

# TERMS & CONDITIONS



**Definitions in this Agreement, unless the context requires otherwise:**

**"Act"** means the Contract and Commercial Law Act 2017 (including any amendments).

**"Agreement"** means the agreement constituted by the account application form, these conditions, and any variation or amendment made in accordance with these conditions.

**"Carriage"** means the whole of the operations and services provided by the Company in respect of the receipt, carriage and delivery of the "goods".

**"Company"**, "We", "Us", "Our" means Express Cargo 2022 Limited, its employees, agents, subcontractors, and assignees.

**"Customer"**, "You", "Your", means the person, firm or company specified as the Customer and which term includes any "Contracting Party" in terms of the Act.

**"Dangerous Goods"** includes firearms, noxious, dangerous, or inflammable goods, any goods likely to cause damage or which it is unlawful to carry, or advised by the Company from time to time to be dangerous goods.

**"Goods"** has the meaning given to it in the Act.

**"High Risk Items"** includes bullion, cash, coins, negotiable instruments, (such as vouchers) securities or bearer securities (including credit cards and uncrossed cheques), traveller's cheques, precious stones, jewellery, stocks, bonds, antiques, paintings, or any works of art, passports, glass (with the exclusion of bottled beverages), goods of a fragile nature, Dangerous Goods, Perishable Items, second hand goods or car parts (including windscreens), or any other high risk item advised to the Customer by the Company from time to time.

**"Indemnify"** means to exclude.

**"Perishable Items"** means goods of a perishable nature, refrigerated items and/or items which need to be delivered within a limited time span.

**"Proof of delivery"** means company stamp, receiver's signature (whether receiver is consignee or any person at the consignee's address), scanned bar code, electronic name, electronic signature or any other reliable acknowledgement of receipt.

## 1. Parties

This Agreement is between the Customer and the Company. All business undertaken by us, including the provision of any advice, information or other services is undertaken upon and subject to this Agreement.

## 2. Consumer Guarantees Act 1993

Where the Customer is a business as defined by the Consumer Guarantees Act 1993, you agree that you are acquiring our services for the purpose of a business and that the Consumer Guarantees Act 1993 does not apply. Where the provisions of the Consumer Guarantees Act 1993 do apply, the provisions of this Agreement will be read subject to the application of that Act, and in the case of any conflict, the provisions of that Act will apply.

## 3. Contract and Commercial Law Act 2017

Subject to the provisions of the Contract and Commercial Law Act 2017, Sections 284-291 shall apply to this Agreement only to the extent that they extend or enlarge our rights and powers in terms of this Agreement. Sections 18 and 19 are modified by clause 19 of this Agreement 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.

## 4. Subcontract

We may subcontract the performance of all or any part of this Agreement.

## 5. Protection of Servants, Agents and Contractors

You undertake that no claim or allegation shall be made against any subcontractor, servant or agent of ours which attempts to impose any liability whatsoever in connection with the performance, manner or performance or non-performance of our obligations hereunder.

## 6. Ownership of Goods

You expressly warrant to us that you are the owner or the authorised agent of the goods and that you are authorised to accept and do accept this Agreement not only for yourself but also for and on behalf of all other persons who are or may hereafter become interested in the goods.

## 7. Acceptance of Goods for Delivery

Subject to the other provisions of this Agreement (in particular but not by way of limitation clauses 12 and 13), goods are accepted for Carriage by us at the time we collect those goods for delivery. We shall have no liability whatsoever in respect of those goods prior to that time.

## 8. Delivery

The goods shall be deemed to have been delivered when they are physically deposited at the address given to us by you or a consignee for that purpose, or have been collected from our premises or the premises of an authorised agent of ours. You accept that no form of acknowledgement that delivery has occurred is required to be obtained except in those instances where you have specified, and we have agreed, that we obtain proof of delivery. In addition no proof of delivery will be obtained, where: the consignee has signed an Authority to Leave form; you agree that no proof of delivery or form of acknowledgement that delivery has occurred need be obtained.

## 9. Packing

You warrant that all goods have been labelled correctly and that the contents of packages are adequately and securely packed, wrapped and cushioned for transportation. We do not provide special handling for packages bearing "fragile", package orientation markings (e.g. "UP" arrows or "This way up" markings) or any similar markings.

## 10. Insurance

Carrier insurance is limited to \$2000 (including GST) for loss or damage subject to the Claims process (refer to Claims Procedure) - any insurance in excess of this limit is the responsibility of you to obtain and meet the cost of. Carrier insurance is limited to items that are expressly owned by the account holder or the owner of the ticket and proof of ownership may be requested by way of an original cost price invoice.

## 11. Exclusion of Certain Items

**a.** Pursuant to Section 293 (1), (2) of the Act we will not accept or deal with, and you shall not give us any High Risk or Perishable items except in accordance with this clause.

**b.** We will only deal with any High Risk or Perishable items, and you will only give such goods to us, if we have expressly agreed in writing to deal with those High Risk or Perishable items and you or your authorised agent have complied with all relevant law including, in the case of Dangerous Goods, the Dangerous Goods Act 1974 and associated regulations, and the requirements/procedures set out in the Standards Association of New Zealand Code of Practice for the Transport of Hazardous Substances

on Land as amended from time to time.

**c.** You acknowledge that we are not in a position to ascertain the contents of any consignment given to us for delivery and will not under any circumstances be deemed to be aware of the contents.

**d.** If you deliver any Dangerous Goods to or cause such goods to be dealt with by us, the Dangerous Goods may be destroyed or otherwise dealt with at the sole discretion of us or any other person in whose custody the goods may be. This will be at the expense of you without us or such other person being responsible or accountable for the value thereof except where we have expressly agreed to deal with certain Dangerous Goods presented by you or your authorised agent for consignment, in which case our liability shall be limited to the amount determined by clause 19.

**e.** Any unauthorised High Risk Items will be carried "at owners' risk" and we will not accept any liability for such items. This includes any Goods that are required to be maintained under controlled temperature or humidity conditions.

## 12. Rights of Inspection and Refusal of Carriage

We retain the right to open any package, inspect any goods, and refuse Carriage to you in respect of any consignment that by reason of the dangerous or other character of its contents is likely, in the sole judgement of us, to soil, taint, or otherwise damage other goods or equipment carried by us or that is economically or operationally impractical to transport, or that is improperly packed or wrapped.

## 13. Charges

**a.** You agree to pay our charges subject to annual market increases, which are to be paid to us in accordance with the payment terms specified in clause 14 and on the account application for or any prepaid ticket except under a special arrangement previously made in writing with us.

**b.** All charges payable by you hereunder may be varied by us by giving notice in writing to you at any time. The notice shall state the date from which the new charge or charges shall be effective. This includes renegotiated rates based on any change in your freight mix and volume.

**c.** The customer shall pay for any fines, charges, levies or similar costs incurred by us as a result of undeclared and/or improperly packaged Dangerous Goods being included with any goods given to us by you.

**d.** All prices quoted exclude GST and VFR (Variable Fuel Rates).

## 14. Payment Terms

**a.** Payment if invoices is due by the 20th of the month following invoicing or as otherwise agreed in writing.

**b.** You cannot withhold payment for any disputed portion of an invoice/account unless full written details of the disputed portion are sent to us within seven days of receipt of invoice, along with full documentation in support of the withheld portion. The undisputed amount/s must be paid by the due date.

**c.** You cannot withhold payment in relation to a claim dispute or outstanding claims.

**d.** We reserve the right to withhold any services to you if your account is in arrears until such time as the account is paid in full.

**Initial here:** \_\_\_\_\_

Express Cargo Head Office: Level 1/8 Avenger Crescent, Wigram, Christchurch.



0800 378 246



expresscargo.co.nz



accounts@expresscargo.co.nz

e. We reserve the right to charge interest, at a rate equivalent to 2.5% per month calculated daily on overdue accounts and to recoup any fees in relation to a collection agency or for legal fees.

#### 15. Indemnity

You will indemnify us against all losses, penalties, claims, damages (including damage or deterioration by or to any other consignment), costs and expenses of any kin whatsoever, howsoever caused or arising and (without limiting the generality of the foregoing) whether caused or arising:

a. As a result of the negligence us or otherwise;

b. out of any default or negligence of you (including but not limited to a failure to comply with the terms of this Agreement);

c. As a result of any claim by any third party;

d. And/or suffered or incurred by us in connection with, or resulting from, the Carriage of the goods or any matter or thing done said or omitted by us in connection with the goods.

#### 16. Lien

All goods (and documents relating to goods) shall, immediately upon coming into our possession, be subject to a particular and general lien and the right of detention for all moneys due to us by you or the consignee, consignor or owner, whether in respect of such goods or otherwise. If any moneys due to us are not paid within fourteen (14) days after notice has been given to you from whom the moneys are due that such goods are being detained, then they may be sold by auction or otherwise at the sole discretion of us and at the expense of you, and the net proceeds applied in or towards satisfaction of any such indebtedness. Any such sale shall not prejudice the right to recover any balance due or payable in respect of the services provided hereunder or the cost of the said detention and sale.

#### 17. Company's Liability

a. If the Account Application Form Agreement is at "Declared Value Risk", our maximum liability as being less than \$2000 (including GST), then this agreement, and our liability in respect of that particular consignment shall be at "Declared Value Risk" as defined in the Act. In such cases, our liability in respect of loss or damage to goods is limited to the amount specified in the relevant contract, (if any amount is not specified in any of those documents) \$2000 (including GST per unit of goods carried. In all other cases (and subject to clauses 7,12,16,19 and 22), this Agreement is at "Limited Carriers Risk" as defined in the Act.

b. Any other goods carried by us are carried at "Limited Carrier's Risk". Our maximum liability in respect of any one item or consignment carried us under the Act is limited to the lesser of \$2000 (including GST) or the current market value of each consignment.

c. Object to the provisions of the Act imposing liability in respect of the loss of or damage to the goods we shall not be under any direct or indirect liability whatsoever (whether in contract, tort or otherwise) for any direct or indirect losses, penalties, damages, costs or expenses of any kind whatsoever (including indirect or consequential loss or damage) brought, claimed, suffered or incurred by you or any third party, in connection with, or resulting from, the Carriage of the goods or any matter or thing done, said or omitted by the Company in connection with goods or this Agreement howsoever caused or arising and (without limiting the generality of the foregoing) whether caused intentionally or arising as the result of negligence of the Company or otherwise.

d. In the event of a subcontractor going into receivership or liquidation or ceasing business for any reason (voluntary or otherwise), we accept no liability for loss of service.

e. Claims - payment for claims by us to you is limited

to your cost value of the items/s lost or damaged to the maximum of \$2000 (including GST) as per clause 18 (i) and 18(ii).

f. Salvage - we reserve the right to request all salvage being claimed for to be returned to us or the carrier. We reserve the right to decline any claim if salvage is disposed of by you without the express permission of us to do so. Upon payment of a claim all salvage becomes the property of us to be disposed of at our discretion.

#### 18. Claims for Lost or Damaged Goods

We 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 us within seven (7) days after the delivery of the goods or, in the case of loss of the goods, within seven (7) days of the expected date of delivery, subject to our standard claims procedure; or in the event of an item showing no obvious signs of damage when delivered but is discovered to be damaged while unpacking, within twenty four (24) hours from the time of delivery.

b. Express Cargo must receive all the completed documentation relating to the claim within 30 days from the date of delivery, or expected delivery in the event of loss.

c. We reserve salvage rights to any damaged claim items prior to payment of any claim and payment of any such claim may be refused should salvage rights not be possible.

d. Our request for a tax invoice for the cost price of an item when lodging a claim is not acceptance of a claim.

e. Express Cargo will not be liable for a claim if a valid POD can be provided; this includes POD's noted with "subject to inspection" or "STC".

f. Express Cargo does not count cartons for pallet movements so will not accept short-landed claims in these circumstances.

g. no claim may be brought against Express Cargo if the loss or damage is attributable in whole or material part of any inherent defect in the goods or their packaging/labelling/containment as at the date of acceptance of delivery.

h. Pickup is not deemed acceptance by Express Cargo as to the standard of packaging.

i. No claim may be brought against Express Cargo for consequential loss, for example but not limited to, freight costs for replacement goods.

#### 19. Notice

Any notice to be given under this Agreement shall be deemed to be received if delivered, or forwarded by registered post, to the registered office of you to receive it or the usual or last known residence or place of business of you.

#### 20. Variations

We may review, vary and amend this Agreement at any time provided we notify you of any variations and amendments. Except as provided for in this clause 21, no variations or amendments to this Agreement shall be binding on us unless they are in writing, signed by or on behalf of both parties.

#### 21. Events Outside our Control

We shall not be liable to you for any failure to carry out our obligations or for any loss or damage you have suffered where such failure or such loss or damage is caused by mechanical breakdown of any equipment, weather conditions, strikes, lockouts, labour disputes or restraint of labour, act of God, war (whether declared or not), any act regulation or restriction imposed by the Government, riot or civil commotion, any act or omission by you, your servants, subcontractors or agents, or any cause beyond our

control.

#### 22. General

The terms and conditions set out herein shall prevail over the terms and conditions set out in any document used by us (unless expressly acknowledged to override this Agreement), you, the owner or any other person having an interest in the goods and purporting to have a contractual effect.

#### 23. Cancellation

i. 30 days written notice is required for cancellation of services provided by Express Cargo 2022 Ltd, except for customers who have a contract of rates for a fixed term period (see clause 23. iii.)

ii. Should notice fail to be given then we have the discretion to invoice you for an amount of no more than a one month average spend based on the previous 12 months trading. If trading has been for less than 12 months, the average will be calculated using the total number of months trading.

iii. If you have a contract for rates for a fixed term period, you cannot cancel the contract with us prior to the end of the term specified in the contract. Should you elect to discontinue or information becomes known to us which suggests you are no longer using our services within the contract period, we have the discretion to invoice you the average monthly spend for the total number of months remaining in the contract. The average monthly spend is calculated using the total spend and total months to date within the contract period. iv. We shall be entitled without liability to you to cancel any contract between you and us for the supply of Goods and/or services if:

a. you become insolvent, or enter into a scheme of arrangement with creditors (other than with our consent), or you cease to carry on all or a material part of your business, or have a receiver appointed in respect of any or all of your assets or other steps are taken for your dissolution;

b. If an event occurs or information becomes known to us, which in our opinion, might materially affect your creditworthiness, or your ability or willingness to comply with your obligations under these Terms of Trade;

c. In our absolute discretion we consider that your usage patterns, content or behaviour unreasonably impacts on our business operation or the operations of any of our other customers;

d. you breach any of these Terms.

**Signed By (please print):**

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**Date:**

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**On behalf of (Company):**

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**Signature:**

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**Position Held:**

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