

Terms of Trade

<p>The Customers attention is drawn to these conditions which exclude or limit the Company's liability and may require the Customer to indemnify the Company in certain circumstances.</p> <p>All business undertaken by the Company is subject to these terms and conditions and the terms and conditions of any Transport Document issued by the Company or a Carrier for Services supplied to the Customer. In the event of any inconsistency between these terms and conditions and the terms and conditions of a Transport Document these terms and conditions are paramount. Use of the Services constitutes an acceptance of these conditions by the Customer.</p> <p>1. Definitions Carrier : means the actual carrier engaged to carry the Goods and includes warehousemen.</p> <p>Company : means Emmerson Transport Limited (ETL) and Emmerson Container Transport Ltd (ECTL), their servants, agents and subcontractors and includes any or all companies related to any subsidiary of the foregoing.</p> <p>Customer : means the person acquiring Services from the Company and includes the shipper, consignee, receiver, owner or bailor of the Goods.</p> <p>Goods : means the whole or any part of the chattels, articles and things tendered under this agreement by the Customer and includes the Container of the Goods.</p> <p>Container : means any container, trailer, transportable tank, flat, pallet or other packaging or article used to carry, consolidate, store or package the Goods.</p> <p>Dangerous Goods : means Goods which are in fact or at law noxious, dangerous, hazardous, explosive, radioactive, flammable or capable by their nature of causing damage or injury to their Container, other Goods or to any persons, or animals, or property.</p> <p>Services : means all services supplied by the Company to the Customer whether gratuitously or not and includes but is not limited to any advice or information, carriage, storage, lifting, packing, warehousing, handling, installation, removal, assembly, erection or insurance of the Goods, and arranging provision of these Services by a third party.</p> <p>Transport Document : means any house or Carrier air waybill, bill of lading, warehouse receipt, consignment note or other document issued by the Company or a third party providing Services in respect of the Goods.</p> <p>Person : includes corporation or firm.</p> <p>1. Variation of Contract The Company shall not be bound by any agreement purporting to vary these terms and conditions unless the agreement is in writing and signed on behalf of the Company by one of its Directors.</p> <p>2. Regulations Relating to Goods The Customer shall comply with the requirements of any applicable law relating to the nature, condition and packaging of the Goods and the expenses and charges of the Comp any in complying with the provisions of any such law or any order or requirement thereunder or with the requirement of any harbour, dock, airport, railway, shipping, customs, warehouse or other authority or corporation shall be paid by the Customer and the Customer shall provide to the Comp any all such assistance, information and documents as may be necessary to enable the Company to comply with such laws, orders or requirements.</p> <p>3. Dangerous Goods (1) The Customer shall not tender any Dangerous Goods for Carriage or storage without presenting to the Company a full description thereof and giving such notice of intention to ship or bail Dangerous Goods and comply with any applicable laws, regulations or requirements. If any Goods are in the opinion of the Company liable to become of a dangerous, flammable or damaging nature, they may at any time be destroyed, disposed of, abandoned or rendered harmless without compensation to the Customer and without prejudice to the Company's right to freight and charges.</p> <p>(2) Whether or not the Customer was aware of the nature of the Goods the Customer shall indemnify the Company against all claims, losses, damages or expenses arising in consequence of any breach of the provisions of this clause.</p>	<p>4. Methods and Route of Transportation</p> <p>(1) Pending forwarding and delivery the Goods may be warehoused or otherwise held at any place at the sole discretion of the Company at the Customers risk and expense.</p> <p>(2) The Company may at any time and without notice to the Customer.</p> <p>(a) use any means of transport or storage whatsoever;</p> <p>(b) transfer the Goods from one conveyance to another including transshipment;</p> <p>(c) unpack and remove Goods which have been stowed into a container and forward the same in a container or otherwise;</p> <p>(d) proceed by any route in its discretion;</p> <p>(e) load or unload the Goods at any place and store the Goods at any such place;</p> <p>(f) comply with any orders or recommendations given by any government or authority or any person or body acting or purporting to act as or on behalf of such government or authority.</p> <p>5. Delivery (1) If delivery of the Goods or parts thereof is not taken by the Customer at the time and place when and where the Company is entitled to call upon the Customer to take delivery thereof, the Company shall be entitled without notice to unstow the Goods if stowed in Containers or to store the Goods at the sole risk of the Customer. Such storage shall constitute delivery, and the liability of the Company in respect of the Goods shall wholly cease and the cost of such storage shall be payable by the Customer.</p> <p>(2) If the Customer fails to take delivery of the Goods within 30 days of its becoming due under sub-clause (1) above or if in the opinion of the Company they are likely to deteriorate, decay, become worthless or incur any charges in excess of their value or if the Goods are insufficiently addressed, marked or not identifiable, the Company may without prejudice to any rights which it may have against the Customer, without notice and without any responsibility, sell or dispose of the Goods and apply any proceeds in reduction of any sums due to the Company from the Customer.</p> <p>6. Declaration of value The Comp any will not declare the value of the Goods in a Transport Document unless instructed to do so in writing by the Customer.</p> <p>7. Freight and Charges (1) Freight and storage charges are payable upon delivery of the Goods to the Company or a Carrier whether or not the Goods are lost or damaged, unless credit terms has been approved by ETL or ECTL. The Company may charge freight or storage by weight, measurement or value, and may at any time reassess the Goods and charge additional freight or storage charges accordingly.</p> <p>(2) Where a Customer gives special instructions that the Company's charges are to be paid by a third party it shall be liable to pay those charges if the third party does not pay the Company within 7 days of delivery, tendered delivery or where the Goods should have been delivered.</p> <p>(3) The Customer shall pay the Company for Services in accordance with the Company's tariff and charges in force from time to time or as agreed. If any moneys due to the Company for Services are unpaid for 30 days from the date of invoice, the Company may, at its discretion, charge the Customer interest at the rate of 2% per month calculated at daily rates.</p> <p>(4) Charges for the Company's Services may at the absolute discretion of the Company be quoted and/or charged in the currency of origin or destination or another freight currency based on the higher of mass, volume or value.</p> <p>(5) Collect freight charges, inclusive of a collection fee, may be converted into the currency of destination at exchange rates set by the company at its absolute discretion.</p> <p>(6) The company reserves the right to enforce weekly trade terms at its discretion for customers who are in breach of the standard monthly terms.</p> <p>8. Advances of Duties, Expenses and Customs Entry The Customer authorises (and promises to repay) the Company in its absolute discretion without obligation to advance for the Customer any duties, taxes, charges or other disbursements for the Goods. If it is necessary to make customs entry of Goods at any place, the Goods shall be deemed to be consigned at that place to the Customer, the Carrier or any person the Carrier designates as customs consignee.</p> <p>9. Lien (1) All Goods and documents relating to Goods shall be subject to a particular and general lien for moneys due in respect of such Goods or any other moneys due from the Customer to the Company. If any moneys due to the Company are not paid within 30 days after notice has been given to the person from whom moneys are due that the Goods have been detained, they may be sold at the discretion of the Company and at the expense of such person and the proceeds applied on account of such general or particular lien.</p>	<p>(2) Notwithstanding any transfer of ownership, the Goods are not released until all moneys owing have been paid to the Company. In the event of any Goods for any reason being delivered to the owner or his nominee without payment having been made in full, the Company retains a lien on such goods and may retake possession of them pending payment and may enter any premises for that purpose.</p> <p>10. Insurance The Company will arrange insurance as a Service only if it receives written instructions from the Customer. The Company acts only as the agent of the Customer and does not act as nor offers advice as an insurance broker or intermediary. Any insurance arranged by the Company is subject to the exceptions and conditions of the policy. The Company is under no obligation to effect a separate insurance for the Goods but may declare them on any open or general policy. The Company accepts no liability for any insurance arrangements and the Customer agrees to indemnify the Company for any loss or damage it may suffer in relation to or arising out of the insurance of the Goods.</p> <p>11. Brokerages and Commission The Company is entitled to and may retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by or paid to customs, shipping and forwarding agents and insurance brokers, whether declared or otherwise, and no such brokerage, commission, allowance or other remuneration shall be payable or allowable to the Customer.</p> <p>12. Claims Handling The Customer agree that the Company is not obliged to advise or assist the Customer or any other party to prepare or make a claim against a Carrier and accepts no liability for any loss or damage however caused. The Company may agree in writing to provide advice or assistance and may make an additional charge for doing so.</p> <p>13. Warranties The Customer expressly warrants that it is the owner or the authorised agent of the owner of the Goods and enters into this contract on its own behalf and also as agent for the owner of the Goods and indemnifies the Company against all claims by any other person for any loss or damage whatsoever arising out of or incidental to or in connection with the Services and provided by the Company.</p> <p>14. Exclusion of Liability (1) In the event that the Company is the actual carrier of the Goods its liability is limited to the maximum extent provided by New Zealand law or any applicable international convention.</p> <p>(2) The Company shall in no circumstances whatsoever or howsoever arising (including negligence or wilful default) be liable for direct, indirect or consequential loss or damage. Without limiting the generality of the foregoing, this exclusion extends to any claim against the Company for loss or damage or delay or payment of any charge, fine, penalty, sales tax or duty whether the claim be founded in contract, bailment or tort.</p> <p>(3) In all cases where liability has not been effectively excluded, whether by this agreement or by statute, convention or otherwise, the total liability of the Comp any for any loss or damage, under The Carriers Act is limited to:</p> <p>(a) NZ\$1500.00 per package</p> <p>(b) Where contents and condition of contents and condition of contents are unknown, claims will be considered only where there are signs of outside damage only</p> <p>15. Indemnity (1) The Customer indemnifies the Company from all claims for loss or damage, customs duty, excise duty, sales tax, costs, fines or penalties which the Company becomes liable to pay for any reason whatsoever in respect of the Goods whether or not such liability is due to the negligence or wilful default of the Company.</p> <p>(2) The Customer warrants that all information provided by it to the Company in connection with the Goods is accurate and adequate and the Customer agrees to indemnify the Company against all loss, damage, fees and expenses arising or resulting from any inaccuracies or inadequacy in that information.</p> <p>16. Consumer Guarantees If the Customer has acknowledged in writing that the supply of services is for the Customers' business purposes (as that term is defined in the Consumer Guarantees Act 1983) or if the Customer has actually acquired the services for such purposes, then the provisions of the Consumer Guarantees Act shall not apply to the transaction unless expressly stated on the front of this form. Otherwise nothing in these terms and conditions shall affect or diminish the rights of any Customer under</p>	<p>the Consumer Guarantees Act. In the event of conflict between these terms and conditions and the Consumer Guarantees Act then the provisions of the Consumer Guarantees Act shall prevail and any such conflict shall be deemed not to be an attempt to contract out of the Consumer Guarantees Act.</p> <p>17. Sub-Contracting and Indemnity (1) The Company shall be entitled to sub-contract on any terms the whole or part of the Services.</p> <p>(2) Any person providing the Services (other than the Company) shall have the benefit of these provisions as if they were expressly for his benefit; and in entering into this agreement, the Company does so as agent and trustee for such person.</p> <p>(3) If the Company sub-contracts the whole or part of the Services to another person, the Services provided by the Company are also subject to the terms and conditions of the contract between the Company and that other person and the Company shall have the benefit of all provisions benefiting that other person as if those provisions were expressly for the benefit of the Company. In the event of and to the extent of any inconsistency between these terms and conditions and the terms and conditions of the contract between the Company and the other person, these terms and conditions are paramount.</p> <p>18. Notice of Loss Any claim for loss or damage must be notified in writing to the Company within 7 days of delivery of the Goods or the date upon which the Goods should have been delivered, failing which the Company shall be discharged of liability howsoever arising.</p> <p>(a) Credit claim requests Credit request claims will not be recognised after 30 (thirty) days from date of invoice.</p> <p>19. Time Bar The Company shall be discharged from all liability unless suit is filed and served on the Company within 9 months (except as defined by statute or convention) after completion of the Services, delivery of the Goods or the date when the Goods should have been delivered, whichever is the shorter.</p> <p>20. Contrary Legislation These Terms and Conditions are to be read subject to relevant statutory provisions having effect in New Zealand which by law cannot be excluded, restricted or modified. Any such term and condition of these Terms and Conditions which is inconsistent with or repugnant to that legislation shall be null and void to the extent (but no further) of such inconsistency or repugnance.</p> <p>21. Severability Each term of this document is severable from the other, and if for any reason a term is invalid or unenforceable it shall not prejudice or affect the validity or enforceability of any other term.</p> <p>22. Law and Jurisdiction These conditions shall be governed and construed in accordance with New Zealand law and any proceedings shall be brought in the courts of New Zealand.</p> <p>23. Arbitration The Customer shall refer all disputes to arbitration in New Zealand. The arbitration shall be conducted in accordance with the Arbitration Act 1996 or any re-enactment or amendment thereof.</p>
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