

Contract and Conditions of Carriage

1 This contract

- 1.1 This contract of carriage is made between the Consignor and the Carrier. The Carrier's obligations under this contract of carriage (including the consequences of providing any advice, information or other services) are undertaken upon and subject to these Conditions, which constitute the entire agreement between the Consignor and the Carrier in relation to the provision of the services.
- 1.2 In this contract of carriage, unless the context otherwise requires:
- (a) The Act means the Carriage of Goods Act 1979, and unless modified every word or expression defined in the Act bears the same meaning in this contract.
 - (b) Carrier includes the Fastway franchisee and/or owner/driver with whom the Consignor contracts for the carriage of goods under this contract, as contracting carrier, and otherwise includes (where the context requires) any Sub-contractor of the contracting carrier and any Actual Carrier or Carrier as defined in the Act.
 - (c) Goods includes any item or items of freight which are the subject of this contract of carriage and includes any unit of goods or unit as defined by the Act.
 - (d) Services includes Carriage and Incidental Service as defined in the Act and any advice, information or other services provided by the Carrier.
 - (e) The singular number includes the plural and vice versa and words importing one gender only include the other genders.
 - (f) Reference to any Act or Regulation extends to and includes any statutory or other modification or re-enactment thereof and any other like provision for the time being in force in New Zealand.
 - (g) Any headings of any clauses or paragraphs herein will not affect the interpretation given to this contract.

2. Application of the Act

- 2.1 Sections 18, 19, 21, 22, 23, 24, 25, 26 and 27 of the Act shall apply to this contract of carriage only to the extent that they extend or enlarge the Carrier's rights and powers under these Conditions. Sections 18 and 19 are modified by clause 16 of these Conditions and the relevant sections shall, in relation to any matter arising out of the provisions of those sections, have effect subject to the express terms contained hereunder.
- 2.2 No person has any authority from the Carrier to waive or vary these conditions unless such waiver or the variation is in writing by the Carrier (if a natural person) or an executive officer of the Carrier.
- 2.3 The terms of the Consignor's documentation shall not diminish or negate the application of these Conditions to the provision of the services.

3. Sub-contractors

- 3.1 The Carrier and any Sub-contractor may sub-contract on such terms as they think fit the whole or any part of the services.
- 3.2 Every exemption, limitation or condition contained in these conditions and every right power, authority, exemption from liability, defence and immunity applicable to the Carrier or to which the Carrier is entitled shall also be available to and extend to protect:
- (a) Any Sub-contractors,
 - (b) Every Agent, servant or officer of the Carrier and every Sub-contractor,
 - (c) Every other person by whom any part of the services are performed, and
 - (d) All persons who are or may be vicariously liable for the acts or omissions of any of these persons in (a) (b) or (c) and/or the Carrier, and for the purpose of this clause the Carrier is or shall be deemed to be acting as an agent or trustee on behalf of each such persons who shall to that extent be deemed to be parties to this contract of carriage.
- 3.3 The Consignor:
- (a) Warrants that no claim inconsistent with Clause 3.2 shall be made by the Consignor or any other person interested in the Goods, and
 - (b) Indemnifies and shall keep indemnified by the Carrier and each Sub-contractor from and against all such claims including legal costs incurred by the Carrier or any Sub-contractor in relation to any such claim on a full indemnity basis, and
 - (c) Expressly agrees that any of the parties referred to in clause 3.2 may claim the benefit of these Conditions if any claim is made against them by the Consignor or Consignee or any person claiming through or under them.

4. Ownership of goods

The Consignor expressly warrants to the Carrier that the Consignor is the owner or the authorised agent of the owner of the goods and is authorised to and does accept these Conditions not only for the Consignor but also for and on behalf of all other persons who are or may hereafter become interested in the goods.

5. Insurance

Insurance of the goods is the responsibility of the Consignor not of the Carrier.

6. Warranties

6.1 The Consignor warrants:

- (a) That it has complied with all laws and regulations relating to the nature, packaging, labelling and carriage of the goods, and
- (b) That the goods are packed in a manner to withstand the ordinary risks associated with the courier services and the Linehaul trucking operation having regard to the nature of the goods, and
- (c) The accuracy of all markings, branding and labelling of the goods, descriptions, value and other particulars furnished to the Carrier for carriage, customs, consular or any other purpose and indemnifies and shall keep indemnified the Carrier against all loss, damage, expense and fines arising from any inaccuracy or omission in that respect.

6.2 The Consignor has complied and shall comply with all requirements of any Act, Regulation or otherwise, and specifically (without limiting the generality of the foregoing) section 70G of the Transport Act 1962, all IATA regulations for items offered for carriage by air, other provisions of the Transport Act 1962 relating to the transportation of hazardous substances, the Hazardous Substances and New Organisms Act 1996 and the Land Transport Rule: Dangerous Goods 1999. (Rule 45001)

6.3 Where the Consignor enters into this contract of carriage for the purposes of a business nothing in the Consumer Guarantees Act 1993 shall apply to this contract of carriage.

7. Delivery

7.1 The carrier shall be conclusively deemed to have delivered the goods in accordance with these conditions if either the carrier obtains a receipt, captures an electronic signature, or signed delivery sheet from any person at the address specified by the Consignor for delivery following delivery of the goods, or delivery is effected in any one or more of the following authorised ways:

- (a) By delivery to any actual or ostensible agent of, or place nominated by, the Consignor or Consignee, or
- (b) In the case of fresh flowers and produce when they are physically deposited at the address given by the consignor or consignee
- (c) In the case where the Consignee has given the carrier "authority to leave" without a signature, when they are physically deposited at the address given by the Consignor or Consignee
- (d) In the case of a Consignee with a rural delivery address (rural delivery address as deemed by Fastway Couriers); delivery will be effected in one of the following ways
 - (i) In the event of the consignor affixing a Rural Delivery label to the item by delivery to the Consignee's rural delivery contractor's depot or agent for delivery by them, or
 - (ii) Delivery to the nearest Fastway depot or agent.
 - (iii) In all cases an electronic signature or signed delivery sheet will not be obtained
 - (iv) In all cases an additional fee applies to all rural deliveries and/or drop off points

7.2 If the place for delivery in terms of clause 7.1 is unattended at the time delivery is attempted or if delivery cannot otherwise be effected the Carrier may, without being obliged to do so, store the goods at the risk and expenses of the Consignor so that:

- (i) The Consignor shall pay on demand to the Carrier all costs and expenses incurred in or about storage, and
- (ii) The Carrier may re-deliver the goods to the Consignor from the place of storage at the Consignor's further expense.

7.3 Where the goods are collected or consigned for collection, the Carrier may release the goods to any person who presents himself to the Carrier as the Consignee or its agent, servant or officer and the Carrier shall be conclusively presumed to have delivered the Goods in accordance with these conditions if the Carrier obtains from that person a receipt or signed delivery run sheet for the goods.

7.4 Where the goods are delivered to the Consignee (or to any person who presents themselves to the Carrier as the Consignee or its agent, servant or officer) who prefixes his signature with an indication that inspection of the goods is a prerequisite to acceptance (eg STI), then the goods must be immediately inspected with the actual delivery Carrier. Any goods left for later inspection will be conclusively deemed to have been delivered in accordance with these conditions.

8. Responsibility for charges

8.1 The Consignor agrees to pay and shall be liable to the Carrier for all proper charges incurred for any reason in the provision of the Services.

8.2 The Carrier's charges shall be deemed fully earned as soon as the goods are received by or on behalf of the Carrier and shall be immediately payable then and non refundable.

8.3 The Consignor shall not defer or withhold any payment or deduct any amount from the account of the Carrier by reason of any claim the Consignor alleges against the Carrier.

8.4 The Consignor shall be liable to the Carrier for any legal fees or collection costs incurred to recover outstanding charges on a full indemnity basis.

8.5 The Consignor agrees and accepts that all prepaid labels and satchels are not transferable, not refundable and that payment is due immediately upon receipt of the labels and satchels.

9. Lien

The Carrier shall have a lien on the goods (and any documents relating to the goods) and any other items (and any documents relating thereto) of the Consignor in the custody or control of the Carrier for any monies owing to the Carrier by the Consignor whether in connection with the carriage of goods or otherwise and the Carrier may sell the goods or any of those items by public auction or private treaty without further notice to the Consignor or any other person having an interest in them towards satisfaction of that obligation and all costs incurred by the Carrier for storage, cartage or in relation to the sale, including legal costs on a full indemnity basis. Any such sale shall not prejudice or extinguish the right of the Carrier to recover all the monies to which the Carrier may be entitled .

10. Nature of goods

- 10.1 The Consignor shall not tender for carriage or storage any volatile spirits, explosive goods or goods which are or may become dangerous, inflammable or offensive (including radio active materials) or which may damage or become liable to damage any property whatsoever without providing to the Carrier a full description disclosing the nature of the goods, and in any event shall be liable for all loss, damage or destruction caused thereby (including any fines or other penalties incurred by the Carrier under any law).
- 10.2 If in the opinion of the Carrier the goods are or are liable to become dangerous, explosive, volatile, or offensive or of a damaging nature, the goods may at any time be destroyed, disposed of, abandoned or rendered harmless by the Carrier without compensation to, but at the cost in all things of the Consignor, and without prejudice to the Carrier's right to its charges under these conditions.
- 10.3 The Consignor will indemnify and keep indemnified the Carrier from and against all actions, suits, costs, damages, claims, proceedings or injunctions made or brought against the Carrier, including any fines or other penalties imposed upon the Carrier following any prosecution, arising out of the carriage, storage, spillage, escape, destruction, disposal or abandonment of any goods referred to in clauses 10.1 and 10.2 or arising out of the actions of the Consignor contrary to the provisions of clause 6.2.
- 10.4 The Carrier does not accept for carriage livestock, perishables (excluding plant life but including food plants), second hand motor vehicle and engine parts, vehicle windscreens, cash (including vouchers, tickets, coupons and other similar negotiable documents), jewellery (including watches, gems, medallions, precious metals and stones) or other similar valuables, antiques, memorabilia, personal effects, works of art (including paintings, sculptures, photography) and any such items consigned are carried wholly at the risk of the Consignor without any obligation being accepted in respect thereof by the Carrier.

11. Ownership

The Consignor acknowledges that the business of the Carrier is owned and operated independently from those of Fastway Couriers (NZ) Limited and other operators (including franchisees and owner/drivers) in the Fastway network, and that the Consignor shall have no right of action whatsoever against Fastway Couriers (NZ) Limited or any of its franchisees other than the actual carrier arising out of the carriage of goods pursuant to this contract of carriage.

12. Export control and customs

- 12.1 The Consignor authorises the Carrier to act as the Consignor's agent for export control and customs purposes and to complete all documents as may be necessary or desirable in connection with the provision of the services on any terms provided that the Carrier shall not be liable to act as the Consignor's agent in this respect.
- 12.2 The Carrier may (but without obligation to do so) advance any duties, taxes, imports, outlays or charges at any port or place in respect of the goods and the Consignor shall on demand pay any amounts so paid by the Carrier.

13. Enforceability

All rights, powers, authorities, immunities and limitations of liability in these conditions shall continue to have full force and effect in all circumstances and notwithstanding any breach of these conditions or negligence of any person entitled to the benefit of these conditions or any of their respective agents, servants or officers.

14. Indemnity

The Consignor indemnifies and shall keep indemnified the Carrier its agents, servants and officers in respect of all liabilities arising from any breach of these conditions by the Consignor or the provision of the service except for liabilities expressly assumed by the Carrier under these conditions.

15. Limited carrier's risk

This contract for carriage is at limited carrier's risk, and subject to the provisions of the Act imposing liability in respect of the loss of or damage to the goods:

- (a) The Carrier 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 Carrier, breach of contract or otherwise for any damage or loss, deterioration, mis-delivery, delay in delivery of the goods (whether the goods are or have been in the possession of the Carrier or not), nor for any instruction, 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
- (b) The Consignor will indemnify and keep indemnified the Carrier from and 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 Carrier, breach of contract or otherwise, brought by any person in connection with any matter or thing done, said or omitted by the Carrier in connection with the goods.

16. Actions Against the Carrier.

The Carrier shall be under no liability whatsoever unless:

- (a) Written notice of any claim, giving full particulars of any alleged damage or destruction, is received by the Carrier within fourteen (14) days after the delivery of goods or, in the case of loss of the goods, within three (3) months of the date of despatch;
and
- (b) an action shall have been commenced by the Consignor in a Court of competent jurisdiction within twelve (12) months from the date of despatch of the goods.

17. Claims

- 17.1 The Carrier shall not be liable in any event, for any consequential or special damages or other indirect loss however arising, whether or not the Carrier had knowledge that such damages might be incurred, including but not limited to loss of income, profits, interest or loss of market.
- 17.2 No claim or proceeding whatsoever may be made against Fastway Couriers (NZ) Ltd or any of its franchisees other than the actual Carrier.

18. Cubic conversions

167kg per cubic metre

19. Notice

Any notice given under this contract shall be deemed to be received if delivered or forwarded by registered post to the registered office of the party to which it is addressed or the usual or last known place of residence or business of that party.

20. Privacy Act 1993

Pursuant to the provisions of the Privacy Act 1993, the Consignor authorises any person, agency or company to provide the Carrier with such information as the Carrier may require at any time in response to the Carrier's credit enquiries concerning any aspect of its dealings with the Consignor, and the Consignor authorises the Carrier to furnish to any third party details of any application being actioned by the Carrier and/or any subsequent details concerning the Carrier's credit enquiries.

21. Paramount Clause – Consumer Guarantees Act 1993.

Where the provisions of the Consumer Guarantees Act 1993 apply, the provisions of these conditions will be read subject to that Act, and in the case of any conflict, the provisions of that Act prevail.

22. Electronic Messages

If the Consignor has supplied their email address on the Customer Information form, the Carrier may occasionally email the Consignor with information about their products, services and promotions on offer. In accordance with the Unsolicited Electronic Messages Act 2007, the Consignor may at any time choose to opt out of receiving emails about products, services and promotions on offer by selecting the 'unsubscribe facility' in any email received. The Consignor's email will then be removed from any future emails about products, services and promotions on offer.