

## TIL FREIGHTING LIMITED T/A TIL FREIGHT GENERAL TERMS AND CONDITIONS OF CARRIAGE

Act	means the Contract and Commercial Law Act 2017 (including any amendments)
Contract	means the contractual arrangement between TIL Freight and the Customer and includes any accepted quotation, these general terms and conditions of carriage and TIL Freight's terms of credit where credit is extended to the Customer
Customer	means the party requesting provision of carriage of goods services by TIL Freight
	TIL Freight means TIL Freighting Ltd or any other company within the TIL Freight group of companies and includes an "actual carrier" (as defined in the Act) contracted by TIL Freight.

### 1. Contract

- 1.1 TIL Freight agrees to supply carriage of goods services to the Customer in terms of this Contract subject to the Customer's acceptance of any quotation provided by TIL Freight.
- 1.2 The acceptance by TIL Freight of goods for carriage for the Customer constitutes the Customer's acceptance of any quotation for the carriage of goods provided by TIL Freight (should quotation not be accepted or expire then TIL Freight standard charges will apply) and acceptance of these general terms and conditions of carriage.
- 1.3 Notwithstanding clause 1.2, TIL Freight has the absolute discretion to refuse to accept goods for carriage of any particular goods or category of goods unless specifically itemised in TIL Freight's quotation.
- 1.4 TIL Freight reserves the right to conduct a credit check of the Customer and this Contract is subject to TIL Freight remaining satisfied that there is no credit risk.
- 1.5 This Contract is at "limited carrier's risk" in terms of the Act unless otherwise specified on TIL Freight's quotation.
- 1.6 The provisions of the Act apply to this Contract except where there is an express provision to the contrary.
- 1.7 The Customer indemnities TIL Freight from and against any third party claims outside the liability accepted by TIL Freight under this Contract.
- 1.8 TIL Freight has no liability to the Customer for damage to goods caused through inadequate packaging or containment when the goods are delivered by the Customer to TIL Freight.
- 1.9 Rates submitted may be subject to change in the event of Force Majeure e.g. road closures, natural disasters, road diversions. If this event does take place, TIL Freight will contact the Customer and notify them of these changes.
- 1.10 TIL Freight reserve the right to charge a Fuel Adjustment Factor (FAF). The model used to calculate the FAF and the current FAF rate can be found on our web site [www.tilfreight.kiwi](http://www.tilfreight.kiwi)
- 1.11 Where TIL Freight is subjected an increase in Government Levies (e.g. Road User Tax charges) TIL Freight reserves the right to pass these on to the customer by way of an increase in rate.

### 2. Payment of Charges

- 2.1 TIL Freight reserves the right to suspend delivery of further goods if the terms of payment are not strictly adhered to by the Customer.
  - a. Interest may be charged on overdue accounts at a rate of 15% p.a.
  - b. Any expenses, costs or disbursements incurred by TIL Freight in recovering any outstanding monies including debt collection agency fees or solicitor's costs shall be paid by the Customer.
  - c. You must pay us any fees or costs imposed on us if any payment you make to us is dishonoured or reversed.
  - d. Unless otherwise agreed invoices shall be paid to TIL Freight by the 20th of the month following the month in which the invoice was dated. Payment will not be accepted by any means other than cash, cheque, direct credit or direct debit.
  - e. If any account is in dispute, the undisputed portion of the account shall be payable in accordance with the normal terms of payment as provided in 2.1(d). Payment of the disputed portion may be withheld provided the matter is brought to TIL Freight's attention immediately it is discovered and a written explanation setting out the particulars of the dispute is sent to TIL Freight within seven days of the dispute arising.
- 2.2 Where the Customer fails to comply with the terms of payment, TIL Freight has no liability for any damage or deterioration to the goods and may withhold delivery to the consignee until paid in full.
- 2.3 TIL Freight may require the deposit of a sum equivalent to its charges or any lesser sum determined by TIL Freight as a deposit on account of payment.
- 2.4 TIL Freight will issue a GST invoice to the Customer on or after acceptance for carriage by TIL Freight and payment is due on the 20th day of the month following the date of the GST invoice or (if credit has been arranged) in accordance with the terms of credit.
- 2.5 TIL Freight may in its discretion accept delivery of goods for carriage on the basis that the consignee will pay its charges but nevertheless the Customer remains liable for payment in default of payment by the consignee.
- 2.6 If a charge is disputed notice must be given to TIL Freight as soon as possible, but prior to the due date for payment of the invoice. The undisputed amount or amounts are to be paid by the due date.
- 2.7 All rates quoted by TIL Freight are exclusive of GST. The Customer is responsible to pay all applicable GST and each invoice will specify the GST payable.

### 3. Carriage

- 3.1 TIL Freight may subcontract carriage of the Customer's goods to another carrier (actual carrier) but nevertheless remains the contracting carrier in terms of the Act. In such event, the obligations and liabilities of TIL Freight as contracting carrier and the actual carrier are as set out in the Act.
- 3.2 The Customer warrants that if it is not the owner of the goods it is the duly authorised agent of the owner of the goods to enter into this Contract and in default of payment of the charges by the owner the Customer is liable for that payment.

- 3.3 TIL Freight has a carrier's lien over the goods for all charges due by the Customer (whether in respect of those goods or otherwise) and under the Act, in default of payment, may exercise the lien in terms of the Act.
- 3.4 The Customer is liable for any additional costs or loss or damage caused to TIL Freight where the cost, loss or damage is attributable (wholly or in part) to the nature, packaging or containment of the goods on acceptance of delivery by TIL Freight.
- 3.5 Where the Customer is a business as defined in the Consumer Guarantees Act 1993, the Customer acknowledges that the services supplied by TIL Freight are for the purpose of a business and the provisions of that Act are excluded to the maximum extent permissible under that Act.

#### **4. Claims**

- 4.1 TIL Freight shall be under no liability whatsoever (including in relation to any loss caused by its negligence) unless:
- a. Written notice of any claim is received by TIL Freight within 7 days after delivery of the goods or, in the case of loss or destruction of the goods, within 14 days of the date of dispatch, together with full particulars of any alleged loss or damage and supporting evidence of the quantum of the claim, including proof of the cost price of any lost or damaged goods.
  - b. If the claim is not settled, an action shall have been commenced by the Customer in a Court of competent jurisdiction within 6 months from the date of acceptance of the goods for carriage.
  - c. TIL Freight reserves the right to obtain salvage of any damaged product prior to payment of any claim, and payment of any such claim may be refused should the salvage not be available.
  - d. The Customer has paid TIL Freight's invoice.
- 4.2 Where TIL Freight considers it appropriate it will appoint a professional assessor/loss adjustor to investigate the claim and in the absence of manifest error the determination of the assessor/loss adjustor will be final and binding and a copy of the report will be forwarded to the Customer as soon as practicable.
- 4.3 No claim may be brought against TIL Freight if the loss or damage is attributable in whole or material part to any inherent defect in the goods or their packaging/containment as at the date of acceptance of delivery by TIL Freight.
- 4.4 TIL Freight Ltd will not be liable for any consequential loss attributed to the cartage of freight for the customer.

#### **5. Delivery to Consignee**

- 5.1 TIL Freight will use its best endeavours to carry the goods as soon as practicable after acceptance of goods for carriage from the Customer but will not be liable to the Customer or any other party for any delay in delivery to the consignee.
- 5.2 Signature of the consignment note by the consignee constitutes acceptance that this contract has been discharged by TIL Freight except as provided for in clause 4.1.
- 5.3 Where delivery to the consignee or signature of the consignment note by the consignee cannot be procured the provisions of the Act will apply and the Customer is liable to TIL Freight for all costs incurred as a result.

#### **6. General**

- 6.1 TIL Freight reserves the right at any time and from time to time to vary or add to these conditions of carriage with effect from the date of notification to the Customer.
- 6.2 TIL Freight as forwarder under section 28(1) of the Act has the right to not accept or deal with bullion, cash, coins, bank notes, deeds, documents, negotiable instruments, phone cards, precious or semi precious stones, jewellery, gold or silver items, antiques, paintings, perishables including foodstuffs, glass, car parts, live plants or flowers of any type, un-crated motorcycles, furniture, personal effects, household removals, or other valuables. If any such items are accepted for carriage by TIL Freight or any subcontractor or agent of the company, the contract shall be at owner's risk in relation to those items and the company shall not be liable for any loss or damage whatsoever arising out of the carriage of the goods.
- 6.3 TIL Freight may charge freight by weight, measurement, or value and may at any time re-weigh, re-measure or re-value the goods or require the goods to be re-weighed, revalued or re-measured and charge proportional freight accordingly.
- 6.4 The Customer shall not be entitled to assign or transfer any right or interest, or to require TIL Freight to suspend or defer the performance of any carriage or other service, under any contract, except with the prior written consent of TIL Freight and then only upon such terms and conditions as TIL Freight may specify.
- 6.5 All rates of carriage and other charges contained in any price list, quotation, proposal, confirmation or other material submitted to the customer may be withdrawn or varied at any time prior to acceptance of any order placed by the customer. TIL Freight also reserves the right to increase any such charges contained in the rates of carriage confirmation or otherwise forming part of the contract by written notification to the Customer with effect fourteen (14) days after the date of written notification.
- 6.6 The goods shall comply with the requirements of any applicable law relating to the nature, labelling and packaging and carriage of goods and the expenses and charges of TIL Freight in complying with the provisions of any such law or with any order or requirement thereunder or with the requirement of any harbour, dock, railway, shipping, customs, excise, duty, taxation, warehouse or other authority or company and the expenses, charges, levies or fines arising out of any breach of any applicable law shall be paid by the Customer.
- 6.7 The goods shall be properly and safely packaged and labelled and fully described in writing in the contract or consignment note. The nature and value of all goods subject to special rates of carriage or of a noxious, dangerous, hazardous or inflammable nature and capable of causing damage or injury to any other goods or property or to any persons or animals, must be clearly stated in writing before accepted for carriage. Additional freight charges shall be paid on such goods if deemed necessary by TIL Freight. Failure to safely and properly package or label or fully describe any goods shall render the Customer liable for any loss or damage caused to or by such goods and acceptance of the goods for carriage with out discovery of any such defect, failure or characteristic shall not exclude or diminish any liability on the part of the Customer.
- 6.8 This contract shall be governed by and construed in accordance with the laws of New Zealand and the parties expressly agree to submit to the jurisdiction of its Courts.