport may in its absolute discretion think fit. The Customer shall be bound by the terms of any consignment note, air waybill or other contractual document which Pukekohe Hiab Transport may receive for the Goods, or for any package, unit or container in which the Goods may be packed, whether by the Customer, Pukekohe Hiab Transport, or any other person.

7. Customer-Packed Containers

- 7.1 If a container has not been stowed by or on behalf of Pukekohe Hiab Transport, Pukekohe Hiab Transport shall not be liable for loss of or damage to the Goods caused by:
- (a) the manner in which the container has been stowed; or
 - (b) the unsuitability of the Goods for carriage or storage in containers; or
 - (c) the unsuitability or defective condition of the container.

8. Nomination of Sub-Contractor

- 8.1 The Customer hereby authorises Pukekohe Hiab Transport (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 Customer 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 Pukekohe Hiab Transport. In so far as it may be necessary to ensure that such Sub-Contractor shall be so entitled Pukekohe Hiab Transport shall be deemed to enter into this Contract for its own benefit and also as agent for the Sub-Contractor.

9. Pukekohe Hiab Transport's Servants or Agents

- 9.1 The Customer undertakes that no claim or allegation shall be made against any servant or agent of Pukekohe Hiab Transport 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 Pukekohe Hiab Transport and any such servant or agent against all consequences thereof.

10. Method of Transport

- 10.1 If the Customer instructs Pukekohe Hiab Transport to use a particular method of carriage whether by road, rail, sea, or air Pukekohe Hiab Transport will give priority to the method designated but if that method cannot conveniently be adopted by Pukekohe Hiab Transport the Customer shall be deemed to authorise Pukekohe Hiab Transport to carry or have the Goods carried by another method or methods.

11. Route Deviation

- 11.1 The Customer shall be deemed to authorise any deviation from the usual route or manner of carriage of Goods that may in the absolute discretion of Pukekohe Hiab Transport be deemed reasonable or necessary in the circumstances.

12. Charges Earned

- 12.1 Pukekohe Hiab Transport's Charges shall be considered earned in the case of Goods for carriage as soon as the Goods are loaded and dispatched from the Customer's premises.

13. Demurrage

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

14. Dangerous Goods

- 14.1 Dangerous Goods are Goods which are or may become of a dangerous, noxious, explosive, inflammable, radio-active or damaging nature and include Goods likely to harbour or encourage vermin or other pests. Unless agreed in writing, the Customer shall not deliver to Pukekohe Hiab Transport, or cause Pukekohe Hiab Transport to deal with or handle, Dangerous Goods.

- 14.2 If the Customer is in breach of clause 14.1:

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

- 14.3 Where Pukekohe Hiab Transport agrees to accept Dangerous Goods, if during the period of cartage, Pukekohe Hiab Transport, its Sub-Contractors (or any other suitably qualified person or authority) reasonably forms the view that those Goods pose any risk to other goods, property, life or health, then the provisions of clause 14.2 shall apply.

15. Consignment Note

- 15.1 It is agreed that the person delivering any Goods to Pukekohe Hiab Transport for carriage or forwarding is authorised to sign the consignment note for the Customer.

16. Customer's Responsibility

- 16.1 The Customer expressly warrants, represents, confirms and/or acknowledges that:

- (a) Pukekohe Hiab Transport has relied upon the Customer in its description of the Goods (including height, measure, standard, strength, quantity, quality, figures, dimensions, and values). Accordingly, Pukekohe Hiab Transport accepts no liability for any discrepancy that may arise with the description; and
- (b) unless specified otherwise in writing, Pukekohe Hiab Transport has relied upon the Customer's skill in properly packaging, labelling, marking, securing and preparing the Goods, and that the Customer has complied with all applicable laws and regulations (including those applicable to Dangerous Goods) and shall furnish such information and provide such documents as may be necessary to comply with such laws and regulations;
- (c) the Customer is either the owner or the authorised agent of the owner of any Goods or property that is the subject matter of this Contract of cartage and/or storage and by entering into this Contract the Customer accepts these conditions of Contract for the Consignee as well as for all other persons on whose behalf the Customer 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 Customer's description of the Goods;
- (e) it is the Customer's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery.

17. Delivery

- 17.1 Pukekohe Hiab Transport is authorised to deliver the Goods at the address given to Pukekohe Hiab Transport by the Customer for that purpose and it is expressly agreed that Pukekohe Hiab Transport shall be taken to have delivered the Goods in accordance with this Contract if at that address Pukekohe Hiab Transport obtains from any person a receipt or a signed delivery docket for the Goods.
- 17.2 Pukekohe Hiab Transport 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.
- 17.3 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery for the purposes of this Contract.
- 17.4 It is the Customer's sole responsibility to provide unobstructed access to the nominated address to enable effective delivery, including ensuring that trees are trimmed or cut back along driveways, and/or (for self-load or self-unload) ensuring that foot or vehicular traffic is not impeded, and that public safety is considered. If delivery cannot be effected by Pukekohe Hiab Transport (whether due to obstructed access to the nominated address or otherwise) then Pukekohe Hiab Transport at its sole discretion may:
- (a) deposit the Goods in the nearest and safest position to the address, and such action will be deemed to constitute valid delivery; or
 - (b) use vehicle/equipment, and charge the Customer any costs incurred by Pukekohe Hiab Transport in so doing; or
 - (c) refuse to effect delivery and instead store the Goods, in which case the Customer shall be liable for, and shall reimburse Pukekohe Hiab Transport for all costs and expenses incurred in connection with such storage.
- 17.5 It is the responsibility of the Customer to ensure that access to the collection or delivery site is suitable to accept the weight of laden trucks. The Customer agrees to indemnify Pukekohe Hiab Transport against all costs incurred by Pukekohe Hiab Transport in recovering such vehicles in the event they become bogged or otherwise immovable.
- 17.6 The Customer and Pukekohe Hiab Transport shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the Services.
- 17.7 Any time specified by Pukekohe Hiab Transport for the delivery of Goods is an estimate only and Pukekohe Hiab Transport will not be liable for any loss or damage incurred by the Customer 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 Pukekohe Hiab Transport is unable to deliver the Goods as agreed solely due to any action or inaction of the Customer then Pukekohe Hiab Transport shall be entitled to charge the Customer any additional costs incurred by Pukekohe Hiab Transport as a direct consequence of any resultant delay or rescheduling of the delivery.

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) Pukekohe Hiab Transport shall not be under any liability for any loss or damage suffered by Pukekohe Hiab Transport, Customer (or any third party) as a result of:
 - (i) the Customer contravening clause 16;
 - (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) Pukekohe Hiab Transport shall not be under any liability for any consequential or indirect loss, loss of market or consequences of delay; and
 - (c) the Customer will indemnify Pukekohe Hiab Transport 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 Pukekohe Hiab Transport in connection with the Goods.

19. Insurance

- 19.1 The Customer acknowledges that:
- (a) the Goods are carried and stored at the Customer's sole risk and not at the risk of Pukekohe Hiab Transport; and
 - (b) Pukekohe Hiab Transport is under no obligation to arrange insurance of the Goods and it remains the Customer's responsibility to ensure that the Goods are insured adequately or at all; and
 - (c) under no circumstances will Pukekohe Hiab Transport be under any liability with respect to the arranging of any such insurance and no claim will be made against Pukekohe Hiab Transport 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 Customer believes that they have any claim against Pukekohe Hiab Transport then they must lodge any notice of claim for consideration and determination by Pukekohe Hiab Transport within thirty (30) days (as set out in the Carriage of Goods Act) 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. Pukekohe Hiab Transport will respond to that notice of claim within ten (10) days of receipt of the notice and will take all reasonable steps to resolve the matter. In the event that the Customer is not satisfied with the resolution provided, the Customer 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 Pukekohe Hiab Transport of its obligations.

21. Indemnities

- 21.1 The defences and exclusions of liability in these conditions general including clause 18 apply in any action (whether based on contract, tort, bailment or any other cause of action howsoever arising) against Pukekohe Hiab Transport even if it is resulted from an act or omission of Pukekohe Hiab Transport done wilfully or recklessly with knowledge that damage would or would probably result.
- 21.2 Nothing whatsoever done or omitted to be done or other conduct by Pukekohe Hiab Transport in breach of these terms and conditions or otherwise howsoever lawfully or unlawfully shall under any circumstances constitute either a breach going to the root of this Contract, or a deviation or departure therefrom or a repudiation thereof such as to have effect of disentitling Pukekohe Hiab Transport from obtaining the

benefit of and enforcing all rights, defences, exceptions, immunities and limitations of liability and other protections herein which shall continue to have full force and effect in any event whatsoever.

22. Carrier's Lien

- 22.1 Pukekohe Hiab Transport shall have a right to take a particular and general lien on any Goods the property of the Customer or a third party owner which are in the possession or control of Pukekohe Hiab Transport (and any documents relating to those Goods) for all sums owed at any time by the Customer or a third party owner to Pukekohe Hiab Transport (whether those sums are due from the Customer on those Goods or documents, or on any other Goods or documents), and Pukekohe Hiab Transport shall have the right to sell such Goods or cargo by public auction or private treaty after giving seven (7) days' notice to the Customer. Pukekohe Hiab Transport 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.
- 22.2 Notwithstanding clause 22.1 nothing shall prejudice Pukekohe Hiab Transport's rights to use any of Pukekohe Hiab Transport'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 22.1 and no exception shall be taken upon the grounds that the Charges realised is less than the full market value of the Goods.

23. Consumer Guarantees Act 1993

- 23.1 This Contract is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Customer is contracting within the terms of a trade/business (which cases are specifically excluded).
- 23.2 Pukekohe Hiab Transport shall be under no liability whatsoever for loss or damage to Goods unless;
- (a) the Customer provides written notice to Pukekohe Hiab Transport detailing the alleged damage, and that such written notice shall be received by Pukekohe Hiab Transport within ten (10) days after the delivery of the Goods; or
 - (b) in the case where the Goods have been lost in transit then the Customer shall be required to provide written notice detailing the alleged loss within thirty (30) days of the date of dispatch of the Goods.

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

- 24.1 Upon assenting to these terms and conditions in writing the Customer 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 Pukekohe Hiab Transport, over which Pukekohe Hiab Transport invokes a lien; and
 - (b) all the Customer's present and after acquired property being a charge, including anything in respect of which the Customer 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 Customer to Pukekohe Hiab Transport for Services – that have previously been provided and that will be provided in the future by Pukekohe Hiab Transport to the Customer.
- 24.2 The Customer 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 Pukekohe Hiab Transport may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, Pukekohe Hiab Transport 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 Goods in favour of a third party without the prior written consent of Pukekohe Hiab Transport.
- 24.3 Pukekohe Hiab Transport and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 24.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 24.5 Unless otherwise agreed to in writing by Pukekohe Hiab Transport, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 24.6 The Customer shall unconditionally ratify any actions taken by Pukekohe Hiab Transport under clauses 24.2 to 24.5.
- 24.7 Subject to any express provisions to the contrary (including those contained in this clause 24), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

25. Security and Charge

- 25.1 In consideration of Pukekohe Hiab Transport agreeing to supply Services, the Customer 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 Customer either now or in the future, and the Customer grants a security interest in all of its present and after-acquired property, to secure the performance by the Customer 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.
- 25.2 The Customer indemnifies Pukekohe Hiab Transport from and against all Pukekohe Hiab Transport's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Pukekohe Hiab Transport's rights under this clause.
- 25.3 The Customer irrevocably appoints Pukekohe Hiab Transport and each director of Pukekohe Hiab Transport as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 25 including, but not limited to, signing any document on the Customer's behalf.

26. Default and Consequences of Default

- 26.1 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 Pukekohe Hiab Transport's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

- 26.2 If the Customer owes Pukekohe Hiab Transport any money the Customer shall indemnify Pukekohe Hiab Transport from and against all costs and disbursements incurred by Pukekohe Hiab Transport in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Pukekohe Hiab Transport's collection agency costs, and bank dishonour fees).
- 26.3 Further to any other rights or remedies Pukekohe Hiab Transport may have under this Contract, if the Customer has made payment to Pukekohe Hiab Transport, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Pukekohe Hiab Transport under this clause 26 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 26.4 Without prejudice to Pukekohe Hiab Transport's other remedies at law Pukekohe Hiab Transport shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to Pukekohe Hiab Transport shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to Pukekohe Hiab Transport becomes overdue, or in Pukekohe Hiab Transport's opinion the Customer will be unable to meet its payments as they fall due; or
 - (b) the Customer has exceeded any applicable credit limit provided by Pukekohe Hiab Transport;
 - (c) the Customer 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 Customer or any asset of the Customer.

27. Cancellation

- 27.1 Without prejudice to any other remedies Pukekohe Hiab Transport may have, if at any time the Customer is in breach of any obligation (including those relating to payment) Pukekohe Hiab Transport may suspend or terminate the provision of Services to the Customer and any of its other obligations under the terms and conditions. Pukekohe Hiab Transport will not be liable to the Customer for any loss or damage the Customer suffers because Pukekohe Hiab Transport exercised its rights under this clause.
- 27.2 Pukekohe Hiab Transport 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 Customer. On giving such notice the Customer shall repay to the Customer any sums paid in respect of the Charges. Pukekohe Hiab Transport shall not be liable for any loss or damage whatever arising from such cancellation.
- 27.3 In the event that the Customer cancels the delivery of Goods, or the provision of any Services, then the Customer shall be liable for any loss incurred by Pukekohe Hiab Transport (including, but not limited to, any loss of profits) up to the time of cancellation, or as a direct result of the cancellation.

28. Privacy Policy

- 28.1 All emails, documents, images or other recorded information held or used by Pukekohe Hiab Transport is "**Personal Information**" as defined and referred to in clause 28.3 and therefore considered confidential. Pukekohe Hiab Transport 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. Pukekohe Hiab Transport acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by Pukekohe Hiab Transport that may result in serious harm to the Customer, Pukekohe Hiab Transport will notify the Customer in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Customer by written consent, unless subject to an operation of law.
- 28.2 Notwithstanding clause 28.1, privacy limitations will extend to Pukekohe Hiab Transport in respect of Cookies where the Customer utilises Pukekohe Hiab Transport's website to make enquiries. Pukekohe Hiab Transport 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 Customer's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to Pukekohe Hiab Transport when Pukekohe Hiab Transport sends an email to the Customer, so Pukekohe Hiab Transport may collect and review that information ("collectively Personal Information")
- If the Customer consent to Pukekohe Hiab Transport's use of Cookies on Pukekohe Hiab Transport's website and later wish to withdraw that consent, the Customer may manage and control Pukekohe Hiab Transport's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 28.3 The Customer authorises Pukekohe Hiab Transport or Pukekohe Hiab Transport's agent to:
- (a) access, collect, retain and use any information about the Customer;
 - (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 Customer's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Customer.
 - (b) disclose information about the Customer, whether collected by Pukekohe Hiab Transport from the Customer directly or obtained by Pukekohe Hiab Transport 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 Customer.
- 28.4 Where the Customer is an individual the authorities under clause 28.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 28.5 Pukekohe Hiab Transport will destroy Personal Information upon the Customer'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.
- 28.6 The Customer can make a privacy complaint by contacting Pukekohe Hiab Transport via e-mail. Pukekohe Hiab Transport 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 Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.

29. Service of Notices

- 29.1 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.
- 29.2 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.

30. Trusts

- 30.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Pukekohe Hiab Transport may have notice of the Trust, the Customer covenants with Pukekohe Hiab Transport as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
 - (b) the Customer has full and complete power and authority under the Trust 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 Customer against the Trust or the trust fund. The Customer 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 Customer will not without consent in writing of Pukekohe Hiab Transport (Pukekohe Hiab Transport will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Customer 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 property.

31. Load Measuring Devices

- 31.1 If any crane has been fitted with a load measuring device, the Customer hereby acknowledges and agrees that Pukekohe Hiab Transport has made no warranties or representations whatsoever with respect to the ability of said load measuring device to accurately or consistently measure the weight of the load being lifted by such crane. The Customer further acknowledges and agrees that it is the responsibility of the Customer to independently determine the weight of every load to be lifted by any crane comprising all or a portion of the Equipment so as to ensure that any such load to be lifted does not exceed the rated load as determined by such crane's capacity chart and that the load measuring device shall be used as an operator-aid only.
- 31.2 The Customer will be liable for, and shall indemnify and hold harmless Pukekohe Hiab Transport of and from, any and all liabilities, costs, damages, charges, legal fees and disbursements (including those on a solicitor and own client basis with right of full indemnity) fines, penalties, expenses, actions, suits, proceedings and demands, all of whatever kind or nature which Pukekohe Hiab Transport may suffer or incur or be liable for, either directly or indirectly, by reason of failure of any load measuring device to perform consistently or accurately, notwithstanding the negligence of Pukekohe Hiab Transport directly or indirectly related thereto. The Customer hereby releases Pukekohe Hiab Transport of and from any and all liabilities, losses, costs, damages, claims and demands which it may have against Pukekohe Hiab Transport, either directly or indirectly, arising by reason of the failure of any load measuring device to perform consistently or accurately, notwithstanding the negligence of Pukekohe Hiab Transport. Without restricting the generality of the foregoing, the Customer covenants and agrees that they shall not sue Pukekohe Hiab Transport for any such losses, or costs, damages, claims or demands. Furthermore, the Customer acknowledges and agrees that if they rely in any way whatsoever on any such load measuring device that they do so completely at their own risk.

32. General

- 32.1 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 Pukekohe Hiab Transport'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.
- 32.2 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 Pukekohe, New Zealand.
- 32.3 Pukekohe Hiab Transport shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Pukekohe Hiab Transport of these terms and conditions (alternatively Pukekohe Hiab Transport's liability shall be limited to damages which under no circumstances shall exceed the Charges).
- 32.4 Pukekohe Hiab Transport may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 32.5 The Customer cannot licence or assign without the written approval of Pukekohe Hiab Transport.
- 32.6 Pukekohe Hiab Transport 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 Customer agrees and understands that they have no authority to give any instruction to any of Pukekohe Hiab Transport's sub-contractors without the authority of Pukekohe Hiab Transport.
- 32.7 The Customer agrees that Pukekohe Hiab Transport may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for Pukekohe Hiab Transport to provide Goods to the Customer.
- 32.8 Where Pukekohe Hiab Transport is unable, wholly or in part, by reason of any fact, circumstance, matter or thing beyond the reasonable control of Pukekohe Hiab Transport, 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 Pukekohe Hiab Transport gives the Customer 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 Pukekohe Hiab Transport.

- 32.9 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 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.
- 32.10 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.

Additional Terms & Conditions Applicable to Hire Only

33. Hire Period

- 33.1 For Equipment in which a timing device is installed the hire period shall be the number of hours or part thereof recorded on the timing device whilst the Equipment is in the Customer's possession.
- 33.2 Where the Equipment does not have a timing device installed hire charges shall commence from the time the Equipment is collected by the Customer from Pukekohe Hiab Transport's premises and will continue until the return of the Equipment to Pukekohe Hiab Transport's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 33.3 If Pukekohe Hiab Transport agrees with the Customer to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves Pukekohe Hiab Transport's premises and continue until the Customer notifies Pukekohe Hiab Transport that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 33.4 The date upon which the Customer advises of termination shall in all cases be treated as a full day's hire.
- 33.5 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason unless Pukekohe Hiab Transport confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Customer notifies Pukekohe Hiab Transport immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Customer.

34. Risk to Equipment

- 34.1 Pukekohe Hiab Transport retains ownership of the Equipment nonetheless all risk for the Equipment passes to the Customer on Delivery.
- 34.2 The Customer accepts full responsibility for the safekeeping of the Equipment and indemnifies Pukekohe Hiab Transport for all loss, theft, or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Customer.
- 34.3 The Customer will insure, or self-insure, Pukekohe Hiab Transport's interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 34.4 The Customer accepts full responsibility for and shall keep Pukekohe Hiab Transport indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons or damage to property arising out of the use of the Equipment during the hire period however arising and whether or not arising from any negligence, failure or omission of the Customer or any other persons.

35. Title to Equipment

- 35.1 The Equipment is and will at all times remain the absolute property of Pukekohe Hiab Transport.
- 35.2 If the Customer fails to return the Equipment to Pukekohe Hiab Transport then Pukekohe Hiab Transport or Pukekohe Hiab Transport's agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.
- 35.3 The Customer is not authorised to pledge Pukekohe Hiab Transport's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

36. Customer's Responsibilities

- 36.1 The Customer shall:
- (a) satisfy itself at commencement that the Equipment is suitable for its purposes;
 - (b) notify Pukekohe Hiab Transport immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Customer is not absolved from the requirements to safeguard the Equipment by giving such notification;
 - (c) maintain the Equipment as is required by Pukekohe Hiab Transport (including, but not limited to, maintaining (where applicable) water, oil and fluid levels and tyre pressures);
 - (d) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by Pukekohe Hiab Transport or posted on the Equipment;
 - (e) ensure that:
 - (i) all persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed to operate the Equipment and shall provide evidence of the same to Pukekohe Hiab Transport upon request;

- (ii) the operator of any Equipment is not under the influence of alcohol or any drug that may impair their ability to operate the Equipment;
 - (iii) all reasonable care is taken by the driver in handling and/or parking the Equipment and that the Equipment is left locked and/or securely stored when not in use.
 - (f) be liable for any parking or traffic infringement, impoundment, towage, and storage costs incurred during the hire period and will supply relevant details as required by the Police and/or Pukekohe Hiab Transport relating to any such matters or occurrences.
 - (g) comply with all workplace health and safety laws relating to the Equipment and its operation;
 - (h) on termination of the hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to Pukekohe Hiab Transport;
 - (i) refuel the Equipment prior to its return from hire. In the event the Equipment needs to be refuelled upon its return from hire then the costs of refuelling shall be charged to the Customer in addition to the costs of the Equipment hire;
 - (j) keep the Equipment in their own possession and control and shall not assign the benefit of the hire Contract nor be entitled to lien over the Equipment;
 - (k) employ the Equipment solely in its own work and shall not permit the Equipment of any part thereof to be used by any other party for any other work;
 - (l) indemnify and hold harmless Pukekohe Hiab Transport in respect of all claims arising out of the Customer's use of the Equipment.
- 36.2 The Customer shall not:
- (a) alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
 - (b) exceed the recommended or legal load and capacity limits of the Equipment;
 - (c) use or carry any illegal, prohibited or dangerous substance in or on the Equipment;
 - (d) fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold.
- 36.3 Immediately on request by Pukekohe Hiab Transport the Customer will pay:
- (a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to Pukekohe Hiab Transport;
 - (b) all costs incurred in cleaning the Equipment;
 - (c) all costs of repairing any damage caused by:
 - (i) the ordinary use of the Equipment;
 - (ii) the negligence of the Customer or the Customer's agent;
 - (iii) vandalism, or (in Pukekohe Hiab Transport's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Customer.
 - (d) the cost of fuels and consumables provided by Pukekohe Hiab Transport and used by the Customer;
 - (e) any:
 - (i) lost hire fees Pukekohe Hiab Transport would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
 - (ii) costs incurred by Pukekohe Hiab Transport in picking up and returning the Equipment to Pukekohe Hiab Transport's premises if the Customer does not return the Equipment to Pukekohe Hiab Transport's premises or any pre-agreed pickup location when it was originally agreed that the Customer would do so;
 - (iii) insurance excess payable in relation to a claim made by either the Customer or Pukekohe Hiab Transport in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Customer and irrespective of whether charged by the Customer's insurers or Pukekohe Hiab Transport's.

37. Wet Hire

37.1 "Wet Hire" shall mean that the Equipment is hired with an operator who shall at all times remain an employee of Pukekohe Hiab Transport.

37.2 In the event of Wet Hire, the operator of the Equipment remains an employee of Pukekohe Hiab Transport and operates the Equipment in accordance with the Customer's instructions. As such Pukekohe Hiab Transport shall not be liable for any actions of the operator in following the Customer's instructions.