

**AMERICOLD STANDARD TERMS AND CONDITIONS FOR TRANSPORT,
STORAGE AND LOGISTICS SERVICES
NEW ZEALAND OPERATIONS**

1. GENERAL CONDITIONS

1.1 Entire Agreement

This Contract supersedes all prior undertakings, arrangements and agreements and constitutes the entire agreement between Americold and the Customer in relation to the Services and the subject matter of the Contract. There are no conditions, warranties or other terms affecting the agreement between Americold and the Customer, other than these terms and conditions and any other documentation expressly identified in the Proposal as forming part of the Contract.

1.2 Risk

Subject to these terms and conditions and the Proposal, the provision of Services is entirely at the risk of the Customer and Americold accepts no liability and will not be responsible for any claim, loss, damage, liability, cost or expense arising out of, or in relation to, the Goods or the provision of the Services whatsoever.

1.3 Details

Subject to these terms and conditions, Americold relies on the details of description, items, pallet space, quantity, weight, quality, value and measurement concerning the Goods, as supplied by the Customer's Personnel but otherwise does not admit their accuracy.

1.4 Storage Media

Americold will not be responsible for the maintenance, repair or replacement of any Storage Media received from the Customer or the Customer's Personnel caused by normal wear and tear. All Storage Media other than plastic wrapping and cartons that is owned or sourced by Americold or Americold Personnel and delivered into the custody or control of the Customer or the Customer's Personnel is to be returned to Americold within 7 days at the Customer's cost.

1.5 Stocktaking Service

Unless stipulated in the Contract, Americold will not be under any obligation to carry out a stocktake of the Goods.

1.6 Method

If the Customer instructs Americold to use a particular method in relation to the provision of any Services, Americold will give priority to that method but if Americold cannot conveniently adopt it, Americold may use any method it considers most appropriate in order to carry out the Services and to achieve compliance with its obligations under this Contract.

1.7 Quarantine

Americold will be entitled (but not obliged) to quarantine any Goods that it considers have exceeded their shelf life and hold them separately from any remaining Goods of the Customer. Subject to these terms and conditions, Americold will dispose of the relevant Goods in accordance with the Customer's instructions and at the Customer's expense.

1.8 No Obligation to Deliver Goods Unless Stipulated

Unless stipulated in the Proposal, Americold will not be under any obligation to arrange for the delivery of the Goods to and from the Site and it will be the responsibility of the Customer to arrange for the delivery of the Goods to and from the Site, at the Customer's expense.

1.9 Opening Goods

If any identifying document or mark appearing on any carton, wrapping, package or container in which the Goods are placed or carried is lost, damaged, destroyed or defaced Americold may open the said carton, wrapping, package or container to inspect the Goods to determine their nature or condition and/or to determine ownership. For clarification, the opening of the subject carton, wrapping, package or container in which the goods are placed or carried, may also be legally required (for example by the New Zealand Ministry for Primary Industries in relation to packaging matters within their jurisdiction).

1.10 Review of Rates

Americold may review its Charges and submit a replacement Proposal to the Customer if the Customer's notified volumes on which any existing Proposal depends or is based change by plus or minus 10%

2. CUSTOMER'S OBLIGATIONS

2.1 Instructions Regarding Goods

The Customer must:

- (a) notify Americold in writing if any Goods delivered into the custody or control of Americold Personnel are outside of the temperature requirements as specified in the Proposal or if any Goods received are warmer than plus 4 degrees Celsius for chiller product or colder than minus 18 degrees Celsius for freezer product. at which Americold is required to maintain the Goods whilst in the custody or control of Americold's Personnel, for the purpose of providing the Services or otherwise;
- (b) each time the Customer's Personnel delivers Goods into the custody or control of Americold Personnel supply full details of the provenance of the Goods and (if applicable) the containers in which they are stored and the expected shelf life of those Goods under the agreed storage and/or carriage conditions. The Customer will at all times remain responsible to ensure that the Goods do not exceed their expected shelf life;
- (c) not cause to be delivered into the custody of Americold Personnel any Goods which are, or may become, Dangerous Goods without first providing the appropriate Americold Personnel with a full written and accurate description of the nature of the Goods.

2.2 Access to Site

- (a) The Customer must not do or allow to be done anything which causes or may cause annoyance, nuisance, grievance, disturbance or damage to the Site or which interferes with or threatens to interfere with the continuing use of the Site by Americold or Americold Personnel.
- (b) The Customer, its employees and agents must be accompanied by an Americold employee at all times when on Site and will be bound by all of Americold's Health and Safety policies. Americold will not be held responsible for any loss or injury where adherence to such policies are followed.
- (c) The Customer must not convey any Goods or materials to or from the Site except through the entrances and service areas identified as being provided for that purpose.
- (d) The Customer's Personnel must not load or unload any Goods or other such materials from any vehicle at the Site unless the vehicle is parked in designated loading docks or other areas designated by Americold Personnel for this purpose and is accompanied by accurate and comprehensive documents pertaining to those Goods or materials, which the Customer's Personnel must provide to Americold upon request.

2.3 Collection and Delivery of Goods to and from Site

- (a) In respect of collection of Goods, unless otherwise stated in the Proposal, the Customer must give written notice to Americold of its intention to collect any or all of the Goods from the Site prior to 12.00 pm on the previous Business Day; and
- (b) If the Proposal stipulates that Americold is to collect the Goods from a location external to the Site and/or deliver the Goods to a location external to the Site, the Customer must identify in writing a time and address for collection or delivery and provide these instructions at least 24 hours before the nominated time. If the nominated address for collection or delivery is unattended at the nominated time and Americold elects to collect or deliver the Goods at a later time, Americold will be entitled to charge the Customer for the cost of collection or delivery at that time including any storage costs Americold may reasonably incur. Americold will not be liable for date expiry or temperature damage to the Goods in those circumstances and the Customer must accept their delivery.

2.4 Storage Media

- (a) The Customer must pay to its suppliers, and must defend, indemnify and hold harmless Americold against, all charges for any Storage Media supplied by the Customer or the Customer's Personnel for use in relation to the Services and must comply with the lawful requirements and regulations of its various suppliers.
- (b) Unless agreed to the contrary in writing by an authorised officer of Americold, Americold will not exchange Storage Media.

2.5 Delivery of Files

Following termination or expiration of this Contract, the Customer must forthwith deliver to Americold any and all of its records relating to any of the Goods which remain on the Site.

2.6 Change of Customer's Details

The Customer must immediately notify Americold of any change in its registered address, place of business or corporate status including any change in the Effective Control of the Customer.

2.7 Orders

- (a) Any quotation by Americold is not to be construed as an offer by, or an obligation on, Americold to supply Services.
- (b) Americold may accept, refuse or cancel any Order for the Services in its absolute discretion and may make its acceptance of an Order conditional (e.g. upon a satisfactory credit assessment of the Customer).
- (c) Once placed, an Order cannot be cancelled or deferred without Americold's prior written agreement and then only on terms that will fully indemnify Americold against any loss, damage, cost or liability suffered by it as a result of that cancellation or deferral.
- (d) Unless otherwise agreed, the Customer must submit an Order to Americold by electronic means.
- (e) Americold is under no obligation to enquire as to the authority of any person placing an Order on behalf of the Customer and all Orders are deemed to be placed with Americold with the authority of the Customer and in its name. The Customer indemnifies Americold for any loss or claims suffered by Americold by accepting an unauthorised Order.
- (f) The Customer must provide Americold with accurate details in all Orders it submits. Americold is under no obligation to enquire as to the accuracy of the details in any Order or whether the Services will be fit for the purpose required by the Customer.
- (g) Americold will use its reasonable commercial endeavours to fulfil accepted Orders and comply with any requested or estimated date for delivery out of Goods. However, Americold is not liable for any

delay in delivery out of Goods or in the supply of Services and Americold reserves the right to extend the date for delivery out of Goods.

- (h) By placing an Order the Customer will be taken to have accepted these terms which, upon Americold's acceptance of the Order, will become part of this Contract.

2.8 Checking Goods

- (a) On receipt in of the Goods by Americold and on delivery out of the Goods by Americold to the Customer (or in accordance with the Customer's directions) Americold will visually inspect and count the Goods. If there is any difference between the Customer's records and Americold's count, Americold will notify the Customer of that difference. Americold's count will be taken to be conclusive.
- (b) If the Customer delivers the Goods to Americold at a temperature outside the designated range, Americold may in its discretion accept or reject the Goods without Americold having any liability to the Customer.
- (c) An inwards receipt does not provide title to the Goods. Americold will only act on the Customer's instructions.

2.9 Control of the Goods

- (a) Americold has total control of the Goods in storage, and has the right to determine whether Goods need to be stored in bulk, sorted into separate lots and any other aspect of the storage (including the nominated storage facility).
- (b) Americold may in its discretion at any time and at the Customer's expense, remove any Goods which have or will become deteriorated, objectionable, unwholesome, offensive or a source of contamination.

3. SUBCONTRACTING

- (a) Americold (and any subcontractor of Americold) may subcontract part or all of its obligations under the Contract on any terms to any subcontractor.
- (b) Americold is not obliged to disclose the terms of the contract between Americold and any subcontractor.
- (c) Americold shall remain liable to the Customer in all respects for the performance of the Services as if Americold were providing the Services but the subcontractor shall have the benefit of these terms and conditions as if they were parties to this Contract and Americold holds that benefit on trust for them and can, if requested by them, enforce it on their behalf.
- (d) The Customer warrants that no claim or allegation will be made against any Americold Personnel which attempts to impose upon them any liability whatsoever arising out of, or in relation to, the provision of the Services. If any such claim or allegation should nevertheless be made, the Customer will defend, indemnify and hold harmless Americold and Americold Personnel against all consequences thereof.
- (e) The Customer may not subcontract any of its obligations, nor may it assign any of its rights under this Contract without the prior written consent of Americold.

4. INVOICES, PAYMENT AND DEFAULT

4.1 Issuance of Invoices

- (a) ANZL may issue tax invoices to the Customer for Services provided and Additional Expenses incurred as follows:

- (i) for Storage Services – as agent for IPL ; and
 - (ii) for Non-Storage Services - in its own capacity.
- (b) The tax invoices so issued will identify the Charges and the GST payable in relation to each of the Charges.
- (c) Unless otherwise stipulated in the Proposal:
- (i) the tax invoices will be issued every 7 days; and
 - (ii) the Customer must pay any tax invoice issued by Americold by the 20th of the calendar month following the date of the invoice (or any longer period under any credit application submitted by the Customer and approved by ANZL) and in full, without any deductions whether by way of set-off, counter-claim, or any other equitable or legal claim and until the Customer makes payment in full Americold is entitled to retain and exercise a lien over any Goods belonging to the Customer which remain in Americold's possession;
- (d) The Customer is liable for all Taxes and Government charges payable in relation to the Contract including new Taxes and Government charges introduced during the term of the Contract.

4.2 Interest on Default

The Customer will pay to ANZL on demand interest at the Default Interest Rate for any Charges, GST or other amounts payable by the Customer which remain unpaid 7 days after the due date for payment of the tax invoice in which the Charges and GST are captured. Interest will be calculated from the relevant due date and will accrue on a daily basis until paid. The Customer will be responsible for any expenses, disbursements and legal costs incurred by Americold in the enforcement of its' rights.

4.3 Suspension

If any tax invoice remains unpaid more than 14 days after the due date for payment, Americold may, in addition to its other rights and remedies under these terms and conditions, suspend the performance of its obligations under the Contract.

4.4 Increase in Charges

The Charges may be increased in accordance with the applicable rate review formula, as set out, or incorporated by reference, in the Proposal or as a consequence of the application or introduction of the Taxes and Government charges referred to in clause 4.1. In the absence of any rate review formula in the Proposal, Americold will be entitled to increase the Charges at any time upon 28 days written notice to the Customer.

4.5 Discharge

ANZL may give a valid discharge in relation to payments made by the Customer to ANZL for the provision of Storage Services.

5. CUSTOMER'S PERSONNEL

The Customer will ensure that each member of the Customer's Personnel:

- (a) complies with all Americold's policies and procedures stated in or contemplated by clause 7;
- (b) possesses appropriate qualifications and experience to undertake their duties;
- (c) undertakes all necessary training;

- (d) performs their duties with due care, skill and diligence;
- (e) carries proper identification when on Site;
- (f) does not interfere with or unreasonably disrupt the activities of Americold's Personnel; and
- (g) does not do any act or thing which may injure, impair or reduce the goodwill or reputation of Americold or Americold's Personnel.

6. WARRANTIES

The Customer warrants that:

- (a) it has fully and adequately described and labelled all of the Goods as to their nature, weight and measurements;
- (b) it has complied with all applicable laws and regulations concerning the Goods including notification, classification, description, labelling, transport, packaging and storage of the Goods;
- (c) the Goods have been packed in a proper way to withstand the ordinary risks of carriage, loading and unloading, storage and other Services identified in the Proposal;
- (d) the Customer's Personnel who deliver or collect the Goods to or from the Site are authorised so to do by the Customer and (if applicable) to sign for any delivery or collection document on behalf of the Customer;
- (e) it is either the owner or the authorised agent of the owner of the Goods;
- (f) the Goods are free from any encumbrance, charge, lien or any other Security Interest;
- (g) the Goods are and will remain free of any objectionable matter or odours that may affect other goods in transit or storage, unless the condition of the Goods has previously been notified in writing to Americold and Americold has accepted the Goods in that condition;
- (h) subject to any notice provided in accordance with Clause 2.1(a), the Goods will be delivered to Americold at the specified or agreed temperature;
- (i) it has not asked nor influenced Americold to handle or transport the Goods in any way that could be unlawful; and
- (j) it will not cause to be delivered into the custody of Americold Personnel any Goods which are, or may become, Dangerous Goods without first providing the appropriate Americold Personnel with a full written and accurate description of the nature of the Goods;
- (k) it will discharge the obligations stipulated in Clauses 2.2 and 2.4.

7. COMPLIANCE AND SAFETY

The Customer will, at the Customer's own cost:

- (a) ensure that the Customer, and each member of the Customer's Personnel, complies with:
 - (i) all laws applicable to the stowage, carriage, loading, unloading and delivery of the Goods including environmental laws applicable in New Zealand;
 - (ii) Americold's drug and alcohol policy and other policies and procedures of Americold at the Site; and
 - (iii) the directions of Americold and Americold Personnel in relation to health and safety.

- (b) ensure that the Customer, and each member of the Customer's Personnel, always:
 - (i) provide safe working conditions for all persons engaged in the performance of the Customer's obligations under the Contract;
 - (ii) undertake and successfully complete any safety induction program prior to entering the Site;
 - (iii) take all necessary steps to be informed of all Site policies and procedures of Americold applicable at the Site;
 - (iv) register at the Site reception or gatehouse on entry to the Site;
 - (v) gain access to, enter and remain on the Site strictly for the purposes of performing the Customer's obligations under the Contract.

- (c) ensure that the Customer, and each member of the Customer's Personnel, always comply with all laws and Good Operating Practices relating to:
 - (i) loading of Goods;
 - (ii) unloading of Goods;
 - (iii) mass management and weights of vehicles and loads;
 - (iv) securing loads on vehicles;
 - (v) Chain of Responsibility;
 - (vi) driver fatigue; and
 - (vii) any other matters relating to the safe driving and operation of vehicles and/or machinery.

- (d) ensure that any Customer's Personnel involved in the driving and operation of vehicles or machinery obtains and maintains a current licence, permit and/or any other approvals required to:
 - (i) operate and control any vehicles and/or machinery used to deliver the Goods and/or perform the Services;
 - (ii) load the Goods; and
 - (iii) unload the Goods.

8. CHAIN OF RESPONSIBILITY

The Customer will ensure that:

- (a) the Customer, and each member of the Customer's Personnel, comply with all laws and Good Operating Practices relating to compliance with, and management of, Chain of Responsibility.
- (b) the Customer, and each member of the Customer's Personnel, will not directly or indirectly by any act or omission engage in any business practice, establish any schedule or make any requirement or direction that causes or has the effect of causing any actual or potential contravention of any laws or other requirements relating to Chain of Responsibility.
- (c) the Customer, and each member of the Customer's Personnel, maintain proper, complete and accurate records, documents and systems in relation to compliance with and management of Chain of Responsibility obligations including but not limited to:
 - (i) a fatigue management plan;

- (ii) driver schedules;
 - (iii) the work and rest hours of each driver engaged in delivering or collecting the Goods including, but not limited to, whether a driver is operating under ordinary hours, basic fatigue management hours, advanced fatigue management hours or the hours specified in any work and rest hours exemption;
 - (iv) hard copies and/or electronic copies of driver log books;
 - (v) any data loggers and/or any other electronic devices used to record, monitor and manage driver fatigue and/or speed; and
 - (vi) any other documents, electronic data or records required to be maintained and retained in relation to driver hours and driver fatigue which may be relevant to assessing driver fatigue.
- (d) the Customer and each member of the Customer's Personnel will provide to Americold or any Americold Personnel on request copies of all information and documents and access to all electronic data, records or systems in relation to compliance with and management of Chain of Responsibility obligations.

9. INDEMNITIES

The Customer must defend, indemnify and hold harmless Americold and Americold Personnel from and against any and all claims, suits, actions, liabilities, loss, judgments, costs (including legal costs and expenses on a solicitor/own client basis) or damages, whether ordinary, special or consequential, arising directly or indirectly from or in connection with:

- (a) the acts and omissions (whether or not negligent), negligence, and/or wilful misconduct of the Customer or the Customer's Personnel;
- (b) loss of, or damage to, any physical property or physical injury to, or death of, any person caused by a negligent act or omission of the Customer or the Customer's Personnel; or
- (c) any fraudulent, misleading or deceptive conduct of the Customer.
- (d) a breach of any of the Customer's warranties under the Contract or implied by common law or statute; or
- (e) a breach of the Contract by the Customer.

10. INSURANCE

- (a) In addition to any insurance policies which the Customer is by law obliged to effect, the Customer shall procure and maintain with a reputable insurance company and at the Customer's own cost, such policies of insurance that Americold may reasonably request, having regard to the nature of Goods to be delivered, unloaded, loaded, collected and otherwise handled by the Customer.
- (b) At the very least, the Customer must maintain the following insurances:
 - (i) workers' compensation and employer's liability insurance, covering all claims and liabilities in respect of any statutory or common law liability for the death, injury or illness of or to any person employed by, or deemed to be employed by, the Customer;
 - (ii) public and product liability insurance for an amount not less than \$10,000,000 for any one occurrence in relation to all risks associated with the storage, carriage, loading and unloading of the Goods; and
 - (iii) transit (all risk) insurance covering carriage, loading and unloading of the Goods for not less than full replacement value of the Goods.

- (c) At any time at the request of Americold, the Customer must provide a valid Certificate of Currency for any policy of insurance referred to in Clause 10(b) and any policy of insurance required by law.
- (d) The Customer warrants that the Customer's Personnel will comply with Clauses 10(a)-(c) inclusive or will be covered under the Customer's own policies.
- (e) The Customer warrants that it will immediately notify Americold of any event that might affect Americold's right to claim against any insurance policy held by Americold.

11. TERMINATION

11.1 Termination on notice

Subject to Clause 14.1, Americold may at any time terminate this Contract by giving the Customer 30 days prior written notice.

11.2 Default

Americold may end this Contract in accordance with Clause 11.3 if:

- (a) the Customer fails to pay in full any tax invoice issued by ANZL in accordance with Clause 4.1 or meet any of its other obligations under this Contract;
- (b) the Customer is a corporation and becomes insolvent, an order is made or a resolution is passed to wind it up, it goes into liquidation or has a provisional liquidator appointed, is placed under official management, has a receiver or receiver and manager appointed over any of its assets or an administrator appointed; or
- (c) the Customer is a natural person and:
 - (i) commits an act of bankruptcy as defined in the Insolvency Act 2006;
 - (ii) becomes bankrupt;
 - (iii) takes or attempts to take advantage of Part 5 of the Insolvency Act 2006; or
 - (iv) enters into a composition or arrangement with or makes an assignment for the benefit of their creditors.

11.3 Termination after Default

If Americold has given 7 days prior written notice to the Customer that:

- (a) the Customer has defaulted under this Contract as provided in Clause 11.2; and
- (b) the Customer fails within such period to remedy the default (if it is capable of remedy) and/or provide reasonable compensation in money,

then Americold may terminate this Contract forthwith by written notice to the Customer, the termination taking effect from the date of giving the notice.

11.4 Period for Remedy

The period of 7 days is agreed by Americold and the Customer as a reasonable period within which the Customer must remedy a breach capable of remedy under this Contract and/or make reasonable compensation in money.

11.5 Goods Remaining at Site

If the Customer leaves Goods at the Site following the termination of this Contract Americold may either dispose of the Goods at the Customer's expense or at Americold's sole discretion, also at the Customer's expense, continue to store the Goods, subject to the same Charges and Additional Expenses and under the same terms and conditions (with the necessary changes made) as those contained in this Contract until the Goods are collected by the Customer or otherwise disposed of.

11.6 Acceptance of Charges

Any act on the part of Americold amounting to an exercise of either or both of the powers conferred on it by Clause 11.5 following a default by the Customer under this Contract will be without prejudice to the subsequent exercise of the powers conferred on it by Clauses 11.3 or 11.5 or any other right, power or privilege of Americold under this Contract and will not operate as an election by Americold either to exercise or not to exercise any of those rights, powers or privileges then or on any subsequent breach.

12. CONSEQUENCES OF TERMINATION

12.1 Complete Instructions

Americold shall, subject to these terms and conditions, fulfil any reasonable instructions by the Customer prior to the termination of this Contract, but further subject to Americold obtaining such security or guarantee of payment and performance by the Customer as Americold considers in its reasonable opinion appropriate in the circumstances.

12.2 Pay Moneys Owing

Neither the expiration nor termination of this Contract shall release the Customer from the obligation to pay any sums owing to Americold or from the obligation to perform any other duty or to discharge any other liability that may have been incurred prior thereto.

13. LOSS OR DAMAGE

13.1 General Exclusion of Liability

Subject to clause 13.2, Americold will not be liable for any loss or damage suffered by the Customer, the Customer's Personnel or any other person or entity, howsoever caused or arising, whether an authorised or unauthorised act under this Contract and whether caused by the negligence and/or recklessness and/or wilful misconduct of Americold or Americold Personnel or otherwise in any way arising out of, or in connection with, the provision of the Services or this Contract.

13.2 Limitation

If rights are conferred upon the Customer, or any other person, or obligations are imposed upon Americold by any applicable legislation which cannot be excluded, restricted or modified, the provisions of Clauses 13.1, 13.3, 13.4, 13.5, 13.6 and 13.7 shall be read subject to those rights or obligations, however Americold hereby expressly limits its liability under any such legislation to the maximum extent permitted by law.

13.3 Notice of Loss or Damage

No claim for loss of or damage to the Goods may in any event be made against Americold unless notice of the claim in writing is received by Americold within 24 hours of the date of the Customer or the Customer's Personnel taking possession of the Goods (or the relevant part of them) and to the extent permitted by law all claims not so made within the time shall be deemed to have been waived.

13.4 Failure to Notify

The Customer acknowledges and agrees that any failure to notify a claim within the time under Clause 13.3 is evidence of satisfactory performance by Americold of its obligations.

13.5 Failure to Bring Action

Even if the Customer complies with clause 13.3 Americold will be discharged from all liability for loss of or damage to the Goods unless formal legal proceedings are brought within 6 months of the Customer or the Customer's Personnel taking possession of the Goods (or the relevant part of them) from Americold Personnel.

13.6 Ullage Acknowledgment

- (a) The Customer acknowledges that despite all reasonable care and attention on the part of Americold, damage and or loss of Goods can sometimes occur through storage, handling and transportation (“Ullage”).
- (b) The Customer agrees that except to the extent required by law Americold will have no liability to the Customer for Ullage as the parties have taken this into account in negotiating the pricing for the Services.

13.7 Acknowledgement

Without in any way limiting, and subject to the preceding provisions of, this Clause 13, and to the extent permitted by law:

- (a) the Customer acknowledges and accepts that due to the nature of the storage processes, chilled, frozen and ambient Goods may show variations in quality, weight, measurements, shades, tints and colours.
- (b) Americold shall not be bound to make good any defect in Goods if the defect is caused as a result of:
 - (i) the information provided by the Customer to Americold;
 - (ii) the Goods having been subjected to misuse, neglect or damage by the Customer;
 - (iii) the Customer not following an appropriate regime to maintain the condition of the Goods.

13.8 Maximum Liability

Subject to the preceding provisions of this Clause 13 and to the extent permitted by law, the Customer agrees that the liability of Americold under this Contract for the breach of any legal obligation imposed upon Americold is limited to:

- (a) in the case of defective Goods, either of the following (at Americold's option):
 - (i) replace the Goods or supply equivalent goods; or
 - (ii) pay the costs of replacing the Goods (based on cost of manufacture) or of supplying equivalent goods; and
- (b) in the case of defective Services, either of the following (at Americold's option):
 - (i) supply the Services again; or
 - (ii) pay the costs of having the Services supplied again.

Except as provided in Clause 13.2 and this Clause 13.8 and as required by law, no other warranty or condition, express or implied shall apply under this Contract.

13.9 Demurrage

The Customer agrees that Americold will not be liable to compensate the Customer for demurrage or any associated loss or damage arising from loading, unloading or storing the Goods.

14. ADDITIONAL EXCLUSIONS OF LIABILITY

14.1 Force Majeure

- (a) Americold shall not be liable for any direct or indirect loss or damage to the Goods or otherwise suffered by the Customer arising from non-performance or late performance of this Contract by Americold caused by Force Majeure.
- (b) If Americold is wholly or partially prevented from performing its obligations under this Contract by a Force Majeure event, then the obligation to perform in accordance with this Contract will be suspended for the duration of the Force Majeure event.
- (c) If the Force Majeure event (and consequential inability to perform this Contract) continues for a period longer than 7 days from its initial occurrence, then either the Customer or Americold may terminate this Contract by written notice to the other. Such notice will not prejudice any rights or obligations either party may have accrued prior to such termination.

14.2 Americold Sub-Contractors and Employees

The Customer agrees that all Americold Personnel are entitled to the full benefit of these terms and conditions, including all exclusions or limitations of liability, to the same extent as Americold.

14.3 Breach

Even if Americold breaches this Contract or any of these terms and conditions, all of the rights, immunities and limitations of liability in these terms and conditions continue to have their full force and effect in all circumstances.

15. LIEN

15.1 General and Specific Lien

Americold has both a specific and a general lien on the Goods held by Americold and any documents relating thereto and on any other goods of the Customer in Americold's possession from time to time and in priority to any other Security Interest for all Charges or other moneys due under this Contract or which become due on any account whether for the provision of Services or any other goods or services provided by Americold.

15.2 Security Interest

Clause 15.1 creates a Security Interest granted by the Customer in favour of Americold over the property described in clause 15.1 and the proceeds of that property, for payment of all Charges, Additional Expenses and other moneys due and performance of all obligations owed by the Customer to Americold.

15.3 Disposal

If the Charges are not paid when due or the Goods are not collected when so required or designated, Americold may after the giving of notice in accordance with Clause 11.3:

- (a) remove all or any of the Goods and store them as Americold thinks fit at the Customer's risk and expense;
- (b) open and sell all or any of the Goods as Americold thinks fit and apply the proceeds to discharge the lien and costs of sale without being liable to any person for any loss or damage caused.
- (c) deduct or set-off from any moneys due from Americold to the Customer under any contract, debts and moneys due from the Customer to Americold under the Contract or under any other contract.

16. PERSONAL PROPERTY SECURITIES REGIME

16.1 PPSA further steps

- (a) If in Americold's opinion any Transaction Document contains, or any of the Transactions create, a Security Interest for the purposes of the PPS Law or the PPS Law does or could affect Americold's rights or obligations under or in connection with any Transaction Document (each a **PPSA Event**), Americold may, at its discretion:
 - (i) register or give any notification in connection with any relevant Security Interest and exercise rights in connection with the Security Interest; and/or
 - (ii) give notice to the Customer requiring it to do anything at the Customer's expense that Americold requires for the purposes of the relevant PPSA Event including, but not limited to, amending any Transaction Document, executing any new document or agreement, obtaining consents and supplying information.
- (b) The Customer must comply with any notice received pursuant to clause 16.1(a)(ii) within the time stipulated in the notice.
- (c) The Customer gives Americold a power of attorney to complete and execute any and all documentation to give effect to Clause 16.1(a).

16.2 Americold's right to terminate the Transaction Documents

If any action referred to in clause 16.1 is not performed to Americold's satisfaction or despite such action Americold determines that its rights or obligations under or in connection with the Transactions or any Transaction Document have been or will be materially adversely affected, then, in addition to Americold's rights under these terms and conditions, Americold may give notice to the Customer cancelling all or any of the Transaction Documents or any other document in connection with the Transactions and require:

- (a) full payment of all Charges; and
- (b) collection of the Goods within the control or possession of Americold or Americold Personnel,

within 5 Business Days of the date of notification.

16.3 General

- (a) The Customer irrevocably and unconditionally waives its right to receive from Americold any notice under the PPS Law (including notice of a verification statement) unless required by the PPS Law and if the notice cannot be excluded.
- (b) The Customer must not register a Security Interest against Americold without its prior written consent.
- (c) The Customer must notify Americold immediately of any change in its name, address, and any other information provided to Americold to enable Americold to register a financing change statement under the PPS Law if required.

- (d) The parties agree that this agreement and its terms, that are not publicly available are confidential and each party must not disclose any such information to a third party without the prior written consent of the other party..

16.4 The Customer's PPSA representations, warranties and acknowledgments

- (a) The Customer represents and warrants for the purposes of the PPSA that the Goods are the unencumbered property of the Customer.
- (b) The Customer acknowledges that where the Goods, over which a Security Interest attaches, gives rise to Proceeds then the Security Interest continues in the Goods and attaches to the Proceeds.
- (c) The Customer acknowledges that Americold has entered into or will enter into the Contract in reliance on the representations, warranties and acknowledgments in this clause.

16.5 Contracting out

- (a) The Customer agrees that:
- (i) Americold is not required to give notice to the Customer under sections, 114(1)(a), 120(2) or 129 of the PPSA;
 - (ii) Americold is not required to comply with sections 116, 125, 126, of the PPSA;
 - (iii) the Customer may not exercise any rights under sections 121, 127, 131, 133 or 134 of the PPSA; and
 - (iv) in accordance with section 148 of the PPSA, the Customer waives its right to receive a verification statement in respect of any financing statement or financing change statement relating to the Security Interest.
- (b) The parties agree that Americold has the power to retain, deal with or dispose of any property seized by it in the manner specified in sections 109, 113, and 120 or otherwise, of the PPS Law and in any other manner it deems fit. If there is any inconsistency between those sections of the PPS Law and the terms of the Transaction Documents, then the terms of the Transaction Documents will prevail.
- (c) Unless the context otherwise requires, the terms and expressions used in this clause 16.5 have the meanings given to them in, or by virtue of, the PPS Law.

17. CONFIDENTIAL INFORMATION

All specifications, trade secrets and other information relating to the Services or the business of Americold which are divulged to the Customer by Americold are to be regarded as confidential and must not be disclosed by the Customer to any third party except to the extent such disclosure is necessary for the purposes of the Contract or with the prior written consent of Americold.

18. PRIVACY

- (a) The Customer agrees that Americold may obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by Americold and may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for any of the following purposes:
- (i) to assess an application by Customer;
 - (ii) to notify other credit providers of a default by the Customer;
 - (iii) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; or
 - (iv) to assess the credit worthiness of the Customer.

- (b) The Customer consents to Americold being given a consumer credit report to collect overdue payment on commercial credit.
- (c) The Customer authorises Americold to give information about the Customer to a credit reporting agency for either of the following purposes:
 - (i) to obtain a consumer credit report about the Customer; or
 - (ii) to allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

19. NOTICES

- (a) Notices must be:
 - (i) in writing;
 - (ii) addressed to a party's last known registered address or email address; and
 - (iii) left at or sent by post or facsimile to that address or by email transmission to that email address;
- (b) A notice in accordance with Clause 19(a) will be taken to have been received:
 - (i) if delivered by hand to the address, on the date of delivery;
 - (ii) if sent by post, 3 working days after posting;
 - (iii) if sent by facsimile on a Business Day, on the date of transmission, or if sent on a non-Business Day, on the next Business Day (in both cases as long as the facsimile machine records a successful transmission); and
 - (iv) if sent by email on a Business Day, on the day of transmission or if sent on a non-Business Day, on the next Business Day (in both cases as long as the email transmission is successful).

20. CHOICE OF LAW AND DISPUTE RESOLUTION

This Contract is governed by, and must be construed in accordance with, the laws in force in New Zealand. The parties submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of all matters arising out of, or in relation to, the Contract, its performance or subject matter.

21. SEVERABILITY

Any provision of the Contract which is invalid in any jurisdiction must, in relation to that jurisdiction, be read down to the minimum extent necessary to achieve its validity, if applicable, and be severed from the Contract in any other case, without invalidating or affecting the remaining provisions of the Contract or the validity of that provision in any other jurisdiction.

22. NON-WAIVER

A failure, delay, relaxation or indulgence by a party exercising any power or right conferred on that party by these terms and conditions does not operate as a waiver of the power or right. A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under this Contract. A waiver of a breach does not operate as a waiver of any other breach.

23. CUMULATIVE RIGHTS

Each indemnity in these terms and conditions is a continuing obligation that is separate and independent from the other obligations in the Contract and Americold is not obliged to take any action, or incur any expense, before enforcing any indemnity under this Contract.

24. VARIATIONS AND REVISIONS

- (a) Americold may revise these terms and conditions at any time and the revised terms and conditions will supersede and replace the existing terms and conditions to the extent of the revision.
- (b) Any variation of, or amendments to the Contract or any provisions must be in writing and signed by an authorised officer of each party.

25. PARTICIPATION OF IPL

IPL as the landowner or lessee of the Sites together with the fixed infrastructure (including warehouses) located on those Sites, is a party to this Contract for the limited purpose of providing the Storage Services. IPL will not be liable for the provision of the Non Storage Services nor for any act or omission of ANZL.

26. DEFINITIONS AND INTERPRETATION

26.1 Definitions

In this Contract:

"Additional Expenses" means any of the following Services:

- costs relating to permits and licences;
- expenses arising out of, or in relation to, Americold exercising its rights pursuant to Clauses 1.7 or 2.3(b);
- expenses incurred by Americold or Americold Personnel as a result of incorrect declarations by the Customer or the Customer's Personnel regarding the weight, volume, description or packaging of the Goods (including non-conformity of any pallets or packaging);
- expenses incurred by Americold or Americold Personnel as a result of delays of any kind caused by the Customer or the Customer's Personnel;
- hire of Storage Media; and
- additional services requested by the Customer and not currently provided by Americold which in the judgment of Americold must be incurred in order to properly effect the Services.

"Americold" means:

- (a) in relation to the provision of Storage Services – IPL ; and
- (b) in relation to the provision of Non-Storage Services – ANZL.

"Americold Personnel" means any director, officer, employee, servant, contractor, subcontractor or agent of Americold;

"Americold's Rates" means the rates stipulated in the Contract for the provision of Services, adjusted in accordance with Clause 4.4;

"Ancillary Services" means those services which Americold provides to the Customer and which are ancillary or incidental to the Storage Services and/or the Non-Storage Services, as the case may be;

"ANZL" means Americold NZ Limited;

"Business Day" means any day other than a Saturday, Sunday or public holiday in the State of New South Wales;

"Chain of Responsibility" means any and all matters relating to driver fatigue, vehicle mass and dimension, load securing, speed, Dangerous Goods and/or other matters relating to the safe operation of vehicles;

"Charges" means Americold's charges for:

- any Services excluding Additional Expenses, calculated in accordance with Americold's Rates; and
- Additional Expenses, which are not subject to Americold's Rates but must be calculated in accordance with what is stated in the Proposal or otherwise in a manner that is fair and reasonable;

"Contract" means the contract between Americold and the Customer including these terms and conditions, the Proposal and any other documentation identified in the Proposal as forming part of the Contract;

"Customer" means the Customer identified in the Proposal;

"Customer's Personnel" means any director, officer, employee, servant, contractor, subcontractor or agent of the Customer (other than Americold);

"Dangerous Goods" means goods that are classified as such by either IATA Dangerous Goods Regulations, the New Zealand Land Transport Rule: Dangerous Goods 2005, or other applicable New Zealand legislation or regulation, or if they might injure or damage people, property or environment. They include goods that are or may become poisonous, corrosive, volatile, explosive, flammable or radioactive.

"Default Interest Rate" means a rate which is 5% higher than the highest overdraft rate charged by Americold's principal bank for commercial loans in excess of \$100,000, as at the due date in respect of any overdue Charges;

"Effective Control" means the ability to control the composition of the board of directors or having more than 50% of the shares giving the right to vote at general meetings;

"Force Majeure" means any of the events set out below:

- an act of God;
- the outbreak of hostilities (whether or not accompanied by any formal declaration of war), riot, civil disturbance or acts of terrorism;
- the act of any government or competent authority (including the cancellation or revocation of any approval, authority or permit);
- fire, explosion, flood, earthquake, inclement weather, or natural disaster;
- the declaration of a state of emergency or the invocation of martial law having an effect on commerce generally;
- industrial action (including strikes and lock-outs);
- power failure;
- motor vehicle accident;
- the default of any suppliers under any material contracts;
- the unexpected breakdown of refrigeration plant, machinery or escape of refrigerant despite regular preventative maintenance; or
- any other cause, impediment or circumstance beyond the reasonable control of a party; and which makes performance more onerous or uneconomic;

"Good Operating Practices" means those practices, methods and acts engaged in or approved by an organisation which exercise that degree of safe and efficient practice, diligence, prudence and foresight reasonably and ordinarily exercised by skilled and experienced operators.

"Goods" mean the classes of goods identified in the Contract and any other goods accepted by Americold or Americold Personnel from the Customer or the Customer's Personnel from time to time and includes any Storage Media supplied by the Customer or the Customer's Personnel;

"GST" means goods and services tax pursuant to the *Goods and Services Tax Act 1985*;

"Insured Risks" means the risks of loss or damage to the Goods whilst in storage or transit caused by events including but not limited to fire, theft, storm damage, earthquake, lightning, explosion, malicious damage, flood, collision or overturning of the conveying vehicle and such other risks as may occur in the storage or transport of Goods whether or not in the nature of the foregoing, as Americold from time to time decides;

"IPL" means Icecap Properties NZ Limited, the landowner or lessee of the Sites.

"Non-Storage Services" means those services other than Storage Services more explicitly identified in the Proposal;

"Order" means an order placed by the Customer in a prescribed form or in a form acceptable to Americold and stipulating the Services which the Customer wishes Americold to supply;

"PPSA" means the Personal Property Securities Act 1999 ;

"PPS Law" means the PPSA, any regulations made under the PPSA and any amendment made at any time to any other law as a consequence of the PPSA or its regulations;

"Proposal" means the Proposal for Rates and Services attached to, or otherwise provided with, these terms and conditions.

"Proceeds" has the same meaning as in section 16(1) of the PPSA;

"Related Body Corporate" has the same meaning as the term "related company" has in Section 2(1) of the Companies Act 1993;

"Relevant Code of Practice" means the standard or regulation applying to this Contract (if any) identified in the Contract;

"Security Interest" has the meaning given to that term in Section 17 of the PPSA and to which the PPSA applies;

"Services" means:

- Storage Services;
- Non - Storage Services;
- Ancillary Services;
- Additional Expenses; and
- Any goods or equipment supplied along with, or incidental to or which form part of any of the above.

"Site" and **"Sites"** means the site or sites operated by Americold and/or Americold Personnel at which the Services (or some of them) will be provided;

"Storage Media" means pallets, roll cages, cartons, crates, drums or other re-useable containers or packaging used by Americold Personnel for the purpose of providing the Services;

"Storage Services" means those storage services more explicitly identified in the Proposal;

"Taxes" means any present or future tax, fee, levy, duty, charge, withholding, penalty, fine, impost or interest imposed by any government agency or authority including but not limited to any tax in relation to sales, use, property, value added, goods and services, turnover, stamp duty, interest equalisation, business, occupation, excise, income, profits or receipts;

"Transaction" means any transaction contemplated by or in connection with any Transaction Document;

"Transaction Document" means:

- the documents comprising the Contract;
- any document or agreement that the parties designate as a Transaction Document; and
- any document or written agreement that is entered into under any of the above.

17.2 Interpretation

In these terms and conditions and in the Contract:

- (a) the headings will not affect interpretation of these terms and conditions and in the Contract;
- (b) the singular includes the plural and vice versa, and a gender includes other genders;
- (c) any other grammatical form of a word or expression defined in these terms and conditions and in the Contract has a corresponding meaning;
- (d) a reference to "NZ\$", "\$NZ", "dollar" or "\$" is to New Zealand currency;
- (e) a reference to a party is to a party to the Contract;
- (f) a reference to a person includes a natural person, body corporate, partnership, trust, association or any government or governmental, semi-governmental, administrative or judicial body, tribunal, department, commission, authority, agency, minister, statutory corporation, instrumentality or any other entity;
- (g) a reference to a statute, ordinance, code or other law includes regulations, rules and other instruments under the statute, ordinance, code or other law and any consolidations, amendments, re-enactments or replacements;
- (h) a word or expression defined in the Companies Act has the meaning given to the word or expression in the Companies Act 1993;
- (i) the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;
- (j) a reference to any thing (including but not limited to any right) includes part of that thing;
- (k) any undertaking by a party not to do any act or thing will be deemed to include an undertaking not to permit or suffer the doing of that act or thing;
- (l) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of the relevant term or condition or part of the Contract; and
- (m) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

17.3 Inconsistency

If there is any conflict or inconsistency between any provisions in the documents that comprise the Contract, the conflict or inconsistency will be resolved in the following order of precedence:

- (a) these terms and conditions;
- (b) the Proposal; and
- (c) any other document comprising part of the Contract.