

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 “**HFL**” means Harbour Fish Limited, its successors and assigns.
- 1.3 “**Customer**” means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting HFL 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.
- 1.4 “**Goods**” means all Goods or Services supplied by HFL to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.5 “**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 HFL’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.**
- 1.6 “**Price**” means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Goods as agreed between HFL and the Customer in accordance with clause 8 below.

2. Acceptance

- 2.1 The parties acknowledge and agree that:
- (a) they have read and understood the terms and conditions contained in this Contract; and
 - (b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts Delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract 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 and accepts that:
- (a) the supply of Goods on credit shall not take effect until the Customer has completed a credit application with HFL and it has been approved with a credit limit established for the account; and
 - (b) in the event that the supply of Goods requested exceeds the Customer’s credit limit and/or the account exceeds the payment terms, HFL reserves the right to refuse Delivery.
- 2.5 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. Authorised Representatives

- 3.1 The Customer acknowledges that HFL shall (for the duration of the Services) liaise directly with one (1) authorised representative, and that once introduced as such to HFL, that person shall have the full authority of the Customer to order any Goods, and/or to request any variation thereto on the Customer’s behalf. The Customer accepts that they will be solely liable to HFL for all additional costs incurred by HFL (including HFL’s profit margin) in providing any Goods, or variation/s requested thereto by the Customer’s duly authorised representative.

4. Errors and Omissions

- 4.1 The Customer acknowledges and accepts that HFL 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 HFL 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 HFL in respect of the Services.
- 4.2 If such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of HFL; the Customer:
- (a) shall not be entitled to treat this Contract as repudiated nor render it invalid; but
 - (b) shall not be responsible for any additional costs incurred by HFL arising from the error or omission.

5. Change in Control

- 5.1 The Customer shall give HFL 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 and contact phone or fax number/s, change of trustees or business practice). The Customer shall be liable for any loss incurred by HFL as a result of the Customer’s failure to comply with this clause.

6. Credit Card Information

- 6.1 HFL will:
- (a) keep the Customer’s personal details, including credit card details for only as long as is deemed necessary by HFL;
 - (b) not disclose the Customer’s credit card details to any third party; and
 - (c) not unnecessarily disclose any of the Customer’s personal information, except in accordance with the Privacy Act (clause 20) or where required by law.
- 6.2 The Customer expressly agrees that, if pursuant to this Contract, there are any unpaid charges, other amounts due and outstanding by the Customer, then HFL is entitled to immediately charge the Customer’s nominated credit card for these amounts, and is irrevocably authorised

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to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Customer pursuant to the terms of this Contract.

7. On-Line Ordering

- 7.1 The Customer acknowledges and agrees that:
- (a) HFL does not guarantee the website's performance;
 - (b) display on the website does not guarantee the availability of any particular Goods; therefore, all orders placed through the website shall be subject to confirmation of acceptance by HFL;
 - (c) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades;
 - (d) there are inherent hazards in electronic distribution, and as such HFL cannot warrant against delays or errors in transmitting data between the Customer and HFL including orders, and you agree that to the maximum extent permitted by law, HFL will not be liable for any losses which the Customer suffers as a result of online-ordering not being available or for delays or errors in transmitting orders;
 - (e) when making a transaction through the website, the Customer's information will pass through a secure server using SSL (secure sockets layer) encryption technology. The encryption process ensures that the Customer's information cannot be read by or altered by outside influences; and
 - (f) if the Customer is not the cardholder for any credit card being used to pay for the Goods, HFL shall be entitled to reasonably assume that the Customer has received permission from the cardholder for use of the credit card for the transaction.
- 7.2 HFL reserves the right to terminate the Customer's order if it learns that you have provided false or misleading information, interfered with other users or the administration of HFL's business, or violated these terms and conditions.

8. Price and Payment

- 8.1 At HFL's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by HFL to the Customer; or
 - (b) the Price as at the date of Delivery of the Goods according to HFL's current price list; or
 - (c) HFL's quoted price (subject to clause 8.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 8.2 HFL reserves the right to change the Price:
- (a) if a variation to the Goods and/or Services, which are to be supplied is requested; or
 - (b) in the event of increases to HFL in the cost of labour or materials which are beyond HFL's control.
- 8.3 Variations will be charged for on the basis of HFL's quotation, and will be detailed in writing, and shown as variations on HFL's invoice. The Customer shall be required to respond to any variation submitted by HFL within ten (10) working days. Failure to do so will entitle HFL to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 8.4 At HFL's sole discretion a reasonable non-refundable deposit may be required.
- 8.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by HFL, which may be:
- (a) on Delivery of the Goods;
 - (b) for certain approved Customers, the date which is fourteen (14) days following the date of any invoice given to the Customer by HFL.
- 8.6 Payment may be made by electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Customer and HFL.
- 8.7 HFL may in its discretion allocate any payment received from the Customer towards any invoice that HFL determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer HFL may re-allocate any payments previously received and allocated. In the absence of any payment allocation by HFL, payment will be deemed to be allocated in such manner as preserves the maximum value of HFL's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 8.8 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by HFL nor to withhold payment of any invoice because part of that invoice is in dispute.
- 8.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to HFL an amount equal to any GST HFL must pay for any supply by HFL under this or any other contract for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

9. Compliance with Laws

- 9.1 The Customer and HFL shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods and HFL warrants that Goods manufactured or sold on its registered premises, and supplied to all Customers, shall meet all safety regulations and standards as defined by the Hazard Analysis and Critical Control Points (HACCP), Food Safety Programme, and is eminently suitable for public consumption and thereby compliant with the Australia New Zealand Food Standards Code.
- 9.2 The Customer agrees that HFL shall not be liable for any damage or loss including personal injury, death, sickness, inconvenience, or expense (including loss of income) as a result of HFL providing the Goods.
- 9.3 It is the Customer's responsibility:
- (a) to ensure that all applicable health and safety regulations are observed and other appropriate steps taken in relation to the storage, handling and use of the Goods and where information is supplied to the Customer on potential hazards relating to the Goods to bring such information to the attention of its employees, agents, visitors and customers; and
 - (b) to ensure that the Goods are used under the correct supervision in accordance with the information provided (including but not limited to expiry dates, storage instructions, potential hazards etc.)
- 9.4 The Customer hereby indemnifies and shall keep indemnified HFL against all action claims, demands, summons, suits proceedings judgments, orders or decrees arising out of or in connection with any act or omission of the Customer in respect of its obligations pursuant to this clause.

10. Delivery of Goods

- 10.1 Delivery (“**Delivery**”) of the Goods is taken to occur at the time that:
- (a) the Customer or the Customer’s nominated carrier takes possession of the Goods at HFL’s address; or
 - (b) HFL (or HFL’s nominated carrier) delivers the Goods to the Customer’s nominated address even if the Customer is not present at the address.
- 10.2 The cost of Delivery is either included in the Price or is in addition to the Price as agreed between the parties.
- 10.3 HFL may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 10.4 Any time specified by HFL for Delivery of the Goods is an estimate only and HFL 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 HFL is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then HFL shall be entitled to charge a reasonable fee for redelivery and/or storage.

11. Risk

- 11.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 11.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, HFL is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by HFL is sufficient evidence of HFL’s rights to receive the insurance proceeds without the need for any person dealing with HFL to make further enquiries.
- 11.3 If the Customer requests HFL to leave Goods outside HFL’s premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer’s sole risk.
- 11.4 Due to the nature of fresh and/or frozen seafood HFL does not guarantee the supply of any specific type of seafood at any particular time (including but not limited to the weather, algae bloom, etc.).

12. Access

- 12.1 The Customer shall ensure that HFL has clear and free access to affect Delivery of the Goods. HFL shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of HFL.

13. Title

- 13.1 HFL and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid HFL all amounts owing to HFL; and
 - (b) the Customer has met all of its other obligations to HFL.
- 13.2 Receipt by HFL 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.
- 13.3 It is further agreed that until ownership of the Goods passes to the Customer in accordance with clause 13.1:
- (a) the Customer is only a bailee of the Goods and must return the Goods to HFL on request;
 - (b) the Customer holds the benefit of the Customer’s insurance of the Goods on trust for HFL and must pay to HFL the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for HFL and must pay or deliver the proceeds to HFL on demand;
 - (d) the Customer irrevocably authorises HFL to enter any premises where HFL believes the Goods are kept and recover possession of the Goods;
 - (e) HFL may recover possession of any Goods in transit whether or not Delivery has occurred;
 - (f) HFL may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

14. Personal Property Securities Act 1999 (“PPSA”)

- 14.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Goods that have previously been supplied and that will be supplied in the future by HFL to the Customer, and the proceeds from such Goods as listed by HFL to the Customer in invoices rendered from time to time.
- 14.2 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 HFL may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, HFL for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registrations charged thereby;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or the proceeds from such Goods in favour of a third party without the prior written consent of HFL; and
 - (d) immediately advise HFL of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 14.3 Unless otherwise agreed to in writing by HFL, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 14.4 The Customer shall unconditionally ratify any actions taken by HFL under clauses 14.1 to 14.3.
- 14.5 Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

15. Security and Charge

- 15.1 In consideration of HFL agreeing to supply the Goods, 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.
- 15.2 The Customer indemnifies HFL from and against all HFL's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising HFL's rights under this clause.
- 15.3 The Customer irrevocably appoints HFL and each director of HFL as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Customer's behalf.

16. Defects

- 16.1 The Customer shall inspect the Goods on Delivery and shall within three (3) days of Delivery of fresh and/or frozen seafood (time being of the essence) notify HFL of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford HFL an opportunity to inspect the Goods within a reasonable time following Delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which HFL has agreed in writing that the Customer is entitled to reject, HFL's liability is limited to (at HFL's discretion) replacing the Goods.
- 16.2 Goods will not be accepted for return other than in accordance with 16.1 above, and provided that:
- (a) HFL has agreed in writing to accept the return of the Goods; and
 - (b) the Goods are returned at the Customer's cost within seven (7) days of the Delivery date; and
 - (c) HFL will not be liable for Goods which have not been stored or used in a proper manner.
- 16.3 If HFL accepts that the Customer is entitled to reject the Goods following their return pursuant to clause 16.2(b) HFL will reimburse the Customer's actual and reasonable costs of return Delivery.
- 16.4 Due to the perishable nature of the Goods, HFL will not accept the return of Goods other than in accordance with 16.1.

17. Consumer Guarantees Act 1993 and the Fair Trading Act 1986

- 17.1 If the Customer is acquiring Goods for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 ("CGA") do not apply to the supply of Goods by HFL to the Customer.
- 17.2 HFL agrees to abide by the provisions of the Fair Trading Act 1986 ("FTA").

18. Default and Consequences of Default

- 18.1 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 a half percent (2.5%) per calendar month (and at HFL's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Customer owes HFL any money the Customer shall indemnify HFL from and against all costs and disbursements incurred by HFL in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, HFL's collection agency costs, and bank dishonour fees).
- 18.3 Further to any other rights or remedies HFL may have under this Contract, if a Customer has made payment to HFL, 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 HFL under this clause 18 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.
- 18.4 Without prejudice to HFL's other remedies at law HFL shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to HFL shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to HFL becomes overdue, or in HFL's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by HFL;
 - (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.

19. Cancellation

- 19.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions the other party may suspend or terminate the supply of Services or purchase of Goods to the other party. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.
- 19.2 If HFL, due to reasons beyond HFL's reasonable control, is unable to deliver any Goods and/or Services to the Customer, HFL may cancel any Contract to which these terms and conditions apply or cancel Delivery of Goods and/or Services at any time before the Goods and/or Services are delivered by giving written notice to the Customer. On giving such notice HFL shall repay to the Customer any money paid by the Customer for the Goods and/or Services. HFL shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.3 The Customer may cancel Delivery of the Goods and/or Services by written notice served within twenty-four (24) hours of placement of the order. Failure by the Customer to otherwise accept Delivery of the Goods and/or Services shall place the Customer in breach of this Contract.

20. Privacy Policy

- 20.1 All emails, documents, images or other recorded information held or used by HFL is "Personal Information" as defined and referred to in clause 20.3 and therefore considered confidential. HFL 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. HFL

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acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by HFL that may result in serious harm to the Customer, HFL 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.

20.2 Notwithstanding clause 20.1, privacy limitations will extend to HFL in respect of Cookies where the Customer utilises HFL's website to make enquiries. HFL 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 HFL when HFL sends an email to the Customer, so HFL may collect and review that information ("collectively Personal Information")

If the Customer consents to HFL's use of Cookies on HFL's website and later wishes to withdraw that consent, the Customer may manage and control HFL's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.

20.3 The Customer authorises HFL or HFL'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 HFL from the Customer directly or obtained by HFL 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.

20.4 Where the Customer is an individual the authorities under clause 20.3 are authorities or consents for the purposes of the Privacy Act 2020.

20.5 The Customer shall have the right to request (by e-mail) from HFL, a copy of the Personal Information about the Customer retained by HFL and the right to request that HFL correct any incorrect Personal Information.

20.6 HFL 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.

20.7 The Customer can make a privacy complaint by contacting HFL via e-mail. HFL 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>

21. Service of Notices

21.1 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.

21.2 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.

22. Trusts

22.1 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 or as an agent for a trust ("Trust") then whether or not HFL may have notice of the Trust, the Customer covenants with HFL as follows:

- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust, the trustees and the trust fund;
- (b) the Customer has full and complete power and authority under the Trust or from the Trustees of the Trust as the case maybe 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, the trustees and 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 during the term of the Contract without consent in writing of HFL (HFL 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 fund or trust property.

23. General

23.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.

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- 23.2 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 that party'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.
- 23.3 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 Dunedin, New Zealand.
- 23.4 Subject to the CGA, the liability of HFL and the Customer under this Contract shall be limited to the Price.
- 23.5 HFL may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent provided the assignment does not cause detriment to the Customer.
- 23.6 The Customer cannot licence or assign without the written approval of HFL.
- 23.7 HFL 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 HFL's sub-contractors without the authority of HFL.
- 23.8 The Customer agrees that HFL 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 HFL to provide Goods to the Customer.
- 23.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc., ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Customer to make any payment due to HFL, following cessation of a Force Majeure.
- 23.10 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.