



These Terms of Trade (Terms) apply between Northland Debarking Limited (NDL) and each Customer who signs a credit application form or who otherwise receives log debarking and/or anti sap services from NDL. NDL may vary these Terms at any time by written notice. Such variations will be effective and deemed accepted by the Customer 30 days after the dispatch of the Terms to the Customer.

These Terms apply regardless of any terms specified in any document by the Customer. If any other term or condition is to apply or prevail over these Terms, it must be agreed to in writing by NDL in each case.

- 1 **Services to be provided by NDL**
 - 1.1 NDL may from time to time agree to provide any or all of the following services to the Customer following receipt of not less than 3 days' notice from the Customer of its requirements:
 - a) log handling (including unloading logs from truck) and stacking;
 - b) log debarking; and
 - c) anti-sap stain application to debarked logs.
 - d) Log loading onto shuttles, or road trucks.
 - 1.2 **Minimum Specification:** All logs supplied by the Customer must have a minimum small end diameter (SED) of 30 cm and a minimum length of 3 metres.
 - 1.3 After agreeing to provide any Services, NDL will process Customer's logs except when:
 - a) The customer is, or is likely to become, in breach of either the average or maximum 'removal time' requirements as outlined in these terms;
 - b) logs are delivered without prior arrangement with NDL;
 - c) logs are delivered on a recognised New Zealand public holiday;
 - d) logs do not meet the minimum specification, in which case the Services will only be provided after discussion and agreement in writing with NDL;
 - e) there is a force majeure event (as defined in clause 6.7(a)); and
 - f) there is any other delay caused by the Customer.
 - 1.4 **Exclusivity:** Unless otherwise agreed in writing, NDL's arrangements with the Customer are exclusive and the Customer must not, and must ensure any of its affiliated entities do not, procure Services from any other supplier.
- 2 **Price and Payment**
 - 2.1 Unless otherwise agreed in writing prior to the provision of the Services, the charges for the Services provided will, be as per NDL's Price Schedule of charges in force at the time of provision of the Services. The Customer acknowledges that the Price Schedule is available on request and that it is amended from time to time.
 - 2.2 NDL will invoice the Customer for the Services provided in the previous month.
 - 2.3 If NDL and the Customer have agreed in writing that the Services will be provided based on a Minimum Monthly Volume Requirement (**MMVR**) then if the actual volume of logs processed for the Customer in the preceding month is less than the MMVR, NDL will invoice the Customer for an amount being the difference between the MMVR and the actual volume of logs processed for the Customer for that relevant month multiplied by the MMVR Rate as agreed between NDL and the Customer.
 - 2.4 Unless otherwise agreed in writing, the Customer will pay for the Services in full by the 20th of the month in which the Customer receives NDL's invoice.
 - 2.5 Any payments not made on their due date will bear interest at the rate of 15% per annum calculated on a daily basis. Further, any expenses, disbursements and legal costs incurred by NDL in enforcing any rights in the Agreement shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.
 - 2.6 The acceptance by NDL of any arrears of monies payable under the Agreement does not constitute a waiver of the Customer's continuing obligation to pay such other monies.
 - 2.7 **Immediate Payment:** Notwithstanding anything contained in the Agreement, all payments (whether due or not), shall become immediately due to NDL if the Customer:
 - a) fails to comply with these Terms and/or the Agreement;
 - b) commits an act of bankruptcy;
 - c) enters into an arrangement or composition with its creditors;

- d) being a company:
 - i) does anything that would make it liable to be put into liquidation;
 - ii) passes a resolution or make an application for the liquidation of the Customer;
 - iii) has a receiver or statutory or official manager, or a person in a similar position, appointed over all or part of the Customer's assets and undertaking; or
 - iv) commits any act of insolvency.

2.8 **Credit:** NDL may grant the Customer credit at NDL's sole discretion pursuant to NDL's standard application of credit. In which case the terms and conditions of that credit agreement shall apply to payment by the Customer.

2.9 **GST:** All prices listed are exclusive of GST, which will (if applicable) be payable by the Customer in addition to the Supplier's charges for the Services.

2.10 **Audit:** The Customer acknowledges that:

- a) NDL invoices the Customer for the Services provided, based on the volume of logs processed as advised to NDL by the Customer's log marshaller;
- b) it will ensure that the Customer's log marshaller accurately records and notifies NDL of the volume of logs processed;
- c) NDL reserves the right from time to time to perform an audit of the volume of logs processed, in order to demonstrate to NDL's reasonable satisfaction that the Customer's log marshaller is accurately recording and notifying to NDL, the actual volume of logs processed; and
- d) NDL will meet its costs of any audit unless the audit discloses a breach of these terms. In that case, the Customer will pay to NDL within 5 business days of completion of an audit, NDL's audit costs and any amounts underpaid by the Customer on an invoice.

3 Customer's obligations

3.1 **Arrival time (for DASS services only):** The Customer will use its best endeavours to ensure it delivers all logs to NDL's debarking facility at 32 Marsden Bay Drive, Whangarei (*Facility*) within four days of the logs being felled.

3.2 **Average Removal Time Target:**

- a) The Customer acknowledges that NDL does not provide log storage and requires customers to remove their processed logs within an average time of 12 hours or less, to ensure the plant can effectively and safely operate. Any delays in removing their processed logs according to these Term of Trade will impact NDL's ability to operate, and the Customer is liable for costs and damage according to these Terms of Trade.
- b) NDL will notify the log marshaller when the Customer's logs have been processed (*Process Notice*). Notice given to the log marshaller in accordance with this clause will be deemed to have been given to the Customer.
- c) The Customer acknowledges that NDL maintains a record of the total time taken by the Customer to remove its logs from the Facility and NDL reserves the right to reject any future request by a Customer to provide the Services, in its absolute discretion, including if the Customer's average time for the removal of its logs from the Facility exceeds 12 hours of receipt of the Process Notice.
- d) The average time is assessed as the average time taken to remove rows following Process Notice, over the past rolling 30 days.

3.3 Maximum removal time

- e) The Customer will unless otherwise agreed with NDL, procure the removal of its logs within 24 hours of receipt of the Process Notice from NDL issued in accordance with clause 3.2a).
- f) If the Customer does not procure the removal of its logs within the specified removal time, NDL may arrange for the removal of the relevant logs to the Customer's allocated space at Northport, Marsden Point. The Customer must reimburse NDL the additional storage fee, as per NDL's Price Schedule of charges in force at the time of provision of the Services.
- g) If the Customer does not procure the removal of its logs within 7 days of receipt of the Process Notice, NDL reserves the right to destroy, sell, remove or otherwise dispose of the relevant logs as NDL considers appropriate, without any requirement to notify the Customer. NDL will not be liable to the Customer and the Customer has no right to seek any remedy against NDL for the loss or destruction of the logs.

3.4	Any logs that are not processed by NDL under these terms, must be promptly removed from the Facility upon NDL's request. All costs of storage (including any costs to transport the logs to and from a storage site) will be reimbursed by the Customer to NDL. NDL will not be responsible for any damage caused to or loss of, any logs whilst stored by NDL under the Agreement.		Customer's obligations, warranties and indemnities and potential liabilities pursuant to these Terms, such insurance allowing a claim to be made related to these Terms either during the currency of these Terms or after its cessation. The Customer will provide NDL with a certificate of currency for this insurance at any time when requested by NDL.
3.5	<p>Minimum Monthly Volume Requirement (MMVR):</p> <p>a) If agreed in writing between NDL and the Customer prior to the provision of the Services, the Customer will require Services be provided for the Minimum Monthly Volume Requirement and acknowledges that clause 2.3 will apply.</p> <p>b) For each day that the Customer exceeds the Average Removal Time Target, NDL will need to reduce processing by MMVR/30 and will not be able to recover the production shortfall over the balance of the month. The customer remains liable for the difference that this breach causes between the MMVR and the actual volume of logs processed.</p>	3.7	<p>The Customer warrants to NDL that it will at all times comply with:</p> <p>c) all applicable laws, regulations and codes including the Health and Safety at Work Act 2015, the Resource Management Act 1991 and/or the Maritime Transport Act 1994;</p> <p>d) all directions, requirements and instructions notified to it by NDL in respect of health, safety and security including producing, on demand, evidence that it is satisfying its obligations under the Health and Safety at Work Act 2015. The Customer acknowledges that this may include producing, on demand, evidence that it is satisfying its obligations under applicable laws.</p>
3.6	<p>The Customer warrants that:</p> <p>a) it will orient and position its logging trucks (<i>Logging Trucks</i>) so as to facilitate the most efficient loading, or unloading of the Logging Trucks;</p> <p>b) the Customer and drivers will not permit or engage in any behaviour at the Facility that is illegal, noxious or offensive or that may:</p> <p style="margin-left: 20px;">i) cause a nuisance, damage, disturbance, obstruction or interference to NDL or other users or occupiers of the Facility;</p> <p style="margin-left: 20px;">ii) adversely affect the insurance policy maintained by NDL or cause a claim to be rejected or the premium thereof to be increased.</p> <p>c) all Logging Trucks will be registered and have all relevant warrants of fitness as required by applicable laws;</p> <p>d) all drivers who are operating a Logging Truck at the Facility have a current New Zealand driver licence in the appropriate class of operating a Logging Truck;</p> <p>e) Logging Truck drivers will follow all reasonable directions, orders, instructions or otherwise given by NDL at the Facility; and</p> <p>f) the Customer maintains insurance policies, with an insurer approved by NDL, sufficient to cover all of the</p>	3.8	<p>The Customer warrants to NDL that it will not do or omit to do anything or to use materials, substances or processes which breaches or is likely to breach any duty or obligation under the Resource Management Act 1991 (including subsequent amendments) or which is likely to result in the issue of an abatement order or enforcement proceedings under the Resource Management Act 1991.</p>
		3.9	<p>Indemnity: The Customer agrees to indemnify NDL from and against all losses, costs, expenses, claims, demands, liabilities, damages, actions and proceedings suffered by or commenced against NDL (or its agents, representatives, employees and contractors) which arise (in whole or in part) out of or in connection with the failure of the Customer, its drivers, agents, subcontractors or employees to comply with the provisions of this clause and any other provisions of these Terms.</p>
		4	<p>Performance Standards</p>
		4.1	<p>All logs will be debarked to in accordance with section 2.1.2 of the International Standard for Phytosanitary Measures 39 (ISPM 39) for the International movement of wood (Adopted 2017; published 2017).</p>
		5	<p>Liability</p>
		5.1	<p>Subject to the other provisions of this clause 5 (in particular 5.3 and 5.8, NDL will be liable to the Customer for direct physical loss or damage caused by NDL's negligence.</p>

- 5.2 Except as expressly specified in these Terms, NDL will not be liable or responsible to the Customer (or its agents, representatives, employees and contractors) for any losses, costs, expenses, claims, demands, liabilities, damages, actions and proceedings (whether direct or indirect) suffered by or commenced against the Customer (or its agents, representatives, employees and contractors), or for any loss of profits, loss of opportunity, consequential loss, indirect loss or pure economic loss, which arises from or are in connection with the negligent performance of Services in whole or in part, breach of these Terms, any personal injury, illness or death to any person or damage to any property or vehicle or any other loss or damage of any kind whatsoever or otherwise. If, despite this provision, NDL is held to be liable for any loss, its liability will be limited in accordance with clause 5.3, 5.7 and 5.9.
- 5.3 If the Customer proves that any direct physical loss or damage it has sustained has been caused by the negligence of NDL, NDL's liability to the extent of such negligence, will be the lesser of:
- a) the market value of any property lost or damaged; or
 - b) the reasonable cost of repair of such property; or
 - c) the amount paid by the Customer for Services in the month preceding the incident giving rise to liability,
- except that in no circumstances will NDL's liability for the Customer's loss arising from NDL's provision of the Services (whether arising out of any one event or an interconnected series of events) exceed \$100,000 (including GST).
- 5.4 The Customer agrees to keep NDL, its employees, agents and sub-suppliers indemnified from and against all proceedings, claims, demands, losses (including loss of income and consequential losses), damage, costs, expenses, judgments, awards or orders incurred by NDL or for which NDL may suffer or become liable in respect of, or arising from or in any attributable to matters falling outside the limitations in this clause 5.
- The indemnity referred to in this clause 5.4 continues to apply notwithstanding that the loss, damage or injury was also contributed to by an act of God, inevitable accident, without negligence or wrongful act or omission on the part of any person or otherwise due to the circumstances beyond the control of NDL.
- 5.5 Notice of any claim for any loss must be given in writing to NDL within 30 days of the loss arising, or within 30 days of when the loss was or should have been ascertained, whichever is earlier.
- 5.6 NDL will be discharged from all liability and from any claims the Customer has or might otherwise have against NDL arising directly or indirectly from Services provided under these Terms, unless notice of claim is given in accordance with clause 5.5 and unless proceedings are commenced by the Customer and serviced upon NDL within one year of the Customer's cause of action against NDL arising.
- 5.7 Notwithstanding any other provision of these Terms, NDL will not be liable or responsible for:
- a) any loss or damage or failure to perform the Services which arises in whole or in part by force majeure which shall include (but not be limited to) an act of God, interruption to the supply of electricity, gas or water to NDL, weather conditions, natural disasters, strikes, lockouts (whether or not involving NDL's employees), fire, war, terrorist acts, civil commotion, inability to obtain goods, Services or supplies including the imposition of any export or import bans or acts, orders, regulations, or requirements of any lawful authority or any person purporting to act on behalf of any such authority or any other cause beyond the reasonable control of NDL (*force majeure event*);
 - b) any loss, damage, expense, injury or accident to any property or person to the extent that this has been caused by the action or inaction of the Customer (including any failure by the Customer to comply with any of these Terms);
 - c) loss or damage of any description to any goods or property caused by fire or attempts to extinguish such fire within the Facility and NDL may recover from the Customer costs and expenses incurred in minimising loss or damage resulting from such fire, including but not limited to costs and expenses associated with cleaning up the Facility after such fire or attempts to extinguish such fire.
- 5.8 Every exemption, limitation, defence, immunity or other benefit contained in this clause to which NDL is entitled will also be held by NDL to the benefit of, and will extend to protect, each of NDL's employees, agents, contractors or sub-contractors (excluding the Customer, the Customer's employees, agents, contractors and sub-contractors).
- 5.9 **Business purposes**
- If the Customer is carrying on business, the Customer represents and warrants that it is purchasing the Services from NDL under these Terms solely for business purposes and NDL and the Customer agrees that nothing in the

Consumer Guarantees Act 1993 shall apply to the provision of the Services to the Customer.

6 Agency

6.1 If these Terms are entered into by an agent of the Customer (including a log marshaller) on behalf of the Customer, the agent warrants to NDL that it has the authority to enter into these Terms with NDL and shall indemnify and hold harmless NDL from any loss suffered by NDL as a result of the agent's lack of authority and the Customer's failure to be bound and shall be personally liable hereunder as if it were the Customer.

6.2 Nothing in the Agreement evidences or should be interpreted as constituting either party an agent, partner or employee of the other and neither party may pledge the credit of the other nor represent to anyone that:

- a) it is the other party or is an agent, partner or employee of the other party; or
- b) it has any power or authority to incur any obligation of any nature on behalf of the other party.

7 Termination

7.1 NDL may terminate its provision of Services to the Customer:

- a) immediately if the Customer breaches any of these Terms and/or the Agreement (including payment of monies owing by the due date) and fails to remedy the breach within ten business days of notice from NDL of the breach;
- b) immediately without notice in event of the liquidating, receivership or insolvency of the Customer;
- c) on two business days' notice if any of NDL's facilities are, in the opinion of NDL damaged or destroyed to such an extent as to render them incapable of use by the Customer in terms envisaged by these Terms and/or the Agreement, by giving two business days notice in writing to the Customer, but any such termination shall not affect the Customer's obligations to pay any amounts due to NDL, or the Customer's liability for any breach of these Terms;
- d) on two business days' notice if the Customer's average time for the removal of its logs from the Facility in any consecutive three month period, exceeds 12 hours of receipt of the Process Notice; and
- e) without cause by giving the Customer at least 30 days' written notice of termination.

8 Termination by Customer

The Customer may terminate the Agreement immediately at any time by the Customer giving written notice to NDL if NDL:

- a) has not remedied a material breach of the Agreement within 10 business days of notice requiring the breach to be remedied; or
- b) becomes insolvent or bankrupt, has a receiver appointed over all or some of its assets, or a resolution is passed for the liquidation of that party.

9 Consequences of termination

9.1 On termination or expiry of the Agreement each party will immediately return to the other party any documents, records or information created or made available in connection with the Agreement.

9.2 Termination of the Agreement will not operate as a waiver of any breach of the Agreement and will be without prejudice to any rights, liabilities or obligations of either party which have accrued up to the date of termination. This clause together with any other provisions which expressly or by implication are intended to survive termination or expiry, will continue in force notwithstanding termination or expiry.

10 Subcontracting

10.1 The Contractor will ensure that all contractors employed by it will cooperate with NDL and will comply with the safety precautions required by NDL at all times.

10.2 NDL may appoint a subcontractor (*Contractor*) to perform any of the Services without the prior approval of or notice to the Customer. The benefit of these Terms is intended by the Customer and NDL to extend to any Contractor appointed by NDL and to be enforceable by that Contractor pursuant to the Subpart I of the Contract and Commercial Law Act 2017.

11 No Assignment

The Customer shall not assign the benefit of these Terms or otherwise deal in any manner with the Agreement.

12 Privacy Act

NDL may collect and hold any personal information received from the Customer or any other source for marketing, product development, account administration and credit purposes. The Customer authorises NDL to disclose personal information held by it for the purposes set out above to any other parties including NDL's related companies and shareholders. The Customer understands that it has a right of access and may request correction of personal information held by the Supplier about it.

13 Intellectual Property

- The supply of Services by NDL to the Customer does not give the Customer the right to use, sell, disseminate or duplicate any of NDL's trademarks, copyrights, designs or other intellectual property rights (unless agreed otherwise by NDL in writing).
- 14 **Confidentiality**
- The Customer and NDL will keep confidential the terms of the Agreement and any information made available in connection with the Agreement unless prior written consent is given by the other party or unless disclosure is required by law or the requirements of any stock exchange.
- 15 **Resolving Disputes**
- 15.1 The parties will meet and discuss in good faith and without prejudice any dispute between them arising out of the Agreement.
- 15.2 If any difference is not resolved by discussion within 10 business days, either party may require the matter to be referred to mediation by notice to the other party setting out the general nature of the difference. Where mediation is agreed upon, the parties will:
- a) agree on the appointment of a mediator;
 - b) each appoint a representative with authority to reach an agreed solution;
 - c) act in good faith and use their best endeavours to reach a resolution;
 - d) equally bear the mediator's costs.
- 15.3 If the parties fail to settle the dispute by mediation within 30 days of the matter being referred to mediation, then either party may initiate litigation to resolve the dispute. A party must not issue any legal proceedings (other than applying to a court for urgent or equitable relief) relating to a dispute, unless the process under clause 15.2 has been carried out.
- 15.4 Either party may take immediate steps at any time to seek urgent injunctive or equitable relief before an appropriate court.
- 16 **Notices**
- 16.1 All notices under the Agreement will be given in writing and delivered by hand or by ordinary mail or email:
- a) to NDL at Northland Debarking Limited, 32 Marsden Bay Drive, Whangarei or as otherwise notified to the Customer by NDL;
 - b) to the Customer at any of the Customer's last known place of business whether in New Zealand or elsewhere, or at the address of the Customer's last known agent in New Zealand.
- 16.2 Any notice will be deemed to be duly given or made:
- a) if delivered by hand, when delivered;
 - b) if sent by e-mail, on receipt of transmission if received on a business day or otherwise at the beginning of the first business day following transmission; or
 - c) if sent by post, on the 3rd business day following posting.
- 17 **General**
- 17.1 **Entire Agreement:** These Terms and any Credit Application (together the Agreement) constitute the entire agreement between the parties relating to the Services and replaces all earlier negotiations, representations, warranties, understandings and agreements between them (whether oral or written) relating to the Services.
- 17.2 **Log Marshalling:** NDL does not provide any log marshalling services. If the Customer wishes to obtain marshalling services it must make its own arrangements with other contractors. NDL does not accept any responsibility or liability whatsoever for the provision of such services or for the acts or omissions of any person providing cargo services and the Customer will indemnify and hold NDL harmless from any costs, expenses, loss or damage (including any costs incurred by NDL due to the cessation or suspension of its Facility) suffered by NDL due to the acts or omissions of the Customer's log marshaller or non-compliance with these Terms.
- 17.3 **Errors:** Errors and omissions of a clerical nature in quotations, invoices or statements shall be subject to correction.
- 17.4 **Waiver:** No waivers, exceptions, variations or addendums to these Terms will be recognised by NDL unless they are in writing and signed by a duly authorised representative of NDL.
- 17.5 **No impairment to remedies:** Failure or omission by a party at any time to enforce or require strict or timely compliance with any provision of the Agreement will not affect or impair that provision in any way or the rights of that party to avail itself of the remedies it may have in respect of any breach of that provision or any other provision.
- 17.6 **Non-performance:** Notwithstanding any other provision in the Agreement, non-performance by either party of any of its obligations under the Agreement will be excused, without liability for non-performance during the time and to the extent the performance is prevented, wholly or substantially, by an event beyond the reasonable control of the party claiming the benefit of this clause. Performance of the obligation is to resume as soon as the event has ended, and if the event has not ended

within 14 days, the other party may terminate the Agreement immediately on written notice.

17.7 **Variations:** Any Services supplied by NDL to the Customer will be supplied on the terms set out in the Agreement, unless a variation to the Agreement, expressly stated as being a variation of the Agreement, is agreed by NDL and the Customer. Nothing in any sales or delivery docket or other document furnished by NDL will apply to the purchase of Services by the Customer.

17.8 **Severance:** Each term in the Agreement is separately binding. If for any reason either party cannot rely on any term then all the other terms remain binding.

17.9 **Governing Law:** The Agreement will be governed by and interpreted in accordance with the laws of New Zealand and the parties submit themselves to the exclusive jurisdiction of the courts of New Zealand.

18 Interpretation

18.1 In these Terms:

a) words beginning with capital letters are to be interpreted with reference to the use of those words that are defined

elsewhere in these including in the Key Terms (if any);

- b) Agreement means the Key Terms (if any), these Terms and includes any amendments to the Agreement from time to time;
- c) the singular includes the plural and vice versa;
- d) references to “including” and other similar words are not to be treated as words of limitation;
- e) “business day” means any day other than a Saturday, Sunday or statutory holiday in New Zealand;
- f) “Key Terms” means any Key Terms agreed between NDL and the Customer to form part of the Agreement;
- g) “MMVR” means the minimum monthly volume requirement as may be specified in the Key Terms (if any);
- h) in the event of any inconsistency between these Terms and the Key Terms, the Key Terms shall prevail.