

Escrow Services Trust Deed

Outward Limited

Manager

and

Outward Limited

Trustee

and

Outward Limited

Settlor

Date

BELL GULLY

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This **Escrow Services Trust Deed** is made on 12 June 2019

between (1) **Outward Limited (Manager)**
and (2) **Outward Limited (Trustee)**
and (3) **Outward Limited (Settlor)**

Introduction

- (A) The Settlor operates a business providing escrow services (the **Escrow Services**) to importers and exporters (referred to in the Terms of Use as "Users") seeking to engage in international trade.
- (B) To use the Escrow Services, the importer deposits funds for the trade into a designated bank account (referred to in the Terms of Use as an "Escrow Account"). These funds are referred to in the Terms of Use as "Escrowed Funds". The Escrowed Funds are held in the Escrow Account until certain release conditions are satisfied. Upon satisfaction of these conditions, the Escrowed Funds are released to the exporter. The Settlor, in providing the Escrow Services, charges the importer an Escrow Fee.
- (C) The Terms of Use govern the Users' use of the Escrow Services and provide the terms under which the Manager is to manage and deal with the Escrowed Funds.
- (D) To better ensure that the Escrowed Funds will be held in accordance with the Terms of Use, and cannot be used for another purpose, the Settlor proposes to enter into this Deed. This Deed will establish the Trust, under which the Escrowed Funds will be held by the Trustee on trust for the benefit of the Beneficiaries.
- (E) The Settlor and the Trustee have agreed to enter into this Deed for the purpose of constituting the Trust and appointing the Manager. The Manager, by entering into this Deed, accepts that appointment.

It is agreed

1. Definitions and interpretation

1.1 Definitions

In this Deed, unless the context otherwise requires:

Auditor means the person from time to time appointed as auditor of the Trust pursuant to this Deed;

Beneficiary means any User who, having agreed to be bound by the Terms of Use, elects to use the Escrow Services and deposit Escrowed Funds into an Escrow Account;

Escrow Accounts means all bank accounts opened in the name of the Trust for the purpose of holding Escrowed Funds;

Escrowed Funds means the Escrowed Funds (as that term is defined in the Terms of Use) held in the Escrow Accounts from time to time;

Escrow Services has the meaning given to it in the Introduction to this Deed (and is defined in more detail in the Terms of Use);

Financial Statements means, in relation to the Trust, the financial statements referred to in clause 7 of this Deed, which shall, subject to the discretion of the Manager after consultation with the Auditor, be prepared in accordance with that clause;

Financial Year means, in relation to the Trust, a financial year ending on 31 March or such other date as the Manager nominates and the Trustee agrees;

Terms of Use means the terms of use found [*insert link to Terms of Use on Outward's website*], as amended from time to time; and

Trust means the trust constituted under clause 2 of this Deed.

1.2 Construction of certain references

In this Deed, unless the contrary intention appears, a reference to:

- (a) **business day** means a day (other than a Saturday or Sunday) on which registered banks are open for general banking business in Wellington, New Zealand;
- (b) **dollars** or **\$** is a reference to New Zealand currency;
- (c) a **party** to a document includes that party's respective successors and permitted assigns; and
- (d) a **person** includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a state, a government agency and any other entity (in each case, whether or not having separate legal personality).

1.3 General references

In this Deed, unless the context otherwise requires:

- (a) words denoting any gender include all genders;
- (b) specifying anything in this Deed after the words 'including', 'includes' or 'for example' or similar expressions does not limit what else is included unless there is express wording to the contrary;
- (c) an agreement, representation or warranty given by or in favour of two or more persons is given by or for the benefit of (as applicable) them jointly and severally;
- (d) the singular includes the plural and vice versa;
- (e) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (f) headings are for convenience only and do not affect interpretation; and
- (g) a reference to any document or agreement includes a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time.

1.4 Terms of Use prevail

If any of this Deed's provisions conflict with the Terms of Use, the Terms of Use are to prevail (to the extent of the conflict).

1.5 Capitalised terms

Any capitalised term used but not defined in this Deed has the meaning given to it in the Terms of Use.

2. Constitution of Trust

2.1 Appointment of Trustee

- (a) The Settlor hereby appoints the Trustee, and the Trustee hereby accepts such appointment, to act as trustee of the Trust for the Beneficiaries upon and subject to the terms of this Deed.
- (b) The Settlor shall deposit into an Escrow Account the sum of \$1.00 for the express purpose of establishing the Trust. Thereafter, the Trustee shall, under the terms of this Deed, have and retain legal title to the Escrow Accounts and the Escrowed Funds.

2.2 Appointment of Manager

The Trustee hereby appoints the Manager, and the Manager hereby accepts such appointment, to act as the manager of the Trust upon and subject to the terms and conditions of this Deed.

2.3 Name

The Trust shall be known as the **Outward Escrow Services Trust**. The Manager may change the name of the Trust by written notice to the Trustee.

3. Trustee's powers, duties and fees

3.1 Trustee's general powers

Subject to this Deed, the Trustee has the same powers in respect of the Trust as if it were the absolute and beneficial owner of the Escrow Accounts and Escrowed Funds and acting in its personal capacity.

3.2 Trustee duties

The Trustee shall:

- (a) act continuously as Trustee until the Trust terminates;
- (b) subject to the terms of this Deed, use all reasonable endeavours to ensure the Escrowed Funds are held in the Escrow Accounts and dealt with in accordance with the Terms of Use; and
- (c) except in strict accordance with the Terms of Use, not transfer, or permit the transfer of, any of the Escrowed Funds from the Escrow Accounts.

3.3 Trustee's fees and expenses

The Trustee shall be paid by the Settlor such fees and reimbursed such expenses on such basis as is agreed in writing between the Trustee and the Settlor from time to time.

4. Manager's powers and duties

4.1 General management powers

The Manager shall manage and administer the Trust (and the Escrowed Funds in the Escrow Accounts) with full and complete power of management.

4.2 Manager's duties

Notwithstanding any other provision of this Deed, the Manager shall manage, operate and administer the Trust (and the Escrowed Funds in the Escrow Accounts) in accordance with the Terms of Use.

4.3 Suspension of Manager

- (a) If, in the reasonable opinion of the Trustee, the Manager is at any time failing to meet its material obligations under this Deed, particularly as they relate to compliance with the Terms of Use, the Trustee may, by notice in writing to the Manager (**Suspension Notice**), temporarily suspend the Manager's powers under this clause 4.
- (b) From the date on which the Suspension Notice is delivered to the Manager (the **Notice Date**) until the date on which the Manager resumes its role as manager of the Trust under this Deed (**Suspension Period**), the Trustee, or its duly qualified and experienced nominee, shall perform the obligations of the Manager under this Deed.
- (c) From the Notice Date, the Trustee and the Manager shall work together and in good faith in order for the Manager to remedy the cause of its previous non-compliance with this Deed.
- (d) If, within 20 business days of the Notice Date, the Manager is not, in the reasonable opinion of the Trustee, in a position to resume its responsibilities and discharge its obligations under this Deed as manager, the Trustee may engage on behalf of the Manager a duly qualified and experienced person (**Specialist Consultant**). The Specialist Consultant will work directly with the Manager in order to address the matters that are preventing the Manager from properly discharging its obligations under this Deed.
- (e) The Manager shall fully co-operate with the Specialist Consultant and the Trustee during the Suspension Period.
- (f) The Manager shall cover all reasonable costs and expenses of the Specialist Consultant for the term of the Specialist Consultant's engagement.

5. Removal, retirement and appointment of Trustee

5.1 Removal of Trustee

The Trustee shall cease to hold office as trustee of the Trust if:

- (a) the Trustee is removed from office as trustee of the Trust by the Settlor (in the Settlor's sole discretion); or
- (b) the Trustee has a liquidator, receiver or voluntary administrator appointed in respect of it or if an order is made or a resolution passed for the appointment of a liquidator, receiver, or voluntary administrator in respect of it.

5.2 Retirement of Trustee

The Trustee may retire as trustee of the Trust at any time upon giving 90 days' notice in writing to the Manager of its intention to do so, subject to the due appointment of a new trustee and the transfer to such new trustee of the rights and title to, and all interests in, the Escrow Accounts and the Escrowed Funds.

5.3 Appointment of a new trustee

The power of appointing a new trustee shall be vested in the Settlor (in its sole discretion).

6. Trustee indemnity

Without prejudice to the right of indemnity given by law to trustees generally, the Settlor shall indemnify the Trustee against all costs, expenses, losses and liabilities properly incurred by the Trustee in performing any of its duties or exercising any of its powers under this Deed in relation to the Trust, but this indemnity does not extend to liabilities arising from the Trustee's fraud, negligence or wilful default.

7. Records and Financial Statements

7.1 Records

The Manager shall keep such accounting records as required in order for it to correctly record and explain the transactions and the financial position of the Escrow Accounts. The Manager shall keep at its registered office, or such other place approved by the Trustee, proper books of account that will enable the Financial Statements to be prepared following the end of each Financial Year and conveniently and properly audited in accordance with this Deed.

7.2 Annual Financial Statements to be available to the Trustee

The Manager shall, within 10 business days of receiving finalised Financial Statements, forward a copy of such Financial Statements to the Trustee.

7.3 Manager's report

The Manager shall prepare (or procure from the Auditor or another duly experienced and qualified third party) and provide to the Trustee a semi-annual report on the operations of the Escrow Accounts for the applicable half year. Such report shall be delivered to the Trustee no later than the last business day of the month immediately following the half year for which the report applies. Such a report shall be in a form agreed between the Manager and the Trustee.

7.4 Audit

The Manager shall ensure that the Financial Statements are audited by the Auditor, and that a copy of the Auditor's report is forwarded with the relevant Financial Statements to the Trustee.

7.5 Auditor's direct report

The Manager will procure from the Auditor and provide to the Trustee at the same time as Financial Statements are provided a certificate prepared by the Auditor covering the relevant Financial Year stating:

- (a) whether or not its audit disclosed any breach of this Deed (including any breach of the Terms of Use for a Trade completed within the Financial Year); and
- (b) whether or not in the Auditor's opinion proper accounting records have been kept for the Trust as far as it appears from the Auditor's examination of those records.

8. Auditor

8.1 Appointment

As soon as practicable after the date of execution of this Deed, the Manager shall, after consultation with the Trustee, appoint an Auditor. The Auditor shall be a chartered accountant or firm of chartered accountants.

8.2 Auditor's remuneration

The remuneration of the Auditor shall be fixed by the Manager, and shall be paid directly by the Manager.

8.3 Retirement or removal of Auditor

The Auditor may at any time be removed from office by the Manager.

8.4 Vacancy in office of Auditor

Any vacancy in the office of Auditor shall be filled by the Manager (after consultation with the Trustee) appointing an auditor that complies with the requirements of clause 8.1.

8.5 Information to Auditor

The Trustee and the Manager shall give to the Auditor such information as the Auditor reasonably requires for the performance of its duties.

9. Termination

9.1 Term

- (a) Subject to clause 9.1(c), the Trust terminates on the date (the **Termination Date**) appointed by the Settlor by giving not less than 20 business days' written notice (the **Termination Notice**) to the Trustee.

- (b) The Trustee shall, immediately upon receiving the Termination Notice, take all steps necessary in order to transfer, to the Settlor, legal title to the Escrow Accounts on and from the Termination Date.
- (c) If Escrowed Funds are still held in the Escrow Accounts at the expiry of the 20 business days in clause 9.1(a), the Termination Date shall be the first business day thereafter on which no Escrowed Funds are held in the Escrow Accounts.

10. General

10.1 Notices

- (a) Each notice or other communication under this Deed is to be made in writing and sent by personal delivery or by post or electronically to the addressee at the address or email address, and marked for the attention of the person or office holder (if any), from time to time designated for the purpose by the addressee to the other parties.
- (b) No communication is to be effective until received. Without limiting any other ways in which communication can be received, a communication is to be deemed to be received by the addressee:
 - (i) in the case of personal delivery, when left at the address of the recipient;
 - (ii) in the case of a letter, on the third business day after posting; and
 - (iii) in the case of email, on the date and time at which it enters the recipient's information system (as shown in a confirmation of delivery report from the sender's information system, which indicates that the email was sent to the email address of the addressee notified for the purposes of this clause).

10.2 Amendments

No amendment to this Deed is to be effective unless it is in writing and signed by each party.

10.3 Severability

If any provision of this Deed offends any law applicable to it and is as a consequence illegal, invalid or unenforceable, then:

- (a) where the offending provision can be read down so as to give it a valid and enforceable operation of a partial nature, it must be read down to the minimum extent necessary to achieve that result; and
- (b) in any other case the offending provision must be severed from this Deed, in which event the remaining provisions of this Deed operate as if the severed provision had not been included.

10.4 No merger

A term or condition of, or act done in connection with, this Deed does not operate as a merger of any of the rights or remedies of the parties under this Deed and those rights and remedies continue unchanged.

10.5 Counterparts

This Deed may be executed in counterparts (by scanned and emailed copy or otherwise), each of which when signed will be deemed to be an original, and such counterparts together will be treated as making up the one document.

10.6 Governing law and jurisdiction

This Deed is governed by, and is to be construed in accordance with, New Zealand law. The parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of New Zealand in relation to any dispute or proceeding arising out of or in connection with this Deed.

Execution as a deed

Outward Limited as Settlor by

Director

Print Name

Director

Print Name

Outward Limited as Trustee by

Director

Print Name

Director

Print Name

Outward Limited as Manager by

Director

Print Name

Director

Print Name

This **Deed of Amendment of Trust Deed** is made on

19 February 2021

between (1) **Outward Limited** (company number 6009752) (**Manager**)
and (2) **Outward Limited** (company number 6009752) (**Trustee**)
and (3) **Outward Limited** (company number 6009752) (**Settlor**)

Introduction

- A. The Outward Escrow Services Trust was created under the Escrow Services Trust Deed dated 12 June 2019 (**Trust Deed**).
- B. At the date of the Trust Deed, the Settlor's business was limited to providing escrow services to importers and exporters under the Terms of Use and because of this the Trust Deed provides the Trustee with the powers and duties related to holding Escrowed Funds in accordance with the Terms of Use. The Settlor also provides escrow services to domestic New Zealand clients where the buyer and the seller are both located in New Zealand.
- C. The Settlor now wishes to expand its escrow business operations and to provide the Trustee's with the powers and duties to hold escrow funds for those expanded escrow business operations.
- D. The parties wish to amend the Trust Deed in accordance with clause 10.2.

It is agreed

1. Definitions and interpretation

1.1 Definitions

In this Deed (including the Introduction), unless the context otherwise requires, words which are defined in the Trust Deed have the same meaning in this Deed.

1.2 Interpretation

- (a) Headings are for convenience only and do not affect the interpretation of this Deed.
- (b) In this Deed, unless the context otherwise requires:
 - (i) words importing the singular include the plural and vice versa;
 - (ii) a reference to a clause is a reference to a clause of the Trust Deed;
 - (iii) a reference to a party to this Deed or another deed or document includes the party's successors, permitted substitutes and assigns (and, if applicable, the party's legal personal representatives);
 - (iv) a reference to "including" means "including but not limited to" and "include" and "includes" have corresponding meanings;

- (v) no provision of this Deed will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Deed;
- (vi) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency; and
- (vii) a reference to a person includes that person's successors and legal personal representatives.

2. Amendments

On and with effect from the date of this Deed, the Trust Deed be and is amended as follows:

- (a) reference in the Introduction to the Trust Deed to "exporters" is deemed a reference to "sellers" and "importers" a deemed reference to "buyers", for the purpose of the Settlor's domestic New Zealand business operations;
- (b) by deleting the definition of "Terms of Use" in clause 1.1 and replacing it with:

"Terms of Use means the terms of use found at <https://outward.co.nz/terms-and-conditions>, as amended from time to time; and"
- (c) by inserting the following as new clause 2.1A:

*"The Settlor also appoints the Trustee, and the Trustee accepts such appointment, to act as trustee of the Trust upon and subject to the terms of this Deed for any beneficiary the Settlor provides escrow services to, other than the Escrow Services to a Beneficiary under the Terms of Use (**Additional Escrow Services**)."*
- (d) by inserting the following wording after the words "Escrow Funds" in clause 2.1(b):

"...and any escrow funds or escrow accounts relating to any Additional Escrow Services."
- (e) by inserting the following wording after the words "Escrow Accounts" in clause 4.1:

"...and any escrow funds or escrow accounts relating to any Additional Escrow Services)"
- (f) by inserting the following as new clause 4A:

"4A. Additional Escrow Services

The provisions set out in clauses 3, 4.2, 4.3, 5.2, 7, 9 shall apply mutatis mutandis with respect to any escrow funds or escrow accounts relating to any Additional Escrow Services and any references to the "Terms of Use" in these clauses are, for the purposes of this clause 4A, a reference to the contractual arrangements that govern the provisions of the Additional Escrow Services."
- (g) references in the Trust Deed to "this Deed" shall be references to the Trust Deed as amended by this Deed.



3. General

3.1 Trust Deed otherwise remains in force

Except as modified by the terms of this Deed, the provisions of the Trust Deed shall remain in full force and effect.


3.2 Counterparts

This Deed may be signed in any number of counterparts all of which, when taken together, will constitute one and the same instrument. A party may enter into this Deed by executing any counterpart.

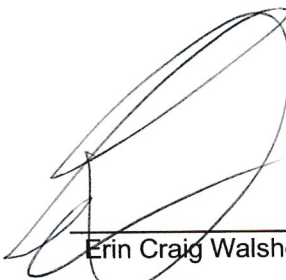
Execution

Executed and delivered as a Deed.

OUTWARD LIMITED in its capacity
as Settlor by:

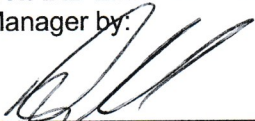


Peter Andrew Dowell

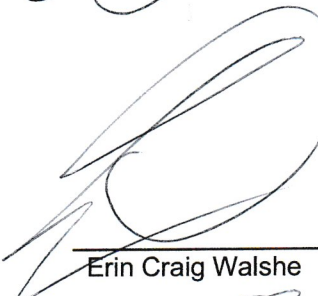


Erin Craig Walshe

OUTWARD LIMITED in its capacity
as Manager by:




Peter Andrew Dowell

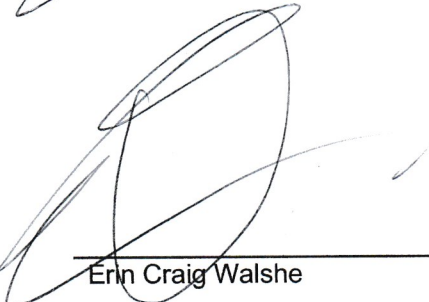


Erin Craig Walshe

OUTWARD LIMITED in its capacity
as Trustee by:



Peter Andrew Dowell



Erin Craig Walshe