

TERMS & CONDITIONS

General Conditions

All business undertaken by TSS Sensitive Freight (NZ) PTY Limited shall be subject the following terms and conditions:

1. Definitions

“**TSS**” means TSS Sensitive Freight (NZ) Pty Ltd and its duly authorised agents and Sub-Contractors.

“**Customer**” includes the party which has entered into a contract for Services with TSS, the shipper, consignor, business, client, customer, account holder, owner or holder of the Goods or agent acting on behalf of any of the same or any persons for whom any of the Service(s) are performed.

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

“**Hazardous Goods**” means Good which are in fact or at law noxious, dangerous, hazardous, explosive, radioactive, inflammable or capable by their nature of causing damage or injury to themselves, any other Goods or to any persons, animals or property.

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

“**Services**” means the whole of the Services performed or provided by TSS or its Sub Contractors, including but not limited to receiving, storing, packing, handling and transportation of Goods and all associated and incidental Services.

“**Sub-Contractor**” means any Person engaged by TSS to perform any Services, and any Person who is an employee, officer, servant, agent of a Sub-Contractor.

2. **Contract Acknowledgment** - These Terms and Conditions constitute the Agreement between TSS and the Customer, and no person has the authority of TSS to waive or vary these conditions unless otherwise agreed in writing. All business undertaken by TSS, including the provision of any advice, information or other services, is undertaken upon and subject to these terms and conditions. This agreement constitutes the entire understanding of the parties in regard to the provision of services and supersedes all prior agreements

and understandings, whether written or oral between the parties. Any additional or altered terms and conditions in any order for Services provided by the Customer shall be of no effect.

3. **Variation of Terms** - TSS may, in its sole discretion, amend change these Terms and Conditions from time to time upon giving reasonable notice. Notice may be given by posting the updated terms on TSS's website www.sensitivefreight.co.nz. The Customer's request for Services after the effective date of the updated terms constitutes the Customer's agreement to those updated terms.
4. **Compliance with Law** - The Customer undertakes that Goods for which Services are requested shall comply with all applicable laws relating to the nature, labelling, packaging and carriage of such Goods. All expenses and charges incurred by TSS in complying with any such laws or with any order or requirement thereunder or with the requirements of any harbour, dock, railway, shipping, customs, warehouse or other authority or company, or expenses, charges, levies or fines arising out of the Customer's breach of any applicable law, shall be paid by the Customer.

The Customer further undertakes the Goods are packed in a manner adequate to withstand the ordinary risks of any Services having regard to their nature and in compliance with all laws and regulations which may be applicable with respect to any Services.

5. **Force Majeure** - TSS will not be in breach of any contract with the Customer and shall not be liable for any delay in providing the Services or for any reduced Services (or any inability to provide Services) caused by any Force Majeure Event. TSS may alter rates in order to perform Services due to a Force Majeure Event. Force Majeure Event means an event or circumstance beyond TSS's reasonable control, including fire, floods, storms, tempest, earthquake or other act of God, any act of a public enemy, war, riot, terrorism, acts of civil or military authority, any act of a person engaged in subversive activity or sabotage, epidemics or quarantine restrictions, failure or defect of electrical power or telecommunications connections or services, prohibition or restrictions on the import or export of Goods or on the provision of Services, industrial and labour disputes or stoppages or any act or omission (including laws, regulations, disapprovals or failures to approve) of any governmental agency.
6. **Hazardous Goods**
 - (a) The Customer warrants that, unless prior written agreement has been reached, none of the Goods for which Services are requested or to be provided are or will be Hazardous Goods.
 - (b) The Customer shall not tender any Hazardous Goods for Services without first having presented a full description of the Hazardous Goods to TSS together with supporting documentation that complies with all relevant New Zealand laws, regulations, and standards.
 - (c) If any Goods are, notwithstanding the warranty in clause 6(a), Hazardous Goods, the Customer will indemnify TSS against loss, damage, disability or costs it sustains or incurs as a result of those Goods being Hazardous Goods

7. Exclusion of Certain Items - Unless TSS otherwise agrees in writing, it will not accept or deal with any:

- (a) Noxious Goods, dangerous Goods, Hazardous Goods, inflammable/perishable Goods, explosives, firearms or any Goods likely to cause damage or which it is unlawful to carry; or
- (b) Freight that is not packaged adequately for transit by the means and route requested by the Customer.

Under no circumstances will TSS accept for carriage bullion, cash, negotiable instruments, precious stones, jewellery, antiques, paintings, passports, or other valuables and the Customer warrants that it will not tender any of the same to TSS.

Should the Customer nevertheless deliver to TSS any Goods referred to above or cause TSS to handle or deal with any Goods listed in clause 7(a) or (b) without TSS's prior agreement in writing, the Customer shall be liable for any loss or damage thereto or consequent thereon whether direct, indirect or consequential and howsoever caused and the Customer shall indemnify TSS from and against all penalties, taxes, duties, claims, liability, losses, demands, damages, costs, expenses and fines arising in connection therewith.

Pursuant to section 292 of the Contract and Commercial Law Act 2017 the Goods may be sold, destroyed or otherwise disposed of at the sole discretion of TSS, any Sub-contractor, any agent of TSS or any other person in whose custody they may be, at the expense of the Customer, without TSS and the subcontractor, agent or such other person being liable in respect of the sale, destruction or other disposition of the Goods.

8. Warranties of Customer - The Customer warrants that:

- (a) 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. TSS may in its sole discretion re-weigh or re-measure at any time, at the Customer's cost, and may charge the Customer any additional freight that is due as a result of the weight or measure having been under-declared..
- (b) All Goods for which Services are requested comply with all relevant legislation including but not limited to *Land Transport Rule: Dangerous Goods 2005 (45001/1)*, *Maritime Transport Rule Part 24A*, *Civil Aviation Rule Part 92: Carriage of Dangerous Goods* concerning the description notification, classification labelling, transport and packaging of the Goods.
- (c) The Person delivering the Goods to TSS, or from whom TSS is to receive the Goods, is authorised to enter into this Contract;
- (d) 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 it acts;
- (e) Neither it nor any other Person will make any allegation, claim or demand against any entity other than TSS about the storage and/or transport of the Goods or the Services;

- (f) It indemnifies TSS against any loss or damage, claim, expense, penalty or liability accruing from a breach of these warranties; and
- (g) The Goods have been packed and prepared are packed and prepared in a proper way to withstand the ordinary risks of the Services.

9. Rights of TSS Under Contract

- (a) TSS may, at any time, refuse in its absolute discretion to provide any Services in respect of the Goods;
- (b) If the Customer instructs TSS to use a particular route or method of transport TSS will endeavour to use that method but if the same cannot conveniently or practically be used, TSS may transport or have the Goods transported by another method;
- (c) TSS is authorised to deliver the Goods at the address given to TSS by the Customer, 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. Should delivery not be possible or a receipt is not able to be obtained, TSS may without notice to the Customer remove the Goods from any shipping container in which they may have been packaged and may store the Goods at the sole risk of the Customer. Such storage shall constitute delivery and the liability to the Company in respect of the Goods shall wholly cease. The cost of storage shall be payable by the Customer;
- (d) If any identifying document is lost, damaged or defaced TSS may open any document, packaging, covering, wrapping or any 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;
- (e) TSS may consolidate the Goods with others and may arrange for transport of these Goods by any Sub Contractor on any terms;
- (f) The Customer authorises TSS to lease, hire or use any conveying vehicle, container, pallet, truck, trailer, or other device in which, on which, or by which the Goods may be placed, packed or transported.

10. Costs of Services

- (a) The Customer agrees to pay in full and without any deduction or set-off, all of TSS's charges and any other costs or money expended by TSS in connection with the Services in respect of the Goods ("Costs of Service").
- (b) All disbursements paid on behalf of the Customer are payable on demand.
- (c) The Costs of Service(s) shall be considered earned as soon as the Goods are first moved at the Customer's premises, picked up or delivered to TSS to dispatch and shall be payable whether the Goods or lost or damaged or otherwise.
- (d) The Costs of Services must be paid within seven (7) days of the date of the invoice.

- (e) The Customer agrees to pay:
- i. any additional charge for demurrage or detention 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 it 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 these conditions.
 - 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 Services made under or pursuant to this contract is a "taxable supply", as defined in the Goods and Services Tax Act 1985, TSS will increase its price in respect of that supply by the amount of GST applicable to the supply.

11. Insurance

- (a) The Customer acknowledges that TSS will not insure the Goods even if requested by the Customer to do so. Insurance shall at all times be the sole responsibility of the Customer, which shall ensure that the Goods are comprehensively insured at all times while the Services are being performed.

12. **Contract and Commercial Law Act 2017** - Sections 284-292 of the Act shall apply to any contract with the Customer only to the extent that they extend or enlarge TSS's rights and powers as set out in these conditions. Sections 277(2), 281 and 283 shall not apply to the contract. Sections 274-280 are otherwise modified by clause 13 of these conditions and shall, in relation to any matter arising out of the provisions of those sections, have effect subject to the express terms contained in these conditions.

For the purposes of sections 257 and 258 of the Act, TSS's period of responsibility for Goods will commence as soon as TSS first moves them at the place of origin or accepts delivery of them at its own premises or that of an agent or Sub-Contractor, and ends when TSS has placed them in their final position at the place of delivery (both as specified in any consignment note or other document) or at any other place or in storage as per clause 9© hereof.

13. Liability of Carrier

- (a) Subject to clause 13(c) below, any liability that TSS may have to the Customer for any loss or damage to Goods that occurs during TSS's period of responsibility for the Goods shall be determined under the provisions of the Contract and Commercial Law Act 2017 governing contracts at limited carrier's risk, except to the extent TSS has by these terms and conditions contracted out of or modified any of those provisions.
- (b) Subject to clause 13(c) below, TSS's liability for the loss of or damage to Goods shall be limited to the sum specified in section 259(2) of the Contract and Commercial Law Act.
- (c) TSS will only provide Services in relation to second-hand Goods and glass, at owner's risk. TSS will pay no compensation if such Goods are lost or damaged unless TSS intentionally loses or damages them.
- (d) Where the Services include the storage of Goods, all such Goods will be stored at the owner's risk and TSS shall not under any circumstances (including its own negligence) be liable for the loss of or damage to stored Goods.
- (e) To the maximum extent permitted by law, TSS shall not be under any liability whatsoever for damages other than for the loss of or damage to Goods, or for damages consequential on the loss of or damage to Goods.
- (f) Should any exclusion of liability in these terms and conditions be held to be ineffective for any reason, TSS's liability shall be limited, at its option, to:
- i. NZ \$100; or
 - ii. The replacement of the Goods or the supply of equivalent Goods;
 - iii. The repair of the Goods;
 - iv. The payment of the cost of replacing the Goods or of acquiring equivalent Goods;
 - v. The supplying of the Services again; or
 - vi. The payment of the cost of having the Services supplied again.

14. Notification of Claims and Limitation of Actions - TSS shall be under no liability whatsoever unless:

- (a) Written notice of any claim for damage to or partial loss of Goods, giving reasonable particulars, is received by TSS within three days after delivery to the delivery address on the consignment note or, in the case of non-delivery, within 14 days after the date of dispatch; and
- (b) An action shall have been commenced by the Customer in a Court of competent jurisdiction within six months of delivery or, in the case of non-delivery, within six months and fourteen days of the date of dispatch.

At no time may the payment of an account be withheld pending the outcome of a claim.

15. Subcontractors - All or part of any Services may be carried out by a Sub-Contractor. Every Sub-Contractor is entitled to the benefit of these terms and conditions.

16. Protection of Servants and Agents - The Customer undertakes that no claim or allegation shall be made against any servant or agent of TSS or any Sub-Contractor which attempts to impose upon any of them any liability whatsoever in connection with the Goods and, if any such claim or allegation should nevertheless be made, to indemnify TSS and any such servant, agent, or Sub-Contractor against all consequences thereof.

17. **Lien** - All Goods (and documents relating to Goods) shall, immediately they come into possession or control of TSS, be subject to a particular and general lien and right of detention for all moneys due to TSS by the Customer, whether or not the amounts owed are in respect of the Goods and/or documents and whether or not the amount owed are overdue for payment. If any moneys due to TSS are not paid within fourteen (14) days after notice has been given to the person from whom the moneys are due that such Goods are being detained, the Goods may be sold by auction or otherwise at the sole discretion of TSS and at the expense of such person, and the net proceeds applied, first, to the costs of the sale and then in reduction or satisfaction of any moneys owed. TSS may dispose of any Goods that in its reasonable opinion are unsaleable.

The lien claimed by this clause is additional to and not in substitution for any other lien right that may be available to TSS at common law and is not to be interpreted as abrogating TSS's common law rights in any way. TSS reserves the right to elect, where necessary, whether to rely on the lien rights conferred by these terms and conditions or any rights available to it at common law.

18. **Privacy Act 2020**

TSS collects, holds, uses and discloses personal information in accordance with its privacy policy, which can be found at www.sensitivefreight.co.nz/privacy-policy-document/

19. **Consumer Guarantees Act 1993** - Where the Customer is in trade the Consumer Guarantees Act 1993 shall not apply to the provision of the Services (if it would otherwise apply). The Customer and TSS both agree that it is fair and reasonable for them to be bound by this clause. Where the Act continues to apply and there is a conflict between these terms and conditions and the Act, the Act shall prevail and any such conflict shall not be deemed to be an attempt to contract out of the Act.

20. **Governing Law** - These terms and conditions are governed and must be construed under the laws of New Zealand.

21. **Indemnity** - Should any loss consequential or otherwise be sustained by the Carrier or its subcontractors or agents, the Customer hereby indemnifies the Carrier and its subcontractors and agents against all such losses and claims of whatsoever nature that may be so incurred.

22. **Brokerages and Commissions** – TSS is entitled to and may retain and be paid all brokerages, commissions, allowances and other remuneration customarily retained by or paid to companies such as TSS and no such brokerages, commissions, allowances and other remuneration shall be payable to the Customer. TSS is under no obligation to separately identify any such brokerages, commissions, allowances or remuneration, even if requested to do so.

23. **Personal Property Securities Act 1999**

Without limiting anything else in these terms and conditions, the Customer acknowledges that: these terms and conditions create, in favour of the Company, a security interest in all present and after acquired Goods (being, for the avoidance of doubt, all the Customer's present personal property and after-acquired property except for any item of personal property which has not or which is exclusively the

proceeds of any item of personal property which has not) been supplied by the Company to (or for the account of) the Customer) to secure the payment by the Customer to the Company of the Amount Owing; and

these terms and conditions will apply notwithstanding anything, express or implied, to the contrary contained in any purchase order (or its equivalent, whatever called) of the Customer; and the Security Interest shall continue until the Company gives the Customer a final release.

The Customer undertakes to:

- i. promptly do all things, sign any further documents and/or provide any information which the Company may reasonably require to enable the Company to perfect and maintain the perfection of its Security Interest (including by registration of a financing statement);
- ii. give the Company (addressed to the Financial Controller or equivalent) not less than 14 days' prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including, but not limited to, changes in the Customer's address, facsimile number, trading name or business practice).
- iii. The Customer waives its right to receive a verification statement in respect of any financing statement relating to the Security interest,
- iv. To the extent permitted by law, the Customer and the Company contract out of:
 - o section 114(1)a of the PPSA; and
 - o the Customer's rights referred to in sections 107(2))c), (d), (h) and (i) of the PPSA.

The Customer agrees that the Security Interest has the same priority in relation to all amounts forming part of the Amount Owing, including future advances.

If an Event of Default occurs:

- i. the Company may suspend or terminate any contract;
- ii. the Amount Owing shall immediately become due and payable notwithstanding that the due date has not arisen;
- iii. the Company may enforce the Security Interest; and
- iv. the Company may (without the consent of the Customer) appoint a receiver in respect of any Goods and any receiver is authorised to do anything referred to in these terms and conditions and otherwise to exercise all rights and powers conferred on a receiver by law.

The Customer agrees that, at any time after an Event of Default has occurred and is continuing or at any time if any Goods are at risk, the Company may:

- i. take possession of any Goods; and/or
- ii. sell or otherwise dispose of any Goods,
- iii. In each case in such manner and generally on such terms and conditions and conditions as it thinks fit, and, in each case, otherwise do anything the Customer could do in relation to those Goods. The Company and the Customer agree that section 109(1) of the PPSA is contracted out of in respect of particular Goods if, and only for so long as, the Company is not the secured party with priority over all other secured parties in respect of those Goods. As the Customer's agent, the Company (and its employees and agents) may, without prior notice, enter any land or premises where the Goods are kept in order to take possession of and/or remove them, without being responsible for any damage caused in doing so. The Customer agrees to procure all other rights (including consents) necessary to enable, and to indemnify the Company (and its employees and agents) against any liability incurred in connection with, such entry, taking of possession and removal. The Company may resell any of the Goods and apply the proceeds of sale in reduction of the Amount Owing.