

MESSENGER SERVICES LIMITED Trading as kiwidrive TERMS AND CONDITIONS OF CARRIAGE

1. Definitions and Interpretation

Definitions: In this Agreement, unless the context requires otherwise:

“Act” means the Contract and Commercial Law Act 2017, Part 5, Subpart 1 as amended, replaced or re-enacted from time to time.

“Agreement” means the agreement constituted by the account application form, these terms and conditions of carriage, Your Business Proposal, our changes in accordance with the Agreement, the terms on any other Company document in relation to the provision of our services to you and any variation or amendment to any one of these.

“Carriage” means the whole of the operations and services provided by the Company in respect of the receipt, carriage and delivery of the “goods”.

“Company” or **“we”** means Messenger Services Limited its employees, agents, subcontractors, and assignees.

“Customer” means the person, firm or company specified as the Customer in the account application form and which term includes any “Contracting Party” in terms of the Act.

“Dangerous Goods” includes firearms and ammunition, noxious, dangerous, or inflammable goods, hazardous chemicals, any goods likely to cause damage or which it is unlawful to carry, or advised by the Company from time to time to be dangerous goods.

“Goods” has the meaning given to it in the Act.

“High Risk Items” includes bullion, cash, coins, negotiable instruments, (such as vouchers) securities or bearer securities (including credit cards and uncrossed cheques), traveller’s cheques, precious stones, jewellery, stocks, bonds, antiques, paintings or any works of art, passports, goods of a fragile nature, dangerous goods, perishable items, second hand goods or carparts, items over 1.8metres in length, or any other high risk item advised to the Customer by the Company from time to time as such.

“Perishable Items” means goods of a perishable nature, refrigerated items and/or items which need to be delivered within a limited time span.

“Proof of delivery” means company stamp, receiver’s signature (whether receiver is consignee or any person at the consignee’s address), scanned bar code, electronic name, electronic signature or any other reliable acknowledgement of receipt.

2. Parties: This Agreement is made between the Customer and the Company. All business undertaken by the Company, including the provision of any advice, information or other services, is undertaken upon and subject to this Agreement.

3. Business Customers: Where the Customer is a business (as defined by the Consumer Guarantees Act 1993), it agrees that is acquiring the Company’s services for the purpose of a business and that the Consumer Guarantees Act 1993 does not apply. Where the provisions of the Consumer Guarantees Act 1993 apply, the provisions of this Agreement will be read subject to the application of that Act, and in the case of any conflict, the provisions of that Act will apply.

4. Contract and Commercial Law Act 2017, Part 5, Subpart 1: Subject to the provisions of the Act, Sections 284 through section 292 (inclusive) shall apply to this Agreement only to the extent that they extend or enlarge the Company’s rights and powers in terms of this Agreement. Sections 274 through section 280 (inclusive) of the Act are modified by clause 19 of this Agreement and shall, in relation to any matter arising out of the provisions of those sections, have effect subject to the express terms contained hereunder.

5. Subcontract: The Company may subcontract the performance of all or any part of this Agreement.

6. Protection of Servants, Agents and Contractors: The Customer undertakes that no claim or allegation shall be made against any subcontractor, servant or agent of the Company which attempts to impose any liability whatsoever in connection with the performance, manner or performance or non-performance of the Company’s obligations hereunder.

7. Ownership of Goods: The Customer expressly warrants to the Company that it is the owner or the authorised agent of the goods and that it is authorised to accept and does accept this Agreement 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. Acceptance of Goods for Delivery: Subject to the other provisions of this Agreement, goods are accepted for Carriage by the Company at the time the Company collects those goods for delivery. The Company shall have no liability whatsoever in respect of those goods prior to that time.

9. 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, or have been collected from the Company’s premises or an authorised agent of the Company. The Customer accepts that no form of acknowledgement that delivery has occurred is required to be obtained except in those instances where the Customer has specified, and the Company has agreed, that the Company obtain proof of delivery.

10. Packing: The Customer warrants that all goods have been labelled correctly and that the contents of packages are adequately and securely packed, wrapped and cushioned for transportation. The Company will not accept liability for damage arising from improper or insufficiently packaged items.

11. Insurance: Insurance of the goods is the responsibility of the Customer.

12. Exclusion of Certain Items:

(a) Pursuant to Section 293(1) and (2) of the Act the Company will not accept or deal with, and the Customer shall not give to the Company, any High Risk Items except in accordance with this clause.

(b) The Company will only deal with any High Risk Items, and the Customer will only give such goods to the Company, if the Company has expressly agreed in writing to deal with those High Risk Items and the Customer or the Customer’s authorised agent has complied with all relevant law

including, in the case of Dangerous Goods, the Dangerous Goods Act 1974 and associated regulations, and the requirements/procedures set out in the Standards Association of New Zealand Code of Practice for the Transport of Hazardous Substances on Land as amended from time to time.

(c) 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 circumstances be deemed to be aware of the contents.

(d) If the Customer delivers any Dangerous Goods to or causes such goods to be dealt with by the Company, the Dangerous Goods may be destroyed or otherwise dealt with at the sole discretion of the Company or any other person in whose custody they may be and at the expense of the Customer without the Company or such other person being responsible or accountable for the value thereof except where the Company has expressly agreed to deal with certain Dangerous Goods presented by the Customer or the Customer's authorised agent for consignment, in which case the Company's liability shall be limited to the amount determined by clause 19.

(e) Any unauthorised High Risk Items will be carried "at owners risk" and the Company will not accept any liability for such items.

13. Rights of Inspection: The Company retains the right to open any package, inspect any goods, and refuse Carriage to any person in respect of any consignment that by reason of the dangerous or other character of its contents is likely, in the sole judgment of the Company, to soil, taint, or otherwise damage other goods or equipment carried by the Company.

14. Charges:

(a) The Customer agrees to pay the Company's agreed charges subject to annual market increases, which are to be paid to the Company in accordance with the payment terms specified in the account application form or any prepaid ticket. Except under a special arrangement previously made in writing with the Company, no credit will be given for the Company's charges.

(b) All charges payable by the Customer hereunder may be varied by the Company by giving notice in writing to the Customer at any time. The notice shall state the date from which the new charge or charges shall be effective. Notice in writing is deemed to have been provided if it is on the Company's website.

(c) The Company reserves the right to impose charges on the Customer to account for any fines or similar costs incurred by the Company as a result of undeclared, over weight, dangerous goods and/or improperly packaged items being included with any goods given to the Company by the Customer.

(d) The Company reserves the right to impose charges on the Customer in respect of any goods that do not carry the required payment identification (tickets and/or type) where the Company has measured and weighed such goods to determine the correct payment required.

(e) Additional charges may apply but are not limited to after hours, rural and Saturday deliveries.

(f) Only full books or packs of product will be accepted for credit.

(g) All prices quoted exclude GST.

(h) The Customer agrees to pay the Company's variable fuel factor which may apply from time to time. This fuel factor will be included in the cost of each job.

15. Payment Terms:

(a) Invoices are issued weekly and are payable 7 days from the date of invoice. If any account is in dispute, the undisputed portion of the account shall be payable as normal.

(b) Messenger Services Limited have the right to withhold any services to any customer whose account is in arrears until such time as the account is paid.

(c) We have the right to charge interest on overdue accounts and to recoup any fees in relation to a collection agency from the Customer.

16. Indemnity:

The Customer will indemnify the Company against all losses, penalties, claims, damages (including damage or deterioration by or to any other consignment), costs and expenses of any kind whatsoever, howsoever caused or arising and, (without limiting the generality of the foregoing) whether caused or arising:

(a) as a result of the negligence of the Company or otherwise;

(b) out of any default or negligence of the Customer (including but not limited to a failure to comply with the terms of this Agreement);

(c) as a result of any claim by any third party;

(d) out of the Customer passing any tickets to any third party;

and/or suffered or incurred by the Company in connection with, or resulting from, the Carriage of the goods or any matter or thing done said or omitted by the Company in connection with the goods.

17. Lien: All goods (and documents relating to goods) shall, immediately they come into possession of the Company, be subject to a particular and general lien and right of detention for all moneys due to the Company by the Customer or the consignee, consignor or owner, whether in respect of such goods or otherwise. If any moneys due to the Company are not paid within fourteen (14) days after notice has been given to the person from whom the moneys 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 of any such indebtedness. Any such sale shall not prejudice the right to recover any balance due or payable in respect of the services provided hereunder or the cost of the said detention and sale. If at 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.

18. Set-off: The Customer authorises the Company to set-off, withhold or deduct without prior notice or demand any amount due or payable to the Company by the Customer under this Agreement or any other agreement from any payment made by the Company to the Customer in full or partial satisfaction of any amount owing to the Customer by the Company under this Agreement or any other agreement. For the avoidance of doubt, this right of set-off applies to any amount due or payable under any agreement relating to the supply of goods and/or services between the Company and Customer.

19. Company's Liability:

(a) All goods carried by the Company are carried at "Limited Carrier's Risk". The maximum liability of the Company in respect of any one item carried by the Company under the Act is limited to the lesser of the current market value or \$2,000 including GST per "unit of goods" as defined in Section 247 of the Act.

(b) Subject to the provisions of the Act imposing liability in respect of the loss of or damage to the goods the Company shall not be under any direct or indirect liability whatsoever (whether in contract, tort or otherwise) for any direct or indirect losses, penalties, damages, costs or expenses of any kind whatsoever (including indirect or consequential loss or damage) brought, claimed, suffered or incurred by the Customer or any third party, in connection with, or resulting from, the Carriage of the goods or any matter or thing done, said or omitted by the Company, in connection with goods or this Agreement howsoever caused or arising and (without limiting the generality of the foregoing) whether caused intentionally or arising as the result of negligence of the Company or otherwise.

20. 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 despatch, subject to our standard claims procedure; and

(b) an action shall have been commenced by the Customer in a Court of competent jurisdiction within six (6) months from the date of despatch of the goods.

21. Notice: Any notice to be given under this Agreement 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. Delivery can include placing a notice on the Customer's website.

22. Variations: The Company may review, vary and amend this Agreement at any time provided any variations and amendments are notified to the Customer. Except as provided for in this clause 21, no variations or amendments to this Agreement shall be binding on the Company unless they are in writing, signed by or on behalf of both parties.

23. Force Majeure: The Company shall not be liable to the Customer for any failure to carry out its obligations or for any loss or damage suffered by the Customer where such failure or such loss or damage is caused by mechanical breakdown of any equipment, weather conditions, strikes, lockouts, labour disputes or restraint of labour, act of God, war (whether declared or not), any act, regulation or restriction imposed by Government, riot or civil commotion, any act or omission of the Customer, its servants, subcontractors or agents, or any cause beyond the control of the Company.

24. General: The terms and conditions set out herein shall prevail over the terms and conditions set out in any document used by the Company (unless expressly acknowledged to override this Agreement), the Customer, the owner or any other person having an interest in the goods and purporting to have a contractual effect.

At commencement of provision of services by the Company to the Customer, the Customer is deemed to have accepted the Terms and Conditions of Carriage for Messenger Services Ltd, contained hereunder, or as amended from time to time by the Company as provided for in clause 25.

25. Amendments to these Terms: The Company may amend these terms from time to time by posting the revised version of the terms on www.kiwidrive.co.nz and/or notify the Customer by email.

STRICT TERMS OF TRADE – Payment is 7 days from the date of invoice.

I accept, understand, and agree to these terms and conditions for Messenger Services Ltd and confirm that I am authorised to sign on behalf of the Customer:

Authorising on behalf of (Customer Name): _____

Authorising Person Name: _____ Position Held: _____

Authorising Person Signature: _____ Date: _____