

**1. Paramount Clause (Consumer Guarantees Act 1993)**

Where the provisions of the Consumer Guarantees Act 1993 apply, the provisions of these Conditions will be read subject to the application of that Act, and in the case of any conflict, the provisions of that Act will apply.

**2. Parties**

This contract is made between the Customer (which term includes any "contracting party" in terms of the Carriage of Goods Act 1979) and Messenger Services Limited ("the Company"). All business undertaken by the Company, including the provision of any advice, information or other services, is undertaken upon and subject to these Conditions.

**3. Business Customers (Consumer Guarantees Act 1993)**

Where the Customer is a business (as "Business" is defined by the Consumer Guarantees Act 1993), it agrees that in acquiring the Company's services for the purpose of a business and the Consumer Guarantees Act 1993 does not apply.

**4. Application of Carriage of Goods Act 1979 ("the Act")**

Subject to the provisions of the Act, Sections 22, 23, 24, 25, 26 and 27 shall apply to the contract only to the extent that they extend or enlarge the Company's rights and powers in terms of these Conditions. Sections 18 and 19 are modified by clause 15 of these Conditions 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.

**5. Subcontractors**

All or part of any work accepted by the Company may be fulfilled by the Company engaging or entrusting the Customer's goods to its authorised subcontractors on such terms agreed between the Company and its subcontractors. The Customer agrees that all work may be performed on behalf of the Company by any subcontractor. In carrying out the work on behalf of the Company, the Customer acknowledges that the subcontractor has the right to rely on the benefit to the Company of these Conditions.

**6. Protection of Servants and Agents**

The Customer undertakes that no claim or allegation shall be made against any subcontractor, servant or agent of the Company 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 the Company and any such subcontractor, servant or agent against all consequences thereof. It is expressly agreed and declared that for the purposes of section 4 of the Contracts (Privity) Act 1982 all provisions limiting or excluding the liability of the Company herein contained shall be for the benefit of all servants, agents and subcontractors of the Company.

**7. Ownership of Goods**

The Customer expressly warrants to the Company that it is the owner of the authorised agent of the goods and that it is authorised to accept and does accept these Conditions not only for itself but also for and on behalf of all other persons who are or may hereafter become interested in the goods.

**8. Delivery**

The goods shall be deemed to have been delivered when they are physically deposited at the address given to the Company by the Customer or consignee for that purpose. The Customer accepts that no form of acknowledgement that delivery has occurred is required to be obtained except in those instances where the Customer has specified, and the Company has agreed, that the carrier obtain a signature from the consignee. Where the Company obtains a signature on a signature ticket/signature sheet or on any approved form used by the Company as a form of acknowledgement that delivery has occurred, the Customer expressly agrees that the carrier may obtain such signature from any person at that address.

**9. Packing**

The Customer warrants that all goods have been labelled correctly and properly and sufficiently packed and prepared for carriage in accordance with the Company's instructions issued from time to time.

**10. Insurance**

Insurance of the goods is the responsibility of the Customer.

**11. Exclusion of Certain Items**

Pursuant to section 28(1) of the Act:

- (a) The Company will not accept or deal with bullion, cash, coins, negotiable instruments, precious stones, jewellery, antiques, paintings or other valuables ("Valuable Goods") or as advised by the Company to the Customer from time to time to be Valuable Goods unless the Company has expressly agreed in writing to handle, deliver or otherwise deal with certain Valuable Goods presented by the Customer or the Customer's authorised agent for consignment.
- (b) The Company will not accept or deal with any noxious, hazardous, dangerous or inflammable or perishable goods, firearms, any goods likely to cause damage, any goods which it is unlawful to carry or goods of any of the kinds specified in the Schedule to the Dangerous Goods Act 1974 ("Dangerous Goods") or as advised by the Company to the Customer from time to time to be Dangerous Goods unless the Company, its servants, subcontractors or agents have expressly agreed to handle, deliver or otherwise deal with certain Dangerous Goods presented by the Customer or the Customer's authorised agent for consignment and the Customer or the Customer's authorised agent has complied with all relevant law including 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. The Customer expressly warrants and agrees that it will not give any such goods to the Company, its servants, subcontractors or agents unless the Company, its servants, subcontractors or agents have expressly agreed (such agreement being in writing in the case of Valuable Goods) to handle, deliver or otherwise deal with certain Dangerous Goods or Valuable Goods presented by the Customer or the Customer's authorised agent for consignment with all relevant law including 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. Notwithstanding the nature of the Customer's business, the Customer acknowledges that the Company is not in a position to ascertain the contents of any consignment given to it for delivery and will not under any circumstances be deemed to be aware of the contents. If the Customer delivers any Dangerous Goods to or causes such goods to be handled or dealt with by the Company or any of its servants, subcontractors or agents and an incident occurs which creates a threat of explosion or fire, or creates a hazard which threatens the public safety or the safety of any person or property, the Customer expressly acknowledges that the Dangerous Goods may be destroyed or otherwise dealt with at the sole discretion of the Company, its servants, subcontractors, agents or any other person in whose custody they may be and at the expense of the Customer without the Company, its servants, subcontractors, agents or such other person being responsible or accountable for the value thereof except where the Company, its servants, subcontractors or agents have expressly agreed to handle, deliver or otherwise deal with certain Dangerous Goods presented by the Customer or the Customer's authorised agent for consignment, in which case the Company's liability shall be limited to the amount determined by clause 14(a).

**12. Payment of Charges**

The Customer agrees to pay the Company's standard charges and those of any subcontractor engaged by the Company and any other costs incurred or money expended by the company in connection with the goods. Except under a special arrangement previously made in writing with the Company, no credit will be given for the Company's charges which are to be paid to the Company at the time the goods are delivered to the Company for carriage. Where the Company has offered to provide the Customer with the e-direct service and the Customer has agreed to use the e-direct service, and the Customer or any employee, agent of or independent contractor to the Customer engages the Company to provide goods and/or services using the e-direct service, the Customer must pay the Company's standard charges and those of any subcontractor engaged by the Company and any other costs incurred or money expended by the Company in connection with those goods and/or services so provided in accordance with the Company's terms of trade.

**13. Lien**

All goods (and documents relating to goods) shall, immediately they come into possession of the Company or any sub contractor be subject to a particular and general lien and right of detention for all moneys due to the Company by the Customer or the consignee, consignor or owner, whether in respect of such goods or otherwise. If any moneys due to the Company 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, then they may be sold by auction or otherwise at the sole discretion of the Company and at the expenses of such person, and the net proceeds applied in or towards satisfaction of any such indebtedness. Any such sale shall not prejudice the right to recover the cost of the said detention and sale. If at anytime payment from the Customer to the Company shall be in arrears, any subsisting obligation of the Company shall be suspended and the Company shall not be under any liability to the Customer during such period.

**14. Limited Carrier's Risk**

- (a) This contract is "at limited carrier's risk".
- (b) Subject to the provisions of the Act imposing liability in respect of the loss or damage to the goods:(i) the Company shall not be under any liability whatsoever (whether in contract, tort or otherwise):(1) for any losses, penalties, damages, costs or expenses of any kind whatsoever brought, claimed, suffered or incurred by the Customer 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, its servants, sub contractors or agents, in connection with goods;(2) for any damage to, loss, deterioration, is-delivery, delay in delivery or non delivery of the goods (whether the goods are or have been in the possession of the Company or not);(3) for any instructions, advice, information or service given or provided to any person, whether in respect of the goods or any other thing or matter;(4) for any consequential or indirect loss or damage, loss of market or consequences of delay;(5) for any error or mistake in counting any currency or bullion, or failure, delay or errors in banking any currency;(6) for any breach by the Company of any term or provision hereof;(7) for any misrepresentation or any other matter or thing whatsoever which may give rise to any cause of action against the Company; 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, its servants, subcontractors or agents otherwise; and(ii) the Customer will indemnify the Company, its servants, subcontractors and agents against all losses, penalties, claims, damages (including damage or deterioration by or to any other consignment), costs and expenses of any kind whatsoever, howsoever caused or arising and,(without limiting the generality of the foregoing)whether caused or arising as a result of the negligence of the Company, its servants, subcontractors or agents or otherwise, brought or claimed by any third party, and/or suffered or incurred by the Company, in connection with, or resulting from, the carriage of the goods or any matter or thing done, said or omitted by the Company, its servants, subcontractors or agents in connection with the goods.

**15. Actions against the Company**

The Company 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 the Company within seven (7) days after the delivery of the goods or, in the case of loss of the goods, within fourteen(14) days of the date of despatch; and
- (b) an action shall have been commenced by the Customer in a Court of competent jurisdiction within six (6) months from the date of despatch of the goods.

**16. Notice**

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

**17. Review of Charges**

All charges payable by the Customer hereunder may be varied by the Company by giving notice in writing to the Customer at anytime. The notice shall state the date from which the new charge or charges shall be effective.

**18. Variations**

No variation of these Conditions shall be binding on the Company or the Customer unless in writing signed by or on behalf of both parties.

**19. Force Majeure**

The Company shall not be liable to the Customer for any failure to carry out its obligations hereunder or for any loss or damage suffered by the Customer 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 Government, riot or civil commotion, any act or omission of the Customer, its servants, subcontractors or agents, or any cause beyond the control of the Company.

**20. General**

The terms and conditions set out herein shall prevail over the terms and conditions set out in any document used by the Company (unless expressly acknowledged to override these Conditions or expressed to be "on declared terms"), the Customer, the owner or any other person having an interest in the goods and purporting to have a contractual effect.

These Conditions of Carriage shall be effective from the 1st day of September 1999.

**TERMS OF TRADE - Payment is required on the 20th of the month following the period of provision of services.**

**Signed .....** **Dated .....**