

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 terms and conditions, which constitute the entire agreement between the Consignor and the Carrier in relation to the provision of the Services and replace any previous written or verbal agreements between the parties relating to the Services.

1. Definitions

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

Act means the Contract and Commercial Law Act 2017.

Additional Items means those items the Carrier agrees to transport in addition to the Goods, including, but not limited to, horse equipment and feed.

Carrier means TFS Horse Transport Limited.

Consignor means the person or entity requesting the Services from the Carrier.

Goods means the horse(s) or animal(s) being transported as part of the Services and, where applicable, the Additional Items.

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

2. Requests for Services

- 2.1 The Consignor may submit a request for Services at any time by way of online booking form, email, telephone or any other agreed method.
- 2.2 The Carrier will let the Consignor know if the Carrier accepts the Consignor's request for Services as soon as possible. While the Carrier will try to meet the Consignor's request for Services, this may not always be possible and sometimes the Carrier may refuse to accept a request.
- 2.3 The Consignor acknowledges that the Carrier may act on the instructions of any person purporting to request Services on behalf of the Consignor (**Consignor's Representative**) without having to enquire further. The Consignor will be required to pay all fees and charges for Services requested by the Consignor's Representative and the Carrier will have no liability to the Consignor if the Consignor's Representative did not have actual authority to request Services from the Carrier.

3. Fees and charges

- 3.1 The Consignor will pay the Carrier's fees and charges for providing the Services as notified by the Carrier to the Consignor from time to time.
- 3.2 Any charges quoted or estimated by the Carrier are exclusive of GST.
- 3.3 The Carrier will issue invoices for the fees and charges for providing the Services. If the Consignor's Representative is acting on behalf of multiple owners, the Consignor's Representative may request that multiple invoices be issued to owners of the Goods with the fees payable under each invoice calculated based on the owner's ownership share of the Goods. However, a minimum fee of \$30.00 will be payable under each invoice to cover the Carrier's administration costs involved in issuing and collecting payment on multiple invoices.
- 3.4 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 Services, time being of the essence.

- 3.5 The Consignor must 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.
- 3.6 If payment of any amount is overdue, then (without prejudice to any other rights or remedies the Carrier may have) the Carrier may:
- (a) Charge interest on the overdue amount at the rate of 5% per month, calculated daily and capitalised monthly until payment is made in full; and/or
 - (b) Charge any collection costs and legal costs on a solicitor/own client basis; and/or
 - (c) Suspend performance of the Services until payment is made in full.

4. Site and access

- 4.1 The Consignor must provide to the Carrier:
- (a) Complete, safe, free and easy access to the site(s) at which the Services are to be performed;
 - (b) Complete, free and easy access for vehicles, machinery and materials required to complete the Services; and
 - (c) Such assistance as is reasonably required for the Carrier to perform the Services.
- 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 clause 4.1, then the Services will be deemed to have been completed when the Carrier was willing to perform them.

5. Delivery

- 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.
- 5.2 The Carrier reserves the right to deliver Goods by instalments (e.g. two horses may be delivered in separate trucks).
- 5.3 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

- 6.1 The Carrier may sub-contract, on such terms as it deems fit, the whole or any part of the Services.
- 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.
- 6.3 The Consignor:
- (a) Warrants that no claim inconsistent with clause 6.2 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 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

- 7.1 The Consignor must hold comprehensive insurance for the Goods for their full insurable value against all risks while they are in the Carrier's possession. The Carrier will not be liable to the Consignor if the Consignor does not comply with this obligation. The Carrier's responsibility for the Goods for the purposes of section 257 of the Act commences once the Consignor has safely loaded the Goods onto the Carrier's vehicle.
- 7.2 The Consignor acknowledges that the Contractor has no obligation to insure the Goods.

8. Warranties

- 8.1 The Consignor warrants that:
 - (a) The Consignor has complied with all laws and regulations relating to the nature and carriage of the Goods;
 - (b) The Goods are fit to withstand the ordinary risks associated with their carriage having regard to the nature of the Goods; and
 - (c) The Consignor is the consignor or otherwise duly authorised agent of the consignor of the Goods.

9. Accompanying the Goods

- 9.1 The Consignor must notify the Carrier prior to the date of collection of the Goods if the Consignor wishes for any person to accompany the Goods and care for them during the provision of the Services.
- 9.2 The Carrier may, in its sole discretion, refuse to allow any person to accompany the Goods.
- 9.3 If the Carrier allows any person to accompany the Goods:
 - (a) That person does so at the Consignor's risk and cost; and
 - (b) That person must comply with all health and safety directions and instructions of the Carrier.

10. Carriage of Additional Items

- 10.1 The Carrier may, in its sole discretion, agree to transport Additional Items.
- 10.2 If the Carrier agrees to transport Additional Items with the Goods, the Carrier does so at the Consignor's risk. The Carrier will not be liable for any loss or theft of or damage to the Additional Items, regardless of how that was caused.
- 10.3 The Consignor indemnifies the Carrier from and against any and all losses, damages, costs, actions, proceedings, claims and demands which the Carrier may incur or suffer as a direct or indirect result of the transportation of the Additional Items by the Carrier. This includes, but is not limited to, any damage to the Consignor's or any other person's vehicles or property and any fines or penalties incurred by the Carrier relating to the transportation of the Additional Items. This indemnity will continue to apply after the termination of this contract of carriage.

11. Consignor's indemnity

- 11.1 The Consignor indemnifies the Carrier from and against any and all losses, damages, costs, actions, proceedings, claims and demands which the Carrier may incur or suffer (including any reasonable legal fees or amount paid by way of settlement) as a direct or indirect result of the Consignor's failure to perform the Consignor's obligations under this contract of carriage or any wilful or negligent act or omission by the Consignor in the course of performing the Consignor's obligations under this contract of carriage. This indemnity will continue to apply after the termination of this contract of carriage.

12. Carrier's liability

- 12.1 This contract of carriage is at limited carrier's risk and the Carrier's liability will be limited as provided under the Act.
- 12.2 To the extent the Carrier's liability is not limited under the Act, the Carrier's liability will be limited to \$2,000 for any single event or series of events, not exceeding a total of \$5,000 in a 12 month period.
- 12.3 To the extent permitted by the Act, the Carrier will not be liable to the Consignor for:
- (a) Any claim relating to loss or damage to the Goods while the Carrier is providing the Services, where the Consignor fails to provide notice giving full particulars of the claim to the Carrier within 14 days after the delivery of the Goods;
 - (b) Any claim relating to non-delivery of the Goods while the Carrier is providing the Services, where the Consignor fails to provide notice giving full particulars of the claim to the Carrier within 3 months after the earlier of the collection of the Goods or the booked collection of the Goods;
 - (c) Any other claim, where the Consignor fails to provide notice giving full particulars of the claim to the Carrier within 6 months after the cause of action giving rise to the claim occurred;
 - (d) Any claim directly or indirectly arising from the Consignor providing the Carrier with incorrect or insufficient information relating to the Goods; and
 - (e) Any loss of business or profits, indirect or consequential loss, whether or not the Carrier should have been aware of that loss.
- 12.4 The provisions of this clause 12 will continue to apply after termination of this contract of carriage.

13. Application of the Act

- 13.1 Sections 274 to 281 of the Act are modified by clause 12 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.
- 13.2 Sections 282 to 292 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 this contract.
- 13.3 No person has any authority from the Carrier to waive or vary the terms and conditions of this contract of carriage unless such waiver or the variation is in writing and signed by an executive officer of the Carrier.
- 13.4 The terms of the Consignor documentation shall not diminish or negate the application of the terms and conditions of this contract of carriage to the provision of the Services.

14. Termination

- 14.1 If a party breaches this contract of carriage and either that breach cannot be remedied or

the breach is remediable, but the defaulting party does not remedy the breach within 14 days of being required to do so by the non-defaulting party, then the non-defaulting party may terminate this contract of carriage with immediate effect by giving written notice to the defaulting party.

- 14.2 Either party may terminate this contract of carriage with immediate effect by giving written notice to the other party if that other party becomes insolvent or has a receiver, administrator or liquidator appointed in relation to its assets.
- 14.3 Either party may terminate this contract of carriage by giving at least 14 days' written notice to the other where a right of termination arises under clause 15.2.
- 14.4 The provisions of this clause 14 will continue to apply after termination of this contract of carriage.

15. Force majeure

- 15.1 Neither party will be liable to the other or be in breach of this contract of carriage, as a result of any delay or failure to perform its obligations due to an event that is beyond the reasonable control of a party and that party is not at fault, such as natural disasters or acts of government (**Force Majeure Event**).
- 15.2 If a Force Majeure Event continues for more than 28 days then:
- (a) Either party may terminate this contract of carriage by giving at least 14 days' written notice; or
 - (b) The parties may agree to suspend the performance of this contract of carriage.

16. No assignment

- 16.1 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.

17. Consumer Guarantees Act 1993

- 17.1 The Consignor acknowledges that as it is entering into this contract of carriage for the purposes of its business, the Consumer Guarantees Act 1993 will not apply.

18. Credit checks

- 18.1 The Consignor agrees that:
- (a) The Carrier is irrevocably authorised to check the Consignor's credit status with any credit reporting agency; and
 - (b) The Carrier may pass on credit information about the Consignor (including failure to make payments to the Carrier) to any credit reporting agency and the credit reporting agency may give that information to its customers if they seek credit information about the Consignor.

19. Notices

- 19.1 All notices and other communications to be given under this contract of carriage must be in writing and be addressed to the other party at their physical address, postal address, or email address designated by them from time to time.

20. General provisions

- 20.1 Reference to any act or regulation extends to and includes any statutory or other modification or reenactment thereof being in force in New Zealand.
- 20.2 Any headings of any clauses will not effect the interpretation given to this contract of carriage.

- 20.3 If any provision of this contract of carriage is unenforceable that provision will no longer apply, but the remaining provisions will continue.
- 20.4 The person signing this contract of carriage for the Consignor warrants that they have full authority to enter into this contract of carriage and all necessary approvals have been obtained.
- 20.5 This contract of carriage may be executed and delivered in any number of counterparts (including by email). All counterparts, when taken together, will form the same document.
- 20.6 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. The parties agree to submit to the exclusive jurisdiction of the New Zealand courts.

21. Execution

Signed by TFS Horse Transport Limited

Signature

Full name

Position

Signed for and on behalf of [Consignor]

Signature

Full name

Position