

TERMS AND CONDITIONS OF CONTRACT OF DIRECT COURIERS (AUCKLAND) LIMITED

Incorporation of terms & conditions

1. All and any business undertaken by the Company is transacted subject to the conditions hereinafter set out each of which shall be deemed to be incorporated herein and to be a condition of any agreement between the Company and the Customer. Where any of these conditions conflict with any provision contained in any consignment note, airway bill, bill of lading or any other contract of carriage whether issued by the Company or a third party, these conditions shall prevail. No agent or employee of the Company has the Company's authority to alter or vary these conditions.

Definition

2. In this contract:-
"Company" shall mean DIRECT COURIERS (AUCKLAND) LIMITED, its servants, agents, successors and assigns.
"Customer" shall mean the person, firm or Company with whom this contract is made.
"The Act" shall refer to the Carriage of Goods Act 1979.

Negation of liability as a common carrier

3. The Company is not a common carrier and does not undertake the obligations or liability of a common carrier and it is expressly agreed by and between the Company and the Customer that the Company shall not be liable to be sued in the manner as if it had actually undertaken to carry the goods as a common carrier for hire. The Company may refuse to accept for carriage any goods or any class of goods at its absolute discretion and shall not be bound or required to give any reason for so doing.

Agreement between parties

4. Subject to and in accordance with the terms and conditions contained herein the Company agrees and the Customer employs and authorises the Company as agent for the Customer to contract either in its own name as principal or as agent for the carriage of the goods.
5. Any instructions given to the Company may in the absolute discretion of the Company be complied with by the Company itself, by its own servants performing part or all of the relevant services or by the Company employing or instructing or entrusting the goods to others on such conditions as such others may stipulate to perform part or all of the services. All rights and limitations on the liability of the Company to the Customer shall also be available to and extend to protect the servants and agents of the Company, its subcontractors and the servants and agents of such subcontractors.

Agreement for payment

6. Subject to any special instructions with respect to the payment of any charges to be made by and collected by the Company from the Customer, the Customer agrees to pay to the Company:
 - (A) all the charges of and incidental to or in connection with the carriage or return or otherwise dealing with the good carried including but not limited to any duties, taxes, imposts, levies, deposits or outlays of any kind levied by the authorities at any port or place for or in connection with the goods and of any payments, fines, expenses, loss or damage incurred or sustained by the Company in connection therewith; and
 - (B) any charges and expenses which may be incurred by the Company, or any agents of the Company, or any carrier with whom the Company may contact with for the carriage of the goods, in disposing of the goods either according to the instructions of the Customer or otherwise pursuant to the terms and conditions hereof, in any case where:
 - (i) the consignee refuses, fails, or neglects to pay any such charge or further charges and expenses by or to be collected from him;
 - (ii) the consignee refuses, fails, or neglects to take delivery of the goods;
 - (iii) delivery of the goods cannot be effected because the consignee is dead, cannot be found or located either because the address given and his whereabouts cannot be immediately ascertained, or because the goods are otherwise not identifiable;
 - (iv) it becomes necessary either before the commencement of the transit of the goods from the hands of the Company and while they are still in the actual physical custody of the conditions hereof or in the course of the transit thereof to sell or otherwise deal with or dispose of the goods either according to the instructions of the Customer or otherwise pursuant to the terms and conditions hereof;
 - (v) where instructions are not or cannot be obtained promptly and within a reasonable time having regard to the nature and condition of the goods and in every case before the expiration of the twenty one days hereinafter referred to, from the Customer with respect to disposing of the goods;
 - (vi) perishable goods are to be delivered with may be sold or otherwise disposed of without notice to the Customer or consignee, or owner of the goods, and payment or tender of the net proceeds of any sale after deductions of all charges and expenses which may be due, owing, or payable to the Company under these terms and conditions shall be equivalent to delivery;
 - (vii) non-perishable goods may be sold or returned to the Company at the option of the Company at any time after the expiration of twenty one days from the date of the sending by the Company of a notice in writing to the Customer at the address given by the Customer to the Company in this contract as the address of the Customer.
 - (C) All brokerage, commission, allowances and other remuneration customarily retained by or paid to Shipping and Forwarding Agents (or Freight Forwarder) and Insurance Broker.

7. For the purposes of this sub-clause (B) a communication in writing from any agent or correspondent of the Company that the goods cannot be delivered for any reason shall be conclusive evidence of that fact.

8. The freight charge shall be deemed earned on delivery of the goods to the Company.

Quotes subject to revision

9. Quotations are given on the basis of immediate acceptance and subject to the right of withdrawal or revision. If any changes occur in the rates of freight, insurance premiums or other charges applicable to the goods, quotations and charges shall be subject to revision accordingly with or without notice.

Warehousing of goods

10. Pending forwarding of delivery, goods may be warehoused or otherwise held at any place or places at the sole discretion of the Company and the costs thereof shall be for the account of the Customer.

Packaging of goods

11. Except where the Company is instructed in writing to pack the goods the Customer warrants that all goods have been properly and sufficiently packed and/or prepared.

Company not to insure

12. Insurance will not be arranged by the Company. It is the responsibility of the customer to ensure adequate insurance cover is arranged in view of the application of all clauses hereof upon which the Company accepts goods of carriage.

Noxious, dangerous and hazardous goods

13. Except under special arrangements previously made in writing the Company will not

accept or deal with any noxious, dangerous, hazardous or inflammable or explosive goods or any goods likely to cause damage. Should any Customer nevertheless deliver any such goods to the Company or cause the Company to handle or deal with any such goods otherwise than under special arrangements previously made in writing, the provisions of clauses 17 to 20 hereof shall apply. Additionally the Customer shall indemnify the Company against all penalties, claims, damages, costs and expenses arising in connection therewith and the goods may be destroyed or otherwise dealt with at the sole discretion of the Company or any other person in whose custody they may be at the relevant time. If such goods are accepted under arrangements previously made in writing they may nevertheless be so destroyed or otherwise dealt with if they become dangerous to their goods or property. The expression "goods likely to cause damage" includes goods likely to harbour or encourage vermin or other pests.

Warranty by customers

14. The Customer expressly warrants that it is either the owner or the authorised agent of the owner of any goods to which the transaction related and further warrants that it is authorised to accept and is accepting these conditions not only for itself but also as agent for and on behalf of all other persons who are or may hereafter become interested in the goods.

Customer warrant as to accuracy of description and values of goods

15. The Customer shall be deemed to be bound by and to warrant the accuracy of all descriptions, values and other particulars furnished to the Company for Customers, Consular and other purposes and it undertakes to indemnify the Company against all losses, damages, expenses and fines arising from any inaccuracy or omission, even if such inaccuracy or omission is not due to any negligence.

Departure from Instructions

16. The Company shall be entitled to transport the goods by any route or way whatsoever (without being bound to follow any customary or usual route or way) to unpack and repack the goods, to break any route or journey as it shall see fit, to part with possession of the goods and to regain the same and in general to deal with the goods in any way whatsoever as shall seem appropriate or convenient to the Company. The Company may in particular and without limiting the generality of the foregoing break any journey for any reason whatsoever without incurring any additional risk to which the goods may be exposed as a result of such break.

Limitation of Liability

17. Subject to any specific exclusions of limitations of liability in these terms the provision of services by the Company is "at limited carriers risk" as defined in the Act. The Company's liability is limited to a maximum of \$2000 for the loss of or damage to a unit of goods however the loss or damage arises (including as a result of negligence).
18. The Company shall be under no liability whatsoever, and no court action or other form of litigation may be brought against the Company unless:
 - (A) a written formal claim, giving full particulars of any alleged damage, loss or destruction, is received by the Company within 14 days after the delivery of goods or, in the case of loss of the goods, within 30 days after the date of dispatch; and
 - (B) the court action or other form of litigation has been commenced by the Customer within 6 months from the date of dispatch of the goods.

Exclusion of our Liability

19. The Company has no liability whatsoever to the Customer for any loss or damage to the extent that the loss or damage;
 - a) Results from any event outside the Company's, (or its servants, agents or subcontractors) control, including any loss or damage resulting from any delay or failure to carry out obligations under this Agreement;
 - b) Occurs after delivery of the relevant goods; or
 - c) Results from any act or omission by the Customer, including a breach of any of the Customer's obligations under this contract.
20. Subject to the provision of the Act in respect of loss of or damage to goods, the Company shall have no direct or indirect liability whatsoever (whether in contract tort or otherwise) for any direct or indirect losses, penalties, damages, costs or expenses of any kind (including indirect or consequential loss) brought, claimed, suffered or incurred by the Customer or any third party in connection with the carriage of goods however caused or arising and (without limiting the generality of the foregoing) whether caused intentionally or arising as a result of the Company's negligence or otherwise.

Company's general lien and right of detention

21. All goods (and documents relating to goods) shall be subject to a particular and general lien and right of detention for monies due either in respect of such goods or for any particular or general balance or other monies due from the Customer or the sender, consignee or owner to the Company. If any monies due to the Company are not paid within one calendar month after notice has been given to the person from whom the monies are due that such goods are being detained, they may be sold by auction or otherwise at the sole discretion of the Company and at the expense of such person, and the proceeds applied in or towards the satisfaction of such indebtedness.

Indemnity by Customer

22. In addition to and without prejudice to the foregoing conditions the Customer undertakes that it shall in any event indemnify the Company against all liabilities suffered or incurred by the Company arising directly or indirectly from or in connection with the Customer's instructions or their implementation for the carriage of the goods, and in particular the Customer shall indemnify the Company in respect of any liability the Company may be under to any servant, agent or sub-contractor, or any haulier, carrier, warehouse person, or other person whatsoever at any time involved with the goods arising out of any claim made directly or indirectly against the Company by any such party or by any person interested in the goods or by any other person whatsoever.

Carriage of Goods Act 1979

23. Sections 18, 19, 21, 22, 23, 24, 25, 26 and 27 of the Act apply to the provisions of this contract only to the extent that they extend, enlarge or improve the Company's rights, powers and position under the provisions of this contract. Where there is any conflict between any such sections of the Act and the provisions of this contract, the section of the Act or the provisions of this contract (as the case may be) that provides the Company with the better rights, powers and position shall prevail.

Consumers Guarantee Act 1993

24. Where the Customer is a business (as defined by the Consumer Guarantees Act 1993), it agrees that it is acquiring the Company's services for the purpose of a business and that the Consumer Guarantees Act 1993 does not apply. Where the provisions of the Consumer Guarantees Act 1993 apply, the provisions of this Agreement will be read subject to the application of the Consumer Guarantees Act 1993, and in the case of any conflict, the provisions of the Consumer Guarantees Act 1993 will apply.

Applicable Law

25. This contract shall be governed by and construed in accordance with the New Zealand law and any proceedings pertaining to the contract shall be instituted in the courts of New Zealand.