

## TERMS & CONDITIONS

### 1. Definitions

In these Terms & Conditions:

**“Authority”** means a duly constituted legal or administrative Person, acting within legal powers and exercising jurisdiction within any nation, state, municipality, port or airport;

**“Carotrans”** means Carotrans Limited and its servants or agents;

**“Container”** includes any container, flexi tank, trailer, transportable tank, flat, pallet or any article of transport used to carry or consolidate goods and any equipment of or connected thereto;

**“Customer”** means any Person at whose request or on whose behalf Carotrans provides any Services;

**“Dangerous Goods”** includes Goods which are or may become hazardous, dangerous, inflammable, radio-active, contaminating, tainting, or damaging to Persons or property, or likely to encourage or harbour vermin or other pests;

**“Goods”** includes goods, wares, merchandise, baggage, articles and chattels of any description, including animals or plants, money, documents, cargo and all other things of value and any Container not supplied by or on behalf of Carotrans in respect of which Carotrans provides Services or Incidental Services;

**“Amended Hague Rules”** means the provisions of the International Convention for the Unification of certain rules Relating to Bills of Lading signed at Brussels on 25th August 1924 as amended by the Visby Protocol signed at Brussels on 23rd February 1968 and the SDR Protocol signed at Brussels on 21st December 1979;

**“Incidental Services”** means any service performed, or to be performed, to facilitate the carriage of Goods under a contract of carriage, including but not limited to services performed by consolidators, packers, stevedores, and warehouse workers;

**“Conventions”** means the Montreal Convention, the Amended Convention and the Guadalajara Convention as more particularly described in section 91A, Civil Aviation Act 1990;

**“Owner”** includes the owner, shipper and consignee of the Goods and any other Person who is or may become interested in the Goods and anyone acting on their behalf;

**“Person”** includes an individual, partnership, firm, trust, associate or body corporate;

**“Services”** means any of all of the services provided by Carotrans to the Customer and all matters necessarily related or ancillary to the provision of Services;

**“Terms and Conditions”** means these Terms and Conditions

### 2. Provision of Services

2.1. All Services are provided by Carotrans as agents only, except in the following circumstances where Carotrans acts as principal:

(a) where Carotrans performs any carriage, handling or storage of Goods, but only to the extent that the carriage is performed by Carotrans itself or its servants and the Goods are in the actual custody and control of Carotrans or

(b) where, prior to the commencement of the carriage of Goods, the Customer in writing demands from Carotrans particulars of the identity, services or charges of Persons instructed by Carotrans to perform part or all of the carriage, and Carotrans fails to give the particulars demanded within 28 days. However, for the purposes of this sub-clause, Carotrans shall only be deemed to be contracting as a principal in respect of that part of the carriage in respect of which Carotrans fails to give the particulars demanded.; or

(c) to the extent that Carotrans expressly agrees in writing to act as a principal, or

(d) to the extent that Carotrans is held by a court of law to have acted as a principal.

2.2. Without prejudice to the generality of clause 2.1:

(a) charging by Carotrans of a fixed price for any Services whatsoever shall not in itself determine or be evidence that Carotrans is acting as an agent or a principal in respect of those Services.

(b) supply by Carotrans of its own or a leased Container shall not in itself determine or be evidence that Carotrans is acting as agent or a principal in respect of any carriage, handling or storage of Goods;

(c) Carotrans acts as an agent where Carotrans procures a bill of lading, sea or air waybill or other document evidencing a contract of carriage between a Person other than Carotrans and the Customer or Owner;

(d) Carotrans acts as an agent and never as a principal when providing any other Services whatsoever for or on behalf of the Customer, including but not limited to Customs and Insurance.

### 3. Mode

3.1. Unless expressly agreed otherwise in writing signed by each of Carotrans and the Customer, to the extent that any contract entered into by Carotrans whether as agent of the Customer or as Principal with the Customer, is:

**(a) a contract for domestic carriage of Goods, it shall be “at limited carrier’s risk” in terms of section 248(1) (d) of the Contract and Commercial Law Act 2017.**

(b) a contract for international carriage of Goods by air, it shall be subject to the compulsorily applicable provisions of Part 9A of the Civil Aviation Act 1990, or to any compulsorily applicable legislation to like effect to which any part of the international carriage by air in any location becomes subject, or, if no such legislation is applicable, then by operation of these Terms and Conditions to the Conventions.

(c) a contract for international carriage of Goods by sea, it shall be subject to the compulsorily applicable provisions of Part 16 and Schedule 5 of the Maritime Transport Act 1994, or to any compulsorily applicable legislation to like effect to which any part of the international carriage by sea in any location becomes subject, or if no such legislation is applicable then by the Terms and Conditions of the Amended Hague Rules.

3.2. If any contract of carriage, whether domestic, international by air, international by sea, or combined transport is entered into by Carotrans as Principal, to the extent of any inconsistency with these Terms and Conditions the provisions of the consignment note, bill of lading, sea waybill, or combined transport document issued in respect of that contract will prevail.

3.3. If any Services, other than contracts of carriage referred to above, that are provided by Carotrans are recorded as being provided upon separate transaction-specific terms and conditions promulgated or otherwise agreed to in writing by Carotrans, to the extent of any inconsistency with these Terms and Conditions Carotrans’ transaction-specific terms and conditions for such transactions shall prevail.

### 4. Liberties

4.1. Carotrans may, without notice to the Customer and in its sole discretion:

(a) Use any means of transport for Goods, including transferring them from one means of conveyance to another

(b) Unpack or re-pack Goods;

(c) At any place load or unload the Goods and store them;

(d) Comply with any orders or recommendations of, or by anyone acting on behalf of any Authority;

4.2. Without limiting clause 4.1, Carotrans may exercise the liberties referred to:

(a) for any purpose whatsoever, whether or not connected with the carriage of Goods;

(b) whether or not the circumstances giving rise to the exercise of the liberty were in existence or contemplated at the time the agreement for Services was entered into.

4.3. Nothing done or not done in the exercise of the liberties referred to shall be a variation or breach of contract by Mainfreight.

### 5. Liability

Subject only to such responsibilities obligations or liabilities as are expressly agreed to by Carotrans in writing, or are not permitted by law to be excluded, Carotrans shall in no other circumstances whatsoever or howsoever be liable for:

(a) Loss of or damage to Goods;

(b) Loss, damage or expense consequential on loss of or damage to Goods, including but not limited to loss of profit, loss of opportunity, or loss of market;

(c) Loss, damage, expense or compensation of any kind in respect of which the Customer fails to notify or prosecute a claim in accordance with applicable statutory time limits;

(d) Loss, damage, expense or compensation of any kind, for which no statutory time limit (other than the Limitation Act 2010) for notification or claim applies, and which the Customer omits for any reason whatsoever to notify within 7 days of occurrence.

## 6. Goods

**6.1. Completion of Carotrans' Client Information Form shall constitute a warranty that the Goods in respect of which Carotrans is requested to provide any Services are or will be at all material times:**

- (a) Owned by the Customer, or tendered to Carotrans for the provision of Services and for delivery to the destination location and recipient notified to Carotrans with the authority of their Owner
- (b) Fit for handling, storage, carriage and delivery in the condition (including but not limited to their packaging) in which they are tendered to Carotrans for provision of the Services;
- (c) Compliant in all respects with any legislative, regulatory or other requirement of any Authority applicable to the Goods and to the Services requested of Carotrans
- (d) Clearly, sufficiently and accurately described, weighed, measured, marked, and documented.

6.2. Goods may be delivered to or uplifted from Carotrans during business hours on business days. Delivery or uplift at any other time will be at the sole discretion of Carotrans, and **any additional costs incurred will be to the Customer's account.**

6.3. Any Goods that Carotrans is instructed by the Customer to hold in cold storage shall be placed in the cold store by Carotrans, and unless given express written permission to do so on each occasion the Customer will not enter Carotrans' cold store.

## 7. Disposal

7.1. Carotrans may by sale, destruction or otherwise dispose of:

- (a) Perishable Goods which appear to be deteriorating or likely to become offensive;
- (b) Dangerous Goods for which no sufficient declaration or documentation is supplied to Carotrans or which are in or are likely to enter a dangerous state necessitating destruction or disposal to avert the threat of harm to Persons or property;
- (c) Goods of which delivery has not been taken when and where Carotrans is entitled to require delivery by or on behalf of the Customer.

7.2. If Goods are disposed of under this clause, Carotrans shall have no further liability in respect of them, and shall be entitled to recover from the Customer all costs and expenses of disposal.

## 8. Charges

8.1. Quoted prices are based on freight, clearing, handling, loading and discharge, and delivery costs; insurance, and bank charges; exchange, tax and duty rates; and third party quotations from contractors utilised by Carotrans prevailing at the date on which a quotation is prepared, and only for its stated period of validity. Any increase in such quote **elements shall be to the Customer's account.**

8.2. Charges may be fixed by weight, measurement or value, and Carotrans reserves the right to re-weigh, re-measure or re-value and to impose proportional additional charges accordingly.

8.3. The Customer shall reimburse Carotrans for any duties, taxes or other similar charges, third party costs or disbursements incurred by Carotrans in the due performance of the **Services, not otherwise included in Carotrans' quoted prices, and whether or not known or contemplated by the Customer at the time of contracting with Carotrans for the Services.**

## 9. Payment

**9.1. Carotrans' charges shall be deemed fully earned and payable without set-off or deduction upon loading and despatch of Goods from the Customer's premises, or delivery to and receipt by Carotrans, whichever first occurs,**

9.2. Should payment to Carotrans of any sums due not be made by or on behalf of the Customer on the due date for payment, then in addition to such sums the Customer will pay all **costs of collection (including but not limited to Carotrans' legal costs on a solicitor and own client basis) and interest at the rate 7.5% per annum above Carotrans' bank's base** lending rate calculated on a daily basis on the total amount outstanding until paid.

9.3. Notwithstanding any direction by a Customer that freight shall be payable by consignor or by consignee, both shall remain jointly and severally liable to Carotrans for all of Carotrans' charges.

## 10. Lien

10.1. Carotrans shall have the right to detain, and shall also have both general and particular liens over any Goods or documents of the Customer for any sums payable by the Customer to Carotrans, whether in respect of the same or other Goods or transactions.

10.2. If upon giving notice to the Customer, or where for any reason after reasonable efforts by Carotrans the Customer cannot be so notified, the Customer fails to make payment in full of all sums due, Carotrans shall have the right in its sole discretion to sell the Goods by auction or otherwise and to apply the net proceeds of sale towards satisfaction of the indebtedness.

## 11. Insurance

11.1. If instructed in writing by the Customer, Carotrans will as agent of the Customer procure insurance of Goods.

11.2. The value of the cover shall be as instructed in writing by the Customer, but such insurance value shall not bind Carotrans as an agreed or declared value for any other purpose.

11.3. The cover will be placed with reputable underwriters or via reputable brokers on standard terms and conditions usually applicable to insurance business of the kind sought by the Customer.

11.4. Without prejudice to the generality of clause 11.3, the cover to be procured by Carotrans for the Customer will exclude:

- (a) loss of or damage to Goods arising from wear and tear, moths, vermin, damp, mildew, loss of market, delay, or inherent vice;
- (b) Gradual deterioration, and rust or oxidation unless caused or contributed to by fire, collision, overturning or another accident to conveyance.

11.5. Any insurance proceeds payable to the Customer under any policy procured by Carotrans will first be applied in satisfaction of any outstanding liability by the Customer to Carotrans.

**11.6. Carotrans shall not in any circumstances whatsoever or howsoever be liable for the suitability or sufficiency of the insurance procured in compliance with the Customer's instructions.**

## 12. COD

Carotrans accepts no responsibility in any circumstances whatsoever to collect any payments due to the Customer or any other Person on delivery of Goods, and will not be bound by any instruction by or on behalf of the Customer to do so, whether by accepting the Goods, performing any Services in respect of them, or otherwise.

## 13. General

13.1. Where the Customer is a business as defined by the Consumer Guarantees Act 1993, it is agreed that the Customer requests and receives any Services for the purpose of the **Customer's business and that the provisions of that Act shall not apply.**

13.2. Breach of any of these Terms and Conditions by Carotrans shall not disentitle it to the benefit of any rights, defences, immunities, or exclusions or limitations of liability.

13.3. Waiver by Carotrans, or failure to enforce any provision of these Terms and Conditions on any one occasion shall not constitute a waiver for any other purpose or at any other time.

13.4. If any provision of these Terms and Conditions is for any reason void or unenforceable, that will not affect the validity and enforceability of all other provisions which will remain in full force and effect according to their terms.

13.5. These Terms and Conditions shall be governed by and interpreted in accordance with the laws of New Zealand, and the Customer submits to the exclusive jurisdiction of the New Zealand courts.

