

## TERMS AND CONDITIONS FOR CONTRACT OF CARRIAGE

This contract of carriage is made between the Consignor and the Carrier. The Carrier's obligations under this contract of carriage are undertaken upon and subject to these conditions, which constitute the entire agreement between the Consignor and the Carrier in relation to the provision of the services.

### 1. Definitions

In this contract of carriage, unless the context otherwise requires:

Carrier means T F S Horse Transport Limited.

Consignor means the person or legal entity requesting the services from the Carrier.

Goods means the horse(s) or animal(s) being transported (and related and/or incidental goods including, without limitation, horse equipment) as part of the service.

Service means the transportation of the goods transported at the request of the Consignor (and related and/or incidental services) which is the subject of this contract of carriage and includes any unit of goods or unit as defined by the Act.

The Act means the Carriage of Goods Act 1979, and unless modified every word or expression defined in the Act bears the same meaning in this contract of carriage.

### 2. Interpretation

1. 2.1 Reference to any Act or Regulation extends to and includes any statutory or other modification or reenactment thereof being in force in New Zealand.

2. 2.2 Any headings of any clauses or paragraphs herein will not effect the interpretation given to this contract of carriage.

3. 2.3 This contract of carriage is in all respects deemed to be a contract made in New Zealand and is governed exclusively by New Zealand Law.

### 3. Responsibility for fees and charges

1. 3.1 The Consignor agrees to pay and shall be liable to the Carrier for all proper fees and charges incurred for any reason in the provision of the service.

2. 3.2 The Carrier's fees and charges shall be deemed fully earned as soon as the goods are received by or on behalf of the Carrier for transportation.

3. 3.3 Where the Consignor has an account that is not in arrears with the Carrier, the Carrier's fees and charges are due for payment by the Consignor by the 20th of the month following the date of the Carrier's invoice to the Consignor for the service, time being of the essence. In all other cases, unless otherwise agreed in writing, the Carrier's fees and charges are due for payment by the Consignor before the Carrier commences performance of the service, time being of the essence.

4. 3.4 The Consignor shall not defer or withhold any payment or deduct any amount from the account of the Carrier by way of any claim the Consignor alleges against the Carrier.

5. 3.5 The Consignor shall be liable to the Carrier for any legal fees and/or any collection costs incurred to recover outstanding fees and charges on a full indemnity basis (including solicitor / client costs).

6. 3.6 Any fees and charges unpaid after 30 days from the date of the Carrier's invoice for any service will incur a finance charge of 2% per calendar month.

### 4. Site and Access

1. 4.1 The Consignor must provide to the Carrier:

- a. Complete, free and easy access to the site(s) at which the service is to be performed;
- b. Complete, free and easy access for vehicles, machinery and materials required to complete the service; and
- c. Such assistance as is reasonably required for the Carrier to perform the service

2. 4.2 If the Consignor fails or refuses or indicates to the Carrier that it will fail or refuse to allow

access as set out in paragraph 4.1 above, then the service is deemed to have been completed when the Carrier was willing to perform it.

## 5. Delivery

1. 5.1 Delivery of the goods is to be made at the place advised by the Consignor or, if no place is indicated for delivery, delivery is to be made at the Consignor's premises.
2. 5.2 The Carrier reserves the right to deliver goods by instalments (eg two horses may be delivered in separate trucks) and each instalment is deemed to be a separate contract under the same provisions as the main contract. Should the Carrier fail to deliver or make effective delivery of one or more instalments, this shall not entitle the Consignor to repudiate the main contract.
3. 5.3 Without limiting clause 10 below, the Carrier will use its best endeavours to deliver the goods on or before the estimated delivery date and time but date and time of delivery shall not be of the essence and the Carrier will have no liability to the Consignor if there is any delay whatsoever.

## 6. Sub-contractors

1. 6.1 The Carrier may sub-contract, on such terms as it deems fit, the whole or any part of the services.
2. 6.2 Every exemption, limitation or condition contained in this contract of carriage and every right, power, authority, exemption for liability, defence and immunity applicable to the Carrier or to which the Carrier is entitled shall also be available to and extend to protect:
  - a. Any sub-contractor engaged by the Carrier;
  - b. Every agent, servant or officer of the Carrier;
  - c. Every other person by whom any part of the services are performed; and
  - d. All persons who are or may be vicariously liable for the acts or omissions of any of the persons in (a), (b) or (c) above and/or the Carrier, and for the purpose of this clause the Carrier is or shall be deemed to be acting as an agent or trustee on behalf of each such persons who shall to that extent be deemed to be party to this contract of carriage.
3. 6.3 The Consignor:
  - a. Warrants that no claim inconsistent with clause 6.2 above shall be made by the Consignor or any other person interested in the goods;
  - b. Indemnifies and shall keep indemnified the Carrier from and against any loss suffered by the Carrier (including, without limitation, consequential loss and legal costs incurred) arising from such claims on a full indemnity basis; and
  - c. Expressly agrees that any of the parties referred to in clause 6.2 above may claim the benefit of these conditions if any claim is made against them by the Consignor or consignee or any person claiming through or under them.

## 7. Insurance

1. 7.1 Insurance of the goods is the responsibility of the Consignor, not of the Carrier.

## 8. Tax and duties

1. 8.1 Any charges quoted or estimated by the Carrier are exclusive of GST.

## 9. Warranties

1. 9.1 The Consignor warrants:
  - a. That it has complied with all laws and regulations relating to the nature and carriage of the goods;
  - b. That the goods are fit to withstand the ordinary risks associated with their carriage having regard to the nature of the goods;
  - c. That the Consignor is the Consignor or otherwise duly authorised agent of the Consignor of the goods; and
  - d. The Consignor, at the Consignor's cost, shall arrange for such suitable persons to accompany the goods and care for them during the provision of the service and at the Consignor's risk.

## 10. Limited Carriers Risk

1. 10.1 This contract of carriage is at limited carrier's risk, and subject to the provisions of the Act imposing liability in respect of the loss or damage to the goods:

a. The Carrier shall not be under any liability howsoever caused or arising and (without limiting the generality of the foregoing) whether caused or arising as a result of the negligence of the Carrier, breach of contract or otherwise for any damage or loss, deterioration, mis-delivery, delay in delivery of the goods (whether the goods are or have been in the possession of the Carrier or not), nor for any instruction, 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 direct, consequential or indirect loss, loss of market, loss of potential winnings or consequences of delay; and

b. The Consignor will indemnify and shall keep indemnified the Carrier from all claims of any kind whatsoever, howsoever caused or arising and (without limiting the generality of the foregoing) whether caused or arising as a result of the negligence of the Carrier, breach of contract or otherwise, brought by any person in connection with any matter or thing done, said or omitted by the Carrier in connection with the goods.

## 11. Application of the Act

1. 11.1 Sections 18, 19, 21, 22, 23, 24, 25, 26 and 27 of the Act shall apply to this contract of carriage only to the extent that they extend or enlarge the Carrier's rights and powers under these terms and conditions. Sections 18 and 19 are modified by clause 12 below and the relevant sections shall, in relation to any matter arising out of the provisions of those sections, have effect subject to the express terms contained in this contract of carriage.

2. 11.2 No person has any authority from the Carrier to waive or vary these terms and conditions of this contract of carriage unless such waiver or the variation is in writing by the Carrier (if a natural person) or an executive officer of the Carrier.

3. 11.3 The terms of the Consignor documentation shall not diminish or negate the application of these terms and conditions of this contract of carriage to the provision of the services.

## 12. Actions against the Carrier

1. 12.1 The Carrier 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 Carrier within fourteen (14) days after the delivery of goods or, in the case of the goods not being delivered, within three (3) months of the earlier of the date of collection of the goods or the date of estimated intended and booked collection of the goods; and

b. An action shall have been commenced by the Consignor in a Court of competent jurisdiction within twelve (12) months from the earlier of the date of collection of the goods or the date of estimated intended and booked collection of the goods.

## 13. No Assignment

1. 13.1 The Consignor may not assign any of the Consignor's rights or obligations under this contract of carriage without the prior written consent of the Carrier.

## 14. Consumer Guarantees Act 1993

1. 14.1 Where the provisions of the Consumer Guarantees Act 1993 ("the CGA") apply, the provisions of these terms and conditions will be read subject to the CGA and in the case of any conflict, the provisions of the CGA prevail. Where the Consignor enters into this contract of carriage for the purposes of a business, nothing in the CGA shall apply to this contract of carriage.

## 15. Privacy Act 1993

1. 15.1 Pursuant to the provisions of the Privacy Act 1993, the Consignor authorises any person, agency or company to provide the Carrier with such information as the Carrier may require at any

time in response to the Carrier's credit enquiries concerning any aspect of its dealings with the Consignor, and the Consignor authorises the Carrier to furnish to any third party any details of any application being actioned by the Carrier and/or any subsequent details concerning the Carrier's credit enquiries.

#### 16. Notices

1. 16.1 Any notice given under this contract of carriage shall be deemed to be received if delivered or forwarded by registered post or courier to the registered office of the party to which it is addressed or the last known place of residence or business of that party.