



Massam Transport Limited

TERMS AND CONDITIONS OF TRANSPORT AND/OR STORAGE

The Contractor shall provide Services to the Sender from time to time and in accordance with the terms and conditions set out herein.

1. Definitions:

In these terms and conditions:

Contractor means Massam Transport Limited

Services means any and all of the services undertaken or procured by the Contractor for the Sender including (without limitation) the Transport and Storage of Goods.

Charges mean the Contractor's fees for procuring the Services.

Goods means the property or supplies to be transported and/or stored and in respect of which the Sender has engaged the Contractor for Services.

Sender means the person or company engaging the Contractor for the provision of the Services.

Transport means any and all of the services undertaken or procured by the Contractor in relation to the carriage and movement of Goods and has the same meaning as the definition for 'goods service' under the Land Transport Act 1998.

Storage means any and all of the services undertaken or procured by the Contractor in relation to the warehousing of Goods.

Receiver means the person to whom the Sender directs the Contractor to deliver the Goods.

2. Contract Basis

2.1 The Contractor accepts no liability as such for its Services and reserves the right to refuse the carriage or transport of Goods for any person, agent or company whatsoever, and any class of Goods at its sole discretion.

2.2 The Contractor relies on the details supplied by the Sender in relation to the quantity, value, type, quality, condition and description of the Goods, and in relation to any address from which the Goods are to be collected or to which the Goods are to be transported. The Contractor cannot verify and does not review the accuracy of the details provided by the Sender and any signature of the Contractor is intended only as acknowledgement of Goods received and shall in no way be taken as confirmation or verification of the details as provided by the Sender.

2.3 The Contractor shall be responsible for procuring the Services as required and requested by the Sender from time to time and may at its absolute discretion arrange for any and all of the Services to be performed by its employees, agents, subcontractors, related entities or any other person or entity that the Contractor deems fit to perform the Services.

3. **Sender's Warranties and Indemnity**

- 3.1 The Sender warrants that it has provided adequate and accurate instructions in relation to the method and location for collection of the Goods by the Contractor or delivery of the Goods to the Contractor and in relation to the method and location for the Storage of the Goods and/or the delivery of the Goods to the Receiver.
- 3.2 The Sender holds harmless and indemnifies the Contractor from any loss, damage, expense, penalty, fine or liability arising in any way whatsoever from a breach of these warranties, or these Terms and Conditions.

4. **Conditions to Service**

The Goods are accepted by the Contractor for the purposes of providing the Services subject to the following conditions:

4.1 Dangerous Goods

- (a) If in the Contractor's opinion the Goods are liable to cause damage to any person or property or to the environment, or to become dangerous, inflammable, explosive, volatile, offensive or damaging in nature, the Contractor may at any time destroy, dispose of, abandon or render the Goods harmless without any compensation to the Sender or Receiver and without prejudice to the Contractor's right to any Charges.
- (b) Furthermore, the Sender indemnifies the Contractor against any expenses, loss or damage incurred or sustained as a result of the Goods being or becoming dangerous including as a result of any spillage, seepage, combustion or contamination or as a result of any disposal, destruction, abandonment, repair or rendering harmless of the Goods by the Contractor.
- (c) The Contractor expressly excludes the following items and will not provide Services in respect of these items unless it otherwise expressly agrees in advance and in writing: firearms; live ammunition; live animals or reptiles; illegal substances; or any item that could be described as a weapon.

4.2 If the Sender instructs the Contractor to use a particular method of Transport whether by road, rail, sea or air, the Contractor will give priority to that method designated but if the Contractor cannot conveniently adopt the designated method, the Sender agrees that the Contractor, in its absolute discretion, may arrange to Transport the Goods by any other method.

4.3 If the Sender instructs the Contractor to use a particular method or type of Storage for the Goods, the Contractor will give priority to the specifications requested but if the Contractor cannot conveniently adopt the specifications requested, the Sender agrees that the Contractor, in its absolute discretion, may arrange storage of the Goods in any other manner which it deems appropriate for the nature of the Goods in question. The Contractor undertakes to notify the Sender as soon as is reasonably practicable of any Storage methods utilised which differ from those specified by the Sender.

4.4 The Contractor is authorised to cause the Goods to be delivered to the address specified by the Sender or Receiver whether or not an authorised representative of the Sender or Receiver is present at the specified address to accept delivery of the Goods, and a receipt signed by any person at the specified address will be taken as proof of delivery of the Goods.

4.5 The Contractor may arrange for the Goods to be Transported or Stored together with any other goods and may procure any person on any terms to perform the Services.

- 4.6 The Contractor may procure that the Goods be carried, stored or otherwise handled by any servant, agent, subcontractor or related entity of the Contractor and the Sender authorizes any deviation from the usual route or manner of cartage or place of storage of Goods which may in the absolute discretion of the Contractor be deemed desirable or necessary in the circumstances.
- 4.7 The Sender must collect the Goods within 14 days of a written request by the Contractor. If the Goods are not removed within 14 days, the Contractor may sell or otherwise dispose of the Goods as it sees fit.

5. Charges

5.1 The Sender must:

- (a) within 30 days of the date of the Contractor's invoice pay the Contractor in full for the Charges. Should the Sender fail to pay by the due date then all Charges shall become immediately due and payable. Unless specified time arrangement agreed to by both parties then the standard 30 days of the following month shall apply.
- (b) Where the Sender is in breach of clause 5.1(a) or any other clause of this agreement, the Contractor shall be entitled to serve upon the Sender a notice informing the Sender of the breach and of the Contractor's intention to terminate this agreement as a result of the specified breach ("Notice"). Immediately upon issuing the Sender with a Notice:
- (i) All payments outstanding to Contractor which are not yet due will become immediately due and payable by the Sender; and
- (ii) The Sender will be liable for any costs incurred by the Contractor as a result of the Sender's breach, including any legal fees and costs associated with recovering any monies owed to the Contractor.
- (c) if any Charges, invoices or other amounts owing by the Sender to the Contractor remain unpaid on their due date for payment, pay interest calculated daily on the unpaid amounts at a rate that is 10% per annum until the unpaid amounts have been paid in full.
- (d) pay any charge for demurrage, or any other costs or expenses directly or indirectly incurred by the Contractor in respect of procuring the Services, at the rate specified by the Contractor;
- (e) pay the Contractor's expenses and charges necessarily incurred by the Contractor in order to comply with any applicable law or regulation or any order or requirement made under them or with the requirement of any harbour, dock, railway, shipping, customs, excise (which includes any customs or excise duty payable on the Goods) or warehouse authority or any other person or organisation.
- (f) pay vehicle charges based on an hourly rate and calculated from point of pick up to the address specified for delivery and return, regardless of whether the vehicle actually returns to point of origin or not.

5.2 The Sender acknowledges that:

- (a) the Contractor's Charges are earned as soon as the Goods are picked up for Transport or placed in Storage and whether the Goods are delivered to the Receiver

or not and whether the Goods are damaged or not, under no circumstances will Charges be reimbursed.

- (b) A Charge may be made by the Contractor in respect of any delay in loading or unloading of the Goods occurring other than as a result of the default of the Contractor (including where the delay is due to the Receiver not being in attendance at the time specified or during normal business hours). The cost of labour to load or unload the vehicle shall be the responsibility and expense of the Sender or Receiver.
- (c) All Charges payable to the Contractor are exclusive of Goods and Services Tax, duties, levies or other taxes which will be added to the Sender's account and additional to the Charges negotiated
- (d) The Contractor may at any time re-assess (on the basis of re-weighing or otherwise) the Goods and charge additional Charges accordingly for its Service performed.

6. Lien

- 6.1 The Contractor has a general lien on the Goods for all Charges due or which become due on any account whether for Transport and/or Storage of these Goods or any other Goods or any other Service. The lien shall secure all amounts owing to the Contractor including expenses incurred by the Contractor for exercising its right of lien.

7. Insurance

- 7.1 The Contractor accepts no liability or responsibility for the insurance of the Goods which shall remain the Sender's and/or Receiver's sole responsibility. The Contractor is not liable for any loss or damage, including any consequential losses, for the failure of the Sender and/or Receiver to adequately insure the Goods.
- 7.2 It shall be the responsibility of the Sender to arrange such insurance as it sees fit to cover all or any of the above items of this agreement/conditions and any other risks. The Contractor shall be under no responsibility whatsoever to see that such insurance has been effected.

8. Damage, Exclusions, Limitations

- 8.1 Goods are deemed to be in transit despite any interruption of the Transport or that the Contractor may divert from the usual route for Transport.
- 8.2 If the Sender requests the Contractor to pack the Goods the Contractor is not liable for any loss or damage whether in packaging or in transit no matter how the damage or loss arises, including by negligence of the Contractor.
- 8.3 Subject to Clause 11, the Contractor will not be liable for, and the Sender releases the Contractor from and indemnifies the Contractor against any liability for or expense arising from loss of, damage to, mis-delivery of, delay in delivery or return of, concealed damage, deterioration, contamination, evaporation, or non-delivery or return of the Goods at any time during the Service or where the Goods are in the Contractor's possession, care, custody or control or any consequential loss howsoever caused even if it arises because of a breach of contract or negligence or a willful act or omission of the Contractor.
- 8.4 Subject to Clause 11, the Contractor will not be liable for, and the Sender releases the Contractor from and indemnifies the Contractor against any liability or expense arising from any personal injury (including death) or illness, or delay to any person or damage to any property howsoever caused or contributed to by the Goods or in relation to the Services. This release and indemnity extends to include injury, illness, delay or damage to any person or

property during any part of the Services and to include any consequential loss even if it arises because of a breach of contract or negligence or willful act or omission of the Contractor.

- 8.5 In the event that the contract requires any handling, installation, removal, or erection of the Goods of any kind by the Contractor, its employees, agents or sub-contractors, then it is undertaken on the strict basis that the Contractor shall not be under any liability for loss or damage or injury of any kind, whether to the Goods or to any person or property and even if caused by the negligence or misconduct of the Contractor. By entering into this agreement each of the Sender and Receiver for itself, its principals and agents, jointly and severally, hereby forever and irrevocably release and agree to indemnify the Contractor from all claims, debts actions and liability for such loss and damage.

9. **Privacy Act 2020**

9.1 The Sender authorises the Contractor or its agent to:

- (a) access, collect, retain and use any information about the Sender (including any overdue fines balance information held by the Ministry of Justice):
 - (i) for the purpose of assessing its creditworthiness; or
 - (ii) for the purpose of marketing products and services to it.
- (b) disclose information about the Sender, whether collected by the Contractor from the Sender directly or obtained by the Contractor 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 Sender.

9.2 Where the Sender is a natural person the authorities under clause 9.1 are authorities or consents for the purposes of the Privacy Act 2020.

9.3 The Sender shall have the right to request a copy of any information about it retained by the Contractor, the right to request the Contractor to correct any incorrect information about the Sender retained by the Contractor, and the right to request the Contractor to delete any information about the Sender held by the Contractor.

10. **Credit Account**

10.1 Where the Contractor has agreed with the Sender to procure the Services on an arrangement for deferred payment by the way of a credit account, or any other method of payment other than cash on delivery, such credit is extended solely to and for the use of the Sender personally and without limiting the generality of the foregoing, may not be utilised by any associate or employee of the Sender. Where any Service is undertaken by the Contractor at the request of a person from whom the Contractor is authorised by the Sender to accept such requests, the Sender shall be liable for the costs and charges of such Services, and the delivery by the Contractor of an invoice for the same shall be conclusive proof of such liability.

11. **Variations**

11.1 The Contractor may at any time vary its Charges and/or method of charging without giving prior notice to the Sender and any charge or rate schedule shall only be firm on the date it is issued.

11.2 The Contractor reserves the right from time to time to amend these Terms and Conditions without giving prior notice to the customer. All amendments shall have force and effect and it shall be the absolute responsibility of the Sender to ensure from time to time that it has an up-to-date copy of the Terms and Conditions which the Contractor will make available on request.

12. Dispute Resolution

12.1 The Contractor will endeavour, but will not be required to resolve all disputes between the parties amicably provided that if the parties cannot resolve a dispute, then no proceedings will be issued in Court in respect of the dispute without the dispute first being mediated by a single mediator appointed by agreement between the parties and failing agreement and on the application of one of them, by the Chief Executive Officer for the time being of the Resolution Institute of New Zealand.

13. Representations and Warranties Exclusion

13.1 No document, writing or other words or understanding between the parties whatsoever shall in any way vitiate or limit the force and effect of these terms and conditions.

13.2 No representations, warranties or agreements in relation to the Goods or the Services made by any agent, subcontractor or employee of the Contractor or of any related entity of the Contractor shall be relied upon by the Sender or the Receiver and the Contractor shall not be held responsible for any such representations, warranties or agreements and shall not be liable for any loss or damage to any person as a result of that person's reliance on such representations, warranties or agreements.

14. Severability

14.1 It is hereby agreed that if any clause or provision of these Terms and Conditions or any part thereof is illegal or unenforceable, that part shall be severed from the remainder of the Terms and Conditions and such unenforceability or severance shall not affect any other part of that provision or any other provision hereof.

15. No Waiver

15.1 Any failure by the Contractor to insist on strict compliance with any of these Terms and Conditions or any delay by the Contractor in exercising its rights under these Terms and Conditions will not constitute a variation or waiver of any of these Terms and Conditions or any of the Contractor's rights hereunder and shall not preclude the Contractor from subsequently enforcing any of those rights or insisting on strict compliance.

16. Joint and Several Liability

16.1 Where the Sender comprises two or more persons, any agreement or obligation to be performed or observed by the Sender shall bind those persons jointly and each of them severally.

17. General

17.1 Nothing in this Agreement will constitute a partnership, agency relationship or contract of employment between the parties.

17.2 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 exclusive jurisdiction of the courts of New Zealand.

17.3 The Sender shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Sender by the Contractor.

17.4 The Contractor 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 Contractor notifies the other parties of such change by posting the change to its website.

- 17.5 The Sender warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.
- 17.6 The Contractor may freely assign its rights and obligations under this Agreement without the other parties' consent. The other parties may not, without our prior written consent, assign, transfer, charge, license or otherwise dispose of or deal in any rights or obligations under this Agreement.
- 17.7 This Agreement is entered into for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement relating to this Agreement are not subject to the consent of any third party.

Accepted by: _____ Name of Company/Entity/Trust

Signature of Director or Authorised Person: _____

Position Held: _____

Date: _____

Executed by Massam Transport Ltd for and on behalf of its subsidiaries or Related Companies.

Signature of accepting officer: _____

Position Held: _____

Date: _____

Massam Transport is the provider of these terms and conditions.

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