

Terms and Conditions of Carriage

1. Definitions

1.1 In these terms and conditions:

- (a) “Act” means the Contract and Commercial Law Act 2017 as amended from time to time.
- (b) “Contracting Party” means the owners and consignees of any goods and their agents.
- (c) “Carrier” means Mainstream Limited and unless the context otherwise requires includes its servants, agents, sub-contractors and actual carriers.
- (d) “Goods” means the goods specified in writing by the Contracting Party to the Carrier that are to be subject to this contract of carriage.

2. Contract of Carriage

- 2.1 The Contracting Party agrees to engage the Carrier to arrange carriage of the Goods on these terms and conditions to the exclusion of any other terms.
- 2.2 All terms used in this contract shall have the meanings as set out in the Act, and where the conditions contained in this contract differ from the provisions of the Act then so far as the parties are able, the contract prevails over any statutory provisions and the parties are deemed to have contracted out of the provisions of the Act.
- 2.3 The Carrier shall not be bound by any agreement varying these conditions unless such agreement shall be in writing and signed with due authority on behalf of the Carrier.

3. Liability of Carrier

3.1 This contract shall be a contract for carriage “*at limited carrier’s risk*” as defined in the Act with the Carrier’s liability limited as set out in the Act for such contracts.

3.2 This is unless either:

- (a) The Contracting Party or their agent has signed a written document relating to the carriage of the Goods containing a statement in the following terms:

“These goods are to be carried 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”.

in which case this contract for carriage will be a contract for carriage “*at owner’s risk*” under which the Carrier shall not be liable for the loss of or

damage to any Goods except where the loss or damage is intentionally caused by the Carrier; or

- (b) This contract is specified to be a contract for carriage “*on declared terms*” in which case the Carrier will be liable for the loss of or damage to any Goods in accordance with the specific terms of the Contract.

3.3 In either case (but subject to any applicable limitation or qualification in the Act or the contract):

- (a) The Carrier 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 Carrier 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 Carrier 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 Contracting Party must indemnify the Carrier 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 Carrier or otherwise, brought by any person in connection with any matter or thing done or said or omitted by the Carrier in connection with the goods.

4. Owner’s Risk Contract

4.1 This contract will be an Owner’s Risk contract of carriage and the parties will comply with clause 3.2(a) to ensure the contract is an Owner’s Risk contract if:

- (a) any of the Goods include glass or other fragile items;
- (b) any of the Goods include bullion, cash, car parts, coins, negotiable instruments, precious stones, jewellery, antiques, paintings, flowers or other valuables, as described in clause 8 (Valuables);
- (c) any of the Goods are required to be maintained under controlled temperature or humidity conditions, or are subject to loss or damage through the passage of time as described in clause 9 (Perishable Goods);

- (d) any of the Goods have insufficient packaging (as determined by the Carrier);

or the parties otherwise agree that the carriage of the Goods is to be an Owner's Risk contract.

5. Notification of Claims and Limitation of Actions

5.1 The Carrier shall be under no liability whatsoever unless:

- (a) Written notice of any claim, giving reasonable particulars of the event giving rise to the claim and any alleged damage of loss, is received by the Carrier within seven days after delivery or, in the case of non-delivery, within fourteen days after the date of despatch.
- (b) An action shall have been commenced by the contracting party in a Court of competent jurisdiction within six months of delivery or, in the case of non-delivery, within six months and fourteen days of the date of despatch.

5.2 Sections 273 to 280 of the Act shall not apply to this contract.

6. Right to Refuse Carriage

6.1 The Carrier reserves the right to refuse carriage for any person or for any goods or class of goods.

7. Labelling and Packaging of Goods

7.1 The Goods shall comply with the requirement of any applicable law relating to the nature, labelling and packaging and carriage of goods and the expenses and charges of the Carrier in complying with the provisions of any such law or with any order or requirement there under or with the requirement of any harbour, dock, railway, shipping, customs, excise duty, GST, warehouse, or other authority or company or the expenses, charges, levies, or fines arising out of the breach of any applicable law shall be paid by the Contracting Party.

7.2 The Contracting Party must ensure that Goods are safely and properly packaged and labelled and fully described in writing including the name and the nature and the value of all Goods subject to special rates of carriage or of a noxious, dangerous, hazardous or inflammable nature or capable of causing damage or injury to any other Goods, or property or to any persons or animals and additional freight charges shall be paid on such Goods if deemed necessary by the Carrier.

7.3 Failure to safely and properly package or label or to fully describe any Goods shall render the Contracting Party liable for any loss or damage caused to or by such Goods and acceptance of the Goods for carriage without discovery of any such defect or lack shall not exclude or diminish any liability on the part of the Contracting Party.

8. Valuables

8.1 The Carrier will not accept or deal with Goods that include bullion, cash, car parts, coins, negotiable instruments, precious stones, jewellery, antiques, paintings, flowers or other valuables. If such items are delivered to be handled or dealt with by the Carrier or any subcontractor or agent of the Carrier, the contract for carriage of such Goods shall be an Owner's Risk contract so that the Carrier shall not be liable for any loss or damage whatsoever arising out of the carriage of such Goods.

9. Perishable Goods

9.1 The Carrier will not accept or deal with Goods that are required to be maintained under controlled temperature or humidity conditions and that are susceptible to loss or damage if the controlled conditions change, or Goods that are susceptible to loss or damage through the normal passage of time, including without limitation perishable food items, plants, seeds, flowers, medicines, nutritional supplements or animal products. If such items are delivered to be handled or dealt with by the Carrier or any subcontractor or agent of the Carrier, the contract for carriage of such Goods shall be an Owner's Risk contract so that the Carrier shall not be liable for any loss or damage whatsoever arising out of the carriage of such Goods.

10. Method of Delivery

10.1 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, re-valued, or re-measured and charge proportional additional freight accordingly.

11. Payment

11.1 Freight shall be considered earned and shall fall due for payment as soon as the Goods are loaded and despatched by the Carrier. Should payment in full not be made to the Carrier within seven days after the due date for payment, then:

- (a) the Contracting Party shall pay interest on all amounts outstanding at a rate which is 5% above the rate charged over the relevant period by the Carrier's bankers on primary level overdraft advances to the Carrier, and
- (b) the Carrier shall be entitled to sue forthwith for the recovery of all outstanding freight and interest thereon and section 282 of the Act shall not apply;
- (c) any costs incurred by the Carrier in connection with recovery action taken in respect of outstanding freight and other charges shall be payable by the Contracting Party on demand;

- (d) the Carrier may withhold the supply of any further goods and services to the Contracting Party until payment to the Carrier of all outstanding amounts.

11.2 The Contracting Party shall be liable for the cost of the freight whether or not the Goods reach their final destination and if delivered in a damaged condition or otherwise. The Contracting Party shall not be entitled to off-set freight charges against any claims for loss of, or damage to, the Goods or for any delays in delivery of the Goods or failure to deliver the Goods.

11.3 If the Contracting Party is the consignor, then every special instruction to the effect that freight shall be paid by the consignee shall be deemed to include a stipulation that if the consignee does not pay the freight within seven days of the date on which the Goods are loaded and despatched, then the Contracting Party shall pay the same and all other charges incurred by the Carrier.

11.4 The Contracting Party will be and remain responsible to the Carrier for all its proper charges incurred for any reasons. A charge may be made by the Carrier in respect of any delay in excess of 30 minutes in loading or unloading occurring other than from the default of the Carrier.

11.5 Such permissible delay period shall commence upon the Carrier reporting for loading or unloading. Labour to load or unload the vehicle shall be the responsibility and expense of the Contracting Party or consignee and should the consignee described hereon not be in attendance at the address given during normal trading hours when delivery is attempted an additional charge may be made at ruling rates for each call until delivery is accomplished.

12. Method of Carriage

12.1 The Carrier may carry or on-forward all Goods or have them carried by any method or any person which the Carrier deems fit and notwithstanding any instructions that the Goods are to be carried or on-forwarded by another method.

12.2 The Contracting Party authorises the Carrier to contract either as principal or an agent for the carriage of Goods and any such contract will be made 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.

13. Bailment of Goods

13.1 From the date on which the responsibility of the Carrier ceases as provided by section 258(1) of the Act, the Carrier may hold the Goods if undelivered as bailee and shall be entitled to storage fees at normal rates charged by the Carrier and as bailee shall not be under any liability

for any loss of or damage to the Goods however caused, or in its discretion return the Goods to the Contracting Party at the risk and expense of the Contracting Party. (The provisions set out above for recovery of interest and costs on outstanding freight shall apply also to storage fees which remain unpaid seven days after demand for payment has been made.)

14. Ownership of Goods

14.1 The Contracting Party expressly warrants that they are either the owner or the authorised agent of the owner of any Goods or property the subject matter of this contract, that the person signing this contract has authority so to do, and by entering into this contract they accept these conditions of contract for the Contracting Party as well as for all other persons on whose behalf the Contracting Party is acting.

15. Lien

15.1 The Goods are accepted subject to a general lien for all charges now due or which may become due in the future to the Carrier on any account. If the lien is not satisfied within 7 days of such payment being due the Carrier having given notice of the lien may at its option either:

- (a) remove such Goods or any part of the Goods and store them in such place and manner as the Carrier shall think proper and at the risk and expense of the Contracting Party or as the case may be or;
- (b) open any package and sell such Goods or any part of the Goods upon such terms as it shall think fit and apply the proceeds in or towards discharge of the lien and costs of sale without being liable to any person for damage thereby caused.

16. Insurance

16.1 If this contract specifies a requirement for insurance the Carrier as the consignor's agent will at the cost of the consignor arrange with a lawful insurer insurance of the Goods. The limit of the cover provided by such insurance as arranged by the Carrier for the consignor shall be the amount specified in this Contract or otherwise notified by the Carrier and following exclusions will apply:

- (a) All claims resultant from wear, tear, moths, vermin, damp, mildew or loss of market loss damage or expense proximately caused by delay or inherent vice or nature of the subject matter insured.
- (b) Gradual deterioration rust and/or oxidation unless due to or consequent upon fire collision overturning or other accident to the conveyance.

And such insurance shall be otherwise on the terms and conditions normally offered for such class of business by the underwriter with whom such insurance is affected provided however that the said limit shall not be construed as an agreed value.

- 16.2 The agreed value shall be the amount representing the value of the Goods as invoiced by the Contracting Party with a limit in any event of the amount specified in this Contract or otherwise notified by the Carrier, provided further that any amount received by the Contracting Party under such contract of insurance shall be applied in extinguishing the liability of the Carrier hereunder.

17. Hazardous Goods

- 17.1 The Carrier will not, except in terms of special arrangements previously made in writing, accept or deal with any noxious, dangerous or inflammable Goods or any Goods likely to cause damage or which it is unlawful to carry. If the Contracting Party delivers such Goods to, or causes such Goods to be handled or dealt with by, the Carrier or any subcontractor or agent:

- (a) the Contracting Party shall be liable for all loss or damage whatsoever caused by or to or in connection with the Goods howsoever caused or arising; and
- (b) the Contracting Party shall indemnify the Carrier, the subcontractors and the agents against all penalties, claims, damages, costs and expenses whatsoever arising as a result; and
- (c) the Goods may be destroyed or otherwise dealt with at the sole discretion of the Carrier, the subcontractors or any other person in whose custody they may be at the expense of the Contracting Party without the Carrier, the subcontractors or such other person being responsible or accountable for the value thereof.

18. Consumer Legislation

- 18.1 Where the provisions of the Consumer Guarantees Act 1993 applies these terms will be read subject to the application of that Act, and in the case of any conflict, the provisions of that Act will apply. Where the Contracting Party is a business ("business" as defined by the Consumers Guarantee Act 1993), it agrees that it is acquiring all services from the Carrier for the purposes of a business and that the Consumer Guarantees Act 1993 does not apply.

19. Fair Trading Act

- 19.1 Where the Contracting Party carries on business in trade it agrees that sections 9, 12A and 13 of the Fair Trading Act 1986 are excluded and will not apply.

20. Electronic Transactions Act 2002

- 20.1 The Carrier operates aspects of its order and delivery processes using electronic media such as computer tablets for recording the dispatch and delivery of Goods by way of electronic signature. The Contracting Party acknowledges and accepts the use of electronic media in the provision of the Carrier's service.

21. Contract and Commercial Law Act 2017

- 21.1 The provisions of the Act, in particular Part 5, Subpart 1 (which deals with the carriage of goods) shall continue to apply to the Carrier and the Contracting Party except and only to the extent they are lawfully modified or extinguished by these terms.

22. Privacy

- 22.1 The Carrier is authorised to obtain credit information about the Contracting Party, its principals and directors (if any) from credit referees and credit reference agencies and is also authorised to disclose credit information (including payment defaults) to credit reference agencies and other persons seeking credit references. The credit information is collected to assist the Carrier to ascertain the Contracting Party's credit status. Failure to provide the requested information may result in credit being refused. Under the Privacy Act 1993 individuals have a right of access to and correction of personal information. This authority is given by the Contracting Party and all the principals and directors of the Contracting Party (if any).

23. Force Majeure

- 23.1 In the event that war, civil disorders, monetary or economic developments, acts of Government, acts of God or material increases in the cost of performing the Carrier's services or other factors beyond the reasonable control of the Carrier whether similar or not will prevent the Carrier from performing its services or render it impracticable for the Carrier to perform its services, then the Carrier may by notice in writing to the Contracting Party either:

- (a) Cancel any contract between the Carrier and the Contracting Party; or
- (b) Advise the Contracting Party that the cost of providing the Carrier's services will increase from the date of notice.