

## 1 This contract

### Definitions

- (a) “the Act” means the Contract and Commercial Law Act 2017, as modified from time to time.
- (b) “Carrier” means the Fastway franchisee that has agreed to provide carriage services in respect of the Goods as specified from time to time, including any sub-contractor of the contracting Carrier.
- (c) “Consignor” means the customer/party that has engaged the Carrier to provide the Services in accordance with these conditions.
- (d) “Goods” means the items provided by the Consignor for carriage by the Carrier.
- (e) “Parcel Connect Agent” means the agent of the Carrier, at who’s premises the Carrier may leave the Goods for collection by the Receiver.
- (f) “Receiver” means the consignee party nominated by the Consignor to receive the Goods.
- (g) “Services” means the services provided by the Carrier in connection with the carriage of the Goods including (without limitation), the carriage, transport and/or storage of the Goods plus any incidental services as defined in the Act.

### Interpretation

Words denoting the singular include the plural and vice versa; any gender includes the other gender; and persons include corporations and bodies politic and include their legal personal representatives and assigns.

## 2. Application of the Act

- 2.1 Sections 193, 248-253, 259 and 260, and 274-275 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. Section 260 is modified by clause 10 of these Conditions and Section 274 and 275 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.

## 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 the person who tenders the Goods for carriage has the authority to deliver the Goods to the Carrier. At the point of providing the Goods to the Carrier, the Consignor accepts these Conditions as binding upon it.
  - (b) Where the Consignor is not the owner of the Goods it warrants it has full authority to act as agent of the owner of the Goods, or any other person having an interest in, the Goods for all purposes in connection with the carriage of the Goods by the Carrier under these conditions and indemnifies and shall keep indemnified the Carrier in respect of all liability whatsoever or howsoever arising (including without limitation any loss or damage caused by the Goods during the provision of the Services by the Carrier or caused from the negligent or wilful act or default of any third party) in connection with the Goods.
  - (c) That it has complied with all laws and regulations relating to the nature, packaging, labelling and carriage of the goods, and that the goods are packed in a manner to withstand the ordinary risks associated with the Services and the Linehaul trucking operation having regard to the nature of the goods. Goods which do not comply with all laws and regulations and which are insufficiently packaged by the Consignor, shall not be covered by any limited liability compensation scheme available to the Carrier.
  - (d) 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 5001)

- 6.3 The Consignor acknowledges that:

- (a) the Carrier uses prepaid labels and satchels, dynamic labels and electronic labels in its operations. All labels and satchels must be used within 1 year of purchase and are not refundable or transferable other than where required by law.
- (b) the Consignor is responsible for ensuring that the correct labels, satchels, dynamic labels and electronic labels are used for the Goods. Where an incorrect label, satchel, dynamic label or electronic label is used by a Consignor, resulting in an underpayment by the Consignor for the carriage of the Goods, the Carrier will calculate and apply the correct payment and raise an invoice against the Consignor for the difference, for immediate payment on presentation. The Carrier reserves its rights not to provide the Services to the Goods until the Consignor has paid the correct amount applicable for the carriage of the Goods.

- 6.4 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:
  - (a) It is authorised to deliver the Goods to the Consignee at the address nominated by the Consignor or Consignee or agent of either of them; and
  - (b) the Carrier:
    - (i) obtains a signature or signed delivery sheet acknowledging receipt from any person who presents themselves to the Carrier as the Consignee or its agent; or
    - (ii) delivers the Goods at the address given by the Consignor without obtaining a signature, where the Consignor has purchased a non signature service, or
    - (iii) is provided with a written Authority to Leave (ATL), which can be either permanent or a per consignment basis, which allows delivery without signature, from either the Consignor or Consignee, or
    - (iv) in the case of perishables, physically deposits the Goods at the address given by the Consignor or Consignee.
- 7.2 If the nominated place of delivery is unattended at the time delivery is attempted (and there is no ATL in place) or if delivery cannot otherwise be effected, the Carrier may, without being obliged to do so, store the Goods at the risk and expense of the Consignor so that:
  - (a) the Carrier may attempt one more re-delivery of the Goods to the Receiver from the place of storage; or
  - (b) at the direction of the Consignee, deliver the Goods to an alternate delivery address provided by the Consignee, for an additional fee; or
  - (c) deliver the Goods to a Parcel Connect Agent and leave a calling card at the delivery address notifying the Consignee to collect the Goods from the relevant Parcel Connect Agent;
  - (d) request that the Consignee attend the Carrier’s premises to collect the Goods.

If neither re-delivery nor pick up by the Consignee can be effected within 7 days, the Carrier may return the Goods to the Consignor.

Where the Goods are collected, or consigned for collection, the Carrier may release the Goods to any person who presents themselves to the Carrier as the Consignee or its agent 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 signature for the Goods.

- 7.3 In the case of a Consignee with a rural delivery address (rural delivery address as deemed by Fastway Couriers) delivery will be effected, for an additional fee, in one of the following ways:
  - (a) 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
  - (b) delivery to the nearest Fastway depot or agent.

In all cases an electronic signature or signed delivery sheet will not be obtained.

- 7.4 If neither re-delivery nor pick up by the Receiver can be effected within 7 days, the Carrier may return the Goods to the Consignor
- 7.5 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, electronic labels and satchels are not transferable, not refundable and that payment is due immediately upon receipt of, or access to, the labels and satchels.
- 8.6 The Carrier reserves the right to review the charges for the Services and introduce surcharges, including but not limited to a fuel surcharge, as deemed necessary by the Carrier from time to time to cover the costs of providing certain Services. The Carrier will provide 30 days' notice to the Consignor of a review of the charges or the introduction of such surcharges and will incorporate the details of any changes to the charges or surcharges on the website [www.fastway.co.nz](http://www.fastway.co.nz)

## 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:

- (a) any Goods with a deadweight or cubic weight of more than 25kg or length of more than 2.4m (or such other deadweight or cubic weight or length as advised by the Carrier in writing prior to taking the Goods; or
- (b) any volatile spirits, explosive goods or goods which are or may become dangerous, inflammable or offensive (including radioactive materials) without also presenting a full description disclosing the nature of the Goods or Dangerous Goods to the Carrier. The Consignor is liable for all loss, or damage or destruction caused by the Dangerous Goods. The Carrier is entitled to refuse to accept for carriage any Dangerous Goods or, if accepted, without the nature of the Dangerous Goods being fully disclosed to the Carrier, to notify the Consignor that it must arrange for collection of the Dangerous Goods at its cost once the nature of the Dangerous Goods is discovered by the Carrier.

If, in the reasonable opinion of the Carrier, the Goods are or are liable to become of a dangerous, flammable, explosive, or of a volatile nature, or otherwise likely to cause damage to property or persons, the Carrier may take any steps reasonably necessary to protect persons and property and render the Dangerous Goods harmless, and will not be required to pay any compensation to the Consignor in respect of any such action taken, including the loss or damage of the Dangerous Goods; or

- (c) Goods 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, ceramics, porcelain, 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. Goods of this type, consigned by the Consignor via the Carrier shall not be covered by any limited liability compensation scheme available to the Carrier. If the Consignor requires insurance cover for these Goods, it must take out its own coverage and its cost.

10.5 The Carrier will accept framing glass and mirrors for carriage provided the Consignor is responsible to ensure that the Goods are sufficiently packaged, with at least manufacturer's packaging to protect the Goods, otherwise the Goods shall not be covered by any limited liability compensation scheme made available 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 Liability

- 15.1 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. Subject to the following sub-clauses, the Carrier is not liable for:
- (a) injury or damage to or destruction or loss of the Goods or any other property arising out of or incidental to the provision of the Services; or
- (b) the mis-delivery, delay in delivery or non-delivery of the Goods.
- (c) 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.
- 15.2 The Carrier will be liable to the Consignor in respect of injury or damage to or destruction or loss of the Goods directly caused by the Carrier in providing the Services up to the amount of \$2,000 as a total maximum liability for all of the Goods the subject of the consignment note (Cap). The parties agree that any such liability shall be based on, in the case of lost goods, the net cost to purchase or manufacture like goods (including any depreciation in the value of the goods lost from the date of original purchase), or in the case of damaged goods, the net cost for repair. The parties agree that neither party is liable for any consequential loss however caused.
- 15.3 The limitations referred to in this clause 15 are subject to law, and in particular do not limit the Carrier's liability for any consumer guarantees under the Consumer Guarantees Act.
- 15.4 The Carrier will not collect cash or any other payment on delivery of the Goods from the Receiver and the Consignor remains liable for payment of the Services.
- 15.5 As the liability of the Carrier is limited as provided in these Conditions the Consignor is advised to secure their own additional insurance cover generally. No insurance will be effected by the Carrier for the benefit of the Consignor

## 16. Actions Against the Carrier.

The Carrier shall be under no liability whatsoever unless:

- (a) in the case of damage to the Goods, written notice of any claim, giving full particulars of any alleged damage or destruction, is received by the Carrier within seven (7) days after the delivery of goods or,
- (b) in the case of loss of the Goods, within thirty (30) days of the date of despatch; or
- (c) 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.

All information reasonably requested by the Carrier, or any third party claims administrator, in relation to the claim must be provided in writing within thirty (30) days of the request being made.

## 17. Claims

- 17.1 Neither party shall not be liable in any event, for any consequential or special damages or other indirect loss however arising, whether or not the party 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

When calculating the weight and measurement profile of any Goods submitted by the Consignor to the Carrier, the Carrier will use the conversion of 200kg 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.