

Terms and conditions

- 1) **Paramount clause- consumer guarantees act 1993**

Where the provisions of the consumer guarantees act 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 Elevate Transport services (the Company). All businesses undertaken by the Company including the provisions of any advice, information or other services is taken 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 it is acquiring the Company's services for the purpose of a business and that the consumer guarantees act 1993 does not apply.
- 4) **Application of the cartage 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 18 of these conditions and the relevant sections shall in relation to any other matter arising out of the provision of those sections, have affect 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 Company's goods to it's authorized subcontractors ("the subcontractors") on such terms agree between the Company and it's 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 of these conditions to the Company.
- 6) **Protection of Servants and Agents**

The Customer undertakes that no claim or allegation shall be made against any servant or agent of the Company which attempts to impose on 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 servant or agent of any such consequences thereof.
- 7) **Ownership of goods**

The Customer expressly warrants to the Company that it is the owner or the authorized agent of the goods and that it is authorized to accept and does not 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 and a signature from the consignee is obtained. In such circumstances the Customer expressly agrees that the Company may obtain any such signature from any person at that address.
- 9) **Packing**

The Customer warrants that all goods have been labeled correctly and properly and sufficiently packed and prepared for carriage.
- 10) **Insurance**

Insurance of the goods is the responsibility of the Customer.
- 11) **Exclusion of certain items**

The Company reserves the right to refuse carriage for any person or for any class of goods and in particular but without limitation reserves the right to refuse carriage in respect of:

 - (i) Bullion, cash, coins, negotiable instruments, precious stones, jewellery, antiques, paintings or other valuables
 - (ii) Any noxious, dangerous or inflammable or perishable goods, firearms or any goods likely to cause damage or which it is unlawful to carry.

The Customer expressly warrants and agrees that unless it has obtained express authorization in writing from the Company in respect of the particular consignment it will not give goods within category 11(i) or 11(ii) to the Company. Notwithstanding the nature of the Customers 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 circumstance be deemed to be aware of the contents except if it has been notified prior to the consignment being given to it and consented to delivery of the same. If the Customer delivers such goods as are contained in clause 11 (i) or 11(ii) to or causes such goods to be handled or dealt with by the Company or any subcontractor or agent without such prior notice and consent by the Company the Customer shall be liable for the loss, damage or deterioration whatsoever caused by or to in connection with any other consignment it shall indemnify the Company, the subcontractors and the agents against all penalties, claims, damages, cost and expenses whatsoever arising or connection therewith and the goods may be destroyed or otherwise dealt with at the sole discretion of the Company, the subcontractors or any other person in whose custody they may be in at the expense of the Customer without the Company, the subcontractor or such other person being responsible or accountable for the value thereof.
- 12) **Payment of charges**

The Customer agrees to pay the Company's standard charges including but not limited to fuel and cancellation surcharges 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 including but not limited to detention, demurrage, weighbridge and permit charges. Except under an arrangement previously made in writing with the Company, no credit will be given for the Company's charges. The Company may charge freight by weight or measurement and may at any time re-weigh or remeasure or require the goods to be re-weighed or re-measured and charge proportional additional freight and any weighing charges incurred. The Company may recover from the Customer any LTSA infringement fines issued to the Company in respect to any under-declared consignments. Every special instruction to the effect that charges shall be paid by the consignee shall be deemed to include a stipulation that if the consignee does not pay the said charges, then the consignor shall pay the said charges. The Company may carry or on-forward all goods or have them carried by any method or any person which the Company deems fit and notwithstanding any instructions that the goods are to be carried or on-forwarded by another method. The Contracting party authorizes the Company wither ad principal or as agent for the carriage of goods and any such contract will be mace upon the terms and subject to the conditions of any bill of lading or other forms or terms of contract for carriage, whether by sea, rail, road or air. From the date on which the responsibility of the Company ceases as provided by section 9 (3) of the Act the Company may hold goods if undelivered as bailee and shall be entitles to storage fees at normal rates charges by the Company AND as Bailee shall not be under any liability for any loss or damage to the goods. OR in its discretion return the goods to the contracting party at the risk and expense of the contracting party.
- 13) **Lien**

All goods (and documents relating to goods) shall, immediately they come into possession of the Company or any subcontractor, be subject to a particular and general lien and right of detention for all monies due to the Company by the Customer or the consignee, consignor or owner whether in respect of such goods or otherwise. If any monies due to the Company are not paid within 14 days after notice has been given to the person from whom the monies 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 expense of such person, and the net proceeds applied in or towards satisfaction at any such indebtedness. Any such sale shall not produce the Company's right hereunder nor the Company's rights of recovery of the cost of the said detention and sale. If any time 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 Carriers Risk**
 - a) This contract is "at limited carriers risk" as defined in the act
 - b) Subject to the provisions of the act imposing liability in respect of the loss of or damage to the goods:
 - i. The Company shall not be under any liability whose ever caused or arising and (without limiting the generality of the foregoing) whether caused or arising as a result of the negligence of the Company or otherwise, for any damage to, loss, deterioration, misdelivery, delay in delivery or non-delivery of the goods (whether the goods are or have been in the possession of the Company or not) nor for any instruction, 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
 - ii. The Customer will indemnify the Company 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 negligence of the Company or otherwise, brought by any person in connection with any matter or thing done, said or omitted by the Company in connection with the goods.
- 15) **International convention and National Law**
 - a. Notwithstanding other provisions in this contract, if it can be proved where the loss of or damage to the Goods occurred, the Company's liability shall be determined bby the provisions contained in any international convention or national law, the provisions of which:
 - i. Cannot be departed from by private contract, to the detriment of the Customer, and
 - ii. Would have applied if the Customer had made a separate and direct contact with the actual provider of the particular service in respect of that service or stage of carriage where the loss or damage occurred and received as evidence thereof any particular document which must be issued if such international convention or national law shall apply
 - b. In the event of any inconsistency between this contract and the conditions of any Bill of Lading or Air Waybill issued by or on behalf of the Company as principal, the conditions of any such Bill of Lading or Air Waybill shall prevail to the extent of such inconsistency but no further.
- 16) **Governing law**

These terms and conditions, and any act or contract to which they apply, shall be governed by and interpreted in accordance with the laws of New Zealand and any proceedings in respect of any dispute, matter or thing shall be instituted in New Zealand
- 17) **Storage and freight station services**

All goods are held and stored entirely at the Owner's risk and neither the Company nor any employee, agent or subcontractor for the Company shall be under any liability for any loss or damage to the goods in store or for any mis-delivery, delay in delivery or non-delivery of the goods.
All cartons, containers, trucks or other such transportation containers, either packed or unpacked, or in any way subject to handling by the Company shall be done so entirely at the Owner's risk and neither the Company nor any employee, agent or subcontractor for the Company shall be under any liability for any loss or damage to the goods or for any mis-delivery, delay in delivery or non-delivery of the goods
- 18) **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 dispatch; and
 - b) An action shall have been commenced by the Customer to this contract of carriage in a Court of competent jurisdiction within six (6) months from the date of dispatch of the goods
- 19) **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.
- 20) **General**

The terms and conditions set out herein shall prevail over the terms and conditions set out in any documents used by the Customer, the owner or any other person having an interest in the goods and purporting to have a contractual effect unless specifically varied and agreed to in writing by the parties.