

## TERMS & CONDITIONS

**ALL AND ANY BUSINESS UNDERTAKEN BY TSS SENSITIVE FREIGHT (NZ) PTY LTD SHALL BE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

### 1. Recitals

- A. TSS Sensitive Freight Pty Ltd is in the business of sensitive freight transportation, packing, unpacking, positioning and logistics (“TSS”).
- B. The Sender wishes to contract with TSS for its Service(s).

### 2. Definitions

In these Terms and Conditions, the following definitions apply:

“Conveying Vehicle” means any mode of transport used by TSS to transport the Goods whether owned by TSS or a Sub Contractor.

“Goods” means the Goods, chattels, articles or things tendered by the Sender for carriage or bailment or other Service(s) and includes any associated container, packaging, covering, wrapping, pallets and other devices they are carried in and/or on delivered with the same to TSS and/or its’ Sub Contractors or provided by TSS and/or its’ Sub Contractors.

“GST Law” means any of:

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- (a) In relation to calculating the GST, Goods and Services Tax Act 1985; and
  - (b) In relation to levying the GST, Goods and Services Tax Act 1985,

and all legislation of a similar effect that amends, consolidates or replaces such enacted legislation.

“Person” means any individual person, business, firm, partnership, limited partnership, company, trust, superannuation fund or other entity (including any foreign entity).

“PPSA” means Personal Property Securities Act 1999 as amended from time to time and any regulations made pursuant to it, and all legislation of a similar effect that amends, consolidates or replaces such enacted legislation.

“Sender” means the shipper, consignor, the receiver, the consignee, the owner of the Goods, the bailor of the Goods, or the person for whom any of the Service(s) are performed.

“Service(s)” means the whole of the Service(s) performed or provided by TSS or its’ Sub Contractors, but not limited to receiving Goods, the storage of Goods, packaging and unpacking Goods, handling and transportation of Goods and all associated Service(s) and performing of TSS Business.

“Sub Contractor” means any Person whom TSS arranges to store or transport the Goods, or engages to provide Service(s) associated with the Goods, or any Person who is an employee, officer, servant, agent of the Sub Contractor of TSS.

“TSS” means TSS Sensitive Freight (NZ) Pty Ltd (ACN 630 952 788) or its duly authorised agents.

### **3. Contract Acknowledgment**

- a. TSS is not a common carrier and does not accept any liability as a common carrier.
- b. TSS may refuse to provide transportation or other Service(s) to any Person at its discretion.
- c. TSS will not provide Services where the Goods, the subject of the Service(s), include:
  - i. bloodstock or stud or prize animals;
  - ii. precious metals and stones, jewellery or money (which means any coin or banknote);
  - iii. bullion, cheques, credit or other card sales;
  - iv. vouchers, securities or shares;
  - v. bonds, deeds, bills of exchange or any document that represents or is exchangeable for money;
  - vi. radioactive goods or explosive goods;
  - vii. commercial bulk consignments of dangerous goods that are defined by any government agency or authority as being dangerous goods;
  - viii. explosives; and
  - ix. live plants & trees.
- d. These Terms and Conditions constitute the Agreement between TSS and the Sender, and no person has the authority of TSS to waive or vary these conditions unless otherwise agreed in writing.
- e. This clause is an essential term of the contract between TSS and the Sender.

### **4. Obligations of Sender under Contract**

- a. Except as agreed in writing, TSS will not accept dangerous goods, valuables, perishable goods, livestock or plants for Service(s) arranged or performed by TSS. Should the Sender nevertheless deliver any such Goods to TSS or cause TSS to handle or deal with any such Goods otherwise than as agreed in writing, the Sender shall be liable for any loss or damage thereto or consequent thereon whether direct, indirect or consequential and howsoever caused and the Sender shall indemnify TSS from and against all penalties, taxes, duties, claims, liability, losses, demands, damages, costs, expenses and fines arising in connection therewith.

- b. The Sender undertakes that any of the Goods referred to in (a) above (including their container, packaging, covering, wrapping, pallets and other devices they are carried in and/or on) shall be distinctly marked having regard to their nature. The Sender further undertakes that the Goods are packed in a manner adequate to withstand the ordinary risks of any Service(s) having regard to their nature and in compliance with all laws and regulations which may be applicable with respect to any Service(s). The Sender shall indemnify TSS against all penalties, taxes, duties, claims, liability, losses, demands, damages, costs, expenses and fines arising in consequence of any breach of this provision.
- c. The sender must:
  - i. fully and accurately disclose to TSS the type and nature of the Goods in respect of which it seeks provision of Service(s);
  - ii. not seek the provision of Service(s) from TSS in respect of dangerous, illegal, inflammable, explosive or offensive Goods which may cause damage to any Person or property other than as specifically disclosed to, and agreed to, by TSS.

## **5. Warranties of Sender**

The Sender warrants:

- a. That it has fully and properly described the Goods including their weight and measurement and their nature and undertakes to indemnify TSS against all penalties, taxes, duties, claims, liability, losses, demands, damages, costs, expenses and fines arising from any inaccuracy or omission in this respect;
- b. That in requesting the Service(s) of TSS, the Goods comply with all the relevant legislation including *Land Transport Rule: Dangerous Goods 2005 (45001/1)*, *Maritime Transport Rule 24a*, *Civil Aviation Rule part 92: Carriage of Dangerous Goods*, and all legislation of a similar effect that amends, consolidates or replaces such enacted legislation, concerning the description notification, classification labelling, transport and packaging of the Goods.
- c. That the Person delivering the Goods, or from whom TSS is to receive the Goods, is authorised to enter into this Contract;
- d. That it is the owner of the Goods or the authorised agent of the owner and accepts these Terms and Conditions for itself and for any other Person for whom they act;
- e. That they will not, nor any other Person, make any allegation, claim or demand against TSS about the storage and/or transport of the Goods or Service(s) provided by TSS;
- f. That they indemnify TSS from any loss or damage, claim, expense, penalty or liability accruing from a breach of these warranties; and
- g. That the Goods are packed in a proper way to withstand the ordinary risks of handling, storage and carriage, having regard to their nature.

## **6. Rights of TSS Under Contract**

- a. TSS may, at any time, refuse in its absolute discretion to store or transport the Goods or provide any of the Service(s);
- b. If in TSS's opinion the Goods are, or are liable to become, dangerous, inflammable, explosive, volatile, offensive or damaging in nature, TSS may at any time destroy, dispose of, abandon them or render them harmless without compensation to the Sender and the Receiver without prejudice to TSS right to charges;
- c. If the Sender instructs TSS to use a particular method of transport TSS will endeavour to use that method but if TSS cannot conveniently adopt it, TSS may transport or have the Goods transported by another method;
- d. TSS is authorised to deliver the Goods at the address given to TSS by the Sender, or any other address directed by the receiver and TSS will be taken to have delivered the Goods if at either address TSS obtains from any Person a receipt for delivery;
- e. If any identifying document is lost, damaged or defaced TSS may open any document, packaging, covering, wrapping or any other container in which the Goods are placed or carried to inspect them either to determine their nature or condition or to determine their ownership and destination;
- f. TSS may consolidate the Goods with others and may arrange for transport of these Goods by any Sub Contractor on any terms;
- g. The Sender authorises TSS to lease, hire or use any Conveying Vehicle, container, pallet, trailer, rail wagon, prime mover, truck or other device in which, on which, or by which the Goods may be placed, packed or transported; and
- h. TSS, in addition to acting for itself, also acts for each of the servants, agents or Sub Contractors, so that each of its servants, agents or Sub Contractors are entitled to the full benefit of these conditions including any exclusions or limitations of liability to the same extent as TSS.

## **7. Costs of Service(s)**

- a. The Sender agrees to pay all of TSS's charges and those of any other costs or money expended by TSS in connection with the storage, handling and transportation of the Goods and the provision of the Service(s) by TSS ("Costs of Service(s)").
- b. All disbursements paid on behalf of the Sender are payable on demand.
- c. TSS Costs of Service(s) shall be considered earned as soon as the Goods are loaded from the Senders premises, picked up or delivered to TSS to despatch.
- d. TSS Costs of Service(s) must be paid within seven (7) days of the date of the invoice.
- e. The Sender agrees to pay:
  - i. any additional charge for demurrage associated with the Goods at the rate charged to TSS.
  - ii. TSS's additional expenses to comply with any law, regulation or requirement made or demanded from them associated with the Goods.

- iii. any customs excise duty or cost to have the Goods released to them.
- iv. the costs of labour to load and unload the Goods, including costs for delay in loading and unloading.
- v. the costs of dealing with the Goods as per clause 4.
- vi. interest on any unpaid invoice at a rate of 5% above the Reserve Bank Cash Rate applicable at that time.
- vii. to the extent that a supply of Service(s) provided by TSS made under or pursuant to this contract is a “taxable supply”, as defined in the GST Law, TSS will increase its price in respect of that supply by the amount of GST applicable to the supply.

## **8. Insurance**

- a. The Sender acknowledges that:
  - i. under no circumstances will TSS be liable to arrange insurance of the Goods and it remains the Sender’s responsibility to affect adequate insurance on the Goods at all times; and
  - ii. under no circumstances will TSS be under any liability with respect to the arranging of any such insurance and no claim will be made against TSS for failure to affect adequate insurance on the Goods.
- b. Under no conditions does TSS provide any coverage for loss of, or damage to, the Goods whilst they are subject to the Service(s) being performed by TSS whether occurring in the Conveying Vehicle or in TSS premises, occurring during transit, or otherwise, or in respect to any delay, loss of market or consequential loss caused by the loss of or damage to the Goods.
- c. The Sender shall affect insurance on the Goods whilst they are subject to the Service(s) being performed by TSS including TSS’s warehousing and/or transportation of the Goods.
- d. The Sender shall make no claim against TSS in relation to any damage to the Goods and agrees to indemnify TSS in respect to any such claim made against them.
- e. The liability of TSS is defined and limited to any amount stated for specified loss and/or damage.

## **9. Lien, Title and Security Interest**

- a. TSS shall have a particular and general lien on all Goods of the Sender and any documents relating thereto and on any other Goods of the Sender in the possession or control of TSS or its’ Sub Contractors or any documents relating thereto and on any other Goods of the Sender which may come into the possession or control of TSS or its’ Sub Contractors or any documents relating thereto for all sums payable by the Sender to TSS or its’ Sub Contractors

(whether overdue or not) and for that purpose TSS shall have the right to sell any such Goods by public auction or private treaty upon providing 30 days' notice to the Sender in writing.

- b. The Sender consents to TSS affecting a registration on the PPSA register (in any manner TSS considers appropriate) in relation to this security interest and the Sender agrees to provide all assistance reasonably required to facilitate this. Despite this requirement for registration of this security interest and regardless of whether or not it is actually registered, TSS may perfect this security interest by possession of the relevant items.
- c. Possession of the Goods shall not pass to the Sender until all amounts owing by the Sender to TSS on any account whatsoever (including the Cost of Service(s)) have been paid.
- d. The Sender shall pay on demand any losses arising from, and any costs and expenses incurred in connection with any action taken by TSS under or in relation to the PPSA.
- e. The Sender must not assign or grant a security interest in respect of any accounts owed to it in relation to the Goods without TSS's prior written consent. TSS has a security interest in all such accounts to secure the amounts owing.
- f. Any notices or documents required or permitted to be given to TSS for the purposes of the PPSA must be given in accordance with the PPSA.

#### **10. Damage, Exclusions or Limitations**

- a. TSS shall not be liable for any loss or damage suffered by the Sender or any other person whatsoever, howsoever caused or arising, whether caused by the negligence and/or recklessness and/or wilful misconduct of TSS or its' Sub Contractors, nor from any loss (whether direct, indirect or consequential loss) or damage resulting from or attributable to any quotation, statement, representation or information, oral or written, made or given on behalf of TSS or its' Sub Contractors as to the classification of, liability for, amount, scale or rate of customs duty, excise duty or other impost or tax applicable to any Goods in carriage or subject to any Service(s).
- b. Save as otherwise provided herein, TSS shall in no circumstances whatsoever or howsoever arising, be liable for direct or indirect or consequential loss or damage of any kind. The defences and limits provided for in these Terms and Conditions shall apply in any action against TSS for loss or damage or delay whether the action be founded in contract, tort, or otherwise.
- c. TSS is not liable for any loss or damage to Goods, including but not limited to:
  - i. all claims resulting from wear and tear, vermin, damp, mildew, loss of market, loss of profits and/or consequential loss, temperature control refrigeration, vibrations, loss, damage or expense caused by delay, inherent vice, nature, war and strikes, riots and civil commotion or malicious damage of the subject matter insured.
  - ii. gradual deterioration, rust and/or oxidation unless due to or consequent upon fire, collision, overturning or other accident in the transport.

- d. Without limiting the generality of the foregoing, TSS shall not be liable for any loss or damage whatsoever suffered by the Sender or any other person as a result of a failure or inability of TSS or its' Sub Contractors to collect or receive payment or delivery from any consignees or their agents whether caused by the negligence of TSS or its' Sub Contractors.
- e. Goods are deemed to be in transit despite interruption of the transport or that TSS may divert from the usual route for transport.
- f. If the Sender requests TSS, or if TSS in its reasonable opinion feels that it is necessary, to pack Goods, TSS is not liable for any damage or loss whether in packing or transit no matter how the damage or loss is incurred, including negligence and/or recklessness and/or wilful misconduct of TSS or its' Sub Contractors.
- g. Subject to clause 13, TSS is not liable for, and the Sender releases and indemnifies TSS against any loss or damage, mis-delivery, delay in delivery or return, concealed damage, deterioration, evaporation or non-delivery or non-return of Goods at any time in its possession, care, custody, control or any consequential loss even if it arises because of breach of contract, negligence, wilful act or omission of TSS or its' Sub Contractors.
- h. Subject to clause 13, TSS is not liable for and the Sender releases and indemnifies TSS against any loss or claim, demand or liability arising from personal injury, illness or death to any Person or property caused or contributed to by the Goods. This disclaimer, release and indemnity extends to include loss, damage or injury even if it arises because of breach of contract or negligence or wilful act or omission of TSS or its' Sub Contractors.
- i. If TSS is required to handle, install, remove, assemble, erect, load or unload, whether into or onto any Conveying Vehicle, bulk tanks, vessels, drums, containers or rail wagons or use any crane, gantry or machinery during that process, TSS is not liable for, and the Sender releases and indemnifies TSS against, any demand, claim or liability arising from any death, illness, injury, damage delay or contamination or any consequential loss from the death, illness, injury, damage delay or contamination, from the time of taking possession of the Goods until delivery to final destination, even if it arises because of breach of contract or failure, breakdown or defect in the machinery, whether or not caused or contributed to any negligence or wilful act or omission of TSS or its' Sub Contractors.
- j. It is hereby agreed between the Sender and TSS that the Sender's right to compensation for any claim for loss or damage will be extinguished:-
  - i. unless any claim for loss of or damage to Goods (including short delivery) is lodged in writing to TSS at its' registered office within 3 days of delivery of the Goods or the date by which the Service(s) are completed, whichever date occurs first; or
  - ii. unless in the case of non-delivery of Goods any claim must be notified in writing to TSS within 14 days from the date the Goods should have been delivered or the Service(s) should have been completed, whichever date occurs first; and
  - iii. if any claim under (i) and/or (ii) has not been resolved, and action has not been commenced by the Sender in a court of competent jurisdiction within 6 months of delivery, or in the case of non-delivery, 6 months from the time TSS took possession of the Goods.

- k. It is specifically agreed that all rights, immunities and limitations of liability granted to TSS or its' Sub Contractors by the provisions set forth in these Terms and Conditions shall continue to have their full force and effect in all circumstances and notwithstanding any breach of these Terms and Conditions or any condition hereof by TSS or its' Sub Contractors.

#### **11. Indemnity**

- a. The Sender shall indemnify TSS and its' Sub Contractors in respect of any claim, loss, damage, payment, fine, expense, duty, tax, impost or other outlay whatsoever, howsoever caused, whether arising directly or indirectly from any Service(s) arranged or performed by TSS in respect of Goods and/or in respect of any such cost incurred as a result of any breach of these Terms and Conditions by the Sender.
- b. Without limiting the generality of the foregoing, the Sender shall remain responsible to TSS for all charges (cash on delivery or otherwise) paid by TSS to any of its' Sub Contractors which are not subsequently paid to TSS by the Sender or any consignee.
- c. The Sender shall indemnify TSS in respect of:-
  - i. any loss or damage arising from any inherent defect, quality or vice of the Goods; and
  - ii. all or any liability in respect of any loss of profits or indirect or consequential loss or damage of any kind arising from the Service(s) performed in respect of the Goods including loss of market, or loss of contracts, howsoever caused.

#### **12. Consumers Guarantees Act 1993, and Fair Trading Act 1986**

These conditions are to be read subject to any implied warranty by the Consumers Guarantees Act 1993, and Fair Trading Act 1986 and all legislation of a similar effect that amends, consolidates or replaces such enacted legislation.

#### **13. Governing Law**

These conditions are governed and must be construed under the laws of New Zealand and any proceedings against TSS must be brought within twelve (12) months of the date of this contract.

#### **14. Variations**

TSS will not be bound by any agreement which varies these conditions unless it is in writing and signed for TSS by an authorised officer.