

ISO LIMITED - STANDARD TERMS AND CONDITIONS

INTRODUCTION

These standard terms form the basis of our agreement with you and apply to all services we supply to you except as separately and expressly agreed by us in writing. Our agreement with you will also include any applicable Services Letter.

We may amend these standard terms at any time. This will vary our agreement with you. When we do this we will make a copy of the amended standard terms available to you. The amendments we make will apply after the date we make the amended terms available to you, unless we have expressly agreed with you in writing not to vary these terms without your consent. We may interpret your ongoing use of our services after that date as constituting your acceptance of the amendments.

INTERPRETATION

In this agreement, unless the context requires otherwise:

"Charges" means our charges (exclusive of GST, unless stated otherwise) for the Services, as set out in the Services Letter(s), which may include fixed charges, usage charges, additional fees and/or one-off fees.

"ISO", **"we"** and **"us"** means ISO Limited.

"Port" means the port that we use to provide the Services to you and to other customers.

"Port Operator" means any entity with whom we have entered into an agreement or arrangement (directly or indirectly) providing for the use of the Port on or around which we provide the Services.

"Payment Date" means 14 Working Days following the date of each invoice we send to you.

"Service" means all or part of a service which we have agreed to provide to you and which is described in the Services Letter(s) and **"Services"** has a corresponding meaning.

"Services Letter" means a letter or other correspondence between us describing a Service, the Charges and any additional terms applying to that Service which evidences our final written agreement in respect of a Service.

"Working Day" means a day on which registered banks are open for business in Tauranga other than Saturdays, Sundays and applicable public holidays.

"Your Cargo" means the cargo that you provide which is the subject of the Services.

In interpreting this agreement:

- (a) references to either party include its respective successors in title and permitted assigns; and
 - (b) a reference to any date, which is not a Working Day, will be deemed to be a reference to the next Working Day.
- Headings in this agreement do not affect their interpretation.

1. QUOTATIONS

Any quotation provided by ISO is an invitation to treat and not a contractual offer. ISO may vary or withdraw a quote at any time.

2. COMMENCEMENT OF SERVICES

We will provide the Services to you in accordance with the timeframe that we together agree in writing or, if no timeframe is agreed, within a reasonable timeframe.

3. OUR COMMITMENT TO YOU

We will:

- (a) provide the Services to you with reasonable care and skill. We will use all reasonable efforts to ensure that the Services are reliable at all times although we do not guarantee that the Services will be continuous or fault free;
- (b) ensure that all work that we perform in connection with the provision of the Services is carried out by competent and suitably qualified personnel and in a professional manner; and
- (c) endeavour to remedy any fault or deficiency with the Service which is caused us within a reasonable timeframe.

4. YOUR COMMITMENT TO US

You agree:

- (a) not to interfere with our provision of the services;
- (b) if any of our equipment is left within your control, to look after that equipment;
- (c) to ensure that all information you provide us is accurate and complete;
- (d) to provide us with all information reasonably required by us to carry out the Services or which might adversely affect the provision of the Services by us, or our directors, officers, employees and agents in connection with the Services (including any Port Operator or user);
- (e) that you will, if we ask you to, obtain any third party authorisation, license or consent that we may reasonably require in connection with the provision of the Services; and
- (f) follow our instructions about the use of the Services and ensure that everyone who uses, or benefits from, our Services in connection with the provision of our Services to you also meets your responsibilities when using the Services. You agree to keep us protected against any legal action taken against us and to meet any losses we may incur as a result of such use of the Services. You are responsible if anyone else, whether authorised by you or not, uses or misuses our Services.

5. CHARGES, INVOICING AND PAYMENT

- 5.1 Our Charges and the basis of those Charges for the Services are set out in our Services Letter or otherwise as notified to you in writing from time to time and are subject to amendment notified to you from time to time, except as we otherwise agree in writing.
- 5.2 You agree to pay any GST that may be payable in addition to the Charges.
- 5.3 We will invoice you for the Services we provide you at intervals applicable to the Service.
- 5.4 You agree to pay each invoice on or before the Payment Date and without set-off, counterclaim or deduction.
- 5.5 If any invoiced amount remains unpaid after the Payment Date we may charge you a late fee of 15% per annum (calculated daily) on that amount until it is paid in full and you will also have to pay any reasonable expenses (including solicitor and own client costs) we incur in collecting any money that you owe to us or in exercising any of our other legal rights. You must advise us when you change your address.
- 5.6 Part payment of your invoice will not amount to a full and final settlement unless we have agreed to this in writing.

6. DISPUTED ACCOUNTS

- 6.1 If you believe that an invoice contains a mistake you must contact us as soon as possible and we will investigate. You must pay any undisputed amount by the Payment Date.
- 6.2 If we agree that there is a mistake, we will correct the invoice as soon as reasonably possible. If we find that there is no mistake, you must pay the outstanding amount immediately on being notified of our finding, or on or by the Payment Date, whichever is the later.

7. OUR EQUIPMENT

- 7.1 Ownership of our equipment remains with us at all times and you shall not make any claim in respect of such ownership.
- 7.2 Where we have provided or are using equipment to provide services to you, and we are unable to access, use or retrieve that equipment when required by us (except due to any act or omission by us), you agree:
- that we will not be liable to you in respect any services we were due to provide to you using that equipment during the period we are unable to access or use that equipment;
 - to provide us with reasonable assistance to obtain access to, use of, or to retrieve that equipment, including by liaising with the vessel owner and any other person who is denying us that access, use or retrieval; and
 - to indemnify us in respect of any loss, damage, cost or expense suffered or incurred by us in relation to this inability to access, use or retrieve that equipment. This indemnity will include any lost income from services which we are unable to provide to you or to any third party using that equipment during the period we are unable to access, use or retrieve that equipment.

8. YOUR CARGO

- 8.1 You will follow our reasonable instructions about modifications that you may need to make to Your Cargo to use the Services.
- 8.2 Notwithstanding anything else in this agreement, if Your Cargo causes a fault in the operation of a Service then you will, if we ask you to, pay us the reasonable costs of restoring that Service.
- 8.3 You will ensure that Your Cargo complies with all relevant laws and regulations (including pre-inspection and destination country phytosanitary requirements) prior to providing Your Cargo to us for the purposes of providing the Services. **We reserve the right to refuse to provide the Services in respect of any of Your Cargo where we are not satisfied that you have complied with this obligation.**

9. INSURANCE

You will insure Your Cargo and any other equipment or property which interacts with our equipment in connection with the Services at all times against loss by fire, accident, theft, public risk liability and such other risks which a reasonably prudent business person would insure against.

10. PORT OPERATORS AND OTHER SUPPLIERS

We have certain obligations towards other Port Operators, agents and suppliers. Those persons (and their officers, employees, contractors and agents) will not be liable to you or anyone else for any claims, costs, damages, losses or other liabilities of any kind arising in any way from the Services or from your use of those Services and the Port, including (without limitation) your access to and use of any Port. This paragraph creates a right that other Port Operators, agents and suppliers can enforce, whether as a defence or otherwise.

11. SUSPENSION

We may suspend provision of Services at any time if you breach this agreement, including where you have failed to pay any undisputed amount by the relevant Payment Date.

12. TERMINATION

- 12.1 Except where we agree with you in writing a specific fixed service term, we may stop providing any Service or terminate this agreement at any time by giving you not less than 30 days prior written notice.
- 12.2 Notwithstanding clause 12.1 we may terminate this agreement immediately where:
- you commit a material breach of this agreement which is incapable of being rectified;
 - you commit a material breach which is not rectified within 10 Working Days of written notice of that breach having been given to you by us;
 - you commit three or more material breaches of this agreement where notice has been given as stipulated above in any 12 month period;
 - a receiver or manager over any or all of your assets is appointed;
 - you or your director(s) or principal(s) go into liquidation, bankruptcy or receivership (or it appears that any of these events is likely to happen); or
 - you are removed from the Companies Register.

13. CONSEQUENCES OF TERMINATION

If this agreement is terminated, then without prejudice to our rights:

- we will discontinue the Services;
- clauses 14, 15, 16 and 17, together with other provisions of this agreement which are required to give effect to those clauses, will remain in effect; and
- subject to any lien in respect of which we are entitled, each party must immediately return to the other any information, Cargo or any other item which is in its possession and which belongs to the other party.

14. CONFIDENTIALITY AND PUBLICITY

- 14.1 Each party agrees not to reveal any information concerning the provisions of this agreement or information provided under it to any third party, other than:
- as required to perform its obligations or exercise its rights under this agreement;
 - as required by law;
 - to its employees, agents and contractors in order to give effect to the purpose for which the information was provided;
 - where the information is already in the public domain (but not where it is in the public domain as a result of a breach of this clause);
 - with the other party's written consent; or
 - as required by MAF Biosecurity New Zealand Post Inspection Product Security (PIPS) accreditation.
- 14.2 Each party agrees not to issue any public statement concerning this agreement without the other party's prior written approval.

15. INTELLECTUAL PROPERTY RIGHTS

You acknowledge that all rights to intellectual property relating to our Services (including any improvements or changes) belong to us or to our licensors or third party suppliers, and are retained by us when we provide the Services to you. These intellectual property rights include, but are not limited to, all copyright, trade mark and design rights relating to the Services.

16. LIABILITY

- 16.1 You acknowledge that you are acquiring any Services for the purposes of a business, and that you will not assert or attempt to assert any rights or claims against us under the provisions of the Consumer Guarantees Act 1993 in respect of the supply of those Services to you.
- 16.2 Except as required by law, no claim for damage, loss or injury, arising against us in respect of any Services shall exceed either the re-supply or the cost of re-supply of the Services giving rise to the claim against us and we reserve the right to elect either option at our absolute discretion. In no circumstances whatsoever will we be liable to you in tort (including negligence), contract or otherwise for any economic loss, loss of profit, loss of savings, loss of anticipated profit or savings, or for any indirect, special or consequential loss or damage, however caused, whether arising in relation to the supply or non-supply of any Services, any breach by us of this agreement or otherwise.
- 16.3 You will indemnify us against all claims of any kind whatsoever however caused or arising (including without limitation all sums paid to compromise or settle claims, proceedings and actions out of court) brought by any person in connection with:
- (a) any use by you of the Services other than in the manner contemplated by this agreement; or
 - (b) any failure by you to meet your obligations under this agreement.
- 16.4 You will reimburse us on demand for any expenses, disbursements and legal costs incurred by us in the enforcement of any of our rights contained in this agreement (including any reasonable solicitor's fees and debt collection agency fees) where we are enforcing those rights as a result of your non-compliance with any of your obligations under this agreement.
- 16.5 You acknowledge that you have not relied on any representation by us or any of our employees or agents as to the fitness for purpose, suitability or features of any Service, except where such representations are recorded in this agreement.
- 16.6 Apart from the warranties expressly given to you in this agreement, all other warranties, express or implied, are excluded (to the extent permitted by law).

17. DISPUTE RESOLUTION

- 17.1 If any dispute arises out of this agreement, neither party is to commence proceedings relating to the dispute (except where urgent interlocutory relief is sought) unless that party has first complied with this clause 17.
- 17.2 A party claiming a dispute has arisen is to give written notice to the other party specifying the nature of the dispute. On receipt of that notice, the parties will use all reasonable endeavours to resolve the dispute by discussion, negotiation or other informal means.
- 17.3 If the parties do not resolve the dispute within 10 Working Days of the receipt of the notice then either party can, by writing to the other, require that the dispute be mediated in accordance with the standard mediation agreement of LEADR New Zealand, and the then current Chair of LEADR New Zealand will select the mediator and determine the mediator's fee.

18. NOTICES

Any notice given pursuant to this agreement must be in writing and be delivered, or sent by post, by email or by facsimile, to the other party's contact address, as follows:

ISO: PO Box 4169, Mt Maunganui 3149, Facsimile: 07 574 0610

You: As set out in the relevant Services Letter.

- 18.1 Any such notice will be deemed to be validly given:
- (a) in the case of delivery, when received;
 - (b) in the case of facsimile transmission, when a correct facsimile confirmation receipt slip is received;
 - (c) in the case of posting, on the second Working Day following posting; or
 - (d) in the case of email, on receipt of delivery confirmation.

19. ENTIRE AGREEMENT, VARIATION AND CONFLICT

- 19.1 This agreement and any applicable Services Letter contain all of the terms, representations and warranties made between the parties and supersedes all prior discussions and agreements covering the subject matter of this agreement.
- 19.2 No variation or waiver of any provision of this agreement shall be recognised or binding on us unless it is in writing and signed by our authorised representative.
- 19.3 If there is any inconsistency between the terms contained in this agreement and in the Services Letter(s), then the terms contained in the Services Letter(s) will take precedence.

20. ASSIGNMENT

- 20.1 You may not assign all or any of your rights or obligations under this agreement without our written consent.
- 20.2 We reserve the right to assign our rights under this agreement without your consent.

21. FORCE MAJEURE

Notwithstanding any other provision in this agreement, we shall not be liable to you for failing to meet any of our obligations under this agreement to the extent that the failure was caused by an act of God or other circumstance beyond our reasonable control. In those circumstances, we will give you as much notice as reasonably possible and will endeavour to ensure that suspensions or restrictions take place at times of least inconvenience to you. Where we are restricting or suspending a Service in the case of an emergency or in order to protect people or property, or due to events beyond our reasonable control, we may not be able to give you any notice prior to such restriction or suspension, but will endeavour to inform you as soon as reasonably possible.

22. NON-WAIVER

If either party delays or fails to enforce any of its rights or remedies under this agreement, this will not constitute a waiver by that party of that or any other right or remedy available to it.

23. TERMS SEPARATELY BINDING

Each term of this agreement is separately binding. If for any reason either party cannot rely on any term, all other terms remain binding.

24. JURISDICTION

This agreement is governed by the laws of New Zealand. The parties agree to submit to the non-exclusive jurisdiction of the courts of New Zealand.