

# CONDITIONS OF LICENCE AGREEMENT



## STORAGE

1. **The Storer:**
  - a. is deemed to have knowledge of the goods in the Space;
  - b. warrants that they are the owner of the goods in the Space, and/or are entitled at law to deal with them in accordance with all aspects of this agreement;
  - c. acknowledges that this agreement does not grant the Storer a lease of the Space;
  - d. warrants that it will only use the Space for the purposes of business storage;
  - e. acknowledges that the Space provided is approximately the size advertised but that due to building tolerances may vary slightly;
  - f. agrees that all time limits imposed on the Storer by this agreement **must be complied with strictly**.
2. **The Facility Operator (FO)** (which term includes its directors, employees, and agents):
  - a. does not provide any services other than a licence to use the Space to store goods and the FO facilitating the deposit and retrieval of goods from the Space;
  - b. does not and will not be deemed to have knowledge of the goods.

## COSTS

3. **Upon signing this agreement the Storer must pay to the FO:**
  - a. the Deposit if applicable (which will be refunded on termination of this agreement less any deductions authorised by this agreement);
4. **The Storer must pay:**
  - a. the Storage Fee which is payable in advance. It is the Storer's responsibility to see that payment is made directly to the FO, on time and in full, throughout the Storage Period. The FO does not invoice for monthly fees. The FO may increase the Storage Fee any time after expiry of the Storage Period. The FO will give the Storer 42 days' written notice of any increase. If the Storer does not agree to pay the increased fee, the Storer may terminate this agreement by giving the FO written notice any time before the end of the FO's 42 day notice period;
  - b. the cleaning fee is payable at the FO's discretion if the Space requires cleaning ("Cleaning Fee");
  - c. the late Payment Fee or fees which become payable each time to the FO is late as indicated on the front of this agreement ("Late Payment Fee");
  - d. any reasonable internal or external costs and disbursements incurred by the FO in collecting late or unpaid Storage Fees, maintaining the goods, selling the goods in enforcement of lien, or in enforcing this agreement in any way;
  - e. interest on outstanding Storage Fees at the rate of 15% per annum.

## ACCESS TO AND CONDITIONS OF USE OF THE SPACE

5. **The Storer:**
  - a. may access the Space during the access hours notified by the FO from time to time;
  - b. is solely responsible for securing the Space in a manner acceptable to the FO, and will secure the Facility's external gates or doors when entering or leaving outside access hours;
  - c. will not store any goods that are hazardous, illegal, stolen, inflammable, explosive, environmentally harmful, perishable or that are a risk to the property of any person;
  - d. will use the Space solely for the purpose of storage and must not carry on any business or other activity in the Space;
  - e. will maintain the Space by ensuring it is clean and in a state of good repair. If the Storer does not, the FO may deduct (at the FO's reasonable discretion) the Cleaning Fee from the Deposit and/or charge an additional Cleaning Fee;
  - f. will ensure the goods are dry, clean and free from vermin and food scraps when placed in the Space;
  - g. may not physically alter or damage the Space in any way (including the use of screws or nails) without the FO's prior written consent. If the Space is damaged, the FO may charge the Storer for any repairs and may deduct repair charges from the Deposit;
  - h. cannot assign this agreement or let any other person store goods in the Space;
  - i. will notify the FO in writing of any change to the Alternative Contact Person (ACP) or any change of contact details of the Storer or the ACP within 48 hours of the change;
  - j. grants the FO consent to discuss any default by the Storer with the ACP;
  - k. agrees to comply with all Facility rules and health and safety or other notices in respect of the Facility.
6. The FO may refuse access to the Space by the Storer where any money is owing by the Storer to the FO, whether or not a formal demand for payment has been made.
7. The FO reserves the right to relocate the Storer to another space of the same or similar dimensions as the Space for the proper management of the Facility. The FO will provide as much notice as reasonably practicable to the Storer of such a relocation and, unless agreed otherwise, the FO or its agent will carry out the relocation.
8. Any items left unattended in common areas or outside the Space at any time may, at the FO's reasonable discretion be sold, disposed, moved or dumped immediately and at the expense and liability of the Storer.
9. The Storer acknowledges in accordance with clauses 1.c, 2.a and 5.d that the FO is only providing a licence to use the Space provided by the FO for the sole purpose of storing goods. The Storer acknowledges that the Storer has been given the opportunity to assess for itself the suitability of the Space. In particular, no other undertakings or commitments are given or undertaken by the FO whether in tort, contract or other legal principle. All conditions and warranties, express or implied, statutory or otherwise, and other obligations and liabilities, including but not limited to warranties and conditions of fitness for purpose and satisfactory quality, are hereby excluded and negated to the fullest extent permitted by law.

## FO LIABILITY

10. The Storer acknowledges that as it is only using the Space for the purposes of business storage, the guarantees and remedies in the Consumer Guarantees Act 1993 ("the Act") are excluded.

11. The Storer acknowledges that the goods are stored at the sole risk and responsibility of the Storer who is responsible (subject to FO negligence) for any and all theft, loss, damage to, and deterioration of the goods (including from delivery or removal by the Storer or its agents), and shall bear the risk of any and all damage to goods stored in the Space caused by flood, fire, leakage or overflow of water, mildew, heat, spillage of material from any other space, removal or delivery of the goods, pest or vermin or any other reason.
12. If the FO is liable notwithstanding clauses 10 and 11, then to the maximum extent permitted by law the FO's liability under this agreement is limited to the total actual loss or damage which is not in excess of the Storage Fees paid by the Storer in the previous 12 months which gave rise to the breach under this agreement. The Storer acknowledges that it is aware of the limitations of liability set out in this clause and clause 13 and that, in all the circumstances, and taking into account the negotiations between the parties and their relationship, such limitation on the FO's liability is a reasonable one.
  - a. In no event shall the FO be liable for any indirect, incidental, consequential, special or economic loss, damages, costs, expenses or other liability including but not limited to loss of profits, loss of anticipated savings, and loss arising from delay, suffered by the Storer regardless of the form of the action, whether in contract, negligence or claims in tort, law or equity or arbitration, whether or not the possibility of such damages has been disclosed to the FO in advance or could have been reasonably foreseen by the FO.
  - b. Where loss, damage or injury is caused by the Storer, the Storer's actions or the Storer's goods, the Storer will indemnify the FO from all claims in contract, tort or otherwise for any loss or damage to the property of, or personal injury to the Storer, the FO, or the facility, third parties, and/or true owner of the goods stored in the Space, resulting from or incidental to the use of the Space by the Storer (including but not limited to storage of goods in the Space, the goods themselves and/or accessing the facility).
13. No oral statements made by the FO or its employees form part of this agreement. No failure or delay by the FO to exercise its rights under this agreement will operate to reduce those rights. A waiver of a right on any one occasion shall not be construed as a waiver of such right on any future occasion. All rights and remedies hereunder shall be cumulative and may be exercised singularly or concurrently. Notwithstanding the foregoing, no action, with the exception of an action for breach of the confidentiality obligations delineated in this Agreement, arising out of breach of this Agreement or transactions related to this Agreement may be brought by a party more than one year after the cause of action has accrued, regardless of the form.
14. This agreement constitutes the entire agreement between the FO and the Storer and supersedes and extinguishes all previous discussions, correspondence, negotiations, agreements, assurances, warranties, representations and understandings between them (both written or oral).

## STORER RISK AND RESPONSIBILITY

15. The Storer warrants that it will not store items which are irreplaceable, such as currency, jewellery, furs, deeds, paintings, curios, works of art, or items of personal sentimental value or that are worth more than \$2,000 (in aggregate) unless specifically itemised and covered specifically by insurance for the duration of storage.
16. The Storer is responsible for any loss, damage or injury to the Storer, the FO or the Facility, third parties, and/or the true owner of the goods stored in the Space, caused by the Storer or resulting from or incidental to the use of the Space by the Storer (including but not limited to the Storer or their agent's actions, storage of goods in the Space, the goods themselves and/or accessing the Facility).
17. The Storer is responsible (and must pay) for loss or damage caused by a third party who enters the Space (or the Facility) at the request or direction of the Storer or who otherwise accesses the Facility using the Storer's access card/code. If a Storer's access card/code is lost or stolen:
  - a. until the Storer notifies the FO of the loss or theft, the Storer's maximum liability under this clause for loss or damage caused by the lost/stolen access card/code is limited to the amount of the FO's insurance deductible; and
  - b. the Storer is not responsible for loss or damage caused by the lost/stolen access card/code after it notifies the FO of the loss or theft of the access card/code. The Storer's maximum liability under this clause is limited to the amount of the FO's insurance deductible.
18. If the FO enforces its rights under clause 17 and the loss or damage is caused by a third party outside the Storer's control, the Storer may notify the FO of this and the FO will then assess the merits of the Storer's claim to determine where liability lies.

## COMPLIANCE WITH LAWS

19. The Storer will comply with all relevant laws applicable to the use of the Space. This includes laws relating to the goods which are stored, and the manner in which they are stored. Liability for any breach of such laws rests absolutely with the Storer and includes all costs resulting from such breach.
20. If the FO believes at any time that the Storer is not complying with clause 19, the FO may (in its reasonable discretion):
  - a. take any action the FO believes necessary to ensure compliance, including inspection of the Space under clause 24 and/or termination under clause 26;
  - b. immediately dispose of or remove the goods in the Space at the Storer's expense; and/or
  - c. contact, cooperate with and/or submit the goods to the relevant authorities.The Storer agrees that the FO can take any such action at any time even though the FO could have acted earlier.

## INSPECTION AND ENTRY BY THE FO

21. The Storer consents to inspection and entry of the Space by the FO on 14 days' written notice.
22. The Storer acknowledges that the FO has the right to access the Space and may access the Space without notice, including to deposit or retrieve goods on the Storer's specific, general or implied instructions, and any other purpose the FO believes necessary for the enforcement of this Agreement or the proper operation of the Facility.
23. In the event of an emergency, the FO may enter the Space using all necessary force without the prior written consent of the Storer. The FO will notify the Storer as soon as practicable of such entry. The Storer irrevocably consents to such entry. For the avoidance of doubt, an emergency includes but is not limited to where the FO believes

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that clause 5.c or 19 is being breached, or where property, the environment or human life is, in the opinion of the FO, threatened, or to allow access, inspection or seizure by relevant authorities.

## DEFAULT

### 24. The Storer acknowledges that:

- a. All goods in the Space are subject to a general lien for all Storage Fees and any other amounts owing to the FO by the Storer. If the Storage Fee or any other sum owing by the Storer under this agreement is not paid in full within 42 days of the due date, the FO may enter the Space, retain the Deposit and/or take possession of any goods in the Space and may, at the FO's sole discretion, do any one or more of the following:
  - i. sell the goods in one or more lots by private arrangement or public auction to offset any unpaid Storage Fee, Cleaning Fee, Late Payment Fee, or costs associated with collection of Fees and/or disposal of the goods; and/or
  - ii. dispose of the goods in any manner as the FO sees fit, whether for value or not, if the goods are unsaleable, remain unsold after being offered for sale, pose a health and safety risk, or are of insufficient value to warrant a formal sale process; and/or
  - iii. if the FO believes in its reasonable opinion that it is a health and safety risk to conduct an inventory of the goods in the Space, the FO may decide to dispose of some or all of the goods without conducting an inventory.

The FO will give notice in accordance with this agreement and permit a reasonable period for the Storer to rectify a default before taking possession and selling/disposing of goods.

- b. If any money is recovered from the sale or disposal of goods, that money shall be used as follows:
    - i. first, to pay the costs of and associated with the sale or disposal of the goods;
    - ii. second, (subject to any rights under the Personal Property Securities Act 1999) to pay all Storage Fees and other fees, costs or disbursements owed to the FO and any other costs incurred by the FO in connection with re-entering the Space and selling or disposing of the goods;
    - iii. third, any excess will be sent to the Storer.
25. Notwithstanding clause 24.a, if the Storer is in breach of this agreement and the FO enters the Space for any reason and no goods are stored there, the FO may terminate this agreement immediately. The FO will send written notice of the termination to the Storer within 7 days of such entry.

## TERMINATION

### 26. This agreement may be terminated:

- a. by either party after the Storage Period has ended on written notice as indicated on the front page to the other party, or, if the FO cannot contact the Storer, to the ACP; and
  - b. by the FO immediately without notice if the Storer breaches clause 3, 4, 5 or 19; and
27. The Storer acknowledges that the Facility may use CCTV to view the inside & the outside of the Space and that the FO may use such CCTV footage as evidence of a breach of this agreement under clause 26.b.
28. If the Storer does not give the notice required to terminate under clause 26.a, the FO may deduct Storage Fees for the notice period from the Deposit.
29. On termination the Storer will:
- a. remove all goods in the Space by the date specified by the FO and leave the Space in a clean condition and good state of repair to the satisfaction of the FO; and
  - b. pay any outstanding moneys and expenses on default calculated by the FO as being owed to the FO up to the date of termination.
30. If the FO reasonably believes that the Storer will not carry out its obligations under clause 29.a or the Storer does not respond in a reasonable period to notices sent by the FO, the FO may, but is not obliged to, permit the ACP to access the Space to carry out the Storer's obligations under clause 29.a and the Storer irrevocably authorises the FO and the ACP to take this action.
31. If the Storer fails to remove all goods from the Space or the Facility on termination, the FO is authorised to (in its reasonable discretion) sell or otherwise dispose of all goods by any means 7 days from the termination date, regardless of the nature or value of the goods. The FO will give 14 days' notice of the intended disposal.
32. Liability for outstanding money, property damage, environmental damage and legal responsibility under this agreement continues to run beyond the termination of this agreement.

## NOTICE

33. Notices must be made in writing to the contact details set out on the front of this agreement. Notices given by the Storer to the FO must be actually received by the FO to be valid.
34. If the FO is not able to contact the Storer, notice is deemed to have been given to the Storer if the FO has sent notice to the Storer's last notified address or via any other contact method, including by text or email to the Storer or the ACP.
35. If there is more than one Storer, notice to or by any single Storer is agreed to be sufficient for the purposes of any notice requirement under this agreement.

## PRIVACY

36. The FO:
- a. may **collect** information about the Storer, including the Storer's Personal Information (as defined in the Privacy Act 1993), to assist in the provision of storage to the Storer, maintaining the Storer's account, and the FO's enforcement of this agreement in any way; and
  - b. may **disclose or search** for any information about the Storer, including the Storer's Personal Information, to Government departments, law enforcement agencies, including the police, any person who can demonstrate to the reasonable satisfaction of the FO a legal or equitable interest in the goods stored, liquidators, administrators or other persons appointed to administer the

Storer's financial affairs, debt collection services or credit reporting agencies, the ACP, agents for any of the above.

37. The Storer warrants that the Storer:
- a. has the right to disclose information to the FO about the ACP (including Personal Information) and that the FO may use this information as it would Personal Information collected about the Storer;
  - b. has informed the ACP that the Storer has made the disclosures referred to in clause 37.a.
38. The parties acknowledge and agree that the ACP may access and correct the information held by the FO in the same manner the Storer may correct its Personal Information.

## OUTSIDE STORAGE

39. The Storer is responsible for ensuring the goods are stored securely. It is recommended by the FO that the Storer satisfies themselves that a suitable locking mechanism has been utilized by the Storer, especially for towable vehicles such as trailers, boats, and caravans.

## GENERAL

40. The Agreement:
- a. May be amended or modified only in writing, agreed to and signed by the authorised representatives of the parties; and
  - b. shall be construed, performed and enforced in all respects in accordance with the laws of New Zealand and the Parties hereby submit to the exclusive jurisdiction of the New Zealand courts.
41. Neither party hereto shall be deemed to have waived any rights or remedies hereunder unless such waiver is in writing and signed by the authorised representative of the party.
42. The descriptive headings of this agreement are intended for reference only and shall not affect the construction or interpretation of the agreement. References to this agreement are inclusive of all schedules hereto.
43. If any provision of this agreement or its application to any party or circumstances shall, to any extent, now or hereafter be or become invalid or unenforceable, the remainder of this agreement shall not be affected thereby and every other provision of this agreement shall be valid and enforceable to the fullest extent permitted by law.