Vanguard Logistics
131 Montgomerie Road,
Airport Oaks, 2022
Auckland, NZ

vanguardlogistics.com
Phone 09 916 0676

O.T.I. #017237N

TRADE TERMS

1. General

1.1 The terms and conditions contained in these trade terms (**Trade Terms**), and the terms and conditions in any house or carrier waybill, bill of lading, warehouse receipt, consignment note or other document issued by Vanguard or a third party (**Transport Document**), apply to all services supplied by Vanguard to the Merchant(**Services**).

1.2 Vanguard's entry into these Trade Terms is subject to it being satisfied in its sole discretion with the references and information set out in the schedule to these Trade Terms (**Schedule**) and any other information which Vanguard reasonably requires.

1.3 These Trade Terms supersede all oral and written proposals, negotiations, commitments and other communications between Vanguard and the Merchant.

1.4 If there are any inconsistencies between these Trade Terms and any Transport Document, these Trade Terms shall be paramount.

1.5 No officer, servant, employee, sub-contractor or agent of Vanguard has or shall be deemed to have the authority to make any representations, warranties or agreements contrary to these Trade Terms.

1.6 For the purposes of these Trade Terms:

1.6.1 **Vanguard** includes Vanguard Logistic Services (NZ) Limited, AFS Freight Management Limited, Direct Container Line (N.Z.) Limited, Export Freight Services and Global Consolidations Services (**Affiliates**), and the employees, servants, agents and sub-contractors of Vanguard and each of the Affiliates; and

1.6.2 **Merchant** includes the party named in the Schedule as Merchant, any shipper, consignee, receiver, owner, or bailor of Goods; and

1.6.3 **Goods** includes any cargo received from or handled on behalf of the Merchant and includes any Container supplied therewith; and

1.6.4 **Container** means any cradle, lashing, container, trailer, flat, pallet, or article used to consolidate, store or package the Goods used for the purposes of providing the Services; and

1.6.5 **Carrier** includes Vanguard and/or any carrier engaged by Vanguard to carry Goods and includes warehousemen; and

1.6.6 **Delivery Order** means any Delivery Order issued by Vanguard, the Carrier or their agents in respect of the release of Goods.

2. Quotations

2.1 Quotations are given on the basis of immediate acceptance and are based on rates, tariffs and charges as at the date of the relevant quotation. Quotations shall be subject to revision without prior notice if there is a change in any rates, tariffs or charges (including without limitation changes in fees, taxes, or customs duties which become payable to a public authority, or any change in the cargo weight and dimensions, rates of freight, insurance premiums or Government department levies).

2.2 All rates quoted are exclusive of GST.

2.3 All quotations are confidential and disclosure in full or in part to another person, company or other entity is not permitted.

3. Payment

3.1 Freight, commissions and all other charges whatsoever due to Vanguard shall be considered earned on receipt of the Goods by Vanguard.

3.2 Unless otherwise specified in writing by Vanguard, the Merchant shall pay to Vanguard, in full (and without deduction, setoff or counterclaim), all amounts invoiced by Vanguard for the Services on the 20th day of the month following the date of the relevant invoice.

3.3 Vanguard may recover on demand from the Merchant for any errors or omissions in calculation of freight, commissions or any other charges relating to the Services.

3.4 If the total amount invoiced by Vanguard for Services exceeds the amount specified as the credit limit in the Schedule, the Merchant shall immediately pay such total amount to Vanguard upon demand and without deduction.

3.5 Notwithstanding clause **3.4**, Vanguard may charge interest at the rate of 15% per annum, calculated on a daily basis, on any amount which the Merchant fails to pay when due. Such interest will apply from the date the Merchant is required to pay the amount outstanding up to the date payment is received by Vanguard. Payment of interest shall be without prejudice to Vanguard's other rights or remedies.

3.6 The Merchant shall pay upon demand all recovery costs incurred by Vanguard arising out of the Merchant's failure to pay any amount when due, including full legal costs on a solicitor-own client basis, disbursements and collections costs (including, without limitation, fees of external debt collection agencies).

3.7 Notwithstanding anything contained in these Trade Terms, and without prejudice to any of Vanguard's other rights and remedies, any amounts payable by the Merchant for the Services shall become immediately due and payable, and Vanguard shall have the right to terminate this Agreement, upon the occurrence of any of the following events:

3.7.1 the Merchant is unable to pay debts as they fall due;

3.7.2 the Merchant (being an individual) commits an act of bankruptcy or being a company) proceedings are taken for the liquidation of the Merchant;

3.7.3 the Merchant (being a company) goes into liquidation or receivership;

3.7.4 the Merchant breaches any of the terms contained in these Trade Terms.

4. Dangerous goods

4.1 Vanguard may, in its sole discretion, refuse to accept for carriage any:

4.1.1 bullion, coins, precious stones, jewelry, valuables, antiques, pictures, living creatures or plants; or

4.1.2 explosive, flammable gas, compressed gas, flammable liquid, flammable solid, water reactive, organic, peroxide, poison, irritant, bio-medical material infectious substance, radioactive substance, corrosive, drugs, magnetised material or any other noxious, dangerous, hazardous or restricted goods or any goods likely to cause damage or injury. The expression "goods likely to cause damage" includes goods likely to harbor or encourage vermin or other pests, (all referred to as the **Dangerous Goods**).

4.2 If Vanguard agrees to accept Dangerous Goods for carriage, the Merchant shall be liable for all loss and damage caused by the carriage of the Dangerous Goods and shall indemnify Vanguard against all penalties, claims, damages, costs and expenses arising in connection with the carriage of such Goods. Vanguard may destroy or otherwise deal with the Dangerous Goods at its sole discretion or at the discretion of any other person nominated by Vanguard in whose custody the Dangerous Goods may be at the relevant time if such Goods become dangerous to other Goods, persons or property. If such Goods are accepted, the Merchant shall provide correct technical information, descriptions, classifications, proper shipping names of restricted articles, correct packaging and handling instructions.

4.3 The Merchant shall comply with the requirements of any applicable law relating to the nature, condition and packaging of the Goods (whether dangerous or not), including compliance with any codes, and it shall be the responsibility of the Merchant to certify that the contents of all such consignments are fully and accurately described, classified, packed, marked, labelled and comply with the appropriate regulations applicable to the relevant mode or modes of transport.

5. Storage and disposal of unclaimed or rejected goods

5.1 Goods may be held at any place at the sole discretion of Vanguard at the Merchant's risk and expense.

5.2 If the Goods are to be delivered to the consignee and the consignee cannot be found, Vanguard may charge an additional fee for each delivery attempt. A communication from any agent or correspondent of Vanguard to the effect that the Goods cannot be delivered for any reason shall be conclusive evidence of that fact.

5.3 Vanguard may, without any notice to the Merchant, sell or otherwise dispose of any perishable Goods which, if such Goods are to be:

5.1.1 collected by the consignee, are not forthwith collected;

5.3.1 delivered to the consignee, the consignee cannot be found or refuses to accept such Goods.

5.4 Nonperishable Goods which cannot be delivered to the consignee for any reason whatsoever, or are not collected by the consignee (as the case may be), may be sold or returned to the consignor at Vanguard's option at any time which is at least 30 days after the date Vanguard sends written notice that the Goods are ready to be collected or delivered (as the case may be) to the address of the consignee provided to Vanguard by the Merchant.

5.5 The Merchant shall pay all charges and expenses arising in connection with the sale, disposal or return of any Goods pursuant to these Trade Terms.

6. Method and Route of Transportation

6.1 Vanguard may at any time and without notice to the Merchant:

6.1.1 use any mode or means of transport or storage whatsoever;

6.1.2 transfer the Goods from one conveyance to another including trans-shipment;

6.1.3 unpack and remove Goods which have been stowed in or on any Container and forward the same in or on any other Container or otherwise;

6.1.4 proceed by any route at its discretion;

6.1.5 load and unload Goods at any place and store the Goods at any such place;

6.1.6 comply with all applicable local or international legislation, rules or regulations and any orders or recommendations given by any government or authority or any person or body acting or purporting to act on behalf of such government or authority.

7. Declaration of Value

7.1 Vanguard will not declare the value of Goods in any Transport Document unless instructed to do so in writing by the Merchant. Where there is a choice of tariff rates according to the extent of the liability assumed by Carriers no declaration of value (where optional) will be made for the purpose of extending liability and the Goods will be forwarded or dealt with at the Merchant's risk, unless express instructions in writing to the contrary are given by the Merchant and accepted by Vanguard.

8. Lien

8.1 Vanguard may exercise a general and particular lien over any part of the Goods (or a Transport Document of title) which are in its possession or control for all charges, whether presently outstanding, now due or which may become due by the Merchant to Vanguard on any account.

8.2 If any monies due and owing by the Merchant are not paid within seven days of the due date Vanguard may at its option:

8.2.1 remove and store the Goods at the risk and expense of the Merchant;

8.2.2 sell the Goods upon such terms as it thinks fit and apply the proceeds in or towards payment of the monies due and owing. Vanguard will account to the Merchant for any balance of funds after deducting amounts due and owing together with all other charges and expenses of the detention and sale. Sale shall not prejudice the right of Vanguard to recover any further amounts due and owing to it.

9. Container Detention and Demurrage

9.1 Where Goods are carried in or on a Container the Container is released to the Merchant on the following terms:

9.1.1 unless noted on a Delivery Order the Merchant acknowledges that the Container is delivered in good order and condition;

9.1.2 the Merchant agrees to return the Container to such yard or depot as is required by the Container owner, lessee or supplier or their authorized agent (Container Owner) within the free days permitted after notification of readiness for delivery of the Container for devanning by or on behalf of the Merchant (Free Period) and following which period Container detention and demurrage charges become payable;

9.1.3 the Merchant shall clean return the Container clean and undamaged and in the same good order and condition as when the Container was released to the Merchant;

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9.1.4 the Merchant shall pay to the Container Owner any Container demurrage, detention or related charges which become due as a consequence of failure to return the Container within the Free Period;

9.1.5 the Merchant shall indemnify Vanguard or the Carrier upon demand in respect of any and all loss, damage, liability, claims, costs (including legal costs on a solicitor and own client basis), expenses, charges, demands, suits and proceedings relating to the use and/or operation of a Container whilst in the Merchant's possession including but not limited to Container detention and demurrage charges and any other associated loss, liability, claims, costs, expenses, charges and demands sought to the recovered from the Vanguard by any person or entity; and

9.1.6 otherwise on Vanguard's "FCL Release Terms and Conditions".

10. Power of attorney

10.1 The Merchant irrevocably appoints Vanguard as the Merchant's true and lawful attorney for the Merchant and in the Merchant's name and as the Merchant's act and/or deed to execute and perform any act, deed, document or thing whatsoever for, instead of, or on behalf of the Merchant which the Merchant may lawfully do by its attorneys including the execution of a security agreement in respect of any Goods or any of the Merchant's other present and after acquired personal property for the purposes of securing the payment of any monies which may from time to time be owing by the Merchant to Vanguard.

11. Insurance

11.1 Vanguard will not arrange insurance unless specifically requested to do so in writing by the Merchant and then only as the Merchant's agent.

11.2 Vanguard shall not be obliged to affect a separate insurance for each consignment but may declare it in any open or general policy. Vanguard accepts no liability for any insurance arrangements. Should insurers decline liability for any reason the insured shall have recourse against the insurer only. The Merchant agrees to indemnify Vanguard for any loss or damage Vanguard may suffer in relation to or arising out of any insurance arranged by Vanguard pursuant to this clause.

12. Liability

12.1 Vanguard is not a common carrier or the actual carrier unless the Goods are carried in a ship, aircraft, vehicle or other conveyance owned or operated by Vanguard.

12.2 When the Goods are not transported on a ship, aircraft, vehicle or other conveyance owned or operated by Vanguard, Vanguard's obligations are limited to arranging carriage of the Goods by a reputable Carrier. In such circumstances, Vanguard contracts with the Carrier or any related ancillary service provider strictly as agent of the Merchant and is authorised to enter into the Carrier's Transport Document or otherwise to contract on the terms of any related ancillary service provider on behalf of the Merchant.

12.3 Where carriage is subject to the Contract and Commercial Law Act 2017 (*Act*), these Trade Terms shall be "at limited carrier's risk" as defined in the Act, except to the extent that the provisions of the Act are inconsistent with these Trade Terms and may lawfully be excluded by contract. Sections 18, 19 and 20 of the Act do not apply to the Services provided under these Trade Terms. Insofar as the parties are able, the Trade Terms prevail over the Act and any other statute.

12.4 Subject to clauses **12.3** and **22.1** of these Trade Terms, Vanguard will under no circumstances whatsoever or howsoever arising (including its negligence) be liable (whether the claim against Vanguard be founded in contract, bailment or tort or otherwise) for direct or indirect loss or damage to, or deterioration of Goods as a result of the performance or failure to perform or the manner of performance of the Services, nor for any losses consequential on such loss or damage to Goods, including but not limited to late performance, failure or mis-delivery, or delay in delivery of the Goods, or any delay caused by accident, nor for any instructions, advice, information, misrepresentation or service given or provided to any person whether in respect of the Goods or any other matter. Without limiting the generality of the foregoing, this exclusion extends to any claim against Vanguard for payment of any charge, fine, penalty, sales tax or duty.

12.5 If the Merchant requires the Goods to be kept at a constant temperature or within a range of temperatures throughout the carriage of such Goods, it must notify Vanguard in writing prior to the time the Goods are accepted for carriage. In the absence of such written notification, Vanguard shall not be liable for damage to, or loss of, the Goods. It is agreed that the Goods will be transported at the specified temperature plus or minus 2 degrees Celsius. Vanguard is not liable for any loss or damage whatsoever arising from breakdown of reefer machinery.

12.6 In all cases where liability has not been effectively excluded, whether by Trade Terms or by statute, convention or otherwise, the total liability of Vanguard for any loss or damage is limited to the lesser of:

12.6.1 NZ$2,000.00 per package or unit of goods shipped;

12.6.2 the value of the Goods at the time the Goods were received by Vanguard;

12.6.3 a re-supply of the Services or payment of the cost of re-supplying the Services.

13. Warranty of Authority

13.1 The Merchant expressly warrants that it is the owner or the authorised agent of the owner of the Goods and enters into these Trade Terms on its own behalf and also as agent for the owner of the Goods and indemnifies Vanguard against all claims by any other person for any loss or damage whatsoever arising out of or incidental to or in connection with the Services provided by Vanguard.

14. Indemnity

14.1 The Merchant indemnifies Vanguard from all claims for loss or damage (including legal costs on a solicitor and own client basis), customs duty, excise duty, costs, fines or penalties which Vanguard becomes liable to pay for any reason whatsoever in respect of the Goods and Services whether or not such liability is due to the negligence or wilful default of Vanguard.

14.2 The Merchant warrants that all information and particulars provided to Vanguard in connection with the Goods and Services are accurate and adequate for the intended transaction and the Merchant agrees to indemnify the Merchant against all loss, damage, fines, penalties, fees and expenses arising or resulting from inaccuracies or inadequacy in that information or particulars or other failure of the Merchant to satisfy this warranty in any way.

15. Sub-Contracting and Indemnity

15.1 Vanguard may sub-contract on any terms the whole or any part of the Services.

15.2 The Merchant shall make no claim whatsoever in relation to the Goods or Services against any servant employee, agent, contractor or sub-contractor of its employees, servant or agents and shall indemnify Vanguard against any claims which may be made on Vanguard by any such employee, servant, agent, contractor or sub-contractor and without prejudice to the foregoing any person providing the Services (other than Vanguard) shall have the benefit of these provisions as if they were expressly for its benefit.

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

16. Notice of Loss

16.1 Any claim for loss or damage must be notified in writing to Vanguard within seven days of delivery of the Goods or the date upon which the Goods should have been delivered failing which Vanguard shall be discharged from all liability whatsoever arising.

17. Time Bar

17.1 Vanguard shall be discharged from all liability unless suit is filed and served on Vanguard within six months after the completion of the Services, delivery of the Goods or in the case of non-delivery, the date when the Goods should have been delivered, whichever is the shorter.

18. Variation of Contract

18.1 Vanguard shall not be bound by any agreement purporting to vary these Trade Terms and conditions unless such variation is in writing and signed by Vanguard.

19. Quarantine Cleaning - General

19.1 This clause will apply where the Goods require cleaning to comply with quarantine standards and regulations as enforced from time to time as applicable enforced from time to time (**Quarantine Standards**).

19.2 Unless otherwise expressly agreed by Vanguard the Services provided by Vanguard, including freight forwarding services, do not include ensuring that the Goods comply with Quarantine Standards. The Merchant expressly acknowledges that it is wholly responsible for ensuring the Goods comply with Quarantine Standards.

19.3 If at any time the Goods are in transit, Vanguard or its agent takes any steps to clean, improve or otherwise maintain the Goods for any purpose whatsoever, the Merchant acknowledges that Vanguard or its agent does so solely to enable the Goods to be carried or transported and not as any admission of any obligation by Vanguard to ensure the Goods will comply with Quarantine Standards.

19.4 If, when the Goods arrive at a destination (whether in New Zealand or elsewhere), they do not comply with Quarantine Standards and the Goods are ordered for re-export, the Merchant acknowledges that it will be wholly responsible for the costs of re-export.

20. Quarantine Inspection

20.1 This clause **20** only applies where the Goods require cleaning or other maintenance to ensure compliance with New Zealand Quarantine Standards (NZQS) and where Vanguard has separately agreed to engage a Quarantine Consultant on behalf of the Merchant to inspect the Goods before shipment and to bring the Goods to a standard which complies with NZQS.

20.2 Vanguard may as the Merchant's agent only, and at the expense of the Merchant, engage a Quarantine Consultant to complete a pre-shipment inspection of the Goods. The Merchant shall then, at its expense, agree to do what such Quarantine Consultant recommends to be done to the Goods to ensure compliance with NZQS.

20.3 The Merchant acknowledges that Vanguard shall have no liability to the Merchant in relation to the Quarantine Services whatsoever.

20.4 Where Quarantine Services are arranged by Vanguard on behalf of the Merchant, Vanguard may charge the Merchant an additional commission fee for arranging such services on behalf of the Merchant.

21. Steam Cleaning

21.1 This clause only applies where the Merchant requires Vanguard to engage a contractor on behalf of the Merchant to steam clean any Goods to NZQS and Vanguard has agreed to engage such contractor on behalf of the Merchant as the Merchant's agent.

21.2 The Merchant acknowledges that the New Zealand Quarantine Authority determines whether or not Goods are required to be cleaned and all cleaning is done under the supervision and direction of the New Zealand Quarantine Authorities.

21.3 The Merchant acknowledges that Vanguard shall have no liability to the Merchant in relation to the steam cleaning of any Goods whatsoever.

21.4 Where steam cleaning services are arranged by Vanguard on behalf of the Merchant, Vanguard may charge the Merchant an additional commission fee for arranging such services.

22. Contrary Legislation

22.1 These Trade Terms are to be read subject to relevant legislation or conventions which by law cannot be excluded, restricted or modified (**Compulsory Legislation**). Nothing in these Trade Terms shall be considered as a surrender by Vanguard of any of its rights or immunities or as increasing its responsibilities under any such Compulsory Legislation or convention. Any term or condition of these Trade Terms which is inconsistent with or repugnant to such Compulsory Legislation or convention shall be null and void to the extent (but no further) of such inconsistency or repugnance.

23. Law and Jurisdiction

23.1 These conditions shall be governed by and construed in accordance with the laws of New Zealand and any proceedings shall be commenced in the New Zealand courts.

24. Consumer Guarantees Act

24.1 The Merchant acknowledges that if the Services are required for business purposes the terms of the Consumer Guarantees Act 1993 shall not apply.

25. Guarantee

25.1 If a person, company, corporation or other entity has been named as a Guarantor in item **2** of the Schedule, such Guarantor (jointly and severally if more than one) acknowledges that Vanguard has entered into these Trade Terms with the Merchant at the request of the Guarantor. The Guarantor unconditionally and irrevocably guarantees to Vanguard the due and punctual

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payment by the Merchant of all moneys from time to time payable by the Merchant under these Trade Terms and the due, punctual and proper performance and observance by the Merchant of all its other obligations under these Trade Terms.

25.2 The liability of the Guarantor will constitute a principal obligation of the Guarantor. Such liability will not be relieved or in any way affected in any manner prejudicial to Vanguard by granting of time, waiver or forbearance to sue by Vanguard, by any other act, omission, matter, circumstance or law whereby the Guarantor as a surety only would, but for this provision, have been released from liability.

25.3 The Guarantor covenants that, although as between the Merchant and the Guarantor the Guarantor may be surety only, Vanguard may look to the Guarantor as the Merchant, and need not proceed against the Merchant before proceeding against the Guarantor.

25.4 The Guarantor acknowledges that it has read and understood these Trade Terms.

26. Personal Information

26.1 For the purposes of the Privacy Act 1993 the Merchant and the Guarantor authorises Vanguard to collect personal information about the Merchant and/or the Guarantor, such personal information being provided by the Merchant or the Guarantor or by third parties for the purposes of providing credit. The Merchant and the Guarantor authorises Vanguard to provide the personal information to any credit agency or other third party for the purposes of establishing creditworthiness of the Merchant and/or Guarantor. Any error contained in the personal information held by the Company shall be corrected at the request of the Merchant and/or Guarantor.