

## **Outward Escrow Services – Terms of Use**

These terms of use (**Terms of Use**) bind the Users and will govern the use of the Services for a Trade from the time at which the Users agree to be bound by these Terms of Use within the Platform for a Trade until either the Trade is complete in accordance with these Terms of Use or (for any reason) the Trade is cancelled.

Please read these Terms of Use carefully.

Outward reserves the right to amend these Terms of Use from time to time. Such amendments will be effective and will govern any Trades agreed from the time at which Outward uploads the amended Terms of Use on the Website. It is the obligation of the Users to read and understand any amended Terms of Use.

By registering to use the Services, the Buyer and the Seller acknowledge (and any individual registering on the behalf of a Buyer or Seller acknowledges) that they have read and understood these Terms of Use.

The Users shall operate the Platform in accordance with the Outward Operating Manual and agree that any material non-compliance with the Outward Operating Manual will be a breach of the User's obligations under these Terms of Use.

### **1. Definitions**

In these Terms of Use:

**Account** means the bank account provided by the Buyer and Seller (respectively) to Outward.

**AML Act** means the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

**Bill of Lading** means the document (that, among other things, serves as a document of title) provided by the Shipping Line to the Seller when the Merchandise is Shipped.

**Business Day** means any working days Monday through Friday which are not legal holidays in Wellington, New Zealand.

**Buyer** means the buyer of Merchandise from the Seller.

**Commercial Invoice** means the commercial invoice provided by the Seller to the Buyer for the Trade in accordance with standard practice for international trade.

**Direct Payment** means payment made directly from the Buyer to the Seller and not with the use of the Escrow Services.

**Escrow Account** means the bank account(s) in which the Escrowed Funds are deposited and held by the Trustee.

**Escrow Fees** means the fees charged by Outward to perform and deliver the Services.

**Escrowed Funds** means, subject to clause 2.3, all funds deposited into the Escrow Account for a Trade.

**Escrow Services** means the services provided by Outward under these Terms of Use relating to the use, by the Buyer and Seller, of the Platform and specifically the Escrow Account in order to facilitate payment for Merchandise under a Trading Agreement.

**Express Release Bill** means the document issued by the Shipping Line that details the instructions relating to the shipment of the Merchandise. Such documents are commonly referred to as an "Express Bill of Lading", "CRM", "Air Waybill", "Sea Waybill" or "Waybill" (depending on the transport mode). Typically the Express Release Bill will show the names of the consignor and consignee, the point of origin of the consignment, its destination, route, and any conditions of contract of carriage.

**Force Majeure Event** means an event or circumstance beyond the reasonable control of a party, which results in or causes the failure of that party to perform any of its obligations under these Terms of Use, provided that lack of funds will not be considered a Force Majeure Event.

**Initial Payment** means the first payment for a Trade of Escrowed Funds transferred by the Buyer into the Escrow Account in accordance with the Payment Milestones.

**Latest Shipment Date** means the date, agreed in the Trading Agreement and reflected in the Outward Trade Screens, by which the Seller is to have Shipped the Merchandise.

**Merchandise** means the merchandise (being the goods, products or otherwise) being bought and sold by the Users in the transaction underlying the Trade.

**Outward Operating Manual** means the operating manual prepared by Outward for the Platform (as amended from time to time).

**Outward Trade Screens** means that section of the Platform where Users provide the commercial details previously agreed between the Users which are relevant to the Trade, this will likely include the Payment Milestones, the Trade Value, the Pre-Shipping Documents and the Latest Shipment Date.

**party** means either Outward, the Buyer or the Seller and **parties** means two or more.

**Payment Milestones** means the milestones agreed between the Users in the Trading Agreement and reflected in the Outward Trade Screens that specify the timing of payments and the amounts payable from the Buyer to the Seller either made to the Escrow Account or through Direct Payment.

**Platform** means the Outward platform and ecosystem housed on the Website.

**Pre-Shipping Documents** means those documents which the Seller discloses in the Outward Trade Screens for the Buyer's approval and confirmation before the Merchandise is Shipped, which must include the Trading Agreement and the Commercial Invoice.

**Relevant Jurisdictions** means, for a Trade, the jurisdictions in which the Buyer and Seller are incorporated or registered and (if different) the jurisdictions in which the Merchandise is exported from and imported to.

**Seller** means the seller of the Merchandise to the Buyer.

**Services** means the Trade Management Services and Escrow Services provided by Outward on the Platform under these Terms of Use.

**Shipped** is used in these Terms of Use in accordance with clause 2.2.

**Shipping Line** means the shipping line (including via sea, air or land) that issues the Bill of Lading or Express Release Bill to the Seller upon the Merchandise being Shipped.

**Telex Release** means the message that is sent by the Shipping Line (or agent) from origin to their agent or office at destination to acknowledge that the Seller has surrendered the Bill of Lading that has been issued to the Seller.

**Trade** means an individual transaction for which a Buyer and Seller use the Services on the Platform.

**Trading Agreement** means any agreement, being predominately (but not exclusively) in the form of a pro-forma invoice, entered into between the Users which governs the underlying transaction, trade or engagement for which the Users are seeking to utilise the Platform.

**Trade Management Services** means any services provided by Outward under these Terms of Use required in order for Outward to provide the Escrow Services, which includes access to the Platform and the communication tools within the Platform.

**Trade Value** means the aggregate price the Buyer shall pay to the Seller for the Merchandise under the Trade, as reflected in the pro-forma invoice and / or the Commercial Invoice (but does not include or take into account the Escrow Fees).

**Trust Deed** means the Outward Escrow Services Trust Deed under which Outward established a trust in which legal title to the Escrow Account and the Escrowed Funds held therein from time to time is to be held by the Trustee.

**Trustee** means the trustee appointed under the Trust Deed.

**User** means either the Buyer or the Seller and **Users** means both the Buyer and the Seller.

**Website** means [www.Outward.co.nz](http://www.Outward.co.nz).

## **2. Interpretation**

2.1. In these Terms of Use, unless the context otherwise requires:

- 2.1.1. headings are to be ignored in interpreting these Terms of Use;
- 2.1.2. the singular includes the plural (and vice versa) and a gender includes each other gender;
- 2.1.3. a word derived from a defined term has a meaning that corresponds with that defined term;
- 2.1.4. whenever the words “includes” or “including” are used in these Terms of Use, they are deemed to be followed by the words “without limitation”;
- 2.1.5. references to legislation include amendments to, and re-enactments of, that legislation; and
- 2.1.6. references to a party include that party’s successors and permitted assignees or transferees.

2.2. Notwithstanding any other agreement between the Users or a User and a third party, including the Trading Agreement or any policies of insurance, Merchandise is “Shipped” for the purposes of these Terms of Use when the Merchandise is provided to the Shipping Line and the Shipping Line issues the Bill of Lading or the Express Release Bill.

2.3. Notwithstanding the definition of “Escrowed Funds” in clause 1, reference in these Terms of Use to “Escrowed Funds” shall not, unless the context otherwise requires, include, or be a reference to, any Escrow Fees deposited or held (from time to time) in the Escrow Account.

## **3. Outward to provide Escrow Services**

3.1. If the Users elect to deposit funds for the Trade into the Escrow Account, whether or not the Users also agree Direct Payments, they agree to Outward holding and retaining the funds on escrow in accordance with these Terms of Use.

3.2. If the Users elect to pay for the Trade exclusively by Direct Payment (and this service is operational within the Platform), Outward will not provide the Escrow Services and, unless the context otherwise requires, any obligations of Outward in these Terms of Use with respect to the Escrow Services shall not apply to the Trade. Outward shall, if the Users elect to proceed exclusively with Direct Payment, grant

the Users access to and a right to use the Platform (excluding the Escrow Services) in order for the Users to utilise the Platform to facilitate their proposed transaction.

#### **4. Outward Trade Screens**

4.1. The Users shall complete, in full, the required details in the Outward Trade Screens. The Users agree and acknowledge that:

4.1.1. the terms inserted into the Outward Trade Screens will, in all material respects, accurately reflect the relevant terms previously agreed between the Users as detailed in the Trading Agreement; and

4.1.2. Outward will proceed with and effect the Trade in accordance with the details provided and confirmed in the Outward Trade Screens.

4.2. If details in the Outward Trade Screens:

4.2.1. conflict with (due to error or otherwise) the terms of the Trading Agreement; or

4.2.2. no longer reflect the arrangement between the Users,

the Users shall as soon as possible correct or amend such details (and agree such correction) within the Outward Trade Screens.

4.3. If, before the Merchandise is Shipped, the Seller believes for any reason that:

4.3.1. the Latest Shipment Date will not be met in accordance with the Trading Agreement; or

4.3.2. the Trade Value will change from that agreed in the Trading Agreement,

then the Seller shall immediately submit, for the Buyer's approval, the required amendments in the Outward Trade Screens. If the Buyer does not agree to the proposed amendments it shall be entitled to cancel the Trade. If the Buyer does not, within five (5) Business Days of the date on which the Seller submits the proposed amendments, accept or decline such amendments, the Seller shall be entitled to cancel the Trade.

4.4. Notwithstanding any provision in any other agreement between the Users (including the Trading Agreement), the Users agree that any action taken by the Users within the Platform to amend the terms of the Trade (including with respect to the Latest Shipment Date or the Trade Value) shall be, if agreed between the Users utilising the functionality of the Platform or otherwise done in accordance with these Terms of Use, a legally binding amendment to the Trading Agreement.

#### **5. KYC Registration and Verification**

- 5.1. The Users acknowledge that Outward is a financial institution under the AML Act in New Zealand. As an entity subject to the AML Act, Outward may be required to complete customer due diligence on certain Users, which may include verification of User's information. If applicable, this information verification will likely need to be completed before a User can use the Services.
- 5.2. In order for Outward to comply with its obligations under the AML Act, Users authorise and approve Outward (and its authorised agents) to undertake verification of the information provided by Users to Outward. In order to comply with these obligations, Outward (or its authorised agents) may be required to:
  - 5.2.1. provide Users' information to third parties in order for it to complete, to a satisfactory level, the required customer due diligence; and
  - 5.2.2. collect and retain the Users' information for ongoing verification purposes (including periodic "know your customer" due diligence).
- 5.3. Users agree to work in good faith with Outward in order for it to comply with its obligations under the AML Act. Users agree to provide, in a timely and efficient manner, any information requested by Outward in order for it to comply with its obligations under the AML Act.

## **6. Limitation on Services**

- 6.1. The Services are only available:
  - 6.1.1. to Users in jurisdictions that can legally use the Services;
  - 6.1.2. for lawful Merchandise; and
  - 6.1.3. for Merchandise or matters not otherwise excluded in clause 7.
- 6.2. Despite this clause 6 or any other clause of these Terms of Use, Outward in its sole discretion can limit access to the Website, Platform or Services.

## **7. Prohibited Conduct**

- 7.1. Users shall not use the Services:
  - 7.1.1. to trade in Merchandise for which, in any of the Relevant Jurisdictions, it is illegal or a criminal offence to trade in, hold or be in possession of (whether physically or through an agent) such Merchandise;
  - 7.1.2. for trading undertaken for an illegal purpose;

- 7.1.3. for trading in any material which, in the reasonable opinion of Outward, is obscene;
- 7.1.4. for trading in:
  - 7.1.4.1. firearms and munitions; or
  - 7.1.4.2. illegal drugs and controlled substances,
- 7.1.5. to facilitate the transfer of, or to settle or close a transaction which results in the transfer of any rights or title to or interests in:
  - 7.1.5.1. any real property, including land and real estate;
  - 7.1.5.2. financial products, including shares (as part of a merger and acquisition transaction) or other securities such as derivative products; or
  - 7.1.5.3. the business and undertaking of a going concern,
- 7.1.6. for trading with, or between, persons or entities which are the subject of an international sanctions regime; and
- 7.1.7. for any transactions being used to support money laundering, financing of terrorism or tax evasion.

7.2. In addition to this clause 7, Outward in its sole and absolute discretion may refuse a User's access to the Services if Outward believes on reasonable grounds that the User or the proposed Merchandise is suspicious or may violate the law of a Relevant Jurisdiction.

## **8. Users' Representations and Warranties**

8.1. The Users represent and warrant that:

- 8.1.1. all information provided to Outward relating to the User's use of the Services, including information within the Outward Trade Screens, is true, accurate, complete and not misleading;
- 8.1.2. the person (or persons) entering into or completing registration on the Website has the necessary authority from the User to do so and to bind the User to the terms of these Terms of Use; and
- 8.1.3. any person (or persons) entering into or completing registration on the Website (and therefore entering into these Terms of Use for and on behalf of the User) is a natural person of at least 18 years of age.

## **9. Payment of Funds**

- 9.1. Once the Outward Trade Screens are completed and agreed by the Buyer and Seller and submitted, Outward will provide payment instructions to the Buyer, which may include both Direct Payment and payment of Escrowed Funds and Escrow Fees into the Escrow Account.
- 9.2. If the Users elect Direct Payment, the Seller shall update the payment status in the Outward Trade Screens as soon as practicable once payment has been received into the Seller's Account.
- 9.3. The Buyer shall update the payment status in, and upload proof of payment to, the Outward Trade Screens as soon as practicable once each payment for a Trade has been completed (whether by Direct Payment or Escrowed Funds in the Escrow Account).
- 9.4. Upon receipt of Escrowed Funds into the Escrow Account, Outward will, as soon as reasonably practicable:
  - 9.4.1. update the payment status for Escrowed Funds on the Outward Trade Screens; and
  - 9.4.2. notify both the Buyer and Seller that the funds have been received into the Escrow Account.
- 9.5. The Initial Payment shall include, in addition to any amounts required under the Payment Milestones, all the Escrow Fees payable to Outward for the Trade.
- 9.6. The Buyer shall transfer any funds for a Trade (whether by Direct Payment or into the Escrow Account) in the selected currency and shall be responsible for any associated wire transfer costs.
- 9.7. If the Buyer transfers to the Escrow Account insufficient funds to meet the terms of a Payment Milestone or to comply with the payment terms agreed in the Outward Trade Screens, the Seller or Outward will immediately notify the Buyer, and the Buyer shall immediately upon receiving such notification transfer to the Escrow Account any additional funds required to meet the applicable Payment Milestone or to comply with the terms set out in the Outward Trade Screens.

## **10. Accounts and Payments**

- 10.1. The Buyer must designate its Account from which payment of the Escrowed Funds will be received by Outward. Outward may, if it considers it necessary or if required under applicable law or regulation, seek to verify the Buyer's Account to confirm it is owned and operated by the Buyer. Outward is under no obligation to accept payment received from an account other than the Buyer's Account.

- 10.2. All payments made by Outward under a Trade will be made to the Accounts of the Buyer and Seller recorded in the Website and in the currency selected for the Trade. Any foreign exchange requirements will be the responsibility of the receiver of the payment (whether Buyer or Seller).
- 10.3. In the event that a Buyer or Seller is overpaid by Outward for any reason, the Buyer and Seller agree to immediately return the funds to Outward.
- 10.4. The Buyer and Seller shall hold Outward, and its affiliates, harmless for any loss that may arise due to currency conversion.
- 10.5. All payments under these Terms of Use are to be made by wire transfer.
- 10.6. Outward shall not be responsible for any delay in the transfer of the Escrowed Funds to the Seller (or, for a cancellation of a Trade or otherwise, to the Buyer) if, for any reason, Outward's method of payment to the relevant Account is not accepted by the relevant User's bank or there is a delay (for whatever reason) by that bank in clearing the funds.
- 10.7. If Escrowed Funds remain unclaimed for three (3) years from the date on which the Escrowed Funds are deposited into the Escrow Account, Outward shall be entitled to retain those Escrowed Funds by transferring them out of the Escrow Account into its operational bank accounts and from that date both the Buyer and the Seller (as applicable) waive any rights to or interest they may have in these Escrowed Funds.

## **11. Escrow Account**

The Users agree and acknowledge that legal title to the Escrow Account (and the Escrowed Funds held therein from time to time) is, under the terms of the Trust Deed, held in the name of the Trustee.

## **12. Variation to Trade Value**

- 12.1. If there is any variation to the Trade Value during the Trade such that the funds paid by Direct Payment (if any) plus those held as Escrowed Funds in the Escrow Account amount to, in aggregate, a sum:
  - 12.1.1. less than the varied Trade Value; or
  - 12.1.2. more than the varied Trade Value,
- 12.2. the Users agree that:
  - 12.2.1. if clause 12.1.1 applies:
    - 12.2.1.1. Outward shall release, to the Seller, all Escrowed Funds; and

12.2.1.2. the Buyer shall immediately transfer to the Seller, by Direct Payment (or as otherwise agreed between the Users), the funds necessary in order to make up the difference between the funds currently held by the Seller for the Trade (including any funds being transferred from the Escrow Account under clause 12.2.1.1) and the varied Trade Value,

12.2.2. if clause 12.1.2 applies:

12.2.2.1. Outward shall release, to the Seller, the amount of Escrowed Funds required in order for those Escrowed Funds plus any Direct Payment to equal the varied Trade Value; and

12.2.2.2. the remaining Escrowed Funds shall be transferred to the Buyer.

12.3. Any assessment under this clause 12 of the total Escrowed Funds held in the Escrow Account shall exclude, from the total Escrowed Funds figure and any funds paid by Direct Payment under clause 12.2.1.2, any funds that the Seller has agreed to contribute to the Escrow Fees for the Trade.

### **13. Escrowed Funds**

13.1. The Escrowed Funds will remain in the Escrow Account until they are released in accordance with these Terms of Use.

13.2. Neither the Buyer nor the Seller shall, in any circumstances, have any right to any interest which is earned as a result of the Escrowed Funds being held in the Escrow Account and the Users irrevocably waive any right to such interest. Title to this interest shall, upon it being earned in the Escrow Account, vest in, and be the sole property of, Outward, and Outward shall be entitled to transfer such funds from the Escrow Account into its operational bank accounts.

### **14. Pre-Shipping Documents**

14.1. Prior to the Merchandise being Shipped, the Seller shall (as and when they become available) upload copies of the Pre-Shipping Documents to the Outward Trade Screens. Outward will, as soon as reasonably practicable, notify the Buyer when a Pre-Shipping Document is uploaded to the Outward Trade Screens. The Buyer will review the Pre-Shipping Documents and either:

14.1.1. confirm the Pre-Shipping Documents through the Outward Trade Screens; or

14.1.2. notify the Seller of any issues with the Pre-Shipping Documents.

- 14.2. For the avoidance of doubt, an issue with (and any dispute that arises from) the Pre-Shipping Documents under clause 14.1.2 shall be a “Users Dispute” and governed by clause 26.
- 14.3. Once the Pre-Shipping Documents are confirmed by the Buyer, the Merchandise can be Shipped by the Seller.
- 14.4. If the Buyer fails to either confirm the Pre-Shipping Documents or notify the Seller of any issues with the Pre-Shipping Documents within three (3) Business Days of the date on which all Pre-Shipping Documents are uploaded onto the Outward Trade Screens, the Buyer shall be deemed to have confirmed the Pre-Shipping Documents as uploaded on the Outward Trade Screens and the Merchandise may be Shipped by the Seller.

## **15. Shipping and Tracking of Merchandise**

- 15.1. If the Users agree to utilise a method of transporting the Merchandise which allows for online tracking information, the Users may enter the Shipping Line details, tracking website, and tracking number or reference (or other necessary information) into the Outward Trade Screens following release of the Merchandise to the Shipping Line.
- 15.2. If clause 15.1 applies, the Seller and Buyer (as applicable) shall take any steps reasonably necessary in order for Outward to receive communication from the Shipping Line regarding notice of the delivery of the Merchandise.
- 15.3. This clause 15 shall only apply if such services are operational on the Platform.

## **16. Release of Escrowed Funds**

- 16.1. Once the Merchandise is Shipped, the Seller shall either:
  - 16.1.1. courier the Bill of Lading, with those Pre-Shipping Documents the Users have agreed (within the Outward Trade Screens) need to be couriered, to the Buyer via a courier that provides confirmation of delivery, and enter the courier and tracking details onto the Outward Trade Screens; or
  - 16.1.2. organise for the Shipping Line to issue a Telex Release, and upload the confirmation of such Telex Release to the Outward Trade Screens; or
  - 16.1.3. if applicable to the Trade, upload the Express Release Bill to the Outward Trade Screens.
- 16.2. Within five (5) Business Days of the date on which either:
  - 16.2.1. the Bill of Lading and the Pre-Shipping Documents have been received by the Buyer by courier (as detailed in clause 16.1.1); or

16.2.2. the Telex Release is uploaded onto the Outward Trade Screens (as detailed in clause 16.1.2); or

16.2.3. the Express Release Bill is uploaded onto the Outward Trade Screens (as detailed in clause 16.1.3),

the Buyer shall, unless clause 17 applies, take all steps necessary to release the Escrowed Funds within the Outward Trade Screens by pushing the "Release Fund" button, and typing "Release" into the pop-up window. The Buyer, upon taking such action, irrevocably authorises and instructs Outward to release the Escrowed Funds to the Seller.

16.3. If the Buyer fails to either release the Escrowed Funds in accordance with clause 16.2 or provide a BL Dispute Notice under clause 17 within the applicable five (5) Business Days referred to in clause 16.2 (the **Release Period**), the Buyer irrevocably authorises Outward to release the Escrowed Funds to the Seller.

16.4. In providing the irrevocable authority set out in clause 16.3, the Buyer agrees that Outward shall, with respect to clauses 16.1.1 and 16.2.1, exercise its authority on the basis that the Release Period is deemed to commence (for the purposes of this clause 16.4) on and from the date on which Outward receives notification from the applicable courier that the Bill of Lading and the Pre-Shipping Documents have been delivered to the Buyer.

16.5. No later than two (2) Business Days after the Buyer effects the release of the Escrowed Funds, Outward shall transfer the Escrowed Funds to the Seller into the Seller's Account in accordance with these Terms of Use.

16.6. Upon any transfer by Outward to the Seller (or to the Buyer upon cancellation of the Trade or for any other reason in accordance with these Terms of Use) of all Escrowed Funds, the Trade shall, from that time, be closed and have come to an end. Outward will, from that time, have no further obligations with respect to the Trade. Any future Trades will, for the avoidance of doubt, create a new (and separate) legal agreement between the parties under the Terms of Use applicable at the time.

16.7. Under clause 16.1.1, the Seller shall take any steps reasonably necessary in order for Outward to receive communication from the relevant courier company regarding notice of the delivery of the Bill of Lading and Pre-Shipping Documents.

## **17. Bill of Lading Dispute**

17.1. If, upon receipt of the Bill of Lading or after reviewing the Telex Release or Express Release Bill but before performing the actions in clause 16.2 necessary to release the Escrowed Funds to the Seller, the Buyer, acting reasonably and in good faith, is unable to confirm that the Merchandise has been Shipped (**BL**

**Dispute**), the Buyer shall, within the Release Period, provide written notice (**BL Dispute Notice**) to the Seller setting out:

- 17.1.1. the specific issue it has with the Bill of Lading, Telex Release or Express Release Bill; and
  - 17.1.2. the actions it requires the Seller to take in order to remedy its concerns.
- 17.2. The Users shall work together and in good faith to resolve the BL Dispute such that the Buyer can provide confirmation of the Bill of Lading, Telex Release or Express Release Bill and the Trade can proceed to completion. If the BL Dispute is not resolved within ten (10) Business Days of the date on which the Seller was delivered the BL Dispute Notice, either User may by notice in writing (the **Arbitration Notice**) to the other User refer the BL Dispute to be determined by arbitration in accordance with clause 18. The Users shall immediately notify Outward that the BL Dispute has been referred to arbitration.

## **18. Arbitration for BL Dispute**

- 18.1. Any BL Dispute which has been referred to arbitration in accordance with clause 17.2 will be finally settled by arbitration and neither User shall be entitled to bring any legal proceedings in respect of a BL Dispute in any court.
- 18.2. The arbitrator will be a person the Users may agree upon in writing within ten (10) Business Days of the date on which the Arbitration Notice is delivered to the User not initiating the arbitration proceedings or, failing such agreement being reached, will be the person appointed, at the request of either User, as arbitrator by the President for the time being of the New Zealand Law Society.
- 18.3. The arbitrator shall, in his or her sole discretion, decide the matters set out in clause 18.4 following such consideration as the arbitrator considers necessary, including with respect to the:
  - 18.3.1. facts pertinent to the BL Dispute;
  - 18.3.2. principal location of the Users;
  - 18.3.3. predominate language in which the Users engage in international trade; and
  - 18.3.4. law under which the BL Dispute is governed.
- 18.4. The arbitrator must:
  - 18.4.1. decide an appropriate commencement date for the arbitration;
  - 18.4.2. decide the appropriate procedures by which the arbitration will proceed;

- 18.4.3. decide the location in which the arbitration will be held or the telecommunications technology which is appropriate where the Users are unable to meet in one location;
  - 18.4.4. the language the arbitration is to be held in or the translation technology necessary in order for both Users to fully participate in and understand the arbitration proceedings; and
  - 18.4.5. the law which shall apply to the substance of the BL Dispute.
- 18.5. During the period from the date on which Outward is notified of a BL Dispute until the date on which the BL Dispute is resolved between the Users or a binding decision from the arbitrator is made, Outward will retain any Escrowed Funds in the Escrow Account and will not transfer the funds to either User. If the BL Dispute is resolved by a binding decision of an arbitrator, the Users irrevocably instruct Outward to deal with any Escrowed Funds in accordance with the terms of any such decision.

## **19. Deduction of Escrow Fees**

- 19.1. Unless otherwise agreed between the Buyer, Seller and Outward, the Buyer agrees to pay all Escrow Fees for the Services as outlined in the Outward Trade Screens on acceptance of the Trade.
- 19.2. The Buyer and Seller (as necessary) irrevocably authorise Outward to deduct from the funds held in the Escrow Account for the Trade the Escrow Fees (or an amount equal to the Escrow Fees) prior to transferring the Escrowed Funds to the Seller (or the Buyer in case of cancellation of the Trade or otherwise). Once paid into the Escrow Account, the Escrow Fees are irreversible and non-refundable.
- 19.3. For the avoidance of doubt, regardless of whether the Trade is cancelled or not completed (for any reason) the Buyer shall remain responsible to pay the entirety of the Escrow Fees due to Outward under the Trade.

## **20. Right to cancel a Trade**

- 20.1. The Trade may be cancelled, for any reason:
  - 20.1.1. by the Buyer or the Seller at any time prior to the Initial Payment being made for the Trade; or
  - 20.1.2. by agreement in writing (whether by using the tools within the Outward Trade Screens or otherwise) between the Users at any time before the Trade is completed and the Escrowed Funds released by Outward in accordance with these Terms of Use.

20.2. Except for:

20.2.1. cancellation in accordance with clause 4.3;

20.2.2. a BL Dispute addressed in accordance with clauses 17 and 18; or

20.2.3. by agreement under clause 20.1.2,

neither User shall have any right to cancel a Trade after the Initial Payment is made for the Trade.

20.3. If cancellation of the Trade under these Terms of Use occurs after the Initial Payment, and the Initial Payment was made into the Escrow Account as Escrowed Funds, Outward shall, within two (2) Business Days of receiving notice of cancellation, transfer those Escrowed Funds to the Buyer. If a Direct Payment has already been made to the Seller, it is the responsibility of the Users to agree a refund (or otherwise) and Outward shall bear no responsibility for (nor be obliged to assist in any way with) such arrangements.

20.4. If a Trade is cancelled in accordance with these Terms of Use the Users agree that from cancellation:

20.4.1. the Users irrevocably instruct Outward to take those actions set out in clause 20.3 (if applicable);

20.4.2. the Users have no claim (for any loss, damages, costs, or otherwise) against Outward;

20.4.3. Outward is under no obligation to assist the Users in resolving any dispute (if applicable) between the Users; and

20.4.4. any ongoing dispute between the Users (whether with respect to returning or onward delivery of the Merchandise, or otherwise) shall be governed by the Trading Agreement and these Terms of Use shall only apply in so far as they are necessary for Outward to enforce any surviving rights it may have against the Users.

20.5. Outward may, in its sole discretion:

20.5.1. cancel the Trade for which the Users have failed to agree on the terms as required in the Outward Trade Screens; and

20.5.2. cancel the Trade or suspend or terminate use of the Services at any time, without notice and for any reason.

20.6. Subject to clause 20.7, the Trade will be cancelled on the Business Day immediately following the Latest Shipment Date and clauses 20.3 and 20.4 shall (where

applicable) apply if Outward has not been notified within the Outward Trade Screens on or before the Latest Shipment Date:

20.6.1. of an amendment to the Latest Shipment Date; or

20.6.2. that the Merchandise has been Shipped.

20.7. Despite clause 20.6, Outward may, in its sole and absolute discretion, not effect cancellation of the Trade for up to five (5) Business Days from the Latest Shipment Date if Outward is of the reasonable opinion that it has not received notification under clauses 20.6.1 or 20.6.2 due to an unforeseen delay (not caused by any act or omission of Outward or the Users) in receipt of the Bill of Lading, Express Release Bill or Telex Release (as applicable) but that the Merchandise was in fact Shipped on or before the Latest Shipment Date.

20.8. If a Trade is cancelled or cannot be completed for any reason, Outward will notify the Users in writing.

## **21. Feedback from Buyer**

Upon receiving the Merchandise and after the Trade is completed and closed (in all respects), the Buyer may upload to the Platform its feedback on the Merchandise and its experience trading with the Seller.

## **22. Outward's Limitation of Liability**

22.1. Outward will have no duties, responsibilities or obligations (and provides no warranties or representations) except as expressly provided in these Terms of Use. Neither Outward nor any of its directors, officers, employees or agents (**Protected Persons**) will be liable for any act or omission in connection with these Terms of Use or the Escrowed Funds, other than to the extent it constitutes willful default, fraud or negligence of Outward.

22.2. Outward is not obliged to:

22.2.1. take account of the terms of any agreement to which it is not a party, including the Trading Agreement;

22.2.2. enquire as to compliance by either User, or ensure compliance by either User (and will have no liability in the event of non-compliance by either User), with the provisions of the Trading Agreement or these Terms of Use;

22.2.3. enquire whether any written directions under these Terms of Use have been given in accordance with any relevant provisions of the Trading Agreement or to determine the correctness of any matter stated within any written directions; or

22.2.4. investigate the application of any funds paid by it to any person pursuant to these Terms of Use.

22.3. The maximum liability of Outward for the Trade under these Terms of Use or in connection with (in any way) Outward providing the Services will be limited to the sum of the Escrow Fees for the Trade.

## **23. Indemnity**

23.1. The Users will jointly and severally on demand indemnify Outward and each Protected Person from and against:

23.1.1. any action, claim or proceeding brought against Outward or any Protected Person by any person whether in contract, tort or otherwise; and

23.1.2. any cost, expense, liability, loss, damage, charge or other payment which Outward or any Protected Person suffers, pays, incurs or is liable for,

as a direct or indirect result of or in any way in connection with:

23.1.3. Outward's rights or obligations under these Terms of Use;

23.1.4. the exercise by Outward of its powers or the performance of its duties or the preservation of its rights under these Terms of Use;

23.1.5. the Users' inability to access (for any reason) the Platform or the Website;

23.1.6. any breach of these Terms of Use by a User or any entity or person affiliated with that User; or

23.1.7. any other action taken or omitted to be taken by Outward under or in connection with these Terms of Use, other than to the extent such action or omission amounts to willful default, fraud or negligence of Outward.

## **24. Disclaimer**

Outward provides no warranties or guarantees that the Services or the Platform will be uninterrupted or error-free. Outward provides the Services on an 'as is' basis. The Users use the Services and the Platform at their own risk. Outward does not give any warranty and has no liability to the Users in relation to the performance or non-performance of the Services or the Platform except to the extent specifically provided for in these Terms of Use.

## **25. Force Majeure**

25.1. Where a party is unable, wholly or in part, by reason of a Force Majeure Event to carry out any obligation under these Terms of Use then that obligation is suspended so far as it is affected by the Force Majeure Event during its continuance and that party shall:

25.1.1. give the other parties immediate written notice of the nature and expected duration of, and the obligation(s) affected by, the Force Majeure Event; and

25.1.2. use all reasonable endeavours to:

25.1.2.1. mitigate the effects of the Force Majeure Event on that party's obligations under these Terms of Use; and

25.1.2.2. perform that party's obligations under these Terms of Use not effected by the Force Majeure Event.

25.2. If, by reason of a Force Majeure Event, the delay or non-performance of a party's obligations continues for more than 90 consecutive days, any party who is not relying on the Force Majeure Event may cancel the Trade effected by the Force Majeure Event by written notice to the other parties.

## 26. Disputes between Users

26.1. Subject to clause 26.2, this clause 26 will apply if any dispute (**Users Dispute**) arises between the Users, including disputes relating to:

26.1.1. the expected time of delivery of the Merchandise;

26.1.2. failure of the Buyer to transfer funds in order to meet a Payment Milestone; or

26.1.3. any other dispute between the Users which effects the operation of the Platform in a way which prevents the Services being provided in accordance with these Terms of Use.

26.2. This clause 26 shall not apply to a BL Dispute, which shall be resolved in accordance with clauses 17 and 18.

26.3. If this clause 26 applies, a User shall, as soon as practicable after becoming aware of the Users Dispute but after (if applicable) notifying the other User, notify Outward through the "Dispute" function in the Outward Trade Screens (**Dispute Notice**).

26.4. If the Users resolve the Users Dispute, they will immediately notify Outward in writing and shall, if required, take such action within the Platform as necessary in order for the Trade to reflect the terms of the resolution to the Users Dispute.

26.5. Despite any terms of a Trading Agreement, if a Users Dispute is not resolved within twenty (20) Business Days of the Dispute Notice such that the Trade can be completed in accordance with these Terms of Use, Outward shall be entitled to cancel the Trade and the provisions of clauses 20.3 and 20.4 (as applicable) shall apply.

26.6. If a Trade is cancelled under clause 26.5, Outward shall have no responsibility or liability whatsoever for resolving the dispute or the return to the Seller or on-sale of the Merchandise relating to a cancelled Trade. This shall be the sole responsibility of the Users.

## **27. Disputes between Users and Outward**

27.1. This clause 27 shall apply if any dispute (**Outward Dispute**) arises between Outward and one or both Users to the Trade under these Terms of Use.

27.2. Outward, as a financial service provider under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (**FSP Act**), is a member of an approved dispute resolution scheme under the FSP Act.

27.3. Any Outward Dispute shall be heard by (and in accordance with) the scheme appointed by Outward (from time to time) under the FSP Act.

## **28. General**

28.1. All communications of any kind under these Terms of Use (including the Pre-Shipping Documents) must be made in English.

28.2. The Buyer and Seller shall each assign an employee to administer the Platform who is fluent in written and spoken English.

28.3. The Users shall not provide any password, passcode or any other security or access code they hold to operate or access the Platform or the Website to any third party and shall take all reasonable steps to ensure the same are retained in a safe and secure environment.

28.4. Outward maintains a privacy policy that sets out Outward's practices in respect of the collection and use of personal information. Users should read that policy at <http://outward.co.nz>. All Users will be taken to have accepted that policy (as updated from time to time in accordance with its terms) when they accept these Terms of Use.

28.5. The Users remain solely responsible for any other third parties' costs associated with the transaction underlying the Trade, including (but not limited to) costs associated with shipping, insurance and inspections.

- 28.6. Outward is not responsible for payment of any sales, use, personal property or other government taxes or levies imposed on any items purchased or sold through the Platform, or that otherwise arise from the transaction underlying the Trade.
- 28.7. If any provision of these Terms of Use is, or becomes, unenforceable, illegal or invalid for any reason, the relevant provision will be deemed to be modified to the extent necessary to remedy such unenforceability, illegality or invalidity. If such modification is not possible then such provision will be severed from these Terms of Use without affecting the enforceability, legality or validity of any other provision.
- 28.8. Any delay, failure or forbearance by a party to exercise (in whole or in part) any right, power or remedy under, or in connection with, these Terms of Use will not operate as a waiver of such right, power or remedy. A waiver of any breach will not be, or be deemed to be, a waiver of any other, or subsequent, breach.
- 28.9. These Terms of Use shall be governed by and construed in accordance with the laws in the jurisdiction of New Zealand. The parties irrevocably submit to the non-exclusive jurisdiction of the New Zealand courts.
- 28.10. Outward may assign, transfer or delegate any of its rights or obligations under these Term of Use by providing written notice to the Users. The Users shall not assign, transfer, sell or alienate in any way any of their rights or obligations under these Terms of Use.
- 28.11. Notices to be sent under these Terms of Use:
- 28.11.1. by a User to Outward shall be in writing and sent to Outward's authorised email address (as provided by Outward from time-to-time), or via Outward's Help Message tab within the Outward Trade Screens; and
  - 28.11.2. by Outward to a User shall be in writing and sent by email to the email account provided by the particular User to Outward within the Platform.