

# Central Southland Freight Ltd

## CONDITIONS OF AGREEMENT

1. LIABILITY OF FORWARDER (such term to include unless the context otherwise requires in these conditions, the holding company and its subsidiaries, its servants, agents, sub-contractors, and actual carriers)
  - (a) The contract shall be "at limited carrier's risk" (pursuant to the Contract and Commercial Law Act 2017 hereinafter referred to as "the Act") unless:-
    - i. The Contracting Party or his agent has signed on the face hereof or on any other document relating to the carriage of the goods a statement in the following terms:  
"These goods are to be carried at "owner's risk". This means that the carrier will pay no compensation if the goods are lost or damaged unless he intentionally loses or damages them; 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".
  - (b) In either case (but subject in the case of a contract "at limited carrier's risk") to the limitation contained in Section 259 of the Act)
    - i. The Forwarder shall not be under any liability, howsoever caused or arising and (without limiting the generality of the foregoing) whether caused or arising as a result of the negligence of the Forwarder or otherwise for any damage to, loss, deterioration, mis-delivery, delay in delivery or non delivery of the goods (whether the goods are or have been in the possession of the Forwarder or not) nor for any instructions, advice, information or service given or provided to any person, whether in respect of the goods or any other thing or matter, nor for any consequential or indirect loss, loss of market or consequences of delay; and
    - ii. The Contracting Party will indemnify the Forwarder 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 of the Forwarder or otherwise, brought by any person in connection with any matter or thing done said or omitted by the Forwarder in connection with the goods.
2. NOTIFICATION OF CLAIMS AND LIMITATION OF ACTIONS
  - (a) The Forwarder shall be under no liability whatsoever 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 Forwarder within seven days after delivery or, in the case of non-delivery, within fourteen days after the date of dispatch.
    - ii. An action shall have been commenced by the Contracting Party in a Court of competent jurisdiction within six months of delivery or, in the case of non-delivery, within six months and fourteen days of the date of dispatch.
  - (b) Sections 274, 275, 276, 277, 278, 279, 280 and 281 of the Act shall not apply to the contract.
3. The Forwarder reserves the right to refuse carriage for any person or for any class of goods.
4. All terms used in this contract shall have the meanings as set out in the Act, and where the conditions contained in this contract differ from the provisions of the Act, then so far as the parties are able the contract prevails over any statutory provision and the parties are deemed to have contracted out of the provisions of the Act and the Forwarder shall not be bound by any agreement varying these conditions unless such agreement shall be in writing and signed with due authority on behalf of the Forwarder.
5. The goods shall comply with the requirement of any applicable law relating to the nature, labelling and packaging and carriage of goods and the expenses and charges of the Forwarder in complying with the provisions of any such law or any order or requirement thereunder or with the requirement of any harbour, dock, railway, shipping, customs, excise duty, or sales tax, warehouse or other authority or company or the expenses, charges, levies or fines arising out of the breach of any applicable law shall be paid by the Contracting Party.
6. The goods shall be safely and properly packaged and labelled and fully described in writing in the space provided hereon including the name and the nature and the value of all goods subject to special rates of carriage or of a noxious, dangerous, hazardous or inflammable nature or capable of causing damage or injury to any other goods or property or to any persons or animals and additional freight charges shall be paid on such goods if deemed necessary by the Forwarder. Failure to safely and properly package or label or to fully describe any goods as aforesaid shall render the Contracting Party liable for any loss or damage whatsoever caused to or by such goods and acceptance of the goods for carriage without discovery of any such defect or lack shall not exclude or diminish any liability on the part of the Contracting Party.
7. The Forwarder 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.
8. Freight shall be considered earned and shall fall due for payment as soon as the goods are loaded and dispatched by the Forwarder without deduction. Payment shall not be withheld or deferred on account of any claim, counterclaim or set-off. Should payment in full not be made to the Forwarder within seven days after the due date for payment, then:
  - (a) Payment is due on the 20<sup>th</sup> of the month following invoice or as specified in additional agreements entered into by the Forwarder and the Contracting party.
  - (b) The Contracting Party shall pay interest on all amounts outstanding at a rate which is 5% above the rate charged over the relevant period by the Forwarder's bankers on primary level overdraft advances to the Forwarder and
  - (c) The Forwarder shall be entitled to sue forthwith for the recovery of all outstanding freight and interest thereon and Section 283 of the Act shall not apply; and
  - (d) Any costs incurred by the Forwarder in connection with recovery action taken in respect of outstanding freight and other charges based on a solicitor and own client basis and the cost any collection agencies charges shall be payable by the Contracting Party on demand.
9. If the Contracting Party is the consignor, then any special instruction to the effect that freight shall be paid by the consignee shall be deemed to include a stipulation that if the consignee does not pay the freight within seven days of the date on which the goods are loaded and dispatched, then the Contracting Party shall pay the same and all other charges incurred by the Forwarder.
10. The Contracting Party will be and remain responsible to the Forwarder for all its proper charges incurred for any reasons. A charge may be made by the Forwarder in respect of any delay in excess of 30 minutes in loading or unloading occurring other than from the default of the Forwarder. Such permissible delay period shall commence upon the Forwarder reporting for loading or unloading. Labour to load or unload the vehicle shall be the responsibility and expense of the Contracting Party or consignee, and should the consignee described hereon not be in attendance at the address given during normal trading hours when delivery is attempted, an additional charge may be made at ruling rates for each call until delivery is accomplished.
11. The Forwarder may carry or on-forward all goods or have them carried by any method or any person which the Forwarder deems fit and notwithstanding any instructions that the goods are to be carried or on-forwarded by another method.
12. The Contracting Party authorises the Forwarder to contract either as principal or an agent for the carriage of goods and any such contract will be made upon the terms and subject to the conditions of any bill of lading or other forms or terms of contract for carriage, whether by sea, rail, road or air.
13. From the date on which the responsibility of the Forwarder ceases as provided by Section 258 of the Act the Forwarder may hold the goods if undelivered as bailee and shall be entitled to storage fees at normal rates charged by the Forwarder AND as bailee shall not be under any liability for any loss of or damage to the goods howsoever caused, OR in its discretion return the goods to the Contracting Party at the risk and expense of the Contracting Party. The provisions set out above for recovery of interest and costs on outstanding freight shall apply also to storage fees which remain unpaid seven days after demand for payment has been made.
14. The consignor expressly warrants that he is either the owner or the authorised agent of the owner of any goods or property the subject matter of this contract, that the person signing this contract has authority so to do, and by entering into this contract he accepts these conditions of contract as or for the Contracting Party as well as for all other persons on whose behalf the Contracting Party is acting.

15. The goods are accepted subject to a general lien for all charges due now or in the past which may hereafter become or are due to the Forwarder on any account. If the lien is not satisfied within seven days of such payment becoming due, the Forwarder having given notice of a lien may at its option either:
- (a) Remove such goods or part thereof and store them in such place and manner as the Forwarder shall think fit and at the risk and expense of the Contracting Party or as the case may be 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 costs of sale without being liable to any person for damage thereby caused.
16. In the event that this contract specifies a requirement for insurance the Forwarder as the consignor's agent will at the cost of the consignor arrange with a lawful insurer insurance of the goods. The limit of the cover provided by such insurance as arranged by the Forwarder for the consignor shall be the amount specified on the face hereof and the following exclusions will apply:-
- (a) All claims resultant from wear, tear, moths, vermin, damp, mildew or loss of market, loss damage or expense proximately caused by delay or inherent vice or nature of the subject matter insured.
  - (b) Gradual deterioration rust and/or oxidation unless due to or consequent upon fire collision overturning or other accident to the conveyance.
- And such insurance shall be otherwise on the terms and conditions normally offered for such class of business by the underwriter with whom such insurance is affected PROVIDED HOWEVER that the said limit shall not be construed as an agreed value.

#### PRIVACY ACT

17. I/We, on behalf of the applicant and in my/our personal capacities authorise every member of the group:
- (a) To furnish to and obtain from any credit reporting agency and any person or company named in this application or in a credit report or that otherwise extends credit to the applicant or any of us, personal information about any of us, including about our credit arrangements, credit worthiness, credit standing, credit history, credit capacity and other information permissible under the Privacy Act 1993 for the purpose of assessing this application and monitoring our credit worthiness during the continuance of this agreement.
  - (b) To provide to any solicitor, debt collection agency, credit reporting agency or other credit provider personal information about any of us, including any default under this agreement or any other contract with any member of the group for the purpose of collecting any overdue monies or otherwise enforcing any of their rights under this agreement or any other contract with the applicant or any of us.
  - (c) To provide to any servant or agency of any member of the group personal information about any of us for the purpose of performing any contract with the applicant or any of us.
  - (d) To furnish to the applicant or any of us information about or concerning the carriage or other services from time to time offered by any members of the group to their customers and prospective customers, unless otherwise notified in writing by the applicant or any of us.