

1. DEFINITIONS

All words used in these Terms shall have the meanings as set out in the Carriage of Goods Act 1979 ("the Act"), and for the purposes of these Terms:

"**Carrier**" means NZL Group Limited trading as Bay Container Lifters, Bridge Freight, Leacock Transport or NZL Transport;

"**Consignment Note**" means any document issued by the Carrier or any statement satisfactory to and recorded by the Carrier (including any information in electronic form) which the Carrier receives in connection with the performance of the Services;

"**Contract**" means any document or agreement (oral or written) between the Carrier and the Contracting Party which is negotiated before the Services to which the document or agreement relates are performed, and which sets out or records the Terms upon which the Services are to be provided;

"**Contracting Party**" means the party with whom the Carrier contracts to provide the Services and includes any representative, agent, employee or contractor of the Contracting Party;

"**Dangerous Goods**" includes Goods which are or may become of a dangerous, inflammable, radioactive, volatile, explosive, offensive or damaging nature;

"**Goods**" has the meaning given to it in the Act;

"**Services**" means the Services the Carrier provides to the Contracting Party under these Terms;

"**Subcontractor**" means any person with whom the Carrier arranges the provision of the Services or any part thereof; and

"**Terms**" means these terms and conditions of Contract.

2. APPLICATION AND PROVISION OF SERVICES

- a. These Terms apply to all Services undertaken by the Carrier for the Contracting Party and must also be read subject to any specific Contract between the Carrier and the Contracting Party.
- b. If the Contracting Party is using the Carrier for business purposes none of the rights or remedies provided under the Consumer Guarantees Act 1993 apply.
- c. The Services are supplied by the Carrier "at limited Carrier's risk" pursuant to the Act unless:
 - i. The Contracting Party has signed on a copy of these Terms or on any other document relating to the carriage of the Goods a statement that: "These Goods are to be carried" "at owner's risk"; or
 - ii. There is a Contract in writing expressed to be "at owner's risk", signed by the parties or their agents relating, but not necessarily exclusively to, the carriage of Goods in which case the Contract shall be "at owner's risk" in accordance with the Act.
- d. The Carrier is not liable in any circumstances for any amount in excess of the lesser of:
 - i. Proved damages; or
 - ii. The sum provided in section 15(1) of the Act.
- e. The Carrier is not liable for any loss of profits or any indirect or consequential loss or damage (including liability of the kinds referred to in subsections 15(2)(b) or 15(2)(c) of the Act in relation to any Service.
- f. The Contracting Party is liable for all loss or damage to any Goods or to the Carrier's equipment or other property (whether that equipment or property is in the Contracting Party's possession or otherwise) caused by any act or omission by the Contracting Party.
- g. Where the Carrier uses an Actual Carrier (as defined in the Act) the Contracting Party's Goods are carried subject to the Actual Carrier's conditions of Contract, except, where there is a conflict between the Actual Carrier's conditions of Contract and these Terms, these Terms prevail.
- h. The aggregate amount recoverable from the Carrier, any Actual Carrier and the parties listed in clause 10 will not exceed the maximum amount of the Carrier's liability.
- i. Save as is provided in clause 2 d. the Contracting Party indemnifies the Carrier against all claims of any kind whatsoever, howsoever caused or arising and (without limiting the generality of the foregoing) whether caused or arising as a result of the negligence or willful act or default of the Carrier or otherwise, brought by any matter or thing done, said or omitted by the Carrier in connection with the Goods or Services.
- j. The Carrier reserves the right to refuse the provision of Services to any Contracting Party at its discretion.
- k. The Carrier shall be under no liability whatsoever to the Contracting Party unless:

- i. written notice of any claim, giving reasonable particulars of the event giving rise to the claim and any alleged damage or loss is received by the Carrier, within seven days after the date of delivery or collection (determined by reference to clause 7.a); and
 - ii. legal proceedings are commenced and written notice of those proceedings is received by the Carrier within 6 months of the date of delivery or collection (determined by reference to clause 7.a).
- l. Where the conditions contained in these Terms differ from the provisions of the Act, then so far as the parties are able the Parties agree that these Terms prevail over any relevant provisions of the Act and the parties are deemed to have contracted out of the relevant provisions of the Act.
 - m. Sections 18, 19 and 20 of the Act do not apply to the Contract.

3. GOODS

- a. The Contracting Party must:
 - i. fully and accurately describe the Goods;
 - ii. give prior written notice to the Carrier if any of the Goods are Dangerous Goods, high value Goods or require special handling;
 - iii. comply with all applicable standards and laws in relation to the Goods;
 - iv. give prior written notice to the Carrier if any of the Goods are liable to customs duties or official restrictions;
 - v. ensure that the Goods are properly and safely packed for pickup, transport and delivery; and
 - vi. ensure that the Goods are ready for pickup so that the Carrier is not delayed in performing the Services.
- b. The Carrier may in its absolute discretion, at the cost of the Contracting Party, undertake any testing or analysis of the Goods.
- c. If, in the sole opinion of the Carrier, Goods subsequently become Dangerous Goods, then the Carrier may, at the cost of the Contracting Party, destroy, dispose of or render harmless the Goods without prejudice to any of the Carrier's rights under these Terms.
- d. The acceptance of the Goods by the Carrier for storage pending carriage shall not bind the Carrier to carry the Goods.
- e. The Carrier may at any time require the Contracting Party to remove the Goods at the Contracting Party's expense (whether in the case of non-shipment or otherwise) and if the Contracting Party fails to do so within seven days of such notice without limiting any right of the Carrier, the Contracting Party shall be liable to pay the Carrier a fee for storage from the date of such notice until the date of removal.
- f. The Goods are at the risk of the Contracting Party at all times.

4. WARRANTIES

- a. The Contracting Party warrants that:
 - i. it has authorised any person who delivers any Goods to or collects any Goods from the Carrier for and on behalf of the Contracting Party to do so; and
 - ii. it has the authority of the owner and all persons having an interest in the Goods to agree to these Terms.
- b. The Carrier does not make any warranty or representation as to the physical or structural state and condition of the Goods or their fitness for the purpose for which they will be used.

5. SUBCONTRACTING

The Carrier and any Subcontractor may subcontract on any terms the performance of part or all of the Services to any person, and may suspend or stop forever supplying the Services at any time.

6. RECEIPT AND HANDLING

- a. The Carrier's liability for carriage of the Contracting Party's Goods commences when the Carrier accepts the Contracting Party's Goods for carriage under clause 6 b. and ceases when the Carrier delivers or the Contracting Party collects its Goods under clause 7 a. The Carrier's liability is subject to the Act and to these conditions.
- b. Goods are accepted for carriage at the later of:
 - i. the time the Carrier receives a Consignment Note containing all the information the Carrier requires; or
 - ii. the time the Carrier takes possession of all Goods referred to in the Consignment Note.
- c. The Contracting Party is responsible for unloading Goods if the Contract or Consignment Note specifically states "Owner to unload" or words to that effect
- d. If the Carrier instructs the Contracting Party to use or it is agreed that the Carrier will use a particular method of handling, storage or transportation of the Goods, the Carrier must give priority to that method, but if such method cannot be conveniently adopted by the

TERMS & CONDITIONS OF CONTRACT

Carrier the Contracting Party authorises the Carrier to handle, store or transport the Goods by another method or methods.

- e. The Contracting Party authorises any deviation from the usual route or method of transport of the Goods, which may in the absolute discretion of the Carrier be necessary or desirable in the performance of the Services.

7. DELIVERY

- a. Unless agreed otherwise:
 - i. Delivery of the Goods by the Carrier occurs when the Carrier delivers the Goods (whether unloaded or not) to the delivery address on the Consignment Note;
 - ii. Goods are collected by the Contracting Party when the Contracting Party collects the Goods or 5 business days after the Carrier notifies the Contracting Party that the Goods are available for collection whichever is the earlier.
- b. The Carrier is authorized to deliver the Goods to the address given to the Carrier by the Contracting Party for delivery and the Carrier shall be deemed to have delivered the Goods in accordance with these Terms if at that address, the Carrier obtains from any person a receipt or signed delivery docket for the Goods.
- c. If the address given to the Carrier for delivery is unattended or if delivery cannot otherwise be effected by the Carrier at that address, the Carrier may at its option:
 - i. deposit the Goods at that address (which shall be conclusively deemed to be delivery under these Terms); or
 - ii. store the Goods and re-deliver the Goods to the Contracting Party at the Contracting Party's cost.
- d. From the date on which the responsibility of the Carrier ceases as provided by s9(3) of the Act, the Carrier may hold the Goods if undelivered as bailee and shall be entitled to storage fees at normal rates charged by the Carrier and as bailee shall not be under any liability for any loss of or damage to the Goods caused; or in its discretion return the Goods to the Contracting Party at the risk and expense of the Contracting Party.

8. CHARGES

- a. The Carrier may charge freight by weight, measurement or value and may at any time re-weigh or re-value or re-measure or require the Goods to be re-weighed, re-valued or re-measured and charge proportional additional freight accordingly.
- b. The charges are payable by the Contracting Party on the 20th of the month following each invoice.
- c. The charges do not include any applicable taxes (including but not limited to goods and services tax, import duties and export duties). The Contracting Party must pay any taxes payable or in connection with the provision of the Services at the same time as the charges for those Services.
- d. The Carrier reserves the right to increase the rates used to calculate the charges from time to time without notice to the Contracting Party.
- e. Quotations are given on the basis of immediate acceptance and may be withdrawn by the Carrier at any time.
- f. Charges shall be deemed to be earned when the Goods are loaded for carriage or transport (whether or not the Goods are delivered, damaged or lost).
- g. The Contracting Party may not for any reason:
 - i. defer or delay payment of the charges; or
 - ii. set off any monies against the charges.
- h. The Carrier may expend any amount it considers necessary or desirable in order to preserve the Goods or to secure the safety, storage, carriage or shipment of the Goods. The Contracting Party will upon demand pay to the Carrier any amount so expended.
- i. The Carrier may charge the Contracting Party interest on any overdue amount calculated daily at 4% per annum above the overdraft rate Westpac Banking Corporation or its successor charges the Carrier during the period that the amount is overdue.
- j. The Contracting Party indemnifies the Carrier from and agrees to pay all costs and expenses which the Carrier may incur recovering from the Contracting Party any overdue account.

9. LIEN

The Goods are accepted subject to a general lien for all charges now due or which may become due to the Carrier by the Contracting Party in respect of the Services. If the lien is not satisfied and/or the Goods are not collected, the Carrier may at its option and, in the case of perishable Goods immediately and in any other case upon the expiration of 7 days notice either:

- a. remove such Goods or part thereof and store them in such place and manner as the Carrier shall think proper at the risk and cost of the Contracting Party; or
- b. open any package and sell such Goods or part thereof upon such Terms as it shall think fit and apply the proceeds in or towards discharge of the lien and the cost of sale without being liable to any person for any loss or damage thereby caused.

10. EXTENSION OF EXCLUSIONS

Every exemption, exclusion or limitation in these Terms of whatsoever nature applicable to the Carrier or to which the Carrier is entitled under these Terms shall also be available and shall extend to protect:

- a. all Subcontractors engaged by the Carrier to perform the Services;
- b. every employee, representative or agent of the Carrier or of a Subcontractor;
- c. every other person by whom the Services are performed or undertaken; and
- d. all persons who are or might be vicariously liable for the acts or omissions of any person falling within clauses 10(a), (b), or (c) and for the purposes of this clause 10 the Carrier is or shall be deemed to be acting as an agent on behalf of and for the benefit of all such persons and each of them and all such persons and each of them shall to this extent be deemed to be parties to these Terms.

11. WAIVER

A provision of or right under these Terms in favor of the Carrier may not be waived or varied except in writing signed by a director of the Carrier.

12. FORCE MAJEURE

If the Carrier is wholly or partially precluded from performing the Services or otherwise complying with its obligations under these Terms by anything outside the Carrier's reasonable control (the "Force Majeure Event"), then the Carrier's obligation to perform its obligations under these Terms will be suspended for the duration of the delay arising out of the Force Majeure Event.

13. SEVERABILITY

If for any reason a provision of these Terms shall be invalid or unenforceable, the validity and enforceability of all other provisions shall in no way be affected and these Terms shall otherwise continue to be of full force and effect and shall be construed subject only to such invalidity or unenforceability.

14. NOTICES

Any notice necessary or required to be given by either party shall be served by sending the same by facsimile transmission (in which case it shall be deemed to have been served at the time of transmission), or prepaid fastpost (in which case it shall be deemed to have been served four days after posting).

15. AUTHORITY

The Contracting Party authorises any person or company to provide the Carrier with such information as it may require in response to its credit enquires.

16. LAWS

New Zealand law applies. The parties submit to the non-exclusive jurisdiction of the courts of that country
NZL Group Limited
November 2003