

## Terms of Trade

### 1. Definitions and Interpretation

#### 1.1. In these terms:

- a. *Claim Notice* means a notice from Jacanna to the Customer specifying the amount and particulars of the amounts owed to Jacanna by the Customer and notifying the Customer that the Goods will be sold by public auction if the amounts are not paid within 10 working days of the date of the Claim Notice.
- b. *Contract* means the contract between Jacanna and the Customer by which Jacanna is to perform Services for the Customer.
- c. *Customer* means the party acquiring services from Jacanna and with whom Jacanna contracts on these terms.
- d. *Goods* means goods of the Customer which are in Jacanna's possession or control during performance of the Contract.
- e. *Jacanna* means Jacanna Holdings Limited [1011018].(T/A Jacanna Customs & Freight)
- f. *Penalty Rate* means an amount equal to the unarranged overdraft rate charged by ASB Bank Limited on the due date.
- g. *Price* means the amount agreed to be paid by the Customer to Jacanna under the Contract.
- h. *Services* means the services that the Customer has engaged Jacanna to perform.

#### 1.2. Unless the context otherwise requires or specifically otherwise stated:

- a. headings are to be ignored;
- b. *including* and similar words do not imply any limitation;
- c. references to any form of law is to New Zealand law, including as amended or re-enacted;
- d. if a party comprises more than one person, each of those person's liability is joint and several;
- e. references to a party or a person includes any form of entity and their respective successors, assigns and representatives;
- f. every right, power and remedy of a party remains unrestricted and may be exercised without prejudice to each other at any time;
- g. singular includes plural and vice versa;
- h. references to a gender covers all the genders;
- i. any word or expression cognate with a definition in this agreement has a meaning corresponding or construed to the definition;
- j. references to a document or agreement includes it as varied, novated or replaced;
- k. this agreement prevails if any ambiguity or inconsistency arises with any other document or agreement relating to it;
- l. *written* and *in writing* include any means of reproducing words, figures or symbols in a tangible and visible form.

**2. Formation and Application**

- 2.1. These terms are effective from 1 August 2021 and are incorporated into to all Contracts between Jacanna and the Customer entered into after 1 August 2021.
- 2.2. Jacanna may update or modify these terms at any time by notice to the Customer and such updated terms shall apply to any Contract entered into by the parties from the date of such notice.

**3. Jacanna’s Rights and Obligations**

- 3.1. Jacanna shall perform the Services in a good and workmanlike manner in accordance with industry standards.
- 3.2. Jacanna provides no warranty that the Services will be completed within a specified time frame. Any time for the performance of Services provided by Jacanna is an estimate only.
- 3.3. Jacanna shall be entitled but under no obligation to open any container or package at any time to inspect the Goods.

**4. Price and Payment**

- 4.1. The Price in all quotations is stated exclusive of GST and the Customer shall be liable for the GST payable in respect of such supply.
- 4.2. All quotations given by Jacanna are based on costs prevailing at the date of the quotation in respect of freight, insurance and other charges, rates of exchange or currency conversion, taxes, duties and other imposts, and on the latest available quotations from carriers. Any increase at any time in costs due to variations in any of the foregoing shall be to the Customer’s account and that price payable by the Customer shall be increased accordingly. The Customer is not entitled to a refund if there is a decrease in such costs or if the actual cost for such matter is less than the amount accepted by the Customer.
- 4.3. All invoices are payable on issue. (or as per previously agreed credit terms)
- 4.4. All invoices shall be paid without deduction or set-off.
- 4.5. Any invoice not paid on the due date shall bear interest at the Penalty Rate for the period from the day after the due date until the date of payment, and interest shall compound monthly.
- 4.6. Jacanna shall be entitled to recover from the Customer, on an indemnity basis, all costs and expenses (including legal costs on a client/solicitor basis) incurred in connection with the recovery of any amount due and payable by the Customer under the Contract including, without limitation, all costs and expenses incurred:
  - a. Selling Goods to recover amounts due and payable;
  - b. In relation to Court proceedings.
- 4.7. Jacanna may suspend performance of the Services where the Customer has unpaid invoices in relation to the Contract or any other contract or relationship with Jacanna.
- 4.8. In addition to a carrier’s lien under section 285 of the Contract and Commercial Law Act 2017, this clause confers on Jacanna a contractual lien over Goods pending payment of all sums owed to Jacanna by the Customer, whether under the Contract or otherwise.
- 4.9. Jacanna may sell the Goods by public auction if, within 2 months after the date on which Jacanna gives Claim Notice to the Customer, payment in full of all sums owed to Jacana by the Customer has not been paid.
- 4.10. From the proceeds of sale of the Goods by public auction, Jacanna may deduct -
  - a. all sums owed to Jacana by the Customer; and

- b. all expenses reasonably incurred by Jacanna in removing, preserving, and storing the Goods pending settlement of Jacanna's claim, and in arranging and conducting the sale of the Goods.
  - c. Jacanna must pay the balance of the proceeds (if any) to the owner of the Goods.
- 4.11. If the amount of the proceeds is less than the amount owing to Jacanna and all recoverable expenses, the deficiency is a debt due to Jacanna by the Customer.
- 4.12. The Customer grants Jacanna a security interest (as that term is defined in section 17 of the Personal Property Securities Act 1999) in the Goods as security for all of the Customer's obligations under the Contract. For the purposes of Section 148 of the Personal Property Securities Act 1999 the Company waives the right to receive a copy of the verification statement in relation to the security interest created in accordance with this clause.

## 5. Customer's Obligations and Acknowledgements

- 5.1. The Customer represents and warrants that:
- a. It has the full and exclusive legal and beneficial title to the Goods or is the authorised agent of the person with such title;
  - b. It is authorised to accept and is accepting these terms and conditions not only for itself but also as agent for and on behalf of the owner (if the Customer is not the owner);
  - c. It has on its own judgement and has not relied on any warranty or representation of Jacanna except as is recorded in these terms;
  - d. All marks, weights, numbers, brands, contents, descriptions, values and other particulars or information given to Jacanna with respect to the Goods are accurate and complete;
  - e. The Goods are fit to be carried and stored in the condition and packaging in which they are tendered to Jacanna (or in accordance the Customer's instructions, if the Goods are tendered with instructions that Jacanna arrange packaging);
  - f. The Goods are not of a flammable, explosive or dangerous nature;
  - g. The Customer has complied with all applicable laws and obligations and has obtained all necessary consents and authorisations in respect of the Goods and the handling, packaging and carriage of the Goods.
  - h. The Customer warrants and represents that any perishable Goods stored by Jacanna are and will remain free from any deleterious or objectionable matter, substance or odour which may soil, contaminate or otherwise prejudicially affect other goods in the store.
  - i. That the person completing the order on behalf of the Customer warrants and affirms that such person has the full authority to enter into the contract on behalf of the Customer and that, where applicable, the Customer expressly authorises Jacanna to act in accordance with requests made on behalf of the Customer by its representative and the Customer further indemnifies Jacanna from and against all claims and expenses or other liability arising out of its acting in good faith in accordance with the arrangements made on behalf of the Customer by such person.
- 5.2. The Customer indemnifies Jacanna on demand against all claims, losses, costs and expenses, penalties and fines, or any other liability arising in consequence of a breach of any warranty or representation set out in clause 5.1 above.

- 5.3. All perishable Goods are held, handled and stored at the Customer's risk.
- 5.4. Jacanna may refuse to handle any perishable Goods which in its opinion are unfit for storage and may, if any perishable Goods subsequently become unfit for storage, have such Goods removed from the premises at the Customer's expense and, where appropriate, dispose of them in accordance with clause 4.9 above.
- 5.5. Jacanna may have a pecuniary interest in or have common shareholders with entities to whom it has subcontracted certain elements of the Services.

**6. Liability of Jacanna**

- 6.1. Where the Services include services to which Part 5 of the Contract and Commercial Law Act 2017 (*CCLA*) apply, unless specified otherwise, the Contract shall be "at limited carrier's risk".
- 6.2. No proceeding may be brought against Jacanna unless written notice giving reasonable particulars of the loss is served on Jacanna within 10 days after the date on which Jacanna's responsibility for the Goods ends. For contracts where Jacanna is a carrier, the notice period in section 274(2)(b) of the *CCLA* is altered to 10 days.
- 6.3. To the fullest extent permissible by law, the maximum liability of Jacanna under the Contract (whether in contract, tort or otherwise) is an amount equal to the Price payable under the Contract.

**7. Miscellaneous**

- 7.1. The Customer may not assign or otherwise transfer its rights and obligations under the Contract, in whole or in part.
- 7.2. Neither party will be liable to the other for any delay or failure to perform any obligation (other than the Customer's payment obligations) under these terms if the delay or failure is due to unforeseen events, which occur after the effectiveness of the terms and which are beyond the reasonable control of the parties, such as strikes, blockade, war, terrorism, riots, natural disasters, change of laws or other governmental action, in so far as such an event prevents or delays the affected party from fulfilling its obligations and such party is not able to prevent or remove the force majeure at reasonable cost.
- 7.3. Where the Customer has acquired the Services to which the Contract relates in trade (as defined in section 2 of the Consumer Guarantees Act 1993 (*CGA*)) the guarantees contained in Part 2 of the *CGA* shall not apply to those Services.
- 7.4. If Jacanna has collected personal information in relation to the Customer, the purpose of that collection is to enable Jacanna to perform the Services in accordance with the Contract and to provide the Customer with marketing information about the services that Jacanna provides or may provide in the future.
- 7.5. No variation to these terms in relation to the Contract shall be binding unless in writing and signed by the parties.
- 7.6. If any part of this agreement is or becomes legally ineffective, invalid or unenforceable, the effectiveness, validity or enforceability of the remainder is not affected.
- 7.7. The Contract is governed by and construed in accordance with the laws of New Zealand for the time being in force, and the parties agree to submit to exclusive jurisdiction of the courts of that jurisdiction.