

## **MESSENGER SERVICES LIMITED Trading as Security Express 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 Request for the Provision of Secure Courier Services, these terms, and any amendment made in accordance with these terms.

**"valuables"** includes currency bank notes, bullion, data and other valuables carried by the Company.

**"the Company"** means Security Express, which is a division of 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, noxious, dangerous, inflammable or perishable goods, 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.

**"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. Term:**

2.1 This Agreement shall commence when signed by both parties and thereafter shall continue until terminated by either party in accordance with clause 5.16.

### **3. Charges:**

3.1 Payment of Charges: The Customer shall pay all fees due under this Agreement on or before the 20th day of the month following the date of the invoice. The Customer shall also pay all goods and services tax levied on such fees.

3.2 Review of Charges: 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.

**4. Business Customers:** Where the Customer is a business (as 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. 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.

### **5. General Terms and Conditions:**

#### **5.1 On Declared Terms:**

(a) This agreement is "on declared terms" as defined in section 248 (2)(c) of the Act and the parties agree that they have freely negotiated the terms of this Agreement.

(b) The declared terms are that the Company will be responsible for each consignment of valuables from the time the Company signs for the Customers consignment upon collecting it for carriage under the terms of this Agreement until it is delivered to the designation specified in writing by the Customer's authorised representative (the Risk Period).

(c) If any valuables are lost or damaged during the Risk Period, the Company will be liable, and will indemnify the Customer for an amount equal to the value of the valuables that has been lost or damaged up to a maximum amount of \$10,000 per local consignment and a maximum amount of \$2,500 per overnight nationwide consignment. For the purpose of determining this amount, the value of the contents of any container of valuables will be the value certified by the Customer on the relevant Company approved documentation.

(d) 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.

**5.2 Limitation:** The Company shall in no event be liable either in contract or in tort (including negligence) to the Customer or to any other person:

(a) except in accordance with clause 5.1 or, if applicable, the Act and if subsection 259(2) of the Act applies then the Company's liability for loss or damage to the valuables that is intentionally caused shall be limited to the amount specified in that subsection; or

(b) for any liability for damage or loss other than the loss or damage to the valuables; or

(c) for any special, indirect or consequential damages or for any loss of business or profit however caused; or

(d) for the value of any cheques included in the consignment.

**5.3 Application of Act:** Subject to the provisions of the Act, sections 283 through section 291 (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 277 and 278 of the Act shall not apply to the carriage of valuables.

#### **5.4 Insurance:**

(a) The Company shall arrange insurance cover in respect of valuables carried by the Company pursuant to this Agreement, such cover to be arranged up to the cash limit of \$10,000 per consignment and on terms subject to such conditions as the Company determines.

(b) Except as expressly provided in paragraph (a), the Company is under no obligation to arrange insurance on behalf of the Customer.

5.5 Indemnity: The Customer shall indemnify the Company in respect of all losses, claims, costs or damages suffered by the Company arising out of any default or negligence of the Customer.

5.6 Protection of Servants, Agents and Contractors: The Customer agrees that no claim or allegation shall be made against any servant, agent or contractor 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.

5.7 Company's statement of moneys to be conclusive: Notwithstanding anything to the contrary contained or implied herein, a written statement by the Company of the amount of any valuables received or collected or handled by the Company in the course of performing the services by the Company shall be conclusive evidence of such amount for all purposes.

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

5.9 Ownership of Valuables: The Customer warrants that it is the owner or the authorised agent of the valuables and that it is authorised to accept and does accept the terms of 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 valuables.

5.10 Valuables to be Secure on Delivery: The Customer shall ensure that all valuables delivered to or made available for collection by the Company for carriage under this Agreement is securely packaged and sealed in appropriate containers. If the Customer does not comply with the obligations set out in this clause the Company may elect not to accept delivery of such valuables or it may agree to carry the valuables subject to such terms and conditions as it considers reasonable in the circumstances.

5.11 Delivery: The valuables shall be deemed to have been delivered when it is physically deposited at the address given to the Company by the Customer or consignee for that purpose. Where the Company obtains a signature on any approved form used by the Company as a form of acknowledgement that delivery has occurred, the Customer agrees that the carrier may obtain such signature from any person at that address, unless a specific receiver has been nominated in writing by the Customer.

5.12 Customers Cheques: The Customer undertakes that whenever a cheque is handed over or given to the Company in connection with or arising out of the performance of the services under this Agreement it shall be the Customer's responsibility to ensure that such cheque is:

- (a) good, valid and enforceable according to its tenor;
- (b) honoured immediately upon presentation, and the Customer agrees to indemnify the Company for any loss or damage which the Company may sustain due to any breach by the Customer of this clause including all consequential costs and expenses.

5.13 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 5.2.

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

5.14 Customer arrears: 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.

5.15 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.

5.16 Termination: Either party may terminate this Agreement at any time by one month's notice in writing to the other. Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party, or the continuation in full force and effect of those provisions of this Agreement which, by express provision or implication, are intended to continue beyond such termination. This agreement may be terminated immediately by the Company by notice in writing to the Customer if the Customer fails to pay any money by the due date or commits any other breach of this Agreement or the Customer becomes bankrupt, goes into receivership or liquidation or being an individual, dies. On termination of this Agreement, all the Company's obligations shall cease and the Company shall be entitled to repossess all equipment of which it is the owner and for that purpose to enter upon the Customer's premises without being liable to the Customer or any third party in respect of any loss or damage caused thereby.

5.17 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 7 days after the delivery of the valuables or, in the case of loss of the valuables, within 14 days of the date of despatch; and
- (b) an action shall have been commenced by the Customer in a court of competent jurisdiction within 6 months from the date of despatch of the valuables.

5.18 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 other cause beyond the reasonable control of the Company.

5.19 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.

5.20 Amendment: No amendment to this Agreement shall be binding on the Company or the Customer unless it is in writing signed by or on behalf of both parties.

5.21 General: These terms shall prevail over the terms set out in any other document used by the Company (unless expressly acknowledged to override this particular Agreement), the Customer, the owner or any other person having an interest in the valuables 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 5.20.

**STRICT TERMS OF TRADE - Payment is required on the 20<sup>th</sup> of the month following the period of provision of services**

**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: \_\_\_\_\_