

MD FREIGHTING LIMITED – TERMS AND CONDITIONS OF TRADE

1. Definitions

In these conditions unless the context otherwise requires:

Company means MD Freightling Ltd.

Buyer means the person, or company buying the goods from the Company.

Products and/or services and/or works means the products and/or services and/or works being purchased by the Buyer from the Company.

Contract means the contract between the Company and the Buyer for the purchase of the goods.

Date of the contract means where the contract arises from a quotation given by the Company, i) the date of acceptance of the order by the Company; or ii) Where the contract arises from a quotation given by the Company, the date upon written notification of acceptance of the quotation is received by the Company.

Contract price means the price of goods as agreed between the Buyer and the Company.

Person includes a corporation, association, firm, company, partnership or individual. Quotation shall mean price on offer for a fixed term. Manager is the companies appointed decision maker.

PPSA means the Personal Property Securities Act 1999.

2. Quotation

The Buyer may request a Quotation from the Company setting out the price and quantity and or specifications of the Goods and/or Services and/or Works to be supplied. If the Quotation is acceptable to the Buyer, the Buyer may place an order within an acceptable timeframe.

3. Acceptance

3.1 If any instruction is received by the Company from the Buyer for the supply of products and/or services, it shall constitute acceptance of the terms and conditions contained herein. Upon acceptance of these terms and conditions by the Buyer, the terms and conditions are definitive and binding.

3.2 It is the Buyers responsibility to ensure that the Goods and/or Services and/or Works are suitable for their requirements and that they fit the application / function / purpose that they intend for them.

4. Terms and Conditions

These terms and conditions and any subsequent terms and conditions issued by the Company shall apply to all orders for the goods and the services made by the Buyer after the date and time at which these conditions are first delivered or sent by email or facsimile to, or otherwise brought to the notice of, any employee, staff member or

representative of the Buyer. It shall be the Buyer's responsibility to ensure that these conditions are promptly brought to the attention of the appropriate staff of the Buyer, and accordingly any order made by the Buyer after the date and time described above in this clause shall be deemed to be an acceptance of these conditions.

5. Price

5.1 The Price shall be as indicated on invoices provided by the Company to the Buyer in respect of products and/ or services supplied; or **5.2** The Price shall be the Price of the Company's current Price at the date of delivery of any goods.

5.3 Time for payment for the products and/or services shall be of the essence and will be stated on the invoice, quotation, tender documents, work authorisation form or any other work commencement forms. If no time is stated then payment shall be due on delivery of any goods.

5.4 The Buyer agrees that the cost Price shall be determined by the Company, and shall take into consideration "one-off" costs such as design and production.

5.5 The Company reserves the right to implement a surcharge for alterations to specifications of products after the order has been placed.

6. Carriage of Goods and Storage

6.1 Interpretation of this section: **The Act** refers to The Contract and Commercial Law Act 2017 and includes any current or future amendments.

We, our and **us** refers to MD Freightling Ltd and to its subsidiaries, servants, employees, agents, contractors, subcontractors and actual carriers.

You and **your** refers to the Consignor, Consignee, Freight Payer, Sender and Receiver and to their employees, agents and all other persons having an interest in the Freight which is listed on any consignment note.

A contract for carriage at "Limited Carriers Risk" where the carrier is liable for loss or damage to any goods, up to an amount of \$2,000.00 per unit of goods and within conditions as set out in the Contract and Commercial Law Act 2017. This was previously known as Carriers Liability.

A contract for carriage at "Owner's Risk" is where the carrier is not liable for the loss of or damage to any goods, except where the loss or damage is intentionally caused by the carrier. A contract for carriage at "Declared Value Risk" is where the carrier is liable for loss or damage to any goods, up to an amount specified in the contract and within conditions as set out in the Contract and Commercial Law Act 2017. A contract for carriage on "Declared Terms" is where the carrier is liable for loss or damage to any goods in accordance with specific terms of the contract.

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Where a contract expressly mentions one of these four types of contract mentioned above, then the contract shall be the type mentioned. Where a contract does not claim to be any particular type it is presumed to be a contract at "Limited Carriers Risk".

Freight refers to "goods" as defined in Section 2 of the Act. Insurance compensation is based on the "unit of goods" i.e. the normal unit of measure for that item of freight such as the number of items, the weight of items (kilograms or tonne), or the cubic measurement that the freight is quantified under (m³).

This contract shall be at "Limited Carriers Risk" pursuant to the Act unless specified otherwise under the Act.

We reserve the right to refuse carriage for any person, or any type or class of goods.

6.2 You warrant and undertake in all respects that the freight is:

Suitably packaged, labelled and addressed to enable us to effect delivery of the freight without delay, and
Fit to be carried and stored in compliance with and in accord with all Acts, Regulations, Orders in Council, By-Laws, Standards and all other legal requirements.

6.3 Our rates do not include GST or any fuel surcharge, unless specifically stated otherwise. Where GST is payable on the services provided for you, it will be charged to and be payable by you in addition to the rates specified. We reserve the right to assess a fuel surcharge at our discretion, without notice and you agree to pay all surcharges as we determine.

6.4 We may check the weight and measurement of your freight at any time and alter any consignment note accordingly. All packaging, pallets and other such items in which freight is packed or stored are deemed to form part of the freight for the purposes of assessing the weight and measurement of the freight and calculating the charges payable by you.

6.5 Hazardous Freight and Dangerous Goods are carried subject to you supplying us with any declaration and other documentation required by us or by law in relation to hazardous freight or dangerous goods. Hazardous Freight and Dangerous Goods must be packed, labelled and loaded in accordance with all laws and regulations applicable to the carriage of hazardous freight and dangerous goods, and in accordance with any guidelines or code of practice specified by us.

You agree and accept that where we have agreed to the carriage of your hazardous freight and dangerous goods that delivery timeframes are not guaranteed because any carriage of such hazardous freight or dangerous goods is subject to compliance with legal compatibility requirements, which may result in your freight and goods being separated and carried at different times.

6.6 No claim or action shall be brought against us for the loss or damage of your freight unless we have received written notice from you giving relevant documentation and full particulars of the alleged loss or damage within seven (7) days from the date of completion of carriage of the freight, which is when our responsibility for the goods ceases as defined in Section 9(3) of the Act.

6.7 From the date on which our responsibility for the goods ceases as defined in Section 9(3) of the Act, we may hold all goods not picked up by you, and/or all undelivered goods; and we shall be entitled to:

Charge storage fees at our normal storage rates at your expense and risk, and/or

Sell, destroy or otherwise dispose of the goods, where in our opinion the goods appear to be deteriorating and are likely to become offensive, or entering into a dangerous state; and you will be held liable for the full expense of such sale, destruction or disposal; and/or

Return the goods to you at your expense and risk, and we shall not be under any liability for any loss or damage to the goods however they may be caused.

7. Payment, Late Payment, Default of Payment and Consequences of Default of Payment

7.1 The method of payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Buyer and the Company.

7.2 Subject to any provision to the contrary in the Contract, payment (being cash unless otherwise arranged in advance and confirmed in writing by [insert your name or employee's name here] or his appointee) shall be received on or before the [insert day here – this is commonly between twenty and thirty days of the invoice date] of the month following the date of the Company's invoice to the Buyer, which shall be issued promptly on or after delivery of the goods.

7.3 Late payment shall incur interest at the rate of 15% per annum calculated on a daily basis. This shall be payable on any monies outstanding under the Contract from the date payment was due until the date payment is received by the Company, but without prejudice to the Company's other rights or remedies in respect of the Buyer's default in failing to make payment on the due date.

7.4 Without prejudice to any other remedies the Company may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. The Company will not be liable to the Buyer for any loss or damage the Buyer suffers because the Company exercised its rights under this clause.

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7.5 In the event that: Any money payable to the Company becomes overdue, or in the Company's opinion the Buyer will be unable to meet its payments as they fall due; or The Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer; then without prejudice to the Company's other remedies at law

The Company shall be entitled to cancel all or any part of any order of the Buyer that remains unperformed in addition to, and without prejudice to any other remedies; and all amounts owing to the Company shall, whether or not due for payment, immediately become payable.

8. PPSA

8.1 The Contract constitutes a security interest in the goods supplied by the Company to the Buyer for the purposes of the PPSA as security for payment by the Buyer of all amounts due under the Contract, including any future amounts.

8.2 The Buyer agrees to promptly execute and deliver to the Company all assignments, transfers and other agreements and documents and do anything else which the Company may deem appropriate to perfect the Company's security interest over the Buyer, or obtain the priority required by the Company or register (and renew registration) a financing statement for a security interest in favour of the Company.

8.3 To the extent that Part 9 of the PPSA applies, the Buyer agrees that the provisions of sections 114(1)(a), 120, 122, 133 and 134 of the PPSA which are for the Buyer's benefit, or place any obligations on the Company in the Buyer's favour, will not apply; and where the Company has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.

8.4 To the extent that Part 9 of the PPSA applies, without limiting anything in the previous paragraph, the Buyer hereby waives its rights under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA, and its rights to receive a copy of a verification statement under section 148 of the PPSA in respect of any financing statement or financing change statement registered by the Company.

8.5 The Buyer agrees to treat the security interest in the goods as a continuing and subsisting security with priority over a registered general security interest and any unsecured creditors, regardless of whether the goods have become fixtures at any time before payment has been made for them.

9. Governing laws

These Terms of Trade will be interpreted in accordance with applicable government legislation, which will have exclusive legal jurisdiction over any dispute in relation to the products and/or services or these Terms of Trade.

10. Dispute resolution

The Company will endeavour to resolve any dispute between the Buyer and itself without the need for Court proceedings. Any such attempt is without legal prejudice.

11. Reservation of title

Ownership and title of the goods remains with The Company until the purchased price and all other monies owing by the Buyer, under the contract or any other contract to The Company, have been paid in full.

12. Warranty

The Company warrants that it will repair or make good any defects in the goods, if written notice of the claim is received by the Company within seven (7) days from the date the goods were delivered. No claim shall be accepted under such warranty if any attempt to repair the defective goods is made by any person not authorised by the Company, or if the defective goods have been modified or incorrectly stored, maintained or used. If the Company elects to repair or replace any defective goods, such work shall be undertaken at such place as the Company may reasonably specify and the Buyer shall be responsible at its cost and risk for shipment of the defective goods to the place specified.

13. Liability

The Company shall not be liable for any loss of any kind whatsoever suffered by the Buyer as a result of any breach of any of the Company's obligations under the contract, including any cancellation of the contract or any negligence on the part of the Company, its servants, agents or contractors, nor shall the Company be liable for any loss, damage or injury caused to the Buyer's servants, agents, contractors, buyers, visitors, tenants, trespassers or other persons. The Buyer shall indemnify the Company against any claim by any such person