

Lyndsay Distributors (1977) Ltd - Conditions of Carriage

1.1 In these conditions the following expressions have the following meanings: "The Company" means Lyndsay Distributors (1977) Ltd and any other related company which enters into any contract with the customer for the supply of carriage or other services and "related companies" has the meaning ascribed to it by the Companies Act 1993 and "the company" means the member of the Company supplying carriage or other services to the customer and its successors and assigns and, where the context permits, includes any freight forwarder or carrier contracted by the company and "the customer" means the person, firm or corporate body ordering carriage or other services from the company and, where the context permits, includes any "contracting party" and "consignor" in terms of the Carriage of Goods Act 1979 (called "The Act").

1.2 Where the context permits, all terms that have defined meanings in the Act shall have those meanings ascribed to them where they are used in these conditions and, where there is any conflict or inconsistency between these conditions and the provisions Act then, to the extent permitted by law, these conditions shall prevail and the parties shall be deemed to have contracted out of the provisions of the Act.

2.1 These conditions and the companies rates of carriage confirmation and, where credit is extended to the customer, the Company's terms of credit shall constitute the conditions of the contract between the parties and apply to and govern all carriage and other services, including the provision of advice and information, performed by the company for or at the request of the customer, unless otherwise agreed in writing by the customer.

2.2 These conditions of carriage may only be varied by an instrument in writing signed by a duly authorised signatory of the company and no other servant, representative or agent of the company shall have any authority to amend or modify these conditions.

2.3 The Company reserves the right at any time and from time to time to vary or add to these conditions of carriage will effect from the date of notification to the customer.

3 If there is any conflict or inconsistency between these conditions of carriage and any order submitted by the customer or any proposal, quotation, consignment note or invoice submitted by the company or any other arrangement with the company, these conditions shall prevail, unless agreed in writing by the company.

4.1 The contract shall be at "Limited Carriers Risk" pursuant to the Act unless:

4.1.1 The customer or their agent, and representative of The LDL Company has signed a contract agreeing that the liability terms of the contract are "Owners Risk"; or

4.1.2 Before or at any time when the goods are accepted for carriage, the contracting party or his agent signs on the consignment note of any other documentation relating to the carriage, that the carriage is at "Owners Risk"; or

4.1.3 The contract is on "Declared Terms" as defined by the Act.

4.2 In case of a contract;

4.2.1 At "Limited Carriers Risk" the carrier will only be liable in accordance with the provisions of section 15(1) of the Act.

4.2.2 On "Declared Terms" the carrier will only be liable in accordance with the terms of that contract.

4.2.3 At "Owners Risk" the carrier will not be liable if the goods are lost or damaged unless the carrier intentionally loses or damages the goods.

4.3 Where the contract is at limited carriers risk, subject to the provisions of the Act imposing liability in respect of the loss of or damage to the goods:

4.3.1 The Company 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 company or otherwise) for any damage to, loss, deterioration, mis-delivery, delay in delivery or non-delivery of the goods (whether the goods are or have been in the possession

of the Company or not), nor for any instructions, advice, information on service given or provided to the customer or any other parties; and

4.3.2 The customer will indemnify the company against 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 Company or otherwise), brought by any party in connection with the goods.

4.4 Subject to the terms of any declared terms contract and otherwise to the extent permitted by law the Company shall not be liable in any way whatsoever to the customer or any third party, whether in tort or contract or otherwise howsoever, for any indirect, special, consequential or economic loss or damage (including without limitation loss of profits or loss of market).

5.1 The submission by the Company of price lists, quotations, proposals and other material forwarded to the customer shall only constitute an invitation to do business and the company shall not be bound by any order based upon or which refers to such material.

All rates of carriage and other charges contained in any price list, quotation, proposal, confirmation or other material submitted to the customer may be withdrawn or varied at any time prior to acceptance of any order placed by the customer.

5.2 The Company also reserves the right to increase any such changes contained in the rates of carriage confirmation or otherwise forming part of the contract by written notification to the customer with effect from 14 days after the date of written notification.

5.3 The Company reserves the right to refuse carriage for any customer or for any class of goods. Any acceptance of an order shall be subject to the Company considering the creditworthiness of the customer. If payment is overdue under any contract with the Company and the Company otherwise considers the creditworthiness of the customer to be unsatisfactory the Company may decline acceptance of an order or cancel any contract for carriage without in way being liable to the customer.

5.4 After acceptance by the Company no order may be cancelled or amended without the prior approval of the company and then only the terms specified by the Company

6.1 The goods shall comply with the requirements of any applicable law relating to the nature, labelling and packaging and carriage of goods and the expenses and charges of the Company in complying with the provisions of any such law or with any order or requirement thereunder or with the requirement of any harbour, dock, railway, shipping, customs, excise, duty, taxation, warehouse or other authority or company and the expenses, charges, levies or fines arising out of any breach of any applicable law shall be paid by the customer.

6.2 The goods shall be properly and safely packaged and labelled and fully described in writing in the contract or consignment note and the nature and value of all goods subject to special rates of carriage of noxious, dangerous, hazardous or inflammable nature or capable of causing damage or injury to any other goods or property or to any persons or animals and additional freight charges shall be paid on such goods if deemed necessary by the Company. Failure to safely and properly package or label or fully describe any goods shall render the customer liable for any loss or damage caused to or by such goods and acceptance of the goods for carriage without discovery of any such defect, failure or characteristic shall not exclude or diminish any liability on the part of the customer.

6.3 The Company as forwarder under section 28(1) of the Act:

6.3.1 Will not accept or deal with bullion, cash, coins, bank notes, deeds, documents, negotiable instruments, phone cards, precious or semi precious stones, jewellery, gold or silver items, antiques, paintings, perishables including foodstuffs, glass, car parts, live plants or flowers of any type, uncrated motorcycles, furniture, personal effects, household removals, or other valuables. If any such items are delivered to be handled or dealt with by the company or any subcontractor or agent of the Company, the contract shall be at owners risk in relation to those items and the company shall not be liable for any loss or damage whatsoever arising out of the carriage of the goods.

6.3.2 Will not accept items over 2.1 metres in length for carriage with LDL Couriers. If any items over 2.1 metres in length are delivered to be handled or dealt with by the company or any subcontractor or agent of the company, the contract shall be at "Owners Risk" in relation to those items and the company shall not be liable for any loss or damage whatsoever arising out of the carriage of the goods.

7.1 The company may charge freight by weight, measurement, or value and may at any time re-weigh, re-measure or re-value the goods or require the goods to be re-weighed, re-valued or re-measured and charge proportional additional freight accordingly.

7.2 All rates of carriage or other charges are exclusive of GST, except to the extent GST is expressly included therein and payment of those charges shall be accompanied by the GST thereon at the appropriate rate.

7.3 The current freight rates and other charges applying to carriage and other services the subject of the contract are disclosed in the rates of carriage confirmation. No change or modification to those charges by way of special or discount charges shall constitute a variation to that schedule or otherwise bind the Company unless they are expressly confirmed in writing and form part of the contract. Any such special or discount charges are conditional on payment being made on or before the due date for payment. If the customer fails to comply with that condition, payment of the charges at the full rates set out in the rates of carriage confirmation shall become immediately due for payment.

7.4 Freight charges shall fall due for payment upon the earlier of receipt of the Company's invoice or as soon as the goods are loaded and dispatched by the Company. Payment of costs, expenses, duties, taxes or any other disbursements incurred by the company shall fall due for payment on receipt of the Company's invoice. Payment is overdue if not made within 7 days of the due date for payment, unless otherwise agreed in writing by the Company.

7.5 Time is of the essence in respect of the payment obligations of the customer. If payment is overdue that shall constitute a breach of these conditions and the customer will upon demand pay to the company interest on any overdue payment at the same rate charged on the Company's current account with its bankers from the date that payment was due until payment is received by the Company. The charging of interest shall not constitute the granting of credit or an option to pay interest instead of the amount of the overdue payment and it is in addition to the Company's other rights and remedies.

7.6 The customer shall be liable for the cost of freight whether or not the goods reach their final destination and if delivered in damaged condition or otherwise. The customer shall not be entitled to offset freight charges against any claims for loss or damage in respect of the goods or for any delays in delivery for the goods or failure to deliver the goods.

7.7 If the customer is the consignor, then every special instruction to the effect that freight shall be paid by the consignee shall be deemed to include a stipulation that, if the consignee does not pay the freight charges by the overdue date specified in clause 7.3, then the consignor shall become liable for and pay the same and any other costs incurred by the Company.

7.8 The customer will be and remain responsible to the Company for payment of all its freight charges and other costs incurred for any reason notwithstanding that the buyer may have incurred all or any part of that indebtedness as agent for any other party. A charge may be made by the company in respect of any delay in excess of 30 minutes in loading or unloading for any reason other than the default of the Company, such period to commence upon reporting for loading or unloading. Labour to load or unload the vehicle shall be the responsibility and cost of the customer or consignee and should the consignee described in the contract or consignment note not be in attendance at the address stipulated during normal business hours when delivery is attempted, an additional charge may be made at the prevailing rates for each call until delivery is accomplished.

8 The Company may carry or on-forward all goods or have them carried by any method or person which the company deems fit and, notwithstanding any instructions that the goods are to be carried or on-forwarded by any other method.

9 The customer authorises the Company to contract either as principal or agent for the carriage of goods and any such contract will be made upon the terms and subject to the conditions of the relevant bill of lading, airway bill, or other forms or terms of contract for carriage whether by sea, rail, road or air.

10 From the date on which the responsibility of the Company ceases as provided under section 9(3) of the Act the Company may (i) hold the goods if undelivered as bailee without being under any liability of any loss or damage to the goods howsoever caused and charge the customer storage fee's at the prevailing rates normally charged by the Company or (ii) in its discretion return the goods to the customer at the risk and expense of the customer.

11 The customer expressly warrants that they are either the owner or the authorised agent of the owner of the goods or property the subject matter of the contract, that the person signing the contract has authority to enter into and bind the customer to the contract and, by entering into the contract, they accept the conditions of the contract as and for the customer as well as for all other parties on whose behalf the customer is acting.

12 The goods are accepted subject to a general lien for all charges now due which may hereafter become due to the Company on any account. If the lien is not satisfied within 7 days of such payment being due the company having given notice of the lien may at its option either:

12.1 Remove such goods or part thereof and store them in such place and manner as the company shall think proper and at the risk and expense of the customer; or

12.2 Open any package and sell such goods or part thereof upon such terms as the company thinks fit and apply the proceeds in or towards discharge of the lien and costs of sale without being liable to any party for damage thereby caused.

13 The Company shall be under no liability whatsoever unless:

13.1 Written notice of any claim is received by the company within 7 days after delivery of the goods or, in the case of loss or destruction of the goods, within 14 days of the date of dispatch, together with full particulars of any alleged loss of damage and supporting evidence of the quantum of the claim, including the cost price of any lost or damaged goods;

13.2 An action shall have been commenced by the customer in a Court of competent jurisdiction within 6 months from the date of dispatch of the goods.

13.3 The Company reserves the right to obtain salvage of any damaged product prior to payment of any claim, and payment of any such claim may be refused should the salvage not be available.

14 The Company will not, except in terms of special arrangements previously made in writing, accept or deal with any noxious, dangerous or inflammable goods or any goods likely to cause damage or which is unlawful to carry. If the customer delivers such goods to or causes such goods to be handled or dealt with by the Company or any subcontractor or agent, the customer shall be liable for any loss or damage whatsoever caused by or to or in connection with the goods howsoever caused or arising and shall indemnify the company, the subcontractors and the agents against all penalties, claims, damages, costs and expenses whatsoever arising in connection therewith and the goods may be destroyed or otherwise dealt with at the sole discretion of the Company, the subcontractors or any other party in whose custody they may be at the expense of the customer without the Company, the subcontractors or such other party being responsible or accountable of the value thereof.

15. The customer undertakes that no claim or demand shall be made against a servant or agent of the company which attempts to impose upon any of them any liability whatsoever in connection with the goods and if any such claim or demand shall nevertheless be made to indemnify the Company and any such servant or agent against all consequences thereof and liability arising therefrom. Without prejudice to the foregoing, every such servant or agent shall have the benefit of all the provisions of the contract benefiting the Company as if such provisions were expressly for the benefit of such servant or agent and in entering into this contract the Company to the extent of such provisions does so not only for its own benefit but also as agent and trustee for such servants or agents.

16 The customer shall not be entitled to assign or transfer any right or interest, or to require the Company to suspend or defer the performance of any carriage or other service, under any contract, except with the prior written consent of the Company and then only upon such terms and conditions as the company may specify.

17 Where the provisions of the Consumer Guarantees Act 1993 applies, the conditions of contract shall be read subject to the application of that Act and, in the case of any conflict, the provisions of that Act shall prevail. Where the customer is a business as defined by the Act they agree that they are acquiring all services from the Company for the purpose of a business and that the Consumer Guarantees Act 1993 does not apply.

18 Except to the extent expressly legated or varied in writing by the parties, the validity, interpretation, performance and other incidents of this contract shall be governed by and construed in accordance with the laws of New Zealand and the parties expressly agree to submit to the jurisdiction of its Courts.