

Terms & Conditions Of Trade Of Captain Transporter Ltd.

Standard Terms and Conditions

"Actual Carrier" has the meaning given to that expression under the Carriage of Goods Act 1979.

"Carrier Rates" means the rates charged and (where applicable) quoted by Captain Transporter Limited for Carrier Services.

"Carrier Service" means any service provided by Captain Transporter Limited for the Carriage of Vehicles by road or rail, and includes any other service provided by Captain Transporter Limited relating to or incidental to that carriage.

"Contract of Carriage" means contracts incorporating these Standard Terms and Conditions of Carriage of Captain Transporter Limited as amended from time to time.

"Customer" means the party who has agreed to be bound by the contract terms and conditions contained herein, and includes that party's permitted assignees.

"Receiver" means a consignee of vehicles and/or goods and their agent(s).

"The Act" means the Carriage of Goods Act 1979.

These conditions shall apply to and govern the supply by Captain Transporter Limited of Carrier Services to the Customer. In the event of conflict or inconsistency between these conditions and the terms of any bookings/orders submitted by the Customer or quotes or invoices issued by Captain Transporter Limited, these conditions shall prevail unless otherwise agreed in writing by Captain Transporter Limited or by a duly authorised signatory. Any amendments or alterations shall be effective upon receipt in writing by the Customer.

1 Liability

1.1 Any Carriage under this contract is deemed to be at Limited Carrier's risk in accordance with section 8(1)(b) of the Act unless otherwise agreed in writing between the parties (pursuant to section 8 of the Act), which agreement shall be annexed hereto.

1.2 Maximum amount of liability

(a) Captain Transporter Limited is not liable for any amount in excess of proved damages to the Vehicles; and

(b) Captain Transporter Limited is not liable for any such proved damages in excess of the sum provided in section 15(1) of the Act.

1.3 Exclusion of indirect and consequential loss

Captain Transporter Limited is not liable for any form of indirect or consequential loss or damage arising out of or in respect of any Carrier Service. Any liability of the kinds specified in subsections 15(2) (b) and (c) of the Act is expressly excluded whether in respect of the Carriage of Goods or otherwise. Without limiting the foregoing, Captain Transporter Limited is not liable for indirect or consequential loss or damage arising from:

(a) delay in pickup/ delivery of any Vehicles for any reason; or

(b) damage to Vehicles from leakage, explosion, or the effects of climate or the elements; or

(c) damage to Vehicles of any Customer where such damage arises out of the actions, or omissions, of the Customer or any other Customer.

1.4 Non-drivable Vehicles

If any Vehicle presented for carriage does not start or is not able to be loaded onto a transporter, Captain Transporter Limited may in its absolute and sole discretion refuse to carry that Vehicle. If the Vehicle is carried, it is on the basis that the Vehicle is carried at owner's risk and Captain Transporter Limited is not liable for any loss or damage involved in the movement of any non-drivable Vehicle. If a vehicle has been booked as a drivable but turns out to be non-drivable, additional surcharges may apply due to costs involved in sending out unsuitable transporter.

1.5 (A) Damaged Vehicles

All damaged vehicles are carried at owner's risk. While every endeavour is made to ensure there is not additional damage through the loading and unloading process, Captain Transporter Limited undertakes no liability for any damage.

1.5 (B) Lowered vehicles and Body kits

Captain Transporter Limited undertakes no liability to damages caused to vehicles which have been lowered below manufacturer's height or which have had body kits, side kits or similar modification carried out on the lower portion of the vehicle. All transport carried out in this instance is on a best effort basis and at owner's risk. Captain Transporter Limited reserves the right to refuse carriage of any vehicle where such modifications have been made.

1.6 Actual Carriers

Where Captain Transporter Limited uses an Actual Carrier, Vehicles are carried subject to the Actual Carrier's conditions of contract and carriage, except that if there is any conflict between the Actual Carrier's conditions of contract or carriage and these Conditions, these Conditions prevail.

1.7 Securing devices

Captain Transporter Limited is by law required to use securing devices to stabilise and secure any Vehicles. Captain Transporter Limited is not liable for any loss or damage to any Vehicles, if that loss or damage is caused by the chafing or moving of securing devices which have been attached by Captain Transporter Limited to prevent loss or damage resulting from carriage.

1.8 Errors, omissions and representations

Captain Transporter Limited is not liable for errors or omissions in publications of schedules or in statements, or representations made by any of its employees, agents or representatives in respect of any Carrier Service. No agent, employee or representative of Captain Transporter Limited has authority to give undertakings or make representations in relation to the provision or timing of any Carrier Service that are inconsistent with these Conditions. Any such undertakings or representations will not bind Captain Transporter Limited except where Captain Transporter Limited prior confirmation in writing is obtained.

1.9 Extension of exclusion or limitation to agents, etc

Any exclusion or limitation of the liability of Captain Transporter Limited applies to and for the benefit of Captain Transporter Limited' agents, employees, representatives and contractors and to any Actual Carrier and to the Actual Carrier's employees, agents, representatives and contractors. The aggregate amount recoverable from Captain Transporter Limited, the Actual Carrier and their respective agents, employees, representatives and contractors shall not exceed the maximum amount of Captain Transporter Limited' liability.

2 Payment

2.1 The Carrier Rate and any additional tax or charge payable by the Customer for a Carrier Service must be paid before commencement of the Carrier Service unless the Customer (or other Person liable for payment of freight) has a current written credit arrangement with Captain Transporter Limited for payment, in which case payment is due by the 20th of the month following invoice date.

2.2 Prices are unless otherwise stated, expressed in New Zealand dollars, do not include Goods and Services Tax and are based on current Carrier Rates. Fluctuations in the cost of labour and raw materials, exchange rates and any variations are for the Customer's account.

2.3 If there is no credit arrangement and payment is not made in advance of acceptance of the Vehicles for Carriage, or, if the amount collected by Captain Transporter Limited or its agent is not the applicable Carrier Rate plus any additional tax or charge, the difference must be paid by the Customer before commencement of the Carrier Service.

2.4 Credit arrangements - authorisation to collect information

In any situation where Captain Transporter Limited has a credit arrangement with a Customer in relation to the provision of Carrier Services, or a Customer requests that a credit arrangement be entered into with Captain Transporter Limited, Captain Transporter Limited will be entitled to collect from sources other than that Customer any information Captain Transporter Limited considers relevant to assessing the creditworthiness or financial position of that Customer. Captain Transporter Limited will be entitled to disclose any such information to any of its subsidiaries, associated companies or any other person engaged in business with Captain Transporter Limited from time to time.

2.5 Late Payment: Time is of the essence in respect of the payment obligations of the Customer (or other Person liable for payment of freight). If payment is overdue that shall constitute a breach of these conditions and the Buyer will upon demand pay penalty interest to Captain Transporter Limited on any overdue amount at the rate of 2.5% per month compounding interest from the date that payment was due until payment in full, including interest is received by Captain Transporter Limited.

Captain Transporter Limited may charge this penalty interest without prejudice to its other rights and remedies.

2.6 Captain Transporter Limited may at its discretion apply any payments it receives from the Customer in and towards the satisfaction of any indebtedness of the Customer and it shall not be bound by any conditions or qualifications that the Customer may make in relation to payments made under this or any other contract with Captain Transporter Limited.

2.7 If Captain Transporter Limited incurs any recovery costs or other expenses, from a debt recovery agency, these costs will become payable by the customer to whom the debt belongs.

3 Rates and charges

3.1 Carrier Rates

Each Carrier Service is performed at and is subject to payment of the applicable Carrier Rate by the Customer, as the case may be. Captain Transporter Limited may from time to time fix or impose special rates or vary existing Carrier Rates or terms of payment without notice.

3.2 Additional handling charges

If Captain Transporter Limited incurs any additional costs in handling any Vehicles, or if the Vehicles are not able to be started or loaded onto a transporter, the Vehicles will be treated as immobile and the Customer is liable to pay any additional costs on demand. Additional handling charges may include, but are not limited to, the costs of Customs inspection fees, demurrage, additional fuel, changing and repairing tyres and cutting keys.

3.3 Applicable Carrier Rates

The applicable Carrier Rates are the current Carrier Rates as determined by Captain Transporter Limited.

3.4 Quotations

Captain Transporter Limited is not bound by quotations or estimates of Carrier Rates or conditions of contract or carriage given verbally unless they are confirmed by Captain Transporter Limited in writing in accordance with these Conditions.

3.5 GST and other Government taxes and charges

Any tax (including GST) or charge, which is not provided for or stated in a Carrier Rate, and which is imposed by a Government or by any regional or other authority, in respect of or incidental to carriage of a Vehicle or the provision of any Carrier Service, is payable in addition to the Carrier Rate by the Customer.

4.0 Inspection of Vehicles and Carrier's Rights

4.1 Inspection of Vehicles

Captain Transporter Limited shall visually inspect Vehicles before their acceptance for carriage. The Customer must assist with the inspection, if required by Captain Transporter Limited. Inspections are carried out in good faith and as the Vehicle is presented to Captain Transporter Limited' staff. Any clearly visible damage to or missing items from any vehicle presented for Carriage shall be noted on the consignment note or condition report. Failure of Captain Transporter Limited to inspect any Vehicle, at all or adequately, does not impose any additional liability upon Captain Transporter Limited or affect any obligation of Captain Transporter Limited in relation to that Vehicle. Captain Transporter Limited accepts no liability for any pre-existing damage which may include:

- (a) any individual marks, blemishes or stone chips;
- (b) any surface scratches, paint or minor damage that is under protection wax or film;
- (c) any damage or marks found after the Vehicle has been washed and groomed unless the Vehicle was presented to Captain Transporter Limited washed and groomed.

4.2 Carrier's right to search Vehicles

Captain Transporter Limited is entitled to inspect or search any Vehicle to be carried on a Carrier Service if Captain Transporter Limited believes that the Vehicle contains Hazardous or Dangerous Goods, or any other Goods for which these Conditions or any other law have not been complied with. Captain Transporter Limited may at its sole discretion remove any item that may be or may be considered hazardous or dangerous goods. Captain Transporter Limited does not accept any liability for items carried within a Vehicle.

4.3 Carrier's right to refuse to accept Vehicle for Carriage

Captain Transporter Limited in its absolute discretion reserves the right to refuse to carry any Vehicle.

4.4 Captain Transporter Limited reserves the right to charge for any Vehicles that are not available for the Carrier Service at the agreed time and place.

4.5 Vehicle acceptance Acceptance of Vehicles by Captain Transporter Limited for carriage is deemed to occur at the time the Vehicle or Vehicles are loaded on the transporter or other means of transport used to provide the Carrier Services, or a signed Vehicle docket.

5 Delivery

5.1 Time for delivery shall not be of the essence of any contract, but Captain Transporter Limited will make all reasonable efforts to meet any date for delivery agreed with the Customer or otherwise to deliver the Vehicles within a reasonable time. In no event shall Captain Transporter Limited incur any liability due to any failure on its part to supply Vehicles by an agreed date.

5.2 Vehicle delivery

Delivery of Vehicles by Captain Transporter Limited is deemed to occur at the time the Vehicles are left by Captain Transporter Limited for collection by the Customer or the Receiver at the destination.

5.3 Delivery not collection

Captain Transporter Limited is only responsible for delivery of Vehicles, not for their collection.

5.4 Unclaimed Property

If for any reason, Vehicles are not removed or collected from the destination as soon as possible after delivery by Captain Transporter Limited:

(a) Captain Transporter Limited is deemed to be the agent of the Customer (and/or of the owner of the Vehicles where relevant) and may store those Vehicles at the sole risk and expense of the Customer (and/or the owner of the Vehicles where relevant); and

(b) Captain Transporter Limited may declare the Vehicles to be unclaimed and may sell those Vehicles and apply the proceeds of sale in payment of:

(i) any Carrier Rates, taxes or charges payable in respect of carriage of those Vehicles or the Customer whose Vehicles have been sold; and

(ii) the expense of storing and selling the Vehicles. If, after the sale of the Vehicles, the Customer whose Vehicles have been sold presents himself or herself to Captain Transporter Limited to collect the Vehicles, Captain Transporter Limited will, upon being provided with satisfactory proof of identity of the Customer, and the entitlement of the Customer to the Vehicles, pay the balance of the sale proceeds, if any, to that Customer.

5.5 Business customers

Where a Person is using a Carrier Service for business purposes, none of the rights or remedies provided under the Consumer Guarantees Act 1993 apply.

5.6 Captain Transporter Limited use Trade plates only where it is either impossible or impractical to transport a vehicle that would otherwise be carried on a transporter. The use of trade plates is restricted to 51 Km and only after the vehicle has passed a safety inspection as prescribed in the Annex A & B documentation and procedures.

6 Defaults/ Remedies

6.1 If the Customer defaults in payment or performance of any of its obligations under these terms or any other agreement with Captain Transporter Limited or if the Customer shall before then become bankrupt or commit any act of bankruptcy or compound with its creditors, have judgement entered against it in any court or go into liquidation whether voluntary or otherwise or have a receiver or manager appointed to give a security over its stock or plant, or if information becomes known to Captain Transporter Limited which in Captain Transporter Limited' opinion might materially affect the Customer's creditworthiness, the value of the Vehicles or the Customer's ability to comply with its obligations under these terms or any other agreement with Captain Transporter Limited, then Captain Transporter Limited:

(a) is irrevocably authorised by the Customer at any time thereafter to retain possession of and remove the Vehicles and to use the Customer's name and to act on his/her behalf in exercising such rights without being liable in any way to the Customer; and

(b) may require immediate payment of all amounts payable to Captain Transporter Limited;

(c) may withhold delivery of Vehicles without notice; and

(d) may require cash payment for future services.

6.2 Carrier's Lien

Captain Transporter Limited reserves the right to withhold delivery of all Vehicles under a contract if the Customer is in default of any of its obligations under any contract or contracts with Captain Transporter Limited. In any proceedings or actions relating to a default by the Customer, the Customer shall indemnify Captain Transporter Limited upon demand for all claims by any third party for any losses resulting from Captain Transporter Limited retaining possession of the Vehicles and for all costs and expenses incurred by Captain Transporter Limited in connection with such proceedings or actions, including but not limited to solicitors costs and enforcement costs. In the event of any default in payment, the Customer will be liable to Captain Transporter Limited for all costs of collection that are incurred by Captain Transporter Limited including but not limited to costs incurred prior to any legal action, collection, agency costs, court costs, and solicitors costs and will pay these costs to Captain Transporter Limited upon demand.

7. Claims

7.1 Notice of claim

Any claim against Captain Transporter Limited in respect of alleged loss of or damage to Vehicles carried on a Carrier Service must be given in writing to Captain Transporter Limited within 7 days after the date on which Captain Transporter Limited' responsibility for those Vehicles has ceased. Captain Transporter Limited must be given a reasonable opportunity to investigate the claim and to appoint a repair agent or obtain two repair quotes to repair any Vehicles that are proven to be damaged in the course of Carrier Services.

7.2 If claims are not made before the Vehicles are repaired by the Customer or Captain Transporter Limited is not given a reasonable period to investigate the claim and appoint an agent or obtain quotes as required under clause 7.1 above (for repair of Vehicles that are proven to be damaged in the course of Carrier Services), the Customer shall be conclusively deemed to have accepted the Vehicles as conforming with the contract in all respects and to have waived absolutely any claims for incorrectly delivered or damaged Vehicles and Captain Transporter Limited shall not have any liability in respect of those claims or otherwise in respect of the Vehicles.

8 Assignment

8.1 Captain Transporter Limited is entitled at any time to assign to any other person all or part of any debt owing by the Customer to Captain Transporter Limited.

9 Governing Law

9.1 (a) These Conditions are governed by New Zealand law in every particular including formation and interpretation; and
(b) every contract incorporating these Conditions is deemed to be made in New Zealand; and
(c) any proceedings relating in any way to these Conditions or to any Carrier Service must be brought in a court of competent jurisdiction in New Zealand; but
(d) the submission by the parties to that jurisdiction does not limit Captain Transporter Limited' right to commence any proceedings arising out of these Conditions in any other court or jurisdiction that Captain Transporter Limited considers appropriate.

9.2 Overriding law

If any provision contained or referred to in these Conditions is in conflict with any statutes, regulations, rules, bylaws, ordinances, orders, and all other requirements or conditions, that apply to the provision of a Carrier Service, or carriage under these Conditions ("other law") and that other law cannot be waived or avoided by these Conditions, then that provision only remains applicable and part of these Conditions to the extent that that provision is not in conflict with the other law. The invalidity of any provision does not have the effect of invalidating any other provision of these Conditions.

9.3 No waiver

Nothing in these Conditions represents a waiver or surrender by Captain Transporter Limited of any statutory or other legal right, immunity, exception, limitation, protection, privilege or defence.