

Standard Terms and Conditions for Cargo Operations

Coastline Transport Limited

Standard Terms

1 Definitions

“Act” means the Contract and Commercial Law Act 2017, as amended.

“Actual Carrier” has the meaning set out in the Act.

“Agreement” means a legally enforceable signed contract between Us and You, for the provision of Services.

“Business Day” means a day (other than Saturday or Sunday or public holiday) on which registered banks are open for general banking business in Auckland, New Zealand.

“Charges” means the charges payable by You to Us for the Services as defined at clause 4.

“Consequential Loss” includes a claim for any indirect or consequential loss or for any loss of revenue, profits, goodwill, business or anticipated business, anticipated savings or for any business interruption, loss of data, or other indirect or consequential loss or damage whether or not that loss was, or ought to have been, contemplated by the party in breach.

“Container” means a standard shipping container of the standard sizes commonly used.

“Contracting Party” means the person who has entered into an agreement with Us for the Services.

“Goods” has the meaning set out in the Act.

“Related Company” has the meaning given to that term in section 2(3) of the Companies Act 1993, but with that meaning extended by reading section 2(3) of the Companies Act 1993 as if “company” included any body corporate (wherever incorporated or formed).

“Services” means the storage of Goods in our depot or storage facilities (including those of our Related Parties), whether in transit or otherwise.

“Temperature Controlled Goods” means Goods which are required to be kept at a constant temperature or within a range of temperatures in order to prolong its useful life.

“Terms” means these standard terms and conditions, as amended from time to time.

“We”, “Our” and “Us” means Coastline Transport Limited and any of its Related Companies.

“You” and “Your” means Our customers and includes the owner of the Goods and each of their respective agents, principals or employees as the case may be.

2 Application

These Terms apply to all Services provided by Us unless We have entered into a written agreement that excludes the application of any or all of these Terms. To the extent any conflict arises between the Agreement and these Terms, the written Agreement shall apply.

3 Privacy Act 1993

You authorise Us to collect, retain and use any information about You in accordance with the Privacy Act 1993 for the purpose of assessing Your creditworthiness. This includes disclosing any information about You, whether collected by Us from You directly or obtained by Us from any other source, to any other credit reporting agency for the purpose of obtaining a credit reference, debt collection or notifying a default by You.

Services

4 Charges

The Charges shall be:

(a) as set out in any Agreement and these Terms;

(b) as otherwise agreed or quoted in writing prior to Our receipt of the Goods; or

(c) in the absence of any agreement under clause 4(a) or 4(b), then at the prevailing rates charged by Us.

5 Quotes

5.1 Any written quote will remain open for acceptance by You for a period of 20 days from the date of issue. We will not be bound by any quote unless it is in writing.

6 Payment

6.1 The Contracting Party is responsible for payment of the Charges by the due date.

6.2 Unless otherwise agreed, the Charges shall be charged at a daily rate for each day or part thereof, as advised to You from time to time.

6.3 Payment of the Charges shall be due as per our terms of sale unless We, in our sole discretion, otherwise agree in writing to accept payment of the Charges at a later agreed date.

6.4 If You fail to pay an amount owing to Us on the due date We may charge You interest at the 30 day BKBM rate plus 5% per annum, calculated daily and compounding monthly from the due date until the date it is paid in full.

7 Lien

All Goods shall be subject to a particular and general lien for all moneys due by You to Us and the lien will continue until You have paid all money owing to Us.

8 Dangerous Goods

We will not accept (unless special arrangements have been previously agreed in writing) any noxious, dangerous, hazardous, inflammable or illegal Goods. If we agree to accept Dangerous Goods and then we (or any other person) reasonably forms the view that those Dangerous Goods constitute a risk to other goods, property, life or health, we may (without notice and without liability) have the Dangerous Goods destroyed or otherwise dealt with at your expense.

8.1 We accept no liability whatsoever for the dangerous goods we carry or store for you. You specifically agree to indemnify us from any liability arising as a result of Us transporting or storing your dangerous goods.

9 Temperature Controlled Goods

9.1 Unless agreed by us in writing prior to receipt of Your Goods, We will not offer storage of Temperature Controlled Goods. We will not be liable for any loss or damage sustained or incurred as a result of Temperature Controlled Goods being stored by us at an incorrect temperature.

10 Right to decline

We reserve the right to refuse to provide Services or refuse to accept Goods for storage for any reason without explanation or to impose any restrictions or conditions on You before accepting Your Goods.

11 Access to Goods

11.1 The Goods shall be placed in and removed from Our storage facility by Our employees and You and Your servants, agents and employees shall not enter into Our storage facility without the express approval, on each occasion, of Our manager subject to any conditions or terms nominated by Our manager.

11.2 You may inspect Your Goods held in storage in order to check their condition with Our prior written consent, during normal business hours provided that You first give reasonable notice and You comply with Our reasonable directions including paying any costs or expenses incurred by Us on demand.

12 Receipt of Goods for Storage

12.1 Goods that are accepted by Us for storage may only be delivered by Us, on any Business Day during Our normal operating hours. Any Goods to be delivered outside Our operating hours or on a non-Business Day must be by special arrangement only. Such arrangements may be subject to an additional charge in Our sole discretion.

12.2 We are deemed not to know the contents of any container, nor the condition, quality or nature of such contents, nor the suitability of any containers for storage.

12.3 Unless specifically requested in writing We will not inspect any container.

12.4 All containers will be recorded by Us into the storage facility. Our record will be final.

13 No Obligation to Inspect

We are under no obligation to inspect the Goods or containers in Our possession, to ascertain the condition of them or to report on the condition of the container or Goods in storage.

14 Your Obligations

14.1 You agree to indemnify Us against all loss (including Consequential Loss), damage and expenses arising or resulting from inaccuracies in or inadequacy of the information provided pursuant to clause 20.1.

15 Your Warranties

You warrant:

- (a) that you have undisputed rights to property in or possession of all Goods stored with Us; and
- (b) that any container or Goods stored are and will remain free from any harmful or objectionable matter, substance or odour which may prejudicially affect any other Goods in the storage facility and will be liable for any damage to any such other Goods or losses arising from such breach of this warranty.

16 Notice to Remove Goods

We reserve the right to remove any container or Goods from Our storage facility within the period specified in the notice (time being of the essence). The notice may be sent by email, post or courier or delivered by hand to Your last known contact addresses or notified place of business. A notice sent by post shall be deemed to have been received by You within 3 Business Days the date of posting or if sent by email the date which it enters Your information system.

16 Disposal of Container or of Goods After Default by You

16.1 If:

- (a) the Charges Rates remain unpaid by You for a period of 20 Business Days after the due date for payment;
- (b) You do not take delivery of Goods at the date of termination of storage in accordance with any Agreement,

then We may, without prejudice to any other right or remedy We may have under these Terms, any Agreement or at law, retain Your container from Our storage facility on such terms as We think fit until any money owing to Us on any account, including an account relating to other Goods is paid in full.

17 Insurance

17.1 You will hold comprehensive insurance for the container and it's contents to the full value of the Goods whilst they are in Our care. We will not be liable for any loss suffered by You as a result of Your failure to adequately insure the container and contents.

17.2 We will at all times during the term of agreed storage maintain bailees' liability insurance in respect of any loss or damage that We may be liable for at common law or under the provisions of any agreement with You for an amount not less than the total value of the Goods stored on Your behalf.

18 Indemnity for Goods Stored

You indemnify Us, Our Related Companies and Our agents, employees and servants against any action for damages brought by any party for damage or loss (including Consequential Loss) in relation to containers and their contents stored with Us however caused, such indemnity to extend to any claim against or by the insurer of the Owner, its associates or any other party.

19 Lien

19.1 All containers and documents relating to containers shall be subject to a particular and general lien for moneys due by You to Us. If any moneys due to Us are not paid within 20 days after notice has been given to You that the containers have been detained by Us We will seek legal recourse.

19.2 In the event of any Goods being delivered to You without payment having been made in full, We retain a lien on such Goods and may retake possession of them pending payment and may enter any premises for that purpose.

Limitation of Liability

20 Our Liability is Limited

20.1 In respect of any warranties, conditions or terms imposed on Us by law, Our liability is limited to the maximum extent permitted by law.

20.2 We and Our employees, Related Companies, contractors, agents or servants will under no circumstances be responsible or liable to You or to any other person in contract, tort, bailment or otherwise for any loss, damage, decay, deterioration, or destruction of the containers or their contents or for any other loss, damage or harm including any Consequential Loss, however caused.

20.3 We will not be liable for:

(a) any loss or damage to the extent that such loss or damage:

(i) arises directly or indirectly from, or is contributed to by, incorrect information provided by You or Your failure to comply with these Terms or any other applicable Terms; or

(ii) arises from circumstances beyond Our control;

any loss of profits or loss of opportunity (whether directly or indirectly flowing from the cause of the loss) or any indirect or Consequential Loss or damage of any kind.

20.4 We are not liable for any loss or damage arising from what We reasonably believe to be Our compliance with any laws or government regulations, orders or requirements, or arising from Your failure to comply with any such laws or regulations.

20.5 The limitations under this clause 20 shall apply:

(a) to any of our Related Companies and its servants, agents, sub-contractors;

(b) where We are acting as agent, trustee or servant for any other person; and

(c) for any other person or company with whom we may arrange to carry out any of our obligations,

the aggregate amount recoverable from Us and any of the people referred to in this clause, will not exceed the maximum amount of Our liability stated in these Terms.

20.6 Notwithstanding any provision of the Terms, if We are under any liability to You or to any other person then Our total maximum liability shall be limited to the contracted price for the Services.

21 Notice of claim and limitation of actions

The following applies in relation to any claim:

(a) We will not have any liability to You unless written notice of a claim, giving reasonable particulars of the event giving rise to the claim and any alleged damage or loss, is received within 7 days from date of delivery or in cases of non-delivery 14 days from the dispatch date.

(b) No action or claim may be brought against Us (whether for loss of or failure to deliver all or part of the Goods, damage to all or part of the Goods, or otherwise) unless such claim or action is brought within six months of the date on which the cause of action arose.

General

22 Joint and Several Liability

If more than one person signs this form or any other credit application form, both or all will be jointly and severally liable to Us for all obligations in respect of such form.

23 Force Majeure

23.1 For the purposes of this clause a "force majeure event" means an event arising from any cause reasonably beyond Our control that prevents Us from carrying out Our obligations to You including but not limited to:

(a) cyber warfare, cyber attacks, ransomware attacks or cyber sabotage;

(b) war, hostilities (whether war is declared or not), invasions, acts of foreign enemies, civil war, sabotage or piracy;

(c) rebellion, terrorism, revolution, insurrection, military or usurped power, riots, civil commotion or disorder;

(d) operation of the forces of nature such as earthquakes, hurricanes, lightning, typhoons or volcanic activity;

- (e) outbreaks of disease, pandemics, epidemics or quarantine;
- (f) instances of exceptionally adverse weather;
- (g) acts of government authority, whether lawful or unlawful;
- (h) damage, theft or burglary;
- (i) any failure of plant and equipment or power outages;
- (j) any spill or leak origination from other containers stored on site
- (k) fire
- (l) strikes, lock-outs, other industrial disputes or any other unavailability or shortage of labour; or
- (m) any other cause or causes beyond the Our reasonable control.

23.2 For the avoidance of doubt, We are in no way required to settle any strike, lock-out or other industrial disturbance.

23.3 If We suffer a force majeure event then no delay, failure or omission by Us to carry out or observe any of Our obligations to You shall give rise to any claim against Us or be deemed a breach of these Terms.

23.4 We reserve the right in the event of a Force Majeure event, acting in good faith, to charge you a reasonable levy in the event We incur material and unforeseen costs to allow Us to continue providing the Services.

24 No Waiver

A failure by Us to exercise or delay in exercising any right or remedy under these Terms will not operate as a waiver of that right or remedy. Any such waiver will not constitute a waiver of any subsequent or continuing right or of any other provision in these Terms.

25 Review

We reserve the right to review these Terms at any time. If following any such review, there is any change to the Terms, that change will take effect from the date on which We notify You of such change or the date that change is updated on our website (whichever is earlier).

26 Subcontract

We reserve the right to subcontract all or any part of the Services in Our sole discretion to any third party.

27 Assignment

We may assign Our rights and obligations under these Terms. You may not assign Your rights or obligations under these Terms.

28 No lease or licence

You agree that this is an agreement for Services and nothing in these Terms creates any interest in property including in the form of a lease or licence.

29 Notices

29.1 Any notice required to be given by Us shall be

sufficiently given by email, ordinary post or courier, or by personal delivery to the addresses on Our records.

29.2 Any notice from You to Us must be given in writing to Our contact addresses advised by Us from time to time

30 Termination

30.1 An Agreement shall terminate on the expiry date as stated in the relevant Agreement.

30.2 An Agreement may be terminated, prior to the expiry date or where no expiry date exists, by Us giving You no less than one month's written notice.

30.3 A party may terminate an Agreement by notice in writing if the other party:

(a) is in breach of a material obligation under the Agreement or Term and Conditions and fails to remedy that breach within 10 Business Days of receiving notification from the other party; or

(b) becomes insolvent, bankrupt, is liquidated, is placed in voluntary administration or has a receiver appointed in any part of its business; or

(c) any event set under clause 32 occurs and the other party is unable to perform its obligations for more than 60 days.

30.4 Any termination or expiry of an Agreement will be without prejudice to the rights and remedies of either party against the other which have arisen up until the date of termination or expiration.

30.5 If an Agreement is terminated, You must immediately pay Us all amounts owing to Us.

31 GST

You will pay to Us goods and services tax on all Charges unless otherwise expressly agreed in writing by Us. Goods and services tax is payable in addition to any Charges.

32 No Set Off

32.1 You are not entitled at any time to set off any moneys owed by You to Us.

32.2 We are entitled at all times to set off any moneys owed by Us to You.

33 Transfer

If You transfer Your interest in the container or in any part of them You will not be relieved of any liability or duty arising under these Terms. You must notify Us immediately if any such transfer occurs and We reserve the right to cancel or vary the terms of the agreement with You.

34 Consumer Guarantees Act 1993

You acknowledge and agree that You are in trade and the Services are acquired by you in trade, the provisions of the Consumer Guarantees Act 1993 are therefore excluded to the maximum extent permitted by law.

35 General Indemnity

You agree to indemnify Us against all costs (including legal costs on a solicitor and client basis), damages, losses, claims and expenses suffered or incurred by Us which arise:

(a) directly or indirectly caused by Your default or negligence;

(b) from any breach or failure by You to comply with these Terms or any other applicable Agreement; or

(c) out of any third party claim including any claim arising from Us detaining or repossessing Goods.

36 Resolution of Disputes

36.1 If any dispute arises you agree to firstly attempt to resolve the dispute by negotiation between You or Your representative and Ours.

36.2 If the dispute cannot be resolved by negotiation then, if We elect, the dispute must be referred to mediation before any court proceedings are issued, except where urgent interlocutory relief is sought. If a mediator cannot be agreed on by You and Us then the mediator will be appointed by the Resolution Institute.

36.3 We may also elect for the matter to be referred to arbitration with an independent arbitrator. If We cannot agree with You on the appointment of an arbitrator then the arbitrator will be appointed by the Arbitrators' and Mediators' Institute of New Zealand Inc or its successor and the provisions of the Arbitration Act 1996 shall apply accordingly.

38 Governing Law/Jurisdiction

These Terms and any Agreement will be governed by and construed in accordance with, the laws of New Zealand. The parties submit to the -exclusive jurisdiction of the courts of New Zealand in relation to all disputes arising out of or in connection with these Terms and any Agreement.