

LinkTrans Ltd – Terms & Conditions of Trade

- 1. Definitions**
- 1.1 "Seller" shall mean LinkTrans Limited and its successors and assigns or any person acting on behalf of and with the authority of LinkTrans Limited.
- 1.2 "Sub-Contractor" shall mean and include:
 - (a) any other person, firm or Seller with whom the Seller may arrange for the carriage or storage of any Goods the subject of the contract; or
 - (b) and any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in clause 1.2(a)
- 1.3 "Customer" shall mean the Customer or any person or persons acting on behalf of and with the authority of the Customer. Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 1.4 "Consignee" shall mean the person to whom the Goods are to be delivered by way of the Seller's Services.
- 1.5 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Customer on a principal debtor basis.
- 1.6 "Goods" shall mean cargo together with any container, packaging, or pallet(s) to be moved from one place to another by way of the Seller's Services, or for storage by the Seller.
- 1.7 "Services" shall mean all services supplied by the Seller to the Customer and are as described on the quotations, invoices, consignment note, manifests, sales order or any other forms as provided by the Seller to the Customer and includes any advice or recommendations.
- 1.8 "Price" shall mean the cost of the Services as agreed between the Seller and the Customer subject to clause 3 of this contract.
- 2. Acceptance**
- 2.1 Any instructions received by the Seller from the Customer for the supply of Services shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Seller.
- 2.3 These terms and conditions are to be read in conjunction with the Seller's quotation, consignment note, agreement, manifests, or any other forms as provided by the Seller to the Customer. If there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail.
- 2.4 The Customer shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any 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, phone number, or business practice). The Customer shall be liable for any loss incurred by the Seller as a result of the Customer's failure to comply with this clause.
- 2.5 The Customer acknowledges that all articles are carried or transported and all storage and other services are performed by the Seller subject only to these conditions and the Seller reserves the right to refuse the carriage or transport of articles for any person, corporation or body, and the carriage or transport of any class of articles at its discretion.
- 3. Price And Payment**
- 3.1 At the Seller's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by the Seller to the Customer in respect of Services supplied; or
 - (b) Seller's quoted Price (subject to clause 3.2) which shall be binding upon the Seller provided that the Customer shall accept in writing the Seller's quotation within seven (7) days.
- 3.2 The Seller may by giving notice to the Customer increase the Price of the Services to reflect any increase in the cost to the Seller beyond the reasonable control of the Seller (including, without limitation, increases in taxes or storage costs).
- 3.3 The Carrier may charge freight by weight, measurement or value, and may at any time re-weigh, or re-value or re-measure or require the Goods to be re-weighed, or re-valued or re-measured and charge proportional additional freight accordingly.
- 3.4 Time for payment for the Services shall be of the essence and will be stated on the on the invoice, consignment note, manifests or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 3.5 At the Seller's sole discretion a deposit may be required.
- 3.6 At the Seller's sole discretion:
 - (a) payment shall be due on delivery of the Goods; or
 - (b) payment shall be due before delivery of the Goods; or
 - (c) payment for approved Customer's shall be due twenty (20) days following the end of the month in which a statement is posted to the Customer's address or email address for notices.
- 3.7 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Customer and the Seller.
- 3.8 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 4. Nomination Of Sub-Contractor**
- 4.1 The Customer hereby authorises the Seller (if it should think fit to do so) to arrange with a Sub-Contractor for the carriage of any Goods that are the subject of the contract. Any such arrangement shall be deemed to be ratified by the Customer upon delivery of the said Goods to such Sub-Contractor, who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as the Seller. In so far as it may be necessary to ensure that such Sub-Contractor shall be so entitled the Seller shall be deemed to enter into this contract for its own benefit and also as agent for the Sub-Contractor.
- 5. Route Deviation**
- 5.1 The Customer shall be deemed to authorise any deviation from the usual route or manner of carriage of Goods that may in the absolute discretion of the Seller be deemed reasonable or necessary in the circumstances.
- 6. Delivery**
- 6.1 The Seller is authorised to deliver the Goods at the address given to the Seller by the Customer for that purpose and it is expressly agreed that the Seller shall be taken to have delivered the Goods in accordance with this contract when the Consignee takes possession of the Goods at the Customer's nominated nature address.
- 6.2 The Seller may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract.
- 6.3 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery for the purposes of this agreement.
- 6.4 It is the Customer's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery.
- 6.5 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
- 7. Loss Or Damage**
- 7.1 This contract is "at limited carrier's risk".
- 7.2 Subject to statutory provisions imposing liability in respect of the loss of or damage to the Goods (including but not limited to chilled, frozen, refrigerated or perishable Goods):
 - (a) the Seller shall not be under any liability, howsoever caused or arising and (without limiting the generality of the foregoing) whether caused or arising as a result of the negligence of the Seller or otherwise, for any damage to, loss, deterioration, mis-delivery, delay in delivery or non-delivery of the Goods (whether the Goods are or have been in the possession of the Seller or not) nor 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, nor for any consequential or indirect loss, loss of market or consequences of delay; and
 - (b) the Customer will indemnify the Seller against all claims 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 Seller or otherwise, brought by any person in connection with any matter or thing done, said or omitted by the Seller in connection with the Goods.
- 8. Insurance**
- 8.1 The Seller is not an authorised agent for the purposes of selling insurance. It is the Customer's sole responsibility to arrange insurance of the Goods, and the Customer acknowledges that such insurance shall not be arranged.
- 9. Unpaid Seller's Rights to Dispose of Goods**
- 9.1 The Seller shall have a lien on any Goods (and any documents relating to those Goods) in the possession or control of the Seller for all sums payable by the Customer to the Seller, and the Seller shall have the right to sell such Goods or cargo by public auction or private treaty after giving notice to the Customer. The Seller shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods or cargo, from the proceeds of sale and shall render any surplus to the entitled person.
- 10. Charges Earned**
- 10.1 The Seller's charges shall be considered earned in the case of Goods for carriage as soon as the Goods are loaded and despatched from the Customer's premises.
- 11. Demurrage**
- 11.1 The Customer will be and shall remain responsible to the Seller for all its proper charges incurred for any reason. A charge may be made by the Seller in respect of any delay in excess of thirty (30) minutes in loading or unloading occurring other than from the default of the Seller. Such permissible delay period shall commence upon the Seller reporting for loading or unloading. Labour to load or unload the vehicle shall be the responsibility and expense of the Customer or Consignee.
- 12. Dangerous Goods and Nature of Goods**
- 12.1 Dangerous Goods are Goods which are or may become of a dangerous, noxious, explosive, inflammable, radioactive or damaging nature and include Goods likely to harbour or encourage vermin or other pests. Unless agreed in writing, the Customer shall not deliver to the Seller, or cause the Seller to deal with or handle, Dangerous Goods.
- 12.2 If the Customer is in breach of Clause 12.1:
 - (a) the Customer, and any person delivering the Goods to the Seller, or causing the Seller to handle or deal with the Goods, shall be liable for any loss or damage caused to, or by the Goods, or by their nature, and shall indemnify and keep indemnified the Seller against all loss, damages, claims and costs (howsoever arising) incurred by the Seller in connection therewith; and
- (b) the Goods may be destroyed or otherwise dealt with as determined by the Seller in its absolute discretion at the expense of the Customer (or by any other person in whose custody they may be at the relevant time also at the expense of the Customer), and neither the Seller nor any such other person shall incur any liability whatsoever to the Customer in relation to any action taken by them concerning the Goods.
- 12.3 If the Seller agrees to accept Dangerous Goods and then during the provision of the Services the Seller, its Sub-Contractors (or any other suitably qualified person or authority) reasonably forms the view that those Goods constitute a risk to other goods, property, life or health, then the provisions of clauses 12.2(a) & 12.2(b) shall apply.
- 12.4 The goods shall comply with the requirement of any applicable law relating to the nature, labelling, packaging and carriage of goods. Any expenses or charges of the company in complying with any such law or requirement of any authority shall be paid by the customer.
- 13. Consignment Note**
- 13.1 It is agreed that the person delivering any Goods to the Seller for carriage or forwarding is authorised to sign the consignment note for the Customer.
- 14. Customer's Responsibility**
- 14.1 The Customer expressly warrants to the Seller that the Customer is either the owner or the authorised agent of the owner of any Goods or property that is the subject matter of this contract of carriage and/or storage and by entering into this contract the Customer accepts these conditions of contract for the Consignee as well as for all other persons on whose behalf the Customer is acting.
- 15. Seller's Servants or Agents**
- 15.1 The Customer undertakes that no claim or allegation shall be made against any servant or agent of the Seller 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 Seller and any such servant or agent against all consequences thereof.
- 16. Consumer Guarantees Act 1993**
- 16.1 This agreement is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Customer is contracting within the terms of a trade/business (which cases are specifically excluded).
- 16.2 The Seller shall be under no liability whatsoever for loss or damage to Goods unless:
 - (a) the Customer provides written notice to the Seller detailing the alleged damage, and that such written notice shall be received by the Seller within seven (7) days after the delivery of the Goods; or
 - (b) in the case where the Goods have been lost in transit then the Customer shall be required to provide written notice detailing the alleged loss within fourteen (14) days of the date of dispatch of the Goods.
- 17. Default & Consequences Of Default**
- 17.1 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by the Seller.
- 17.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own Customer basis and the Seller's collection agency costs.
- 17.3 Without prejudice to any other remedies the Seller may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Services to the Customer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller exercised its rights under this clause.
- 17.4 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to meet its payments as they fall due; or
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 18. Privacy Act 1993 (NZ)**
- 18.1 The Customer and the Guarantor/s (if separate to the Customer) authorises the Seller to:
 - (a) collect, retain and use any information about the Customer and/or the Guarantor/s, for the purpose of assessing the Customer's and/or the Guarantor/s creditworthiness or marketing products and services to the Customer and/or the Guarantor/s; and
 - (b) to disclose information about the Customer and/or the Guarantor/s, whether collected by the Seller from the Customer and/or the Guarantor/s directly or obtained by the Seller from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer and/or the Guarantor/s.
- 18.2 Where the Customer and/or the Guarantor/s are an individual the authorities under (clause 18.1) are authorities or consents for the purposes of the Privacy Act 1993.
- 18.3 The Customer and/or the Guarantor/s shall have the right to request the Seller for a copy of the information about the Customer and/or the Guarantor/s retained by the Seller and the right to request the Seller to correct any incorrect information about the Customer and/or the Guarantor/s held by the Seller.
- 19. Cancellation**
- 19.1 The Seller may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Seller shall repay to the Customer any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.
- 19.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by the Seller (including, but not limited to, any loss of profits) up to the time of cancellation.
- 20. Delivery Terms**
- 20.1 The driver is hereby instructed to deliver the load as directed by the customer and no claim may be made against LinkTrans Ltd for any damage resulting to driveways or underground services (including but not limited to, damage to drainage and cables).
- 20.2 Where access is unformed, any resulting mud deposited on public roads will be the client's responsibility for clearance.
- 21. General**
- 21.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 21.3 The Seller shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Seller of these terms and conditions.
- 21.4 In the event of any breach of this contract by the Seller the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Services.
- 21.5 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by the Seller.
- 21.6 The Seller may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 21.7 The Seller reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Customer of such change.
- 21.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 21.9 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision.
- 21.10 By acceptance of the Sellers quote in 3.1b the Customer authorises the Seller to carry out credit checks to obtain whatever information we consider necessary, and to release these details for debt collection purposes.