

TERMS OF BUSINESS

1. GENERAL

- 1.1 These Terms of Business:
- (a) are on behalf of Tranzport Solutions Limited ("TSL") (a subsidiary TSL of ELE Holdings Limited) together with its employees, agents, subcontractors, and assignees.
 - (b) comprise all the terms, representations and warranties between the parties, subject to any variations recorded in writing and signed by the parties.
 - (c) supersede any and all prior discussions between the parties.
 - (d) shall be binding on the successors and assigns of each party.
 - (e) may be amended, supplemented or varied by TSL at any time. Any updated Terms of Business shall be placed on TSL's website www.tranzportsolutions.nz.
 - (f) shall prevail over the terms and conditions set out in any other document used by TSL (unless acknowledged by TSL to override these Terms of Business).
- 1.2 The Client agrees to comply with the Terms of Business and any request for TSL's Services shall constitute acceptance of the Terms of Business. TSL agrees to supply Services as defined below in accordance with the Terms of Business.

2. SERVICES

- 2.1 TSL agrees to supply the Client with Drivers and/or Trucks to meet the needs of the Client, as represented in the Request for Supply Form. A Request for Supply Form must be completed for each new supply request.
- 2.2 TSL will use all reasonable endeavors to source, locate and place Drivers and/or Trucks to meet the needs of the Client. However, TSL shall not be liable for any losses or damages to the Client as a result of the failure of TSL to supply either a Driver and/or a Truck. TSL will rely on the information supplied by the Client to determine what Services the Client needs.
- 2.3 The Driver shall be under the direction and the control of the Client from the time of commencement of duties for the duration of the engagement. The Client is responsible for all acts, errors or omissions whether willful or negligent or otherwise of the Driver and TSL does not accept any liability for any loss, expense or damages arising from any act or failure to act by a Driver howsoever arising.
- 2.4 The Client agrees that under no circumstances will TSL be liable for any losses or damages to Truck, property or goods, howsoever caused by the Driver while on an Assignment. The Client hereby indemnifies and agrees to keep indemnified TSL against all losses and damages.
- 2.5 TSL accepts no liability whatsoever for any debts to the Client incurred by the Driver.
- 2.6 Drivers will not be required to use their own motor vehicle during an Assignment for the Client's purpose, but if required to do so, the Client will be liable for any loss, costs or damage suffered by the Driver/s to the extent that such loss, cost or damage are not covered by any insurance policy held by or on behalf of the Driver/s.
- 2.7 The Client agrees to indemnify TSL for any representations made by the Client to the Driver/s, including but not limited to, any loss or costs incurred as a result of any personal grievance by the Driver/s against TSL pursuant to the Employment Relations Act 2000 arising out of representations made by the Client to the Driver/s while on Assignment or otherwise.
- 2.8 The Client will not pay or remunerate a Driver in any way, including rewards and gratuities without the prior written consent of TSL.



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3. PAYMENT

- 3.1 All fees, rates and charges are as outlined in the Request for Supply Form. These may be varied at any time with notice in writing to the Client. The notice shall state the date from which the new charge or charges shall be effective. This includes renegotiated rates based on any change in the Client's mix and/or volume of work.
- 3.2 All fees, rates and charges stated in the Request for Supply Form are based on the circumstances applicable and stated in the Request for Supply Form. If circumstances change or are not as stated by the Client, TSL may alter the fees, rates and charges to suit the circumstance and the Client agrees to pay the amended costs.
- 3.3 Payment of the fees is due in accordance with the signed Credit Application. All prices quoted exclude GST.
- 3.4 Should payment not be made by the due date, interest will be charged at the rate of 1.5% per annum calculated daily on the balance owing from the due date to the date of payment. In addition an administration fee of 0.5% or \$500, whichever is greater, will be charged on the total outstanding balance at the due date to cover the additional costs of managing the overdue debt.
- 3.5 The Client will also be liable for any and all costs incurred by the TSL in the enforcement or attempted enforcement of its rights and remedies under the Terms of Business or otherwise. All debt collection costs incurred by TSL for the collection of any outstanding amounts owed shall be paid by the Client. TSL reserves the right to demand full settlement of the account if it remains overdue for more than 7 days.
- 3.6 Any invoice disputes or claims arising from invoices must be raised by the Client within 7 days from the invoice date. Disputes raised after this timeframe will not be accepted as legitimate disputes.
- 3.7 TSL reserves the right to withdraw any Driver and/or Truck from any Assignment with the Client immediately without notice for non-payment.
- 3.8 TSL reserves the right to impose charges on the Client to account for any fines or similar costs incurred by TSL or a Driver where such fine results from the conduct of the Client or matters under the Client's control, for example – overloading or non-registration of a Truck or Trailer.

4. TRANSFER OF DRIVERS TO THE CLIENT

- 4.1 All Drivers are under contract and engaged by TSL. If the Client wishes to employ any Drivers (directly or via any sub contractor, agent or any party associated or connected with the Client) while the Driver is under contract or within six months after the completion of the most recent Assignment, the Client will become liable for a TSL recruitment fee for each driver.
- 4.2 The recruitment fee is not less than 1.5% of the Driver's annual gross salary or \$10,000.00 plus GST, whichever is the greater.
- 4.3 An Offshore Driver, who is on visa and who is under contract to the Client by TSL cannot transfer to the Client at any time without written permission from TSL. If the Client employs an Offshore Driver, on a work visa, who was previously engaged with the Client via TSL, the Client will become liable for a placement fee of not less than 20% of the Driver's annual salary or \$15,000.00 plus GST, whichever is the greater.
- 4.4 No Drivers shall transfer to the Client's employment, unless the Client's account with TSL is paid in full as per the signed Credit Application.



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5. INSURANCE

5.1 The Client has the sole responsibility and liability for insuring the Client's goods, vehicles, materials and equipment including any third party goods, vehicles, materials or equipment. The Client must ensure that the Driver is sufficiently covered by the Client's insurance for acts done during any Assignment. As required the Client will update and amend their own insurance policies to provide appropriate cover. As it relates to this clause the Client shall indemnify TSL against any liability to, or claim by, any person, and all costs, expenses, losses, damages, liabilities and other amounts suffered or incurred by TSL caused through an incident involving the Driver whilst on assignment, arising out of or in connection with the performance or non-performance by the Driver.

6. HEALTH AND SAFETY

- 6.1 The Client must ensure compliance with all statutory requirements relating to the Services, except where these are formal records to be the responsibility of TSL.
- 6.2 It is agreed that the parties will communicate, coordinate and cooperate with respect to shared duties as represented in HSW Act.
- 6.3 The supervision of the Driver is the responsibility of the Client. The Client indemnifies TSL for any breach of the Client's Health and Safety obligations as set out below.
- 6.4 When the Client completes a Request for Supply Form they must ensure that all information provided is full, accurate and current. If anything changes in relation to the Services after the Request for Supply form has been given, the Client must notify TSL immediately.
- 6.5 The Client warrants and agrees that it:
- (a) will ensure that all tasks undertaken by a Driver are carried out in a safe and responsible manner under the supervision and control of the Client.
 - (b) has a Health and Safety policy and plan in place.
 - (c) will provide an induction and where required training to the Driver and will ensure the Driver is aware of any applicable policies or procedures in place by the Client.
 - (d) will ensure all persons are wearing the appropriate protective clothing and equipment at all times.
 - (e) will immediately notify TSL of any accidents or incidents involving Driver and/or Trucks.
 - (f) will, as requested by TSL, provide access for TSL to inspect the site (place of work) to ensure the conditions are safe and consistent with TSL's understanding of the site, the job requirement, the hazards and controls.
 - (g) will have in place and maintain an effective hazard identification and control process.
 - (h) where a safety induction course is required, will advise TSL so as to ensure the Drivers attend the induction and are made aware of any hazards likely to be encountered on the Assignment.
 - (i) will proactively manage all workforce health and safety in keeping with HSW Act.

7. CARRIAGE OF GOODS

7.1 The Client expressly warrants to the TSL that it is the owner or the authorised agent of any goods to be transported and that it is authorised to accept and does accept these Terms of Business not only for itself but also for and on behalf of all other persons who are or may hereafter become interested in the goods.



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- 7.2 The Client warrants that all goods will be adequately and securely packed, wrapped and cushioned for transportation. TSL takes no responsibility or liability for the condition of the goods prior to transportation nor for the packaging and securing of the goods in transit.
- 7.3 Insurance of the goods is the responsibility of the Client. Unless agreed otherwise in writing all goods are transported as "Limited Carriers Risk".
- 7.4 The Client must ensure that any high risk items or goods requiring particular care or special precautions for transportation are notified to TSL and sufficient precautions are put in place to avoid any harm to people, goods or equipment, including the Driver.
- 7.5 TSL retains the right to open any package, inspect any goods, and refuse Carriage to any person in respect of any consignment that by reason of being considered, in the opinion of TSL, as dangerous or other character of its contents is likely, in the sole judgment of TSL, to soil, taint, or otherwise damage other goods or equipment carried by TSL or that is economically or operationally impractical to transport, or that is improperly packed, wrapped or secured.
- 7.6 The Client will indemnify TSL against all losses, penalties, claims, damages (including damage or deterioration by or to any other consignment), costs and expenses of any kind whatsoever, howsoever caused or arising and, (without limiting the generality of the foregoing) whether caused or arising:
- (a) out of any default or negligence of the Client (including but not limited to a failure to comply with these Terms of Business);
 - (b) as a result of any claim by any third party;
- and/or suffered or incurred by TSL in connection with, or resulting from, the Carriage of goods or any matter or thing done said or omitted by TSL in connection with the goods.
- 7.7 Unless agreed otherwise the use or transportation of any Client asset, owned or otherwise, is done so at the Client's risk.
- 7.8 Subject to the provisions of the CCL Act, Sections 284, 285, 286, 287, 288, 289, 290, 291 and 292 shall apply to these Terms of Business only to the extent that they extend or enlarge TSL's rights and powers in terms of these Terms of Business. Sections 274, 275, 276, 277, 278, 279 and 280 are modified by these Terms of Business.

8. TRUCKS

- 8.1 If TSL agrees to provide a Truck (and a Driver) as part of the Services, it does so on the following terms.
- 8.2 The Client will be entitled to have the Truck (and Driver) for the Rental Period agreed.
- 8.3 The Client must not, subcontract or lend the Truck or any of its parts or give anyone any legal rights over the Truck.
- 8.4 The Client must bring to TSL's attention immediately or if this is not practicable, then as soon as it becomes reasonably practicable, any defects, damage, accident, breakdown or mechanical malfunction which occurs in relation to the Truck during the Rental Period. The Client agrees to indemnify TSL against all and any damage, costs, expenses, charges or liabilities incurred in relation to the Truck caused in whole or in part by the Client's failure to bring these matters to TSL's attention immediately.
- 8.5 The Client is responsible for all costs incidental to the use of the Truck including road tolls or similar charges.



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8.6 The Client agrees:

- (a) not to load or cause a Truck to be loaded with dangerous goods (including, without limitation, radioactive, verminous, infected or contaminated goods or goods which prevent the Truck subsequently carrying any other goods) without TSL's prior written consent and if the Client does so, the Client will be liable for all legal and other costs and consequences.
- (b) not load or cause the Truck to be loaded in contravention or in excess of the maximum carrying capacity applied to the Truck by any legal requirement and if the Client does so, the Client will be liable for all legal and other costs and consequences.
- (c) to keep TSL informed of any prosecution, inquest, accident or enquiry and promptly copy to TSL all associated communications relating to the Truck.
- (d) not to make or give any admission of liability or indemnity in respect of any accident, prosecution, inquest or incident as shall entitle the insurers of the Truck to repudiate the claim wholly or partly.
- (e) to promptly give all such information and assistance as may be required by TSL or TSL's insurers as a result of any such prosecution, inquest, accident or enquiry.

9. GENERAL PROVISIONS

- 9.1 The Client acknowledges and accepts that information requested from the Client is to enable TSL to assess the Client's request for services will not be disclosed to any third unless required by law, for debt collection or insurance purposes or for any other purpose reasonably necessary to give effect to these Terms of Business.
- 9.2 The Client will use their best endeavours to prevent the disclosure or publication of any confidential information of TSL, including the use of any confidential information to their own benefit.
- 9.3 No waiver by TSL of any breach of these Terms of Business will be deemed to be a waiver of any other or any subsequent breach. TSL's failure to enforce any provision of these Terms of Business will not be interpreted as a waiver of that provision.
- 9.4 The Client may raise a dispute with TSL, but will not withhold payment in lieu of services. Any dispute will be raised, discussed verbally and recorded in writing resulting in a formal record, including the agreed remedies and outcome. Where practical any dispute must be resolved within 48 hours of the dispute being raised.
- 9.5 Where the Client is a business (as defined by the Consumer Guarantees Act 1993), it agrees that it is acquiring the Services for the purpose of a business and that the Consumer Guarantees Act 1993 does not apply.
- 9.6 TSL may transfer, subcontract or assign to a third party any of its rights and/or obligations under these Terms of Business without the Client's consent. The Client must not transfer, subcontract or assign its rights or obligations under these Terms of Business without TSL's prior written consent.
- 9.7 The Client undertakes that no claim or allegation shall be made against any subcontractor, servant or agent of TSL which attempts to impose any liability whatsoever in connection with the performance, manner or performance or non-performance of TSL's obligations hereunder.
- 9.8 The Client authorises TSL to set-off, withhold or deduct without prior notice or demand any amount due or payable to TSL by the Client under these Terms of Business from any payment made by TSL to the Client in full or partial satisfaction of any amount owing to the Client by the TSL.
- 9.9 Subject to the provisions of the CCL Act imposing liability in respect of the loss of or damage to the goods TSL shall not be under any direct or indirect liability whatsoever (whether in contract, tort or otherwise) for any direct or indirect losses, penalties, damages, costs or expenses of any kind whatsoever (including indirect or consequential loss or damage) brought, claimed, suffered or incurred by the Client or any third party, in connection with, or resulting from,



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the Carriage of the goods or any matter or thing done, said or omitted by the TSL, in connection with goods or these Terms of Business howsoever caused or arising and (without limiting the generality of the foregoing) whether caused intentionally or arising as the result of negligence of TSL or otherwise.

- 9.10 Any notice to be given by TSL under these Term of Business shall be deemed to be received if delivered, or forwarded by email to the email address provided by the Client in its account application form or any other email address regularly used by the Client for communicating with TSL. Any notice to be given by the Client shall be personally served or by registered mail to TSL's Registered Office.
- 9.11 TSL shall not be liable to the Client for any failure to carry out its obligations or for any loss or damage suffered by the Client where such failure or such loss or damage is caused by mechanical breakdown of any equipment, weather conditions, strikes, lockouts, labour disputes or restraint of labour, act of God, war (whether declared or not), any act, regulation or restriction imposed by Government, riot or civil commotion, any act or omission of the Client, its servants, subcontractors or agents, or any cause beyond the control of TSL.
- 9.12 These Terms of Business are subject to the exclusive jurisdiction of New Zealand Courts.

10. DEFINITIONS AND INTERPRETATION

10.1 In these Terms of Business, unless the context requires otherwise:

"Assignment" means the period of time that a Driver is allocated to a Client to provide Services.

"CCL Act" means the Contract and Commercial Law Act 2017 as amended from time to time.

"Carriage" means the receipt, carriage and delivery of the Goods.

"Client" means the person, firm or company specified as the Client and which term includes any "Contracting Party" in terms of the CCL Act.

"Driver" means the TSL worker or workers provided to the Client as part of the Services.

"Goods" has the meaning given to it in the CCL Act. "

"HSW Act" means the Health and Safety at Work Act 2015 as amended from time to time.

"Rental Period" means the period of time that a Truck is allocated to a Client to provide Services.

"Services" mean the agreed services to be provided by TSL to the Client as set out in the Request for Supply Form and any other supporting documents.

"Truck" means any Truck or related equipment, or parts provided by TSL as part of the Services.

"Terms of Business" means these terms, and any variation or amendment made in accordance with these conditions.

