

STANDARD TERMS AND CONDITIONS

1. INTERPRETATION

1.1 In these Terms, unless the context otherwise requires:

“**Act**” means the Contract and Commercial Law Act 2017.

“**Business Day**” means any day, other than a Saturday, Sunday or public holiday in New Zealand, on which banks are generally open for business in Auckland.

“**Customer**”, “**you**” or “**yours**” means any person purchasing Services from LDC, and any other person acting on behalf of, or with the authority of, that person or entity.

“**Fee**” means the fees to be paid for the Services performed in accordance with these Terms the Pricing Schedule and clause 4.

“**Goods**” means all goods to be transported by LDC pursuant to these Terms.

“**GST**” has the meaning given in the Goods and Services Tax Act 1985 as amended from time to time.

“**LDC**”, “**we**” or “**us**” means LD Carriers Limited, New Zealand company number 8311152 and includes any subsidiaries, agents or employees thereof.

“**Order**” means an order for Services placed by Customer in accordance with clause 3.1.

“**Pricing Schedule**” means the schedule of prices and hourly rates for the Services provided by LDC to the Customer prior to, or at the time an Order is placed;

“**Services**” means all services supplied by LDC to the Customer from time to time, including , without limitation, services related to the pick up and delivery of Goods to a location in Auckland specified by the Customer, and all charges for labour and work, hire charges, insurance charges or any other fees or charges associated with the such delivery of Goods by LDC and any other services which LDC may agree to provide to Customer from time to time.

“**Terms**” means these terms and conditions and any subsequent variations of them.

2. LIMITED CARRIER'S RISK CONTRACT

2.1 The parties acknowledge and agree that for the purposes of Part 5 of the Act, these Terms has been freely negotiated by the parties as a contract for carriage at "limited carrier's risk".

2.2 Accordingly, notwithstanding and without prejudice to any other limitations of liability contained in these Terms, LDC's liability for any loss of or damage to any Goods is at all times limited in accordance with sections 256 to 260 of the Act.

2.3 The parties acknowledge and agree that these terms has been freely negotiated between the parties who had equal bargaining power at the time these Terms were entered into.

3. ORDERING, DESPATCH AND DELIVERY

3.1 Customer may place orders with LDC for the provision of Services in accordance with the ordering procedures agreed by the parties from time to time (each, an “Order”).

3.2 LDC will use its reasonable endeavours to meet the despatch and delivery times set out in each Order (or as otherwise agreed in writing between the parties from time to time).

3.3 The Goods shall be deemed to have been delivered when they are either physically deposited at the address provided by Customer to LDC in the Order, or where they are left with the relevant consignee in accordance with the Order.

3.4 LDC will provide the Services with due care and attention, and in accordance with applicable laws and the these Terms.

3.5 Customer must:

- (a) ensure that all Goods will be properly labelled and sufficiently packed and prepared so as to be fit for carriage;
- (b) provide LDC, in a timely manner and at no charge, access to its personnel, premises, office accommodation, data and other facilities as is reasonably required by LDC in connection with the Services;
- (c) inform LDC of all health and safety and security requirements that apply at any of its premises;
- (d) where applicable, provide LDC with timely responses and decisions so as to not adversely affect the provision of the Services; and
- (e) ensure that all information provided to LDC in connection with an Order is materially accurate.

4. FEES

Rates and charges

4.1 The Fees payable for the provision of the Services pursuant to these Terms shall be calculated by reference to the rates and charges as set out in the Pricing Schedule (as it may be amended from time to time).

4.2 All Fees are exclusive of GST and any other applicable taxes, duties, charges and levies.

Invoicing and payment

4.3 Unless otherwise agreed, LDC will issue an invoice to Customer for the Services provided by LDC to Customer.

4.4 Customer must pay such invoice on or before the 5th Business Day following the date the invoice is received by the Customer

5. INSURANCE

5.1 Customer must, at its expense, maintain insurance for the Goods with a reputable insurer(s) for the duration of the Term.

5.2 LDC must, at its expense, maintain carrier's liability insurance and public liability insurance with a reputable insurer(s) for the duration of the Term.

6. **LIABILITY**

- 6.1 Notwithstanding clause 2:
- (a) The liability of LDC for any and all claims whatsoever arising under these Terms will be limited to the amount for each unit of Goods lost or damaged as set out in section 259 of the Act.
 - (b) Neither party shall be liable to the other for any indirect or consequential losses or damages (or any loss of use, loss of profits or loss of anticipated savings) which is or may be sustained by the other party, or any of its directors, officers, employees, consultants and contractors, arising out of or in connection with these Terms.
 - (c) Customer agrees that LDC shall not be liable for any loss or damage it may sustain or incur in connection with the provision of the Services to the extent it occurs due to a breach of these Terms by Customer.
- 6.2 Each limitation in this clause 6 is to be construed as a separate limitation applying even though one or more of the other limitations may be held not to apply in the circumstances.
- 6.3 The provisions of this clause 6 shall survive termination of these Terms.
- 6.4 Subject to the Act, LDC 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 LDC within seven days after the delivery of the Goods or in the case of loss of the Goods, within 7 days of the date of despatch; and
 - (b) an action shall have been commenced by Customer to these Terms of carriage in a Court of competent jurisdiction within 3 months from the date of despatch of the Goods.

7. **TERMINATION**

- 7.1 Either party may terminate the contract created by these Terms with immediate effect by notice to the other party if:
- (a) the other party commits a material breach of these Terms which is not rectifiable or the other party fails to rectify a rectifiable material breach of these Terms within 20 Business Days after receiving a notice specifying the breach and requiring rectification; or
 - (b) an "insolvency event" happens to the other party.
- 7.2 The termination of these Terms in whole or in part will be without prejudice to any accrued rights of any party arising in any way under these Terms prior to the date of termination or expiry, including the right to pursue all remedies available at law or in equity.

8. **FORCE MAJEURE**

- 8.1 A party will not be liable for any failure or delay to perform its obligations under these Terms to the extent that failure or delay is due to a force majeure event, including any cause beyond its reasonable control such as any acts of God, strikes, lock-outs, bans or other industrial disturbances, epidemics and quarantine restrictions, fire, flood, explosion, civil riot

or commotion, government interference or request, by-laws, rules or regulations or order of any competent authority, or anything analogous thereto, provided that nothing in this clause 8 will relieve or suspend a party's obligation to pay money owed to the other party.

- 8.2 If a delay or failure to perform in respect of a force majeure event exceeds 40 Business Days, either party may immediately terminate this agreement by written notice to the other party.

9. **NOTICES**

- 9.1 Any notice, consent, approval or other communication given to a party under these Terms is only given if it is in writing and sent in one of the following ways:
- (a) delivered to the party's address;
 - (b) posted to the party's postal address; or
 - (c) sent by e-mail to the party's email address.
- 9.2 If a party gives the other party 3 Business Days' notice of a change of its address or email address, any notice is only given by that other party if it is delivered, posted or emailed to the updated address or email address.
- 9.3 Any notice is to be treated as given at the following time:
- (a) If it is delivered, when it is left at the relevant address.
 - (b) If it is sent by post, 3 Business Days after it is posted.
 - (c) If it is sent by email, on the date and time the email is sent (as shown in a confirmation of the email generated by the sender's computer system that indicates that the email was sent to the email address of the recipient notified for the purpose of this clause and provided that the sender's computer system has not generated a record that the email has not been received).
- 9.4 However, if any notice is given, on a day that is not a Business Day or after 5.00pm on a Business Day, in the place of the party to whom it is sent it is to be treated as having been given at the beginning of the next Business Day.
10. **CONFIDENTIALITY**
- 10.1 A party shall not, and shall ensure that none of its officers or employees shall, either during the term of these Terms or at any time thereafter, directly or indirectly, disclose to any person any confidential information, other than as required by law, as is already or becomes public knowledge, as authorised in writing by the party to which that confidential information relates, or to the extent reasonably required for the performance of these Terms.
- 10.2 Each party agrees to use any confidential information only to the extent necessary and for the purpose of performing their respective obligations under these Terms
- 10.3 The obligations imposed by this clause 10 shall survive any termination of these Terms.

11. **GENERAL**

No assignment

11.1 None of the rights or obligations under these Terms may be assigned or transferred by the Customer without the prior written consent of LDC. LDC may assign the rights and obligations of these Terms to any party in the event of the sale of the business operated by LDC.

No third party rights

11.2 Unless these Terms expressly provide otherwise, these Terms are not intended to confer a benefit on any person or class of persons who is not a party to it.

Entire agreement

11.3 These Terms contain everything the parties have agreed in relation to the subject matter it deals with. No party can rely on an earlier written document or anything said or done by or on behalf of another party before these Terms was executed.

Waiver

11.4 The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

Severability

11.5 Any provision in these Terms that is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. Otherwise the provision may be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of these Terms or affecting the validity or enforceability of that provision in any other jurisdiction.

Variation

11.6 No variation of these Terms will be of any force or effect unless it is in writing and signed by each party to these Terms.

Further assurances

11.7 Each party must do, sign, execute and deliver and must procure that each of its employees and agents does, signs, executes and delivers, all deeds, documents, instruments and acts reasonably required of it or them by notice from another party to carry out and give full effect to these Terms and the rights and obligations of the parties under it.

Counterparts

11.8 these Terms may be executed in any number of counterparts (including email copies) and, provided that both parties have executed a counterpart of these Terms, the counterparts together shall constitute a binding and enforceable agreement between the parties.

Governing law and jurisdiction

11.9 These Terms shall be governed and construed in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand