

# TERMS AND CONDITIONS OF CONTRACT

### DEFINITIONS

1. For the purposes of these terms and conditions:

"Act" means the Contract and Commercial Law Act 2017

"Grace" means Grace Removals Group Limited

"you/your" means the individual or individuals named on Grace's form of acceptance, whether or not all of those individuals signed the form of acceptance

"contract" means these terms and conditions, Grace's form of acceptance and the quote

"force majeure event" means any cause beyond the control of Grace, including but not limited to adverse weather events, any strike, labour disruption, riot, civil commotion, war, invasion, Act of God, flood, damage by of weather or by moths, borer, vermin, white ants, termites or other insects, damp, mildew, rot, rust, burglary, housebreaking, storm, tempest or explosion or the act of any third party

"goods" means your goods that are subject to the contract

"public holiday" means the following public holidays in New Zealand: New Years Day, the day after New Years Day, Waitangi Day, Anzac Day, Good Friday, Easter Monday, the Sovereign's Birthday, Labour Day, Christmas Day, Boxing Day and the Anniversary Day in the region in which you reside

"quote" means the service proposal provided to you by Grace

"work" means all of the necessary work to be undertaken by Grace in order to execute its duties under the contract, including, but not limited to, the removal, packing, transportation, storage and/or delivery by Grace of your goods

"working day" means any day of the week other than:

- (a) Saturday, Sunday, or any public holiday;
- (b) If Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday

### SCOPE OF THIS CONTRACT

2. **Carriage within New Zealand:** Where some or all of the work required of Grace comprises "carriage" as that term is defined in section 246 of the Act, this contract shall be a contract for carriage at owner's risk (in accordance with section 250 of the Act) in respect of that work, as further described in clause 20 of this contract.
3. **Carriage from New Zealand:** Where some of the work required of Grace comprises carriage that is not subject to the Act, this contract shall be construed in accordance with any applicable law or convention relating to the international carriage of goods by air, road, rail or sea, but otherwise in accordance with clause 21 of this contract.
4. **Non-Incidental Storage (or other work) in New Zealand:** where some or all of the work required of Grace comprises storage (or similar) services in respect of your goods that is not an "incidental service" (as that term is defined in section 246 of the Act) to a contract of carriage referred to above in clause 2, this contract shall be a contract performed by Grace at owner's risk (to the maximum extent permitted by law), as further described in clause 22 of this contract.
5. **Scope generally:** Notwithstanding the foregoing, this contract is subject to all the conditions, stipulations and exceptions expressed in the Act, any regulation, bill of lading, consignment note or contract of any railway, shipping company, airway or other carrier under which the goods are carried and to the charges levied by such railway, shipping company, airway or other carrier in force at the time and to all alterations to any of these conditions, stipulations, exceptions, or to the charges levied by any railway, shipping company, airway or other carrier before the work in the terms of this contract has been physically completed.

### QUOTE

6. **Basis of Quote:** The quotation is based on:
  - (a) **Rates, Levies and Charges:** The rates of exchange, government levies, scales of wages, railway and shipping rates and charges in force at the date of the quote. Additional costs or charges incurred by Grace as a result of any change in such levies, scales or rates after the date of the quote shall be recoverable by Grace and payable by you in accordance with the terms and conditions for payment of all other moneys payable by you pursuant to the provisions of this contract whether or not you have previously paid the whole or any part of the original contract price.
  - (b) **Apportionment of Container Charges:** The assumption that your goods will comprise less than sufficient to fill a container and that Grace has a right to fill such container with goods belonging to other customers and to ship the same at Grace's convenience. If you require a container exclusively for your own goods (whether or not such goods will fill the container) and/or if such container is to be shipped on a specific date then you will pay the rate payable for a full container and such further costs as Grace may incur by shipping on a specific date and/or ship.
7. **Amount of the Quote:** The amount quoted includes the cost of the services set out in the quote but does not include the following services or work. If such services or work are carried out all of the conditions of the contract apply thereto and an extra charge to cover such work will be payable. The services and work excluded are as follows:
  - (a) Any customs duties, consular fees, quarantine costs or charges, municipal dues, taxes or other levies, taxes duties, dues, charges or fines payable to public or other authority, any storage or related charges or any premium for insurance unless such charges or insurance premiums are expressly stipulated and referred to in the signed quotation.
  - (b) The taking down or putting up of fixtures, gas, electric or other apparatus or fittings or blinds or lifting or laying of carpets, linoleums or other floor coverings, dismantling or installing or reassembling any refrigerators, washing machines or similar equipment and the removal and re-erecting of any television aerial.
8. **Acceptance of the quote:** Acceptance of the quote must be confirmed by you signing Grace's form of acceptance.
9. If our costs differ from our initial quote we will contact you using your preferred method of contact. If you do not respond within 5 working days you will be deemed to have accepted the change and be liable to pay any sum over and above our initial quote.

### ACCESSIBILITY TO PREMISES

10. If the work comprises the uplifting of your goods from; or delivery of your goods to a place, Grace agrees to undertake the work on the condition that:
  - (a) there is a suitably practical road and access for the vehicles and workmen of Grace to that place or places to and from which the goods are to be uplifted or delivered and that the same are available to the vehicles of Grace; and
  - (b) if the goods are to be delivered to or uplifted from a building, that they are to be delivered on or uplifted from the ground floor. If the goods are to be delivered or uplifted otherwise than to or from the ground floor of a building, an extra charge will be made to your account, in addition to the amount stated in the quote; and
  - (c) that all doors and stairways are adequate to allow the work to be conveniently carried out, but that Grace may at its discretion use any balcony, window and/or tackle and make an extra charge to your account, in addition to the amount stated in the quote. You hereby indemnify Grace against all claims in respect of the use of any means of accessing the building and also release Grace from any liability for damage either to goods so handled or to the building or buildings to or from which such goods may be uplifted or delivered or to any pathway, drive, grounds or accessway leading to or serving such building or buildings.

### HAZARDOUS GOODS

11. Grace will not accept any work that involves dealing with any goods or substances which are dangerous, explosive, corrosive or otherwise likely to cause damage, loss or injury to any person or property. Notwithstanding the foregoing, if the goods handled by Grace are, or include, any goods or substance which is dangerous, explosive, corrosive or otherwise likely to cause damage, loss or injury, you shall be liable for any such damage, loss or injury, or costs that may be incurred by Grace or by any third party through the presence of any such goods or substance. If any such goods or substance are discovered by Grace it may at its discretion remove, sell, destroy or otherwise dispose of the same at your expense and Grace shall not be responsible or accountable to you for the value thereof or for any other loss that you may suffer as a result of the removal, sale, destruction or disposal of such goods.

**GRACE VEHICLE AND CONTENTS**

12. The responsibility for Grace's vehicle and its contents remain with the driver. The driver has the right at all times to refuse to put their person or vehicle and its contents at risk. If the owner, consignor, consignee or shipper considers that the driver's non-acceptance of his/her instructions is unreasonable, such person has authority to place a collect call to the head office of Grace in order to discuss the matter with Grace's quality assurance manager.

**GOODS SUBJECT TO THIS CONTRACT**

13. When a quote is for specific goods and/or a specific quantity of goods; and additional goods are uplifted, transported and/or stored, an extra charge, to be fixed by Grace, will be made to your account, in addition to the amount stated in the quote, and this contract will apply to the uplifting, transportation and/or storage of such additional goods and such additional costs.
14. It is your responsibility to see that no good(s) required to be removed is left behind, that no goods or fixtures are uplifted in error and that goods left in unoccupied premises are protected against risk (including, but not limited to theft). Grace accepts no liability to you in respect of any such matter and you indemnify Grace against all claims in respect thereof.

**"FORCED" STORAGE**

15. If, in the performance of the work, or otherwise, Grace is forced to store your goods (in circumstances where storage was not anticipated to be required at the time of the quote being made), the terms of this contract relating to storage shall apply to the forced storage which shall then be deemed to fall within the scope of the work to be performed pursuant to the contract, and further charges will be made to your account, in addition to the amount stated in the quote, for such forced storage. Whether the circumstances necessitate that Grace shall be forced to store your goods shall be at the sole and unfettered discretion of Grace.

**TIME OF PERFORMANCE OF CONTRACT**

16. This contract is made on the understanding that the work is able to be performed during ordinary working hours namely between 7.30am to 5.00pm Monday to Friday inclusive but excluding public holidays. Grace shall be entitled to charge for any extra costs incurred by it as a result of any delay experienced by Grace in performing the work arising from any cause whatsoever (other than the neglect or default of Grace) including but without limitation any act or omission of yours, the consignee or the consignor of the goods and/or your failure to provide access to or from the place to or from which the goods are to be uplifted or delivered.

**LIMITATION OF LIABILITY**

17. **Loss or Damage Beyond control of Grace:** Grace shall not be liable for any loss of, damage to or failure to produce any goods for reasons caused by any delay in transit by rail, sea or air, force majeure event, or the act of any third party or cause beyond the control of Grace nor for any consequential loss.
18. **Consequential loss:** Grace shall not be responsible for compensating you for any loss or damage which you may suffer arising from the loss of value of any goods as a result of repair, replacement or loss of use or any costs which you may incur in obtaining either permanently or temporarily the use or enjoyment of substitute goods, any loss of profit or any other consequential loss whatsoever arising from delays in uplifting or delivery of the goods, loss of or damage to or failure to uplift or deliver the goods for any cause whatsoever, storage of the goods or as a result of any matter that is part of, or incidental to the works performed by Grace.
19. **Damage by Grace Vehicle:** Grace will not under any circumstances be liable for damage to any driveway, road, kerb, crossing, path or accessway caused by any vehicle of Grace or Grace's contractors in carrying out the work under the contract unless prior to uplift or delivery of the goods Grace receives notice in writing in accordance with the contract from you that any such path, road, kerb, crossing, driveway or accessway is unsuitable and that such prior written notice has specifically directed Grace not to cross any such path, driveway, kerb, road or accessway with vehicles. In the absence of any such notice you will be deemed to have directed and authorised Grace to cross such path, driveway, kerb, road or accessway with appropriate vehicles and Grace shall under no circumstances be liable for any damage thereto or destruction thereof.
20. **Owner's risk (work that comprises carriage pursuant to the Act):** Notwithstanding the foregoing, it is acknowledged, agreed and declared (in accordance with section 250(1)(a) of the Act that the goods are to be carried at your risk. This means that Grace as carrier will pay no compensation if the goods are lost or damaged, unless Grace intentionally loses or damages them.
21. **Owner's risk (carriage not subject to the Act):** where some of the work required of Grace amounts to carriage that is not subject to the Act (including, but not limited to international carriage), it is acknowledged, agreed and declared that to the maximum extent permissible by law (including, but not limited to any law or convention relating to the international carriage of goods by air, road, rail or sea), this contract is a contract pursuant to which all work is undertaken at your risk and Grace shall not be liable to you for any loss or damage whatsoever to any goods or otherwise, except where the loss or damage is intentionally caused by Grace. If any law stipulates that Grace cannot limit its liability in such a manner, you acknowledge that nonetheless, Grace's maximum liability to you shall be the amount that you are obliged to pay to Grace for the work.
22. **Owner's risk (all other work):** Notwithstanding the foregoing, it is acknowledged, agreed and declared that to the maximum extent permissible by law, this contract is a contract pursuant to which all work is undertaken at your risk and Grace shall not be liable to you for any loss or damage whatsoever to any goods or otherwise, except where the loss or damage is intentionally caused by Grace. If any law stipulates that Grace cannot limit its liability in such a manner, you acknowledge that nonetheless, Grace's maximum liability to you shall be the amount that you are obliged to pay to Grace for the work.

**SUB-CONTRACTING BY GRACE**

23. Grace may arrange with any other contractor, railway, shipping company, airline, dock or transport company or authority to carry out all or any part of the work and the terms of all bills of lading, consignment notes and other documents issued by such other parties may be accepted by Grace as agents for you and shall be deemed to form part of this contract. Grace shall transfer to you at your expense the benefit of such rights (if any) as Grace may have against such other parties in respect of your goods.

**AGENCY**

24. Grace shall act as agents for you and/or the owner of the goods and may take any action which appears to be in the interests of you and/or the owner of the goods for the protection of the goods and the costs of such action if taken shall be additional to the contract and recoverable from you by Grace.

**INSURANCE**

25. Unless at the time that the quote is accepted you expressly request Grace as your agent to arrange insurance in respect of the performance of the work by Grace and you pay the premium for such insurance prior to commencement of the works then it shall be the sole responsibility of you to arrange your own insurance if required. Whether you arrange your own insurance or whether you request Grace to arrange insurance this contract shall nevertheless remain a contract for carriage at owner's risk as defined in section 250(1)(a) of the Act.
26. If you execute a transit protection application at the time of accepting the contract and pay the appropriate premium then Grace will, as agent for and on behalf of you, arrange for the issue of the appropriate insurance policy in relation to the goods subject to the contract.
27. You acknowledge that any insurance cover arranged by Grace on your behalf shall be issued subject to the following conditions:
- That such cover is specifically subject to the terms and conditions contained in the appropriate policy of insurance issued pursuant to the quote, signed by you and is limited to the amount specified therein.
  - The insurance cover will extend for the period of the work.
  - Where such insurance does not specifically extend cover while the goods are placed in any store either at the place of origin or the place of discharge or the place of destination, then such transit insurance ceases immediately if the goods are placed in such store and in such case special in store insurance must be arranged by you either direct with the insurance company or through Grace as the insurance company's agent as detailed on the policy document. It is your liability and obligation to arrange such in store insurance extension or any other additional insurance which may be required.
  - Whether or not the insurance is arranged by Grace at your request and as your agent the contract evidenced hereby shall remain a contract for carriage at owner's risk as defined in section 250(1)(a) of the Act.
28. In any instance where Grace has at your request and as your agent arranged a policy of insurance any claim by you under such policy of insurance must be lodged with Grace as agent for the insurer, in the case of the loss of goods within 5 working days after the goods would, in the ordinary course, have been delivered, or, in the case of damage to goods, within 5 working days of the date that the damage was or should have been reasonably discovered by you.

**PAYMENT OF CHARGES**

29. **Carriage Charges:** Quoted charges relating to the carriage of your goods must be paid in cleared funds no less than 2 working days prior to uplifting of the goods unless alternative arrangements have been made with you (at Grace's absolute discretion), in writing, prior to uplifting of the goods. Payment shall be made for the whole of the quoted amount including charges for packing, transportation, delivery and insurance premiums if any, without deduction. Grace reserves the right to not perform any of the work until such time as Grace have received payment of all charges, in full. Grace shall not be liable to you for any losses (whether direct, consequential or otherwise) that you may suffer as a result of Grace electing to not perform the work due to your failure to make payment of the charges owing to Grace by you.

30. **Storage Charges:**
- All charges relating to storage (other than storage that is incidental to work that amounts to a contract of carriage pursuant to Subpart 1 of Part 5 of the Act) will be billed to you monthly in advance. Charges shall be levied on a weekly (or part thereof) basis (meaning, for example, that if your goods are in store for 10 days, you will be charged for 2 weeks), unless Grace agrees otherwise in writing.
  - All charges relating to storage insurance will be billed to you monthly in advance. Charges shall be levied on a monthly (or part thereof) basis (meaning, for example, that if your goods are in store for 10 days, you will be charged for 1 month), unless Grace agrees otherwise in writing.
  - All charges for storage are payable either by direct debit or recurring credit card only. In the event that neither methods of payment are arranged by you, Grace will invoice you every quarter in advance. Each invoice shall be payable immediately upon sending to you.
31. **Storage Charges Subject to Change:** Any increase in the price of storage during the time the goods are in storage shall be payable by you upon notice in writing thereof being served on you in manner provided by these conditions and the contract shall thereupon be deemed to be varied accordingly.
32. **Interest on Overdue Payments:** If you fail to pay any sum of money payable to Grace as and when the same falls due and if such default shall continue for 20 working days from the due date of payment thereof, Grace shall be entitled to charge interest calculated at Grace's current bank overdraft rate and compounded daily from the due date of payment to the actual date of payment thereof without prejudice however to Grace's other rights and remedies.
33. **Debt Recovery / Credit Rating:** If you default in making payment of the whole or any part of any sum that you owe to Grace pursuant to the contract, Grace shall be entitled to refer the matter to a debt collection agency and/or a credit rating agency.
34. **Costs of Recovery:** If you default in making payment of the whole or any part of any sum that you owe to Grace pursuant to the contract, you indemnify Grace in respect of all costs and disbursements which Grace incurs in recovering or endeavouring to recover such money including the fees and disbursements of any debt collection agency, court costs and legal fees (calculated on a solicitor/client basis) in connection therewith, and such costs shall form part of the debt recoverable from you.
35. **Penalty for Non-Payment:** If any amount due to Grace pursuant to this contract in respect of the work undertaken by Grace is not paid within three calendar months after the same shall have become due, and Grace holds any of your goods subject this contract, Grace may by notice in writing advise you of its intention to sell such goods in the manner provided by the contract. If all amounts due to Grace are not paid within 10 working days after the giving or publication of such notice Grace may examine the goods (and if necessary break open any container) and sell them or any part thereof at public auction and for that purpose place the sale and all matters relating thereto in the hands of any auctioneer without being liable for any act or omission of such auctioneer and Grace may apply the proceeds of sale in or towards payment of the expenses thereof and the amount owing to Grace in respect of such goods by you and any balance shall be payable to you and/or retained by Grace on account of anticipated further charges (provided that Grace still holds some of your goods following the exercise of Grace's rights pursuant to this clause). The provisions of this clause shall be read and construed subject to the provisions of any law governing the contract relating to Warehouseman's Liens which law shall in all respects have full force and effect.
36. **Lien:** All of your goods received by Grace will be subject to a general lien for all moneys owing by you to; or liabilities incurred by you with Grace and the delivery or sale of part thereof shall not affect such lien in respect of the remainder. In respect of any period during which a lien is being asserted, Grace shall be entitled to charge rent and other expenses incurred (by or on your behalf) and this contract shall apply and Grace shall not be required to deliver possession of the goods or any part of them to you so long as any sum of money remains owing by you to Grace pursuant to the provisions of the contract.

#### DELIVERY

37. **Where and to Whom Goods to be Delivered:** Grace shall not be bound to deliver any goods except to you at an address specified by you in the form of acceptance or otherwise by notice in writing in accordance with the contract, or to a person authorised by you in writing to receive the goods at an address specified by you to Grace by notice in writing in accordance with the contract, and Grace shall not be bound to deliver any goods from Grace's warehouse without:
- The written order of you or your attorney; and
  - Payment of all amounts owing by you to Grace pursuant to this contract.
38. **Delay:** If delivery of your goods is delayed for any reason, or if you or your consignee is unable to take delivery of the goods in the premises or at the place where they are to be delivered immediately on their arrival at such premises or place, Grace shall be at liberty to unload them into its own or any other storage place. Delivery at any such storage place shall be deemed to be delivery in accordance with the contract. Grace shall have a lien on such goods for all storage and other charges incurred up to the time that you shall have taken delivery of such goods at such premises or place, and you shall be liable to pay Grace all reasonable further charges in respect of delivery to your nominated premises or place at a later date, if required.

#### YOUR WARRANTIES / LIABILITIES

39. You warrant to Grace that:
- Location of Goods:** the property or place to or from which goods are to be uplifted or delivered by Grace is owned or lawfully occupied by you or that you have obtained prior to the commencement and carrying out of the work by Grace, all necessary permits and approvals and authorizations to enable Grace's vehicles and/or employees to enter upon such property or place with or without vehicles for the purposes of carrying out works hereunder and you hereby indemnify Grace in respect of any loss, claim or damage suffered, brought against or caused by Grace in entering upon such property or place with or without vehicles.
  - Title to Goods:** the goods subject to this contract are owned by you or that you have full right, power and authority to procure the work and that no other person, firm or corporation has any other interest therein or lien or charge thereover or any power or authority to prevent Grace from carrying out the work.
40. You will remain personally liable for payment of all costs, charges and fees payable pursuant to this contract notwithstanding either:
- the receipt by Grace of an acknowledgement from any third party that such third party will be liable for payment of such sums; or
  - the receipt by Grace of any direction from you requesting Grace to direct accounts for payment to any person other than you; or
  - any acceptance of this contract by you where such acceptance purports to be made by you as agent for any third party; or
  - acceptance, by Grace, of any payment, by a third party, of any costs, charges or fees payable by you.

#### ALTERATION OF CONTRACT

41. No agent or contractor of, or person employed by Grace shall have any authority to alter, waive or qualify in any way these terms and conditions and any such purported alteration, waiver or qualification shall be of no legal effect, unless provided in writing by a Director of Grace.

#### COMMENCEMENT OF PROCEEDINGS AGAINST GRACE

42. You shall not be entitled to commence any proceeding against Grace unless and until all moneys payable by you have been paid in accordance with this contract. Any such action or suit must be commenced in a New Zealand Court and New Zealand Law will apply.

#### LOSS OF OR DAMAGE TO GOODS

43. You shall notify Grace in writing, in the case of loss of goods within 3 working days after the goods would in the ordinary course have been delivered, and in the case of damage to goods within 3 working days after delivery or tender of delivery. Further (but subject to the terms of clauses 17 – 22 (inclusive) of this contract):
- Whenever Grace may be liable for loss or damage to goods under removal it shall have the option of replacing or repairing the goods but under no circumstances shall its liability exceed the actual cost of replacement or repairing of the said goods and Grace shall under no circumstances be responsible for any consequential loss or damage.
  - A claim against Grace shall not amount to justification for deferring or withholding payment of any monies payable by you to Grace pursuant to this contract.

#### CANCELLATION

44. This contract may be cancelled by Grace or you provided that notice of such cancellation is given in writing and received by the recipient no later than 5.00 pm on the 7<sup>th</sup> working day prior to the date of due performance of the work/services by Grace.
45. If you give notice of cancellation later than 5.00pm on the 7<sup>th</sup> working day prior to the date of due performance of the work/services by Grace then a late cancellation fee shall be payable by you to Grace (at the rate determined by Grace from time to time), payment of such sum being due within 5 working days of the date of cancellation of the contract by you.
46. In the event that the contract is cancelled and you have paid the contract price or any part thereof Grace shall be entitled to deduct from such payment all or any monies owing by you to Grace including (but not limited to) all charges due and payable irrespective of cancellation, and late cancellation fees, and the balance of any such payment shall be refunded to you within 5 working days of the date of cancellation of the contract.

#### NOTICES

47. Any notice or other communications to be given or served upon you including any receipt or inventory must be given in writing and may be given or served to or upon you personally, by way of email to an email address provided by the you to Grace, or by way of facsimile to a facsimile number provided by you to Grace.

48. Any notice or other communications to be given or served upon Grace must be given in writing and addressed to Grace and either personally delivered or sent by post or email.
49. Address for communications: the addresses to which all communications should be made to Grace are:  
 Hand Delivery: Unit 38D Highbrook Business Park, Highbrook, East Tamiki, Auckland 2013  
 Post: Unit 38D Highbrook Business Park, Highbrook, East Tamiki, Auckland 2013  
 Email: dbardebbs@grace-removals.co.nz  
 Attention: David Bardebbs
50. Deemed receipt: Any notice or other communication to be given or served under this contract is deemed to be received:  
 (a) If delivered by hand, at the time of delivery  
 (b) If sent by post, 5 working days after posting  
 (c) If sent by email, on the day on which the email is deemed to have been received in accordance with section 214 of the Act, provided that the date of delivery is a working day, and the transmission is made prior to 5pm on that working day. If the email is made on a day that is not a working day, or not prior to 5pm, the transmission will be deemed to have been made on the next clear working day.
51. It is your responsibility to inform Grace of any changes to your contact details, using the addresses for communication above.

#### ERRORS AND OMISSIONS

52. Grace will not be bound by any error or omission made in the contract, by way of a typographical error, oversight or otherwise and may, within 5 working days of the error or omission coming to the attention of Grace, give notice in writing to you, in accordance with these conditions, correcting the error or omission so made, and such notice shall be a valid and enforceable variation of the contract.

#### DISPUTE RESOLUTION

53. In the event of any dispute arising between the parties as to the construction of this Agreement, the provisions of this Agreement, or any matter relating to or arising out of the provisions of this Agreement, then such dispute shall be resolved in accordance with the provisions of this clause.
54. The parties will do their utmost to ensure that any disputes between them are settled in the first instance equitably and amicably and in a spirit of compromise and co-operation and (hopefully) without resort to mediation or arbitration. The parties acknowledge that one of the principal objectives of the procedure described in this clause is to achieve a non-litigious determination of any matters arising out of this Agreement.
55. Without prejudice to any other right or entitlement they may have under this Agreement or at general law, the parties shall attempt to resolve any dispute in good faith by negotiation between them. If any dispute cannot be resolved by negotiation within 10 working days of the dispute arising, then either party may refer the dispute to the Disputes Tribunal (provided that the Disputes Tribunal has jurisdiction to hear such dispute), or otherwise the parties will refer the dispute to a mediator in a non-binding dispute resolution process in which an independent mediator facilitates negotiation between parties. Mediation may be initiated by either party writing to the other and identifying the dispute which is being proposed for mediation. The other party hereby agrees to either proceed with such mediation or to at least attend a preliminary meeting with a mediator to discuss whether mediation would be helpful in the circumstances. If the parties cannot agree on a suitable person to act as a mediator, they will request that the Arbitrator and Mediators Institute of New Zealand appoint a mediator. The mediation will be conducted in accordance with the Mediation Protocol of the Arbitrators and Mediators Institute of New Zealand Inc.
56. Any disputes arising out of or relating to this Agreement which is not resolved by mediation shall, on the application of either party, be determined by arbitration pursuant to the Arbitration Act 1996.
57. Neither Party may initiate or commence court or arbitration proceedings relating to a dispute unless it has complied with the procedure set out in clauses 53-56, provided that application may still be made to the court for:  
 (a) interlocutory relief; or  
 (b) to recover or enforce a debt payable; or to enforce a settlement agreed to pursuant to clauses 55 or 56.
58. Important Notice For COVID -19

As the COVID-19 outbreak spreads across the world, a number of countries, (including New Zealand) are implementing various measures to contain the spread of infection. This has impacted all of us, both in our personal and professional lives. Measures that are beyond our control may include quarantine, cancellations, social distancing regulations, border controls, port or transport closures, labour surcharges, and the suspension of operations and/or regional lock-downs. In the event such measures are implemented we may be prevented from, or delayed in carrying out our business in a timely and cost effective manner. If these circumstances exist there could be situations where additional charges are applicable. Examples of these include but are not limited to; freight increases, significant exchange rate swings, route changes, staff or equipment shortages, safety equipment, storage and store handling charges and unforeseen redelivery costs from either a port, warehouse or rail head. In the event additional costs are incurred due to circumstances outside the company's control we may need to pass these on to our customer.(s) We appreciate your consideration and understanding that these measures will only be taken if absolutely necessary. Please be assured that the company's focus is on doing everything possible to deliver services in a way that is compliant, within quoted cost parameters and minimises disruption. Our primary concern is the safety of our customers, their families and our Staff.