

# Conditions of Carriage



## 1 In These Conditions:

- (a) "Carrier" means the person specified on the face of this consignment note opposite the words "Contracting Carrier."
- (b) "Consignor" means the person for whom the carriage of the Goods is performed by the Carrier under these conditions.
- (c) "Goods" means the items accepted by the Carrier for Carriage on behalf of the Consignor under this contract of carriage.
- (d) "Services" means all of the operations and services provided or to be provided by the Carrier in connection with the carriage of the Goods including without limitation, the carriage, transport and/or storage of the Goods or any operations or service incidental to any of them.
- (e) "Sub-Contractor" includes any person who under a contract or arrangement with any other person (whether the Carrier or not) performs or agrees to perform the Services or any part of the services.
- (f) Words denoting the singular include the plural and vice versa; any gender includes the other gender, and persons include corporations and bodies politic and include their legal personal representatives and assigns.
- (g) "Owner's Risk" means the Carrier shall not be liable for the loss of or damage to any Goods, except where the loss or damage is intentionally caused by the Carrier.

## 2 Application Of Conditions

- 2.1 All services are to be performed by the Carrier subject only to these conditions which constitute the entire agreement between the Consignor and the Carrier in relation to the provision of the Service.
- 2.2 No person has any authority of the Carrier to waive or vary these conditions unless the waiver or variation is in writing signed by the Carrier (if a natural person) or an executive officer of the Carrier.
- 2.3 The terms of the Consignor's documentation shall not diminish or negate the application of these conditions to the provision of the services.

## 3 Not A Common Carrier

The Carrier is not a common Carrier and accepts no liability as such and may in its absolute discretion:

- (a) refuse carriage of any item for any person;
- (b) refuse to provide any of the services to the Consignor whether before or after the carriage of Goods has commenced, and
- (c) open any document, envelope, package or other container in which the Goods are placed or packaged, or the Goods, to inspect the Goods to determine the nature or condition of the Goods or, where any consignment note or identifying document or mark is lost, damaged or destroyed, to ascertain the ownership or destination of the Goods.

## 4 Warranties and Acknowledgments

4.1 Where a person who is not the Consignor tenders any items to the Carrier for carriage, that person warrants his authority to deliver the items to the Carrier, to sign the consignment note on behalf of the Consignor or any other person having an interest in the Goods and to accept these conditions for the carriage of the items by the Carrier.

4.2 The Carrier operates entirely on prepaid labels and satchels. Prepaid labels and satchels must be used within 2 years of purchase and are not refundable or transferable other than where required by law.

4.3 Where the Consignor is not the owner of the Goods it warrants its authority to act as agent of the owner of, or any other person having an interest in, the Goods for all purposes in connection with the carriage of the Goods by the Carrier under these conditions and indemnifies and shall keep indemnified the Carrier in respect of all liability whatsoever or howsoever arising (including without limitation from negligence or without act or default of the Carrier or others) in connection with the Goods.

4.4 The Consignor warrants:

- (a) that it has complied with all laws and regulations relating to the nature, packaging, labelling and carriage of the Goods, and that the Goods are packed in a manner adequate to withstand the ordinary risks associated with the services having regard to the nature of the Goods; and
- (b) the accuracy of all markings and brandings of the Goods, descriptions, value and other particulars furnished to the Carrier for carriage, customs, consular or in any other purpose and indemnifies and shall keep indemnified the Carrier against all loss, damage, expense and fines arising from any inaccuracy or omission in this respect.

## 5 Limited Liability

5.1 Subject to clauses 5.2-5.5 (inclusive) and 18, Services are provided by the Carrier entirely at the risk of the Consignor and the Carrier shall not be liable for injury or damage to or destruction or loss of the Goods or any other property arising out of or incidental to or in connection with or occurring during the provision of the Services or for the mis-delivery or non-delivery of the Goods and whether or not caused or contributed to by the default (including negligence) of the Carrier or any agent, servant or officer of the Carrier or any other person entitled to the benefit of these conditions.

5.2 The Carrier shall only be liable to the Consignor in respect of injury or damage to or destruction or loss of the Goods **directly** caused by the Carrier in providing the Services up to the amount (if any) specified on the face of the consignment note opposite the words "Carriers Liability" (or as otherwise advised by the Carrier in writing) as a total maximum liability for all of the Goods the subject of the consignment note, and any such liability shall be based on the net cost to purchase or manufacture like goods, or in the case of damaged goods, the net cost for repair. The Carrier will **not** be liable for any consequential loss however caused.

5.3 Any relief from liability in these conditions is to be read subject to any restriction on contracting out of liability provided in any legislation (including the Competition and Consumer Act, 2010 (Commonwealth) as amended) binding on the Carrier so that the provisions for relief in these conditions are limited or rendered ineffective only to the extent required to give effect to that legislation but are otherwise fully effective or independent of any provisions which are void or ineffective by reason of the legislation.

5.4 Any claim for injury or damage to or destruction or loss of the Goods under clause 5.2 shall be made in writing to the Carrier in the case of:

- (i) Damage to the Goods - an endorsement must be made in writing at the time of receiving the Goods. A formal claim must be received in writing within 7 days of delivery of the Goods.
- (ii) Non-delivery of the Goods - within 120 days from the date the Carrier receives the Goods, so that any such claim not so made shall be waived. Any other claim of any kind shall be waived if the claim is not made in writing within 120 days of the date of the consignment note and all information requested by the Carrier in relation to the claim must be provided in writing within 3 months of the request being made.

5.5 The Goods are accepted by the Carrier on the condition that the Carrier shall accept no responsibility for the collection of cash or any other payment on delivery of the Goods so that the Carrier shall not be bound by any instruction or agreement.

5.6 As the liability of the Carrier is limited as provided in these conditions the Consignor is advised to seek their own additional insurance cover generally. No insurance will be effected by the Carrier for the benefit of the Consignor other than that stated in Clause 5.2.

## 6 Sub-Contractors

6.1 The Carrier and any such Sub-Contractor may subcontract on any terms the whole or any part of the services.

6.2 Every exemption, limitation, or condition contained in these conditions and every right power, authority, exemption from liability, defence and immunity applicable to the Carrier or to which the Carrier is entitled, shall be available and extend to protect all:

- (a) Sub-Contractors;
- (b) Every agent, servant or officer of the Carrier and every Sub-Contractor;
- (c) Every other person (except the Carrier) by whom any part of the Service is performed, and
- (d) All persons who are or may be vicariously liable for the acts or omissions of any of these persons in (a), (b) or (c) 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 and for the benefit of each of such persons who shall to that extent be deemed to be parties to the carriage contract for the Goods.

6.3 The Consignor:

- (i) warrants that no claim inconsistent with Clause 6.2 shall be made by the Consignor or any other person interested in the Goods, and
- (ii) indemnifies and shall keep indemnified the Carrier and each Sub-Contractor against all such claims including legal costs incurred by the Carrier in relation to any such claim on a full indemnity basis.

## 7 Performance Of Services

7.1 If the Consignor instructs the Carrier in writing to provide the Services in a particular way (whether as to means of carriage, place of storage or otherwise) the Carrier shall give priority to that way but in any event the way of providing the service shall be in the sole discretion of the Carrier and the Consignor authorises the Carrier to adopt any way of providing the service in its absolute discretion other than the way instructed or agreed.

7.2 The Consignor authorises any deliveries from the usual route of carriage or place of storage (if any) as the Carrier may in its absolute discretion deem desirable or necessary.

## 8 Delivery

8.1 The Carrier:

- (a) is authorised to deliver the Goods to the Consignee at the address nominated by the Consignor or Consignee or agent of either of them; and
- (b) shall be deemed to have delivered the Goods in accordance with these conditions if the Carrier obtains a signature acknowledging receipt from any person who presents himself to the Carrier as the Consignee or its agent, servant or officer (or obtains a written Authority to Leave without signature from either the Consignor or Consignee).

8.2 If the nominated place of delivery is unattended at the time delivery is attempted or if delivery cannot otherwise be effected the Carrier may, without being obliged to do so, store the Goods at the risk and expense of the Consignor so that:

- (a) the Carrier may attempt one more re-delivery of the Goods to the Consignee from the place of storage; or
  - (b) request that the Consignee attend the Carrier's premises or another nominated location to collect the Goods.
- If neither re-delivery nor pick up by the Consignee can be effected within 7 days, the Carrier may return the Goods to the Consignor.

8.3 Where the Goods are collected or consigned for collection, the Carrier may release the Goods to any person who presents himself to the Carrier as the Consignee or its agent, servant or officer and the Carrier shall be conclusively presumed to have delivered the Goods in accordance with these conditions if the Carrier obtains from that person a receipt or signature for the Goods.

## 9 Responsibility For Charges

9.1 The Consignor shall be liable to the Carrier for all proper charges incurred for any reason in the provision of the Services.

9.2 The Carrier's charges shall be deemed fully earned as soon as the Goods are received by or on behalf of the Carrier and shall be immediately payable then and non-refundable.

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

## 10 Lien

The Carrier shall have a lien on the Goods (and any document relating to the Goods) and any other items (and any documents relating thereto) of the Consignor in custody or control of the Carrier for any monies owing to the Carrier by the Consignor whether in connection with the Carriage of Goods or otherwise and the Carrier may sell the Goods or any of those items by public auction or private treaty without further notice to the Consignor or any other person having an interest in them to satisfy that obligation and all costs incurred by the Carrier for storage or in relation to the sale, including legal costs on a full indemnity basis.

## 11 Nature Of Goods

11.1 The Consignor shall not tender for carriage or storage any parcel with a deadweight or cubic weight of more than 25kg or length of more than 2.15m (or such other deadweight or cubic weight or length as advised by the Carrier in writing), any volatile spirits, explosive Goods or Goods which are or may become dangerous (including radioactive materials), flammable or offensive or which may become liable to damage any person or property whatsoever without presenting a full description disclosing the nature of the Goods and in any event shall be liable for all loss, or damage or destruction caused thereby. The Carrier is entitled to refuse to accept for carriage any such Goods or if accepted, to arrange for a third party to transport the Goods with all additional charges payable by the Consignor.

11.2 If in the opinion of the Carrier the Goods are or are liable to become of a dangerous, flammable, explosive, volatile, offensive or damaging nature the Goods may at any time be destroyed, disposed of, abandoned or rendered harmless by the Carrier without compensation to, but at the cost in all things of the Consignor and without prejudice to the Carrier's right to its charges under these conditions.

11.3 The Carrier does not accept for carriage livestock, second-hand car parts, perishables, flowers or plants, cash or other negotiable instruments, jewellery, cigarettes or tobacco products, irreplaceable items or other such valuables. Items of the above mentioned, consigned by the Consignor via the Carrier shall be deemed to be at Owner's Risk and in such cases the Carrier strongly advises the Consignor to arrange its own coverage for loss or damage.

11.4 Any Goods tendered for carriage by the Consignor that are deemed to be insufficiently packaged by the Carrier or his agents shall be deemed to be at Owner's Risk.

## 12 Consignee's Requirements

The Consignor shall be solely responsible for the conformity of any containers, packaging or pallets with any requirements of the Consignee and for any expense incurred by the Carrier arising from any failure to so conform.

## 13 Brokerage And Commission

The Consignor agrees that the Carrier may retain any allowances, brokerages and commissions paid by shipping and forwarding agents, insurance brokers, airlines and any other person in relation to the provision of the services.

## 14 Export Control And Customs

14.1 The Consignor authorises the Carrier to act as the Consignor's agent for export control and customs purposes and to complete all documents as may be necessary or desirable in connection with the provision of the services on any terms provided that the Carrier shall not be liable for failure to act as the Consignor's agent in this respect.

14.2 The Carrier may (but without obligation to do so) advance any duties, taxes, imports, outlays or charges at any port or place in respect of the Goods and the Consignor shall pay an amount so paid by the Carrier on demand.

## 15 Enforceability

All rights, powers, authorities, immunities and limitations of liability in these conditions shall continue to have their full force and effect in all circumstances and notwithstanding any breach of these conditions or negligence by the Carrier or any person entitled to the benefit of these conditions or any of their respective agents, servants or officers.

## 16 Indemnity

The Consignor indemnifies and shall keep indemnified the Carrier, its agents, servants and officers in respect of all liabilities arising from any breach of these conditions by the Consignor of the provision of the service except for liabilities expressly assumed by the Carrier under these conditions.

## 17 Severance

If any provision or part of any provision in these conditions is or becomes unenforceable that unenforceability will not affect the enforceability of the balance of the provision or any other provisions of these conditions.

## 18 Applicable Law

These conditions shall be governed and construed in accordance with the laws of the place of issue of this consignment note.

## 19 Ownership

The Consignor acknowledges that the business of the Carrier is independently owned from that of other operators in the Fastway network.

## 20 Force Majeure

The Carrier is not liable for loss or damage to the Goods where the loss or damage wholly or partly resulted from causes beyond the control of the Carrier including but not limited to natural disasters, acts of war or civil unrest.