

Terms and Conditions for Storage with Smart Express Ltd for private individuals

1. DEFINITIONS

1.1 In this Agreement the terms set out below shall have the meanings as set out below:

(a) “Abandoned Goods” has the meaning given to it by clause 4.1.

(b) “Agreement” means this contract, and includes all schedules and annexures hereto.

(c) “Customer” means the person or entity named as Customer on the front page of this

Agreement, and any person acting on behalf of that person or entity.

(d) “Goods” means the goods and chattels (being tangible personal property) of the Customer to be stored by SXL.

(f) “GST” means tax arising under the Goods and Services Tax Act 1985.

(g) “SXL” means Smart Express Limited, company number 1594291.

1.2 For the purpose of interpretation or construction of this Agreement and unless the context otherwise requires:

(a) A right granted or reserved may be exercised from time to time and at all times;

(b) Any covenant not to do anything also constitutes an obligation not to suffer, permit, commit or cause that thing to be done;

(c) The obligations of each party contained or implied in this Agreement shall bind each such party and every two or more of them jointly and each of them severally. Where any party comprises more than one person, such persons shall be deemed to have entered into this Agreement both jointly and severally;

(d) Words importing the singular or plural number include the plural and singular number respectively. Words importing any gender include every gender;

(e) References to clauses are references to this Agreement’s clauses;

(f) Expressions defined in the main body of this Agreement have the defined meaning in the whole of this Agreement, including the front page;

(g) Clause and other headings are for ease of reference only and do not affect this Agreement’s interpretation;

(h) References to parties are references to parties to this Agreement;

(i) References to any statutory provision include any statutory provision which amends or replaces it, and any subordinate legislation made under it;

(j) References to anything of a particular nature either before or after a general statement do not limit the general statement, unless the context requires; and

(k) Expressions referring to writing shall be construed as including references to words printed, typewritten or otherwise reproduced.

2. STORAGE TERM

2.1 Upon receipt of the Deposit, and subject to clause 2.2, SXL agrees to store the Customer’s Goods for the Term, under the terms and conditions set out in this Agreement. The length of the Term can be extended

by the Customer by notice in writing at any time before the expiry of the current Term.

2.2 The Customer may terminate this Agreement at any time upon 7 days’ written notice. SXL may terminate this Agreement at any time upon 1 month’s written notice, or immediately upon written notice if the Customer is in breach of clause 5.1.

3. STORAGE CHARGES

3.1 Upon signing this Agreement the Customer must pay SXL the full amount due or one month’s total charges prior to the goods being received into storage.

3.2 The Customer must pay SXL its storage charges for storing the Goods at the rates set out on the front page of this Agreement (or as adjusted pursuant to clause 3.5) along with GST thereon. All payments must be made monthly in advance, or where applicable by the 7th day following the date of the SXL’s invoice.

3.3 In addition to the storage charges SXL is also entitled to charge the Customer for all expenses incurred by SXL in pursuing the Customer for payment of any sums owing by the Customer to SXL (including legal fees on a solicitor-client basis), all sale or disposal expenses incurred by SXL under clause 4, any expenses incurred by SXL under clause 5.3 or clause 6.3, and all further storage charges incurred until such time as full payment is made, which shall become due and payable by the Customer upon demand by SXL.

3.4 In addition to the storage charges and the sums set out in clause 3.3, without prejudice to SXL’s other rights, if any sums due to SXL under this Agreement are not paid within 7 days of their due date then SXL may charge and the Customer must pay interest on the amount owing. Interest will be calculated at the rate of 5% above SXL’s main trading bank’s 90 day bank bill buy rate as at the close of business on the date payment became due.

3.5 SXL may increase the storage charge rates at any time during the term of this Agreement. SXL shall give the Customer 1 month’s written notice of any such price increase before the same are effective. If the Customer does not wish to accept the increase in storage charge rates then the Customer may terminate this Agreement under clause 2.2.

3.6 The Customer hereby grants SXL a lien over the Goods as security for payment of all sums owing to SXL by the Customer, including (but not limited to) all storage charges incurred until such time as full payment is made, and all expenses incurred by SXL in pursuing the Customer for payment of any sums owing by the Customer to SXL (including legal fees on a solicitor-client basis).

4. ABANDONED GOODS

4.1 Any Goods that are not collected by the Customer within 7 days of the expiry of the Term (or earlier termination of this Agreement) and/or any Goods that have not had their storage charges fully paid for within 7 days of the due date for payment shall be deemed to be “Abandoned Goods”.

4.2 Without prejudice to SXL’s other rights, SXL may, after giving 7 days’ notice to the Customer, proceed to sell any Abandoned Goods (by private treaty or public auction or otherwise) and/or dispose of the Goods in any other manner (whether for value or not) as SXL sees fit.

4.3 Any sale or disposal of Abandoned Goods will be undertaken by SXL at the Customer’s risk and expense. SXL will not be liable for the method, costs or consequences of any sale or disposal of Abandoned Goods. SXL will not be obligated to obtain

the best price possible upon any sale or disposal, and no liability rests with SXL if a better price for the Abandoned Goods was obtainable.

SXL is not obligated to repair or maintain any Goods (for purposes of sale or disposal as Abandoned Goods or otherwise).

4.4 If SXL sells or disposes of the Abandoned Goods for value then the money received shall be first applied in payment of the costs incurred by SXL in the sale or disposal of the Abandoned Goods and/or in pursuing the Customer for payment of any sums owing by the Customer to SXL (including legal fees on a solicitor-client basis), and then any balance will be applied towards all outstanding storage charges, interest and other sums owing by the Customer to SXL. If there is any excess money after these payments then this will be paid to the Customer by posting payment to the address the Customer supplied to SXL.

5. SAFETY OF THE GOODS

5.1 The Customer warrants that the Customer is the owner (or authorised agent of the owner) of the Goods and that the Goods are not stolen, illegal, hazardous, inflammable, explosive, environmentally harmful, perishable or likely to attract vermin and that no article or thing of which SXL might take possession under this Agreement is dangerous or could become so over a period of time or in particular circumstances.

5.2 SXL is entitled to rely on any information given by Customer to SXL about the Goods, and is not required to check the Goods or their condition at any time. Notwithstanding the foregoing, SXL may inspect the Goods at any time if it considers it necessary to ensure the safety of SXL’s personnel or any property owned or stored by SXL, or if SXL considers that the Customer has breached clause 5.1.

5.3 SXL may (but is not obligated to) take any and all actions it considers (in SXL’s discretion) reasonably necessary to properly and safely alleviate any danger or harm to any person or property caused, or that may be caused, by the Goods. SXL may (but is not obligated to) take any and all actions it considers (in SXL’s discretion) reasonably necessary to ensure compliance with the law, and to ensure that the Goods are not stolen, illegal, hazardous, inflammable, explosive, environmentally harmful, perishable, likely to attract vermin, dangerous or likely to become so. SXL may charge the Customer for all expenses that SXL incurs in taking any actions under this clause.

6. COLLECTION OF THE GOODS

6.1 The Customer shall collect the Goods at the expiry of the Term or earlier termination of this

Agreement. SXL may allow collection by the Customer (or, if the Customer is a company, its agent) or any person acting with the Customer’s apparent authority, and SXL shall not be required to confirm the credentials of the person collecting the Goods.

6.2 The receipt or signed delivery docket of the person collecting the Goods shall be deemed to be a full discharge of SXL’s obligations under this Agreement, and once the Goods have been collected then any liability SXL may have had in relation to the Goods or the Customer shall cease.

6.3 In the event that any Court order or other mandatory instrument from a government authority is served on or presented to SXL and appears on its face to be duly and properly created, then SXL may comply with such order or instrument and the Customer shall have no recourse against SXL for complying.

SXL may charge the Customer for any expenses incurred by SXL in complying with any such order or instrument.

7. INABILITY TO ACCESS PREMISES

7.1 SXL shall not be liable to the Customer or any other party in the event that SXL is unable to access the premises in which the Goods are stored at any time or for any reason whatsoever (including but not limited to extremely severe weather, land movement, explosion, fire, leakage or spillage of a dangerous substance, malicious damage (or by any damage caused by any such events), and/or because of any restricted access cordon put in place as a result of any such events). Notwithstanding any such event or any disruption or expense caused to the Customer, the Customer shall remain liable for all storage charges incurred during the duration of any such event, until such time as SXL can legally and safely access the premises again.

8. WARRANTY

8.1 The Customer warrants that the Customer (and not SXL) is responsible for the Goods, and for any and all injuries, illnesses, damages, claims, liabilities and costs suffered by SXL (and its employees, officers, agents and affiliated parties) or any other person in connection with the Goods.

9. SXL'S LIABILITY

9.1 SXL will use all reasonable endeavours to store the Goods with care, and to allow the Customer to collect the Goods promptly. However, SXL does not guarantee that its services will be free of faults, and in no circumstance will SXL be liable in any way for any cause or event which SXL could not avoid or the consequences of which SXL could not prevent by the exercise of reasonable diligence.

9.2 The Goods will be stored at the Customer's risk, and the Customer releases SXL (and its employees, officers, shareholders, agents, and affiliated parties) from all liability in tort, contract and otherwise for or in respect of any loss, damage, expense or injury occasioned or suffered by the Customer and those claiming through the Customer due to or arising out of, in connection with or relating to the performance, non-performance, breach or any other matter arising out of the storage of the goods by SXL and/or this Agreement including by way of illustration and not in limitation, liability due to negligence or wilful act or default of SXL or others or the loss or destruction of the Goods.

9.3 SXL does not accept liability for any loss, damage, expense or injury occasioned or suffered by the Customer or anyone else howsoever caused, and to the maximum extent allowed by law, SXL excludes all liability to the Customer or anyone else for loss or damage of any kind (including, but not limited to, general, consequential, special or incidental loss or damages, loss of profits or loss of savings) the Customer or anyone else might suffer as a result of:

(a) any errors or omissions relating to the storage of the Goods and/or the collection of the Goods by any person; or

(b) the loss, destruction or diminution in value in any way of the Goods, due to any cause whatsoever; or

(c) any other reason whatsoever.

9.4 If the Customer is using SXL's storage services for commercial or business purposes, SXL excludes all liability that may arise under the Consumer Guarantees Act 1993.

9.5 For the avoidance of doubt, SXL shall not be liable for any costs that the Customer or anyone else may incur (including but not limited to legal costs,

telephone costs, telecommunications costs or other costs) in pursuing any remedy the Customer or anyone else may or may not have for any loss or damage the Customer or anyone else may or may not have suffered.

9.6 Where SXL's liability cannot be excluded by law, or if, notwithstanding this Agreement, SXL is held liable, then SXL's total liability to the Customer and those claiming through the Customer (through subrogated rights or otherwise) under any and all causes of action, whether in contract, tort or otherwise, shall be limited to the value of the storage charges actually paid by the Customer. If no storage charges were paid, then SXL shall have no liability whatsoever to any person or entity.

10. INSURANCE

10.1 The Customer acknowledges that they should arrange insurance for the Goods, and that the Goods are stored by SXL at the Customer's risk. The Customer further acknowledges that if SXL arranges its own insurance contract over the Goods (and SXL is not hereby agreeing to do so) then this does not mean that any sums received under that contract will cover the replacement cost of Goods or will be paid to the Customer or any person or entity claiming through the Customer.

11. INDEMNITY

11.1 The Customer shall indemnify, defend and hold harmless SXL and its parents, subsidiaries, affiliates and their directors, officers, employees, agents and subcontractors against all third-party claims or actions, and any liabilities, losses, expenses, damages, legal actions and costs (including, but not limited to, legal fees on a solicitor-client basis) related thereto, to the extent same arise out of:

(a) any breach or alleged breach of the Customer's representations and/or warranties contained in this Agreement; and/or

(b) any issue caused by the Goods and/or resulting from the storage of the Goods by SXL.

12. RESOLUTION OF DISPUTES

12.1 All differences and disputes which may arise between the parties touching or concerning this Agreement or any act or thing to be done, suffered, omitted or concerning the construction of this Agreement shall:

(a) in the first instance be referred by one party to the other and the parties shall use all reasonable endeavours to resolve the difference or dispute themselves through negotiating in good faith and without resort to further processes; and

(b) in the event that the parties cannot resolve the dispute through negotiation, then within 30 days of a written notice by either party that good faith negotiations have failed, the dispute shall be referred to mediation; and

(c) in the event that the parties cannot resolve the dispute through negotiation or mediation, then within 30 days of the final mediation meeting the dispute shall be referred to the arbitration of a single arbitrator (or two arbitrators if the parties are unable to reach agreement upon a single arbitrator) for resolution in accordance with the provisions of the Arbitration Act 1996.

12.2 Clause 12.1 shall not prejudice one party applying to obtain immediate injunctive relief and any ancillary order from the Court in the case of any breach or expected breach of this Agreement by another party, without the prior reference to

arbitration, notwithstanding the existence of any dispute whatsoever.

13. GENERAL TERMS

13.1 Except as expressly stated in this Agreement, all warranties, conditions and other obligations which may be imposed on SXL as a result of SXL taking possession of, storing, and allowing collection of the Goods, whether expressly or impliedly by statute, common law or otherwise, are hereby excluded to the fullest extent permitted by law or if not able to be excluded shall only apply to the minimum extent required by the relevant law.

13.2 This Agreement contains all the terms agreed between the parties regarding its subject matter and supersedes and excludes any prior agreement, understanding or arrangement between the parties, whether oral or in writing.

13.3 The Customer may not assign or delegate or otherwise deal with all or any of the Customer's rights or obligations under this Agreement. SXL shall have the right to assign or otherwise delegate all or any of its rights or obligations under this Agreement to any person.

13.4 SXL shall not be liable for any breach of its obligations under this Agreement where SXL has been hindered or prevented from carrying out its obligations by any cause outside its reasonable control, including by lightning, fire, flood, extremely severe weather, strike, lock-out, labour dispute, act of God, war, riot, civil commotion, malicious damage, failure of any telecommunications or computer system, compliance with any law, accident (or by any damage caused by any of such events).

13.5 No waiver by SXL of any default of the Customer under this Agreement shall operate or be construed as a waiver by SXL of any future defaults, whether of a like or different character. No granting of time or other forbearance or indulgence by SXL to the Customer shall in any way release, discharge or otherwise affect the Customer's liability under this Agreement.

13.6 Unless otherwise stated within this Agreement, notices to be given to either party shall be in writing and shall be delivered by hand, electronic mail (other than if the Customer is sending a notice to SXL for the purpose of legal processes), sent by fax or by pre-paid post, to the Customer at the address the Customer supplied to SXL or to SXL at its registered office.

13.7 No term of this Agreement is otherwise enforceable pursuant to the Contracts (Privity) Act 1982 by any person who is not a party to it.

13.8 Notwithstanding anything else contained or implied in this Agreement, the provisions of clauses 3.3, 3.4, 3.6, 4, 5.1, 8, 9, and 11 of this Agreement shall survive termination of this Agreement (for any reason whatsoever) and remain binding on the Customer.

13.9 If any provision in this Agreement is held to be unlawful, invalid or unenforceable, that provision shall be read down so as to be valid and enforceable or, if it cannot be read down shall be deemed severed and the severed part will not affect the validity and enforceability of any remaining provisions.

13.10 This Agreement shall be governed by and construed in accordance with New Zealand law and both parties hereby submit to the exclusive jurisdiction of the courts of New Zealand