

TERMS AND CONDITIONS OF CARRIAGE OF GOODS

1 Definitions

In these terms and conditions, unless the context requires otherwise:

"Act" means the Contract and Commercial Law Act 2017 as amended from time to time;

"Authorised Agent" means a person or entity who has been authorised to act or execute documents on behalf of another person or entity;

"Company" means RMD Transport Ltd, its employees, agents, subcontractors and assignees, and references to "carrier" in these Terms refer to the Company;

"Carriage" means the whole or any part of the operations or services undertaken by the Company in respect of the Goods under these Terms;

"Dangerous Goods" includes firearms, noxious dangerous or inflammable 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;

"Dispatch" means the time when the Customer hands Goods to the Company for delivery;

"Customer" means the owners and consignees of any Goods, including their Authorised Agent on behalf of a firm, organisation, partnership, corporation or other entity (including trust) requesting the Company's services;

"Goods" means goods presented to the Company by the Customer at any time that are to be subject to these Terms;

"Perishable Goods" means Goods of perishable nature, refrigerated or humidified items and/or items which need to be delivered within a limited time span;

"Terms" means these terms and conditions of carriage of goods;

"Valuables" means bullion, cash, car parts, coins, negotiable instruments, precious stones, jewellery, antiques, paintings, flowers or other valuables.

2 Agreement for Carriage

- 2.1 The Customer agrees to engage the Company to arrange carriage of the Goods on these Terms.
- 2.2 These Terms will prevail over and exclude any other terms purporting to cover the Company's arrangement of the carriage of the Customer's Goods.
- 2.3 All terms used in these Terms will have their meanings set out in the Act.
- 2.4 Where any provision of these Terms differs from those in the Act, to the extent possible, these Terms are to prevail.
- 2.5 Agreements varying these Terms must be in writing and signed by an Authorised Agent of the Company to bind the Company.

3 Ownership of Goods and Ability to Contract

- 3.1 The Customer warrants that it is the owner of the Goods, or the Authorised Agent of the owner of the Goods.
- 3.2 The Customer also warrants that the person signing these Terms has the authority to bind the Customer.

4 Right to Refuse Carriage

- 4.1 The Company reserves the right to refuse carriage for any person or any goods or classes of goods (including, but not limited to: Perishable Goods, Valuables and Dangerous Goods).

5 Method of Carriage

- 5.1 To the extent permitted by law, the Company may carry or on-forward all Goods or have them carried by any method or any person which the Company deems fit.
- 5.2 The Customer authorises the Company to contract either as principal or any agent for the carriage of Goods and any such contract will be made upon the terms and subject to the conditions of any written document or other forms or terms of contract for carriage.

6 Liability of Company

- 6.1 These Terms will be "at limited carrier's risk" (as defined in the Act), unless either of the following apply:

- (a) The Customer has signed a written document regarding the carriage of the Goods which contains the following statement:

"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."

- (b) The Customer has signed a written document regarding the carriage of the Goods which is expressed to be on "declared terms," which means that the terms of the carriage of Goods will be those specific declared terms.

- 6.2 In either case (but subject to any limits or qualifications imposed under the Act or in a written and signed document on declared terms):

- (a) The Company will not be liable for any damage to, loss, deterioration, mis-delivery, delay in delivery or non-delivery of the Goods (whether the Goods are or have been in possession of the Company or not) or 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 Customer indemnifies the Company against all claims of any kind brought by any person in connection with any matter whatsoever in connection with the Goods.

- 6.3 The Company will not accept or deal with any Valuables and/or Perishable Goods unless expressly agreed in writing. If any Valuables or Perishable Goods are delivered to the possession of the Company, the contract for their carriage will be an "Owner's Risk" contract, where the Company will not be liable for any loss or damage whatsoever in connection with the Goods.

7 Actions Against the Company

- 7.1 The Company will have no liability whatsoever unless:
 - (a) written notice of any claim, giving full particulars of any alleged damage, destruction or loss is

received by the Company within seven (7) days after delivery of the Goods or, in the case of non-delivery, within fourteen (14) days after the date of Dispatch.

- (b) the Customer has commenced an action in a Court with the correct jurisdiction within six (6) months of delivery or, in the case of non-delivery, within six (6) months and fourteen (14) days of the Dispatch

7.2 Sections 274 to 280 (inclusive) of the Act do not apply to these Terms.

8 Indemnity

8.1 The Customer indemnifies and will keep indemnified the Company, in respect of all liabilities arising from any breach of these conditions by the Customer or the provision of the carriage except as expressly assumed by the Company under these Terms.

9 Labelling and Packaging of Goods

9.1 The Customer will ensure that the Goods will comply with:

- (a) all legal requirements for the nature, labelling, packaging and carriage of Goods; and
- (b) any requirement of any harbour, dock, railway, shipping, customs, excise duty, GST, warehouse or other authority or company.

9.2 The Customer indemnifies the Company for any loss or claim the Company may suffer resulting from the Customer breaching clause 9.1.

9.3 The Customer will ensure that the Goods are:

- (a) safely and properly packaged and labelled; and
- (b) fully described in writing, including in name, nature and value, including:
 - i Goods subject to special rates of carriage; and
 - ii Dangerous Goods.

9.4 The Customer will be liable for any breach of clause 9.3 that results in loss or damage caused to or by Goods and/or to the Customer and the Company has no responsibility to ensure Goods comply with clause 9.3.

10 Insurance

10.1 Subject to clause 10.2, it is the Customer's sole responsibility to insure the Goods.

10.2 If the Company agrees in writing to effect insurance, then it will do so as the Customer's agent, as the Customer's sole cost. The limit of the insurance will also be agreed in writing by the Company, failing which, at an amount set by the Company.

11 Charges

11.1 The Company may charge the Customer by weight, measurement or value.

11.2 The Company reserves the right at any time to re-weigh or re-measure or re-value (or to require the Customer to do so) and charge any proportional increase as additional freight.

11.3 The Customer will remain liable to the Company for all its proper charges incurred for any reason.

11.4 Unless caused by the Company, the Company reserves the right to charge the Customer for any delay over 60 minutes in loading or unloading.

- (a) This delay period begins when the Company arrives for loading or unloading.
- (b) Labour for loading and unloading is the Customer's responsibility.
- (c) If the Customer is not in attendance at the location for delivery during work hours when deliver is attempted, then an additional charge may be made by the Company for each call until delivery can be completed.

12 Payment

12.1 The Customer must pay all amounts due to the Company in full, without deduction or setoff, by the due date specified in the invoice.

12.2 The Customer's payment is made only when the funds are cleared and are showing in the Company's bank account.

12.3 If full payment is not made by the Customer to the Company within 7 days after the due date for payment, then:

- (a) The Company may charge interest on overdue amounts, calculated and compounding daily at a rate of 5% per annum above the current overdraft rate charged by the Company banker at that time, from the due date for payment until payment is received in full;
- (b) The Customer will be responsible for all costs (including legal costs on a solicitor/client basis) incurred by the Company in recovering overdue amounts;
- (c) The Company may discontinue or suspend any carriage of Goods for the Customer until payment is received in full; and
- (d) The Company may exercise its lien under clause 14.

13 Company as Bailee

13.1 The Company may hold any undelivered Goods as a bailee (a person or entity that has possession but not ownership of the Goods) past the date on which its responsibility for the Goods ends under section 258(1) of the Act.

13.2 The Company can:

- (a) charge storage fees at the Company's normal storage rate (including recovery of interest and costs on outstanding amounts under clause 12.3 and will not be liable for any loss, damage or destruction to the Goods however caused; and/or
- (b) return the Goods to the Customer, at the Customer's risk and expense.

14 Lien

14.1 The Company will have a lien (a right to hold on to the Goods until payment has been received, or to sell the Goods, if payment is not received in time) on the Goods for any monies owing to the Company by the Customer.

14.2 If full payment is not made by the Customer to the Company within 7 days after the due date for any payment then, in reliance on the lien, the Company may:

- (a) Remove all or some of the Goods and store them in a manner the Company deems appropriate, such storage to be at the Customer's risk; and/or
- (b) Sell the Goods without further notice to the Customer to apply toward repayment of any overdue monies owing. Any such sale will not prejudice the Company's rights to recover all monies it is owed by the Customer,

and the Customer will be responsible for all costs incurred by the Company for storage, carriage or in relation to the sale, including legal costs on a solicitor client basis.

14.3 Any unsold portion of the Goods will be returned to the Company at the Customer's sole expense.

15 Dangerous Goods

15.1 The Company will not accept or deal with any Dangerous Goods unless expressly agreed in writing.

15.2 If the Customer either delivers Dangerous Goods to the Company or causes Dangerous Goods to be handled or dealt with by the Company in the absence of any written agreement to the contrary, then:

- (a) The Customer will be liable for all loss or damage caused by, to, or resulting from the Dangerous Goods;
- (b) The Customer indemnifies the Company against all penalties, claims, damages, costs and expenses whatsoever arising as a result; and
- (c) The Company may deal with the Dangerous Goods at its sole discretion, including destroying or disposing of the same, at the Customer's sole cost.

16 Force Majeure

16.1 The Company will 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 loss or damage is caused by mechanical breakdown of any equipment, weather conditions, strikes, lockouts, labour disputes or restraint of labour, act of God, pandemic, epidemic, war (whether declared or not), any act, regulation or restrict imposed by Government, riot or civil commotion, or any act or omission of the Customer, or any cause beyond the control of the Company ("Force Majeure Event").

16.2 If a Force Majeure Event occurs, the Company will have the option to provide written notice to the Customer to either:

- (a) Cancel its agreement for carriage with the Customer; or

- (b) Increase the costs of carriage to be charged to the Customer from the date of the notice.

17 Legislation

17.1 **Consumer Guarantees Act 1993.** If the Consumer Guarantees Act 1993 applies, these Terms will be read subject to the Customer's rights under that Act. Where the Customer is in trade (as that term is defined in section 2 (1) of that Act) and the carriage of Goods is supplied and acquired in trade then the Consumer Guarantees Act 1993 does not apply.

17.2 **Fair Trading Act 1986.** Where the Customer carries on business in trade (as that term is defined in section 2 (1) of that Act), it agrees that sections 9, 12A and 13 of the Fair Trading Act 1986 do not apply.

17.3 **Privacy Act 2020:**

- (a) The Company may use any personal information that the Customer gives to it for credit, administration, service and marketing purposes.
- (b) To assist the Company in completing the carriage of Goods and/or considering the Customer's credit status, the Customer authorises the Company or any person or Company instructed by the Company to obtain the Customer's (and its principals' and directors' (if any)) credit information.
- (c) Failure to provide the personal and/or credit information may result in the Company refusing to provide carriage services to the Customer.
- (d) The Customer has a right of access to, and may request correction of, personal information held by the Company.