

# CONDITIONS OF CARRIAGE AND STORAGE

## 1.0 DEFINITIONS AND INTERPRETATION

- 1.1 In these Conditions, unless the context otherwise requires
- "the Company"** means **NEW ZEALAND VAN LINES LTD** a duly incorporated company having its registered office in Wellington, New Zealand.
- "Conditions"** means these Conditions of Carriage and Storage
- "the Customer"** means the person by whom or on whose behalf the Quotation has been accepted.
- "the Quotation"** means the Company's offer to perform the Services for the estimated or quoted (as the case may be) price contained in the Letter of Quotation.
- "the Goods"** and **"Goods"** has the same meaning as in Part 5 - NZ Contract & Commercial Law Act 2017.
- "Services"** means the carriage, storage, packing, unpacking or handling of goods and any other service performed by the Company in respect of the Goods, and any services ancillary to or connected with any of the above.
- 1.2 Where the Customer is more than one person, the obligations, acknowledgments and warranties made by the Customer shall apply to all of those persons jointly and each of them severally.
- 1.3 In the event of a conflict between the terms of these conditions and the terms contained in the Letter of Quotation, the terms contained in the Letter of Quotation shall prevail.
- 1.4 These Conditions are subject to any mandatory contrary provision of law. Where these Conditions or any part of them would but for this clause be void or unenforceable they shall nevertheless be valid and enforceable to the maximum extent permitted by law. For the avoidance of doubt, sections 6-10 of the Contractual Remedies Act 1979 are hereby excluded.

## 2.0 THE QUOTATION

- 2.1 The Quotation is made on the basis that, unless otherwise agreed in writing:
- The Goods will be available at the time proposed.
  - The performance of the Services will not be interrupted, hindered, delayed, or postponed by the Customer.
  - The removal will be performed during the Company's normal hours of business.
  - There are adequate staircases and doorways, firm and passable roads and suitable access being available at the addresses for collection and delivery.
  - The Goods not being required to be removed from or delivered up to any higher than the 2nd floor of any building or equivalent access, being four flights of steps unless specified.
  - In the event of a ferry vehicle and/or additional labour being required due to lack of reasonable access for the delivery vehicle, an additional charge may be made by the Company.
  - Should window or balcony access and/or tackle be necessary, it shall be used at the Company's option and at the Customer's risk and expense.
- 2.2 The Company may make an additional charge or charges in respect of any additional expenditure, liability incurred or work done in connection with the Services, or by reason of any material change to any matter, circumstance or item on which the Quotation is based.
- 2.3 If access to the point of delivery is not available or cannot be effected as indicated or desired, and storage is required, the Company may charge for storage, handling and redelivery at its standard rate, or waiting time as detailed in the quotation.
- 2.4 The Quotation is based on exchange rates, freight rates and wage scales applicable on the date of the Quotation.
- 2.5 Unless otherwise stated the quotation does not include:
- The cost of insurance, customs duties, quarantine charges, demurrage, storage, consular fees, municipal dues, taxes (other than NZ GST).
  - The taking down or putting up of fixtures or fittings, blinds or curtains, or lifting or laying of carpets, lineoleums or other floor coverings, dismantling, disconnecting or installing, connecting or re-assembling any refrigerator, computer, home theatre, stereo, washing machine or similar equipment and the removal or erecting of any television aerial.

## 3.0 LOSS, DAMAGE AND DELAY

- 3.1 To the extent that the Services are subject to Part 5 - NZ Contract & Commercial Law Act 2017, the Goods will be handled, forwarded and/or stored at "Owner's Risk". This means that the carrier will pay no compensation if the Goods are lost or damaged unless the carrier intentionally loses or damages them.
- 3.2 To the extent that the Services are not subject to Part 5 - NZ Contract & Commercial Law Act 2017, then, to the maximum extent permitted by law, the Company shall not be liable whether in negligence, any other tort or in contract or on any other basis whatsoever for:
- Any loss or damage to the Goods (including, without limitation, any deterioration, contamination or evaporation of any chilled, frozen, refrigerated or perishable Goods either in transit or in storage); or
  - Any non-delivery, mis-delivery, delay in delivery; or
  - Any advice, representation, information, or any assistance, or any service of any kind provided in any form by or on behalf of the Company in the course of or in connection with the Services; or
  - Any consequential or indirect loss whatsoever arising from or in connection with any of the matters or things referred to in (a), (b) or (c) above (including, without limitation, loss of profit or loss of market), in any circumstances and for any reason whatsoever and whether or not occurring in the course of events which are at any time in the contemplation of or foreseeable by the Customer and/or the Company.
- 3.3 All customs duty, excise duty, costs, expenses and penalties which the Company becomes liable to pay for any reason whatsoever in respect of or in connection with the Goods and any documents relating to the Goods pursuant to any legislation governing customs and/or excise or the importation, export or Carriage of Goods shall be paid by the Customer.
- 3.4 It is the responsibility of the Customer to ensure that none of the Goods to be removed are left behind, that no goods or fixtures are taken away in error and that articles left in unoccupied premises are protected.

## 4.0 RISK AND INSURANCE

- 4.1 The Company shall arrange Insurance in respect of the Goods upon receipt of instructions given in writing, an insurance proposal form properly completed, and premium paid.
- 4.2 The Insurance premium must be paid on or before the commencement of the Contract.
- 4.3 All insurance arranged by the Company shall be upon and subject to the usual conditions and exceptions of the policies of the insurer or underwriter taking the risk. The Customer shall have recourse against the insurer or underwriter only and the Company shall not be under any Responsibility or residual liability in relation to the Customer for the loss of or damage to any of the Goods.
- 4.4 Any claim for loss of or damage to the Goods shall be made in writing to the insurer or its agent within 14 days of the date of their delivery, or the date on which they were delivered to the nominated agent.
- 4.5 The Goods while in the Customer's premises are the responsibility of the Customer and the Company shall not be liable for any loss or damage caused to them while in the premises unless the loss occurs as a result of an accidental event directly related to the removal.

## 5.0 WARRANTIES AND INDEMNITIES BY THE CUSTOMER

- 5.1 The Customer warrants to the Company that except as previously advised by the Customer and accepted by the Company in writing:
- None of the Goods are, or contain things which are, or are likely to be dangerous to persons or property or are of a corrosive, inflammable, explosive or damaging nature.
  - None of the Goods are infested with or are likely to encourage vermin or damaging insects.
  - The Goods are the unencumbered property of the Customer and/or that the Customer has full right, power and authority to enter into the Services in respect of the Goods.
  - None of the Goods are subject to restrictions on their transportation.
  - Are clean and dry
- 5.2 The Customer acknowledges and agrees that if any of these warranties are breached the Company may remove, sell, destroy or otherwise dispose of the Goods and the Company shall not be responsible or accountable for their value or for any loss or damage, whether direct or indirect, resulting from or caused by such removal, sale, destruction or disposal.
- 5.3 The Customer undertakes to indemnify and keep indemnified the Company against all loss or liability and all actions, suits, proceedings, claims, demands, costs and expenses whatsoever which may be brought or made against the Company by any other person or incurred by the Company arising in whole or in part directly or indirectly as a result of or in connection with:
- A breach of any of the warranties.
  - Any steps taken by the Company, which were in its reasonable opinion at the time necessary or desirable to protect the Goods.
  - Any trespass to the property of any other person occurring in the course of the packing, removing, transporting, delivering or storing the Goods.

## 6.0 STORAGE AND WAREHOUSING

- 6.1 Warehousing and storage costs are calculated on a monthly basis, and charges shall be paid for the part month in which Goods are brought into and removed from Store.
- 6.2 The Company may review the storage charges on an annual basis, giving 30 days notice of any increase.
- 6.3 The Company will not release any goods from storage except to the Customer or any person authorised in writing by the Customer. Such release or delivery will not be made without all outstanding charges having been paid.
- 6.4 Storage charges are payable monthly in advance, or pro rata in advance for periods of less than one month.
- 6.5 The Company reserves the right to charge interest at the rate of 2% per month on any invoiced amount outstanding for more than 30 days. Any costs incurred in the collection of overdue monies, including collection fees and/or legal fees, will be charged in addition to the invoiced amount.

## 7.0 LIEN AND POWER OF SALE

- 7.1 The Company shall have a general and particular lien on the Goods and all documents relating to the Goods for all sums due to the Company by the Customer whether or not such sums are overdue. If any such sums are not paid within two calendar months of becoming due and payable the Company may without the need to give any notice to the Customer, sell the Goods by public auction or private bargain at the expense of the Customer. The proceeds of such sale shall be applied on or towards payment to the Company of:
- All sums owed to the Company by the Customer.
  - The costs and expenses incurred by the Company (including legal expenses) in the course of arranging for the sale of the Goods.
  - The cost of storing and/or maintaining the Goods pending their sale by the Company with the excess (if any) to be paid to the Customer.
- 7.2 The exercise of a power of sale conferred by this clause shall not prejudice the Company's right to recover from the Customer any balance due or payable to the Company.
- 7.3 No delay by the Company in exercising any power, right or remedy under this clause shall constitute a waiver of that power, right or remedy or be deemed to waive any default or breach by the Customer.

## 8.0 PAYMENT

- 8.1 Removal charges are payable prior to collection of the Goods at origin.
- 8.2 All sums of money which are required to be paid to the Company are where applicable and unless otherwise expressly stated, quoted inclusive of Goods and Services Tax.

## 9.0 GENERAL

- 9.1 The Services shall in all respects be governed by and construed in accordance with the laws of New Zealand and the Company and the Customer hereby irrevocably submit to the exclusive jurisdiction of the Courts of New Zealand.
- 9.2 All notices and communications to the Customer shall be deemed to have been duly received by the Customer.
- The day after the notice was sent by post to their last known address.
  - Upon transmission by facsimile to the number supplied.
  - Upon transmission by email to the email address supplied.
- 9.3 In the event this contract for Services is entered into by a person acting for or on behalf of the Customer, that person shall be personally liable, jointly and severally with the Customer, under this contract.
- 9.4 The Customer acknowledges the Company may:
- During the course of transit transfer the Goods from vehicle to vehicle or to store or container.
  - Move the Goods in store or from warehouse to warehouse.
- 9.5 The parties acknowledge and agree that the obligations of the Company shall only be enforceable by the Customer and not by any third party.
- 9.6 No modification, variation or waiver of these conditions or any one or more of its terms shall be effective unless in writing and signed by a Director of the Company.
- 9.7 The Company is not a common carrier and will accept no liability as such. The Company is not the actual carrier unless the Goods are carried on an aircraft, ship or other conveyance owned or operated by the Company, or performs an "incidental service" pursuant to Part 5 - NZ Contract & Commercial Law Act 2017. Where the Company is not the actual carrier its obligations are limited to arranging Carriage of the Goods by an alternative carrier.
- 9.8 The Company may in its absolute discretion arrange with any other reputable contractor, railway, shipping line, airline, Port or transport company or authority to carry out all or any part of the Services on such conditions as such other person or entity may stipulate and the terms of all bills of lading, consignment notes and other documents issued by such other person or entity may be accepted by the Company as agent for the Customer. The Customer authorises the Company to accept any such terms on the Customer's behalf.

## 10.0 CANCELLATION

The Company reserves the right to cancel this contract if it is unable to meet the required removal or delivery dates, or if in the opinion of the Company (which shall be final) there is any other good reason to do so, and in the event of the Company cancelling the contract neither party shall have any claim against the other.