

KiwiRail & Interislander

General Conditions of Carriage

1. DEFINITIONS

In these Conditions, unless the context otherwise requires.

"**Act**" – means the Carriage of Goods Act 1979 and includes any amendments, re-enactments or replacements thereto;

"**Actual Carrier**" – has the meaning given to it under the Act;

"**Animal**" – means any animal whatsoever and includes Livestock;

"**Business Day**" – means any day between 0800 hours and 1700 hours which is not a Saturday, Sunday or public holiday under the Holidays Act 2003;

"**Commercial Vehicle**" – means a self-propelled or towed road vehicle which is either:

- (a) operated in trade as that term is defined in the Fair Trading Act 1986;
- (b) being transported for the purpose of sale; or
- (c) designated as such by us in our absolute discretion, but

does not include any vehicle which is being used for private conveyance.

"**Commercial Vehicle Freight**" means a Commercial Vehicle (together with its contents) carried across Cook Strait by Ship;

"**Commercial Vehicle Services**" – means the services provided by KiwiRail for the carriage of Commercial Vehicle Freight;

"**Conditions**" – means these General Conditions of Carriage, as amended from time to time by KiwiRail;

"**Consignment Note**" – means the KiwiRail document (including in electronic form) titled "Consignment Note" containing details of the Freight;

"**Container**" – means any wagon, container or conveyance of any kind, and includes any truck, van, ship or other vehicle but does not include Commercial Vehicles;

"**Contract**" – has the meaning given to it in clause 2.2 of these Conditions;

"**Dangerous Goods**" – means any substance which, if discharged, may impair human, plant or animal life, may adversely affect the environment or may damage property and includes any substance with one or more of the following properties:

- (a) explosiveness or flammability;
- (b) corrosiveness;
- (c) a capacity to oxidise;
- (d) toxicity;
- (e) infectiousness; and
- (f) radioactivity;

"Dangerous Goods Rule" – means the Land Transport Rule: Dangerous Goods 2005 and includes any amendments thereto;

"Delivery Date" – means the date on which the Freight is delivered to the delivery address specified in the Freight Confirmation or is otherwise available for collection by you;

"Freight" – means in each relevant case "goods" as defined in the Act that we agree to carry for you as Rail Freight or Commercial Vehicle Freight;

"Freight Confirmation" – means the document (in whatever form) issued by us to you recording our agreement to carry the Freight described in the document;

"Freight Handling Code" – means the Freight Handling Code referred to in clause 2.7 which applies in respect of the carriage of all Rail Freight. For the avoidance of doubt, the Freight Handling Code does not apply to the carriage of Commercial Vehicle Freight;

"Freight Payer Code" – means a KiwiRail invoice account code which allows payment by way of account rather than by cash;

"Freight Rates" – means the charges payable by you to us for the carriage of Freight being:

- (a) the charges agreed to by us in writing; or
- (b) if there are no such agreed charges, our rates applicable at the time we accept the Freight for carriage;

"Freight Rates Note" – means the document (in whatever form) we provide to you setting out the Freight Rates (as described in paragraph (a) of the definition of "Freight Rates") applicable to the Freight Services;

"Freight Services" – means the services provided by KiwiRail for the carriage of Rail Freight and/or Commercial Vehicle Freight.

"Interislander" – means the business unit within KiwiRail, trading as the Interislander (or any successor trading name), that operates ferry services across the Cook Strait;

"KiwiRail" – means KiwiRail Limited;

"Livestock" – means horses, sheep, pigs, cattle, deer, goats and all other animals that are typically raised or farmed for profit.

"Material Adverse Change" – means any fact, matter, event or circumstance that individually, or when aggregated with all such facts, matters, events or circumstances will, or is likely to reasonably, have a material adverse effect on the cost of provision, or commercial viability, of either or both of the Rail Freight Services and the Commercial Vehicle Services.

"Maritime Rule" – means the Maritime Rule Part 24A: Carriage of Cargoes – Dangerous Goods and includes any amendments thereto;

"Rail Freight" – means Freight carried by way of rail.

"Rail Freight Services" – means the services provided by KiwiRail for the carriage of Rail Freight;

"Ship" – means any Interislander ferry;

"Temperature Controlled Freight" – means Freight which is required to be kept at a constant temperature or within a range of temperatures in order to prolong its useful life;

"We", "Our", "Us" – refer to KiwiRail, Interislander, our actual agents and where applicable, any Actual Carrier;

"You" and "Your" – means the person to whom we address the Freight Confirmation.

1.2 Interpretation

- (a) Headings contained in these Conditions are included for reference only.
- (b) Words in the singular include the plural and vice versa.
- (c) "Including" and similar words do not imply any limitation.
- (d) References to clauses are to clauses in these Conditions.
- (e) A reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether before or after the date of these Conditions).

1.3 Governing law

These Conditions and the Contract are governed by New Zealand law. New Zealand courts have non-exclusive jurisdiction.

2. APPLICATION

2.1 Governing Terms

The Contract governs the provision and receipt of the Freight Services.

2.2 Priority of terms and conditions:

In the case of conflict with other documents, the following order of priority (unless otherwise expressly stated in these Conditions) shall apply:

- (a) the Freight Confirmation;
- (b) the Consignment Note (if any);
- (c) the Freight Rates Note (if any);
- (d) in respect of Rail Freight, the Freight Handling Code (other than section 4 of that Code) and other written guidelines issued by us concerning the carriage of Freight or the operation of the Freight Services; and
- (e) these Conditions,

together, the "**Contract**".

2.3 Entire Agreement

To the extent allowed by law, the Contract constitutes the entire agreement between us and you for the Freight Services for the relevant Freight and excludes any other terms, agreement and arrangement, including those in any proposal or other document provided by or to you or by or to any third party. You agree that you have not relied on any representation (other than as set out in the Contract) when entering into these Conditions.

2.4 Overriding law

If any provision of the Contract is or becomes unenforceable, illegal or invalid for any reason it shall be deemed to be severed from the Contract without affecting the validity of the remainder of the Contract and shall not affect the enforceability, legality, validity or application of any other provision of the Contract.

2.5 Business Customers

Where the Freight Services are used for business purposes, none of the rights or remedies provided under the Consumer Guarantees Act 1993 will apply.

2.6 No waiver

Nothing in the Contract represents a waiver or surrender by us of any legal right, immunity, limitation or privilege.

2.7 Freight Handling Code and amendments to these Conditions

In respect of Rail Freight, these Conditions form part of the Freight Handling Code, being a code for standards and best practice for rail transportation of freight, issued by us. The version of the Conditions and Freight Handling Code that applies to our provision of the Freight Services to you are those published on <http://www.kiwirailfreight.co.nz/> (or successor website) at the time your Freight is accepted by us in accordance with clause 4. We may amend these Conditions and the Freight Handling Code from time to time and will publish any amendments on <http://www.kiwirailfreight.co.nz/> (or successor website). These amendments take effect immediately once they are published on the website and you agree to be bound by any amendments.

3. RATES AND CHARGES

3.1 Payment of Freight Rates

You will be responsible for paying the Freight Rates, any tax and levies (including goods and services tax) and similar charge imposed by government, or by any regional or other authority, in respect of, or incidental to, the Freight Services, a fuel adjustment factor (if applicable), and all other charges in respect of the Freight Services.

3.2 Freight Rates

- (a) We will not change the Freight Rates:
 - (i) where we have given you a written quote under clause 3.8 and 30 days have not expired; or
 - (ii) during the currency of a Freight Rates Note.
- (b) Notwithstanding clause 3.2(a), in the event of a Material Adverse Change, we shall be entitled to increase the Freight Rates payable by you. We will notify you as soon as possible after we decide to fix, impose or vary the Freight Rates. Any variation or additional Freight Rates will only apply to carriage which occurs after the date such variation or addition is posted on our website or notified to you.

3.3 Payment

Payment for Freight Services must be made either before carriage or by way of an authorised Freight Payer Code. If paying by way of a Freight Payer Code, payment is due to us within 14 Business Days of the date of invoice.

3.4 Interest on overdue amounts

If you fail to pay an amount owing to us on the due date we may charge you interest, on a daily basis, at the rate of 5% per annum above the commercial overdraft lending rate of the Bank of New Zealand (or another major bank in New Zealand selected by us). Interest may be charged on the amount owing (including interest payable under this clause) from the due date until the date it is paid in full.

3.5 Weighing and Measuring of Freight

We reserve the right to check-weigh and check-measure your Freight and alter any Freight Confirmation or Consignment Note accordingly. If:

- (a) you request a weight certificate; or
- (b) the weight or measurement of the Freight, as determined by the check, exceeds your declared weight or measurement of the Freight ("**excess Freight**"),

any check-weighing or check-measuring, and any Freight Services for the excess Freight undertaken by us, will be at your expense. We do not accept responsibility for, or guarantee, our weighing or measurement.

3.6 Pallets, Packaging etc

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 Freight Rates payable for such Freight.

3.7 Set-off

In no circumstances will you be entitled to set off any moneys owed by you to us against any claims for loss of or damage to any Freight or any other claims under the Contract.

3.8 Quotes

Any written quote which we give in respect of the carriage of Freight will remain open for a period of 30 days, unless otherwise specified in the quote. We will not be bound by any quote unless it is in writing.

4. ACCEPTANCE, INSPECTION AND DELIVERY OF FREIGHT

4.1 Rail Freight acceptance

Subject to clause 4.3, Rail Freight is accepted for carriage at the later of:

- (a) the time we issue a Freight Confirmation in respect of that Freight; and
- (b) the time we take possession of that Freight.

4.2 Commercial Vehicle Freight acceptance

Subject to clause 4.3, Commercial Vehicle Freight is accepted for carriage at the later of:

- (a) the time at which the Commercial Vehicle Freight has been stowed on board the Ship; and
- (b) any other time agreed in writing between the parties.

4.3 Right to decline to accept

We reserve the right to refuse Freight for any reason without explanation, or to only accept your Freight under special arrangements or conditions.

4.4 Right to inspect Freight

We may, at your risk and expense, inspect any Freight before or after accepting it for carriage. You must provide us with all reasonable assistance in our inspection. We do not incur any liability to you or to anyone else in respect of the Freight, and the warranty or warranties which you give to us in respect of the Freight shall not be limited or otherwise affected, by reason of us either having inspected or having failed to inspect the Freight.

5. OUR LIABILITY

5.1 Liability to you

Subject to the limitations and other provisions of the Contract, our liability to you:

- (a) for carriage of your Freight starts at the time we accept the Freight for carriage pursuant to clause 4 and ceases at the earlier of:

- (i) the time we deliver the Freight to you (or the third party to whom you intended the Freight to be consigned as recorded in a Consignment Note);
 - (ii) the time you collect the Freight; and
 - (iii) in respect of Rail Freight, the date that is five days after we notify you that the Freight is ready for collection; or
 - (iv) in respect of Commercial Vehicles, the time that is 24 hours after we notify you that the Freight is ready for collection.
- (b) for the Freight Services is, subject to subclause (a), at "limited carrier's risk" as defined in the Act.

5.2 Limitation of liability

Without limiting clause 5.1, we are not liable to you (whether in contract, tort (including negligence), or otherwise) for:

- (a) any amount exceeding the lesser of:
 - (i) the loss or damage suffered by you; and
 - (ii) the sum provided in section 15(1) of the Act; and
- (b) any loss or damage to the extent arising directly or indirectly:
 - (i) from your act or omission (regardless of whether you are negligent or at fault or not);
 - (ii) from, or is contributed to by, incorrect information provided by you or on your behalf;
 - (iii) from any failure by you to comply with the Contract; or
 - (iv) from circumstances beyond our reasonable control.

5.3 No consequential or indirect loss

We are not liable (whether in contract, tort (including negligence), or otherwise) for any loss of profits, loss of income or revenue, loss of anticipated savings, and any indirect or consequential loss or damage of any kind, including any loss or damage of the kinds referred to in sections 15(2)(b) and (c) of the Act.

5.4 Compliance with laws

We are not liable for any loss or damage arising from what we reasonably believe to be our compliance with any laws or government regulations, orders or requirements, or from your failure to comply with any laws or regulations, orders or requirements.

5.5 Liability in respect of other services

Where we provide any service to you other than the carriage of Freight, including the provision of refrigerated or other containers or the provision of storage facilities, that service is incidental to the Freight Service and our liability to you (whether in contract, tort (including negligence), or otherwise) for any loss or damage suffered or incurred by you in connection with that service is limited to the amount charged by us for that service and is further limited by clauses 5.2, 5.3, 5.4 and 5.8.

5.6 Notice of claim

To the maximum extent to which we are able to contract out of the Act, the following provisions apply.

- (a) Notice of any claim against us (whether for loss of or failure to deliver all or part of the Freight, damage to all or part of the Freight, or otherwise) must be received by us within 7 days after the Delivery Date or within 14 days of the date of acceptance by us of the Freight, whichever is the earlier.
- (b) Notices pursuant to subclause (a) above must be given in writing and be accompanied by our invoice in respect of the carriage of the Freight and such other information as we may reasonably require. Notices not complying with this subclause will be deemed not to have been given.
- (c) No action or claim may be brought against us (whether for loss of or failure to deliver all or part of the Freight, damage to all or part of the Freight, or otherwise) until notice required under subclause (a) has been provided and unless such claim or action is brought within 6 months of the date on which we accept the Freight for carriage pursuant to clause 4.1 or clause 4.2.

5.7 Freight Handling Code

In respect of Rail Freight, you must comply with the Freight Handling Code at all times. Notwithstanding anything else contained in the Contract, we will not be liable for any damage to your Rail Freight where such loss or damage arises as a result of your failure to comply with the Freight Handling Code.

5.8 Liability to third parties

We are not liable in contract, tort (including negligence), or otherwise for any direct or indirect losses, penalties, damages, costs or expenses of any kind (including loss of revenue, income or profits, or consequential loss) brought, claimed, suffered or incurred by any third party in connection with our act or omission in relation to the Contract or the services we provide in connection with the Contract, whether caused intentionally or arising as a result of our negligence or otherwise, and whether or not we are aware or ought to be aware that such losses, penalties, damages, costs or expenses may occur.

5.9 Employees, contractors, representatives and agents

The exclusions and limitations of liability set out in this clause 5 and the indemnity set out in clause 6.4 below also apply to, and are for the benefit of, our employees, contractors, representatives and agents together with any Actual Carrier and their employees, contractors, representatives and agents. The aggregate amount recoverable from us and any of the people referred to in this clause, will not exceed the maximum amount of our liability.

5.10 Calculation of the Freight Rates

The parties agree that the Freight Rates have been calculated on the basis that the limitations on liability contained in this clause 5 are reasonable and are enforceable in accordance with their terms.

6. YOUR LIABILITY TO US

6.1 Damage to Freight or equipment

You are liable to us for all loss or damage to any Freight or any equipment or property (whether in your possession or otherwise) belonging to us or our employees, contractors, representatives or agents or any Actual Carrier or their employees, contractors, representatives or agents, where such loss or damage arises directly or indirectly from your act or omission (regardless of whether you are negligent or at fault or not) or any failure by you to comply with the Contract.

6.2 Return of KiwiRail equipment

If you use any of our equipment or property you must return it to us within 2 Business Days following its use or, if earlier, at our request, and it must be in the same condition as when you received it.

6.3 Warranties

You warrant that the Freight:

- (a) complies with all laws and regulations (including the Dangerous Goods Rule and Maritime Rule) relating to the nature, packaging, labelling, storage and carriage of that Freight;
- (b) complies with the requirements of the Freight Handling Code (where the Freight Handling Code applies); and
- (c) is properly and securely packed in such a manner as to ensure that it is safe for transport and is able to withstand the ordinary risks of storage and carriage by any Container or Ship as the context may require, having regard to its nature.

6.4 Indemnity

You will indemnify us against all costs (including costs of and incidental to us enforcing our legal rights against you on a solicitor and client basis and reasonable market rates for our internal labour costs), claims and expenses suffered or incurred by us which arise directly or indirectly from your act or omission, negligence on your part and/or any failure by you to comply with the Contract.

7. SPECIAL FREIGHT

7.1 Applicability

The terms and conditions contained in this clause 7 apply in addition to and, to the extent inconsistent with, prevail over the Freight Handling Code for Rail Freight. For the avoidance of doubt, this Clause 7 also applies to Commercial Vehicle Freight.

7.2 Dangerous Goods

Dangerous Goods are carried subject to the following:

- (a) you must supply us with any declaration or other documentation required by us or by law before we take possession of the Dangerous Goods; and
- (b) without limiting clause 6.3, you must ensure Dangerous Goods are packed, labelled and loaded in accordance with:
 - (i) all laws and regulations applicable to Dangerous Goods; and
 - (ii) any applicable guidelines or codes of practice.

7.3 Removal of Dangerous Goods

- (a) Dangerous Goods, other than Class 1 Explosives designated under the Dangerous Goods Rule or Maritime Rule, must be collected by you within 8 hours of such Dangerous Goods being available for collection.
- (b) Dangerous Goods designated as Class 1 Explosives under the Dangerous Goods Rule or Maritime Rule must be collected by you within 1 hour of such Dangerous Goods being available for collection.
- (c) Dangerous Goods not so collected will be at your risk and responsibility.
- (d) We may, at your risk and expense, dispose of any Dangerous Goods not collected within the foregoing timeframes.

7.4 Temperature Controlled Freight

Where we agree to carry Temperature Controlled Freight, that Freight is carried subject to the following:

- (a) we will not be liable for any loss or damage sustained or incurred as a result of Temperature Controlled Freight being carried at any incorrect temperature if you fail to advise us in writing of the temperature at which such Freight should be carried, prior to the time that it is accepted for carriage; and
- (b) we reserve the right to check the temperature of Temperature Controlled Freight at any time by probe-testing or other such means as we determine appropriate. If you do not permit such testing then we shall have no liability whatsoever in the event that the Temperature Controlled Freight is damaged as a result of being carried at an incorrect temperature.

8. PACKING AND LOADING OF RAIL FREIGHT

8.1 Loading of Containers

Without limiting clause 3, where you load the Rail Freight, we may charge for reloading, adjusting and additional carriage at Freight Rates or else refuse to carry the Freight if the load exceeds the weight or measurement specified on the Container and/or the dimensions set out in the Freight Handling Code, if other applicable terms and conditions regarding loading have not been adhered to or if we consider the load to be unevenly distributed or otherwise unsafe.

8.2 Liability for failure to load correctly

You will load all Containers and Rail Freight in accordance with the Freight Handling Code and ensure that such Rail Freight is properly and securely loaded and will not damage KiwiRail's property or equipment. You are liable for all loss, damage and claims suffered or incurred by us, which arise directly or indirectly from your failure to load a Container or Rail Freight in accordance with the Freight Handling Code or any other guidelines given by us or in any manner which would be considered unsafe or dangerous by a reasonable and prudent consignor.

8.3 Additional charges

If the Rail Freight or its packaging is such that we incur additional costs in handling it, you are liable to pay those additional costs including any costs we incur as a result of the packaging of the Rail Freight not conforming to the requirements of the person who receives the Rail Freight.

8.4 Loading / unloading of heavy Rail Freight

You must load and unload Rail Freight at your own risk and expense, including at terminals which do not have suitable lifting equipment for the loading and unloading of the Rail Freight.

8.5 Private siding traffic

We may fill up a Container travelling to or from a private siding which is not loaded to its full carrying capacity.

All Rail Freight loaded at a private siding is deemed to be "at owner's risk" as defined in the Act.

8.6 Unloading of Rail Freight by you

You are responsible for unloading Rail Freight if:

- (a) the Freight Confirmation or the Consignment Note specifically states "owner to unload" or words to that effect; or
- (b) the Rail Freight is consigned to an unattended terminal or is placed in a private siding.

8.7 Unloading of Rail Freight by us

We may, at your risk and expense, unload any Container which is awaiting collection of Rail Freight or for which you are responsible for unloading if:

- (a) we require the Container for use in our continuing operations; or
- (b) the Container has been on hand for more than 24 hours from the time that the Rail Freight was available for collection or unloading, as the case may be.

8.8 Freight Confirmation for Rail Freight

Neither you nor anyone under your direction or control may load Rail Freight on any Container without a Freight Confirmation being issued to you in relation to such Rail Freight. Without limiting clause 4.3, we may inspect a Container at any time to ensure that a Freight Confirmation or a Consignment Note has been completed in respect of the Rail Freight contained in the Container. Any Rail Freight in respect of which a Freight Confirmation or a Consignment Note has not been completed will be charged at Freight Rates.

9. STORAGE AND DEMURRAGE OF RAIL FREIGHT

9.1 Storage

Without prejudice to our rights under clause 7.2 or 12.4, we may store your Rail Freight and charge you applicable Freight Rates for unloading and storage if:

- (a) we are unable (due to circumstances beyond our control) to deliver the Rail Freight as required in terms of the Contract; or
- (b) you have not collected it within 8 Working Hours of the time at which it is available for collection.

9.2 Terms applying to storage

Where we store Rail Freight on your behalf, whether by agreement or under clause 9.1:

- (a) you must collect the Rail Freight within 8 Working Hours of such Rail Freight being available for collection from our storage facility;
- (b) we make no guarantees as to the storage conditions and, to the maximum extent allowed by law, all responsibility or liability expressly or impliedly imposed on us in respect of such storage is excluded; and
- (c) you must indemnify us against any loss or damage we suffer as a direct or indirect result of the transportation to storage and storage.

9.3 Demurrage

Without limiting clause 12.4, we may charge demurrage on any Container that is not loaded or unloaded by you within 8 Working Hours of:

- (a) the Container being delivered to you; or
- (b) the Container being available to be loaded or unloaded.

10. SPECIAL REQUIREMENTS FOR CARRIAGE OF COMMERCIAL VEHICLES

10.1 Vehicle licensing and registration

Every Commercial Vehicle conveyed on its own wheels by Ship must display a current registration licence issued under the provisions of the Land Transport Act 1998 and any subsequent amendments hereto.

10.2 Securing points

A Commercial Vehicle exceeding 3,500 kilograms gross weight must be fitted with appropriate securing points in accordance with IMO standards. A copy of the IMO standards is available for inspection from us on request.

10.3 Securing ropes

For the purpose of reducing the likelihood of loss or damage during carriage we may use lashings or securing chains or ropes to stabilise or secure any Commercial Vehicle Freight. We are not liable for any loss or damage to Commercial Vehicle Freight, or to any attachment or fitting on any Commercial Vehicle, if that loss or damage is caused by the chafing or moving of lashings or securing chains or ropes which have been attached by us in a manner reasonably calculated to ensure that any loss or damage resulting from carriage is minimised. In attaching or fitting lashings or security chains or ropes, we are not required to take into account the special requirements of any Commercial Vehicle Freight. Any special requirements will only be catered for at our discretion and by prior arrangement.

10.4 Inflammable or dangerous substances

Despite clause 7.2, no Commercial Vehicle may contain or have attached to it any loose containers of motor fuel or other inflammable or dangerous substances.

10.5 Road tankers

Without limiting clause 7.2 and 7.3, any Commercial Vehicle that is an empty road tanker or similar vehicle used for the transport of motor fuels or like commodities must not be conveyed by Ship unless accompanied by a certificate, issued by a qualified industrial chemist, to the effect that the vehicle and its tanks are gas free. If not accompanied by a certificate issued to that effect, the vehicle may only be conveyed at our discretion, on a particular carrier service directed by us and subject to compliance with these Conditions.

11. CARRIAGE OF ANIMALS BY SHIP

11.1 Condition of Animals

All Animals carried as part of the Commercial Vehicle Services must be adequately fed and watered and otherwise in a suitable condition for carriage. All Animals must be accompanied by a person who is competent to, and who will be responsible for, feeding, watering and tending to those Animals. We not accept any responsibility for feeding, watering or otherwise tending to Animals.

11.2 Compliance with rules governing transport of Animals

Without limiting 6.3, any Commercial Vehicle carrying Animals must comply with all relevant animal welfare codes applying to the transportation of the Animals and all animal welfare recommendations produced or published by the Ministry of Agriculture, from time to time, (including, without limitation, the Code of Recommendations and Minimum Standards for the Welfare of Animals Transported within New Zealand published in 1994 by the MAF Animal Welfare Advisory Committee and updated in May 1996 and any replacements or amendments to such documents).

Any removal permits or any other documents required in relation to the transportation of, or concerning diseases of, Animals must be properly completed and, where applicable, must be carried with the Animals.

11.3 Failure to deliver

If, as a consequence of any applicable laws, government regulations or orders, or regional or local authority bylaws concerning the carriage or diseases of Animals, the Commercial Vehicle Service is stopped at any point before, during or after carriage, and while the Animals are still in our possession, we are deemed to have fulfilled our obligations to deliver the animals and may deal with them as we see fit. In those circumstances, you are not relieved from your obligation to pay the applicable Freight Rates.

11.4 Effluent containment

- (a) All Livestock to be carried by Ship must have been held off pasture for an appropriate length of time so as to minimise levels of effluent. In particular:
 - (i) sheep should be held off pasture for at least 4 hours prior to commencement of carriage; and
 - (ii) cattle should be held off pasture for at least 6 hours prior to commencement of carriage;
- (b) The stock crate, vehicle or other container in which the Livestock are to be transported must have an appropriate effluent holding system designed to catch and retain all effluent emanating from the Livestock being carried.
- (c) The preferred effluent holding system is a system incorporating under-floor holding tanks. Stock crates of a monocoque construction, or other stock crates or containers that contain effluent beneath floor gratings, may be accepted by us in our discretion. Where under-floor effluent tanks are not appropriate for a particular type of vehicle carrying small numbers of Livestock (including horse floats) we may, in our discretion, permit a vehicle to be carried by Ship provided that the floor of the vehicle has been covered with a material suitable to absorb the level of effluent likely to arise during the carriage of that Livestock.
- (d) The effluent holding system must be designed to contain such volumes of effluent as are reasonable taking into account the number and type of Livestock to be carried and the nature of the carriage to be undertaken. The effluent holding system must have sufficient capacity to contain such levels of effluent as may be produced over a minimum period of 6 hours. Ministry of Agriculture indications as to effluent production may be taken into account for this purpose. Details of such effluent production rates are available from KiwiRail.
- (e) All effluent holding systems must be designed so as to preclude possible spillage of effluent onto the deck of the Ship including due to pitching (of up to $\pm 10\%$) and rolling (of up to $\pm 20\%$) of the Ship during carriage.
- (f) All effluent holding systems must be emptied of all effluent prior to arrival for check in on any Ship. We do not undertake to provide facilities for the disposal of effluent at Interislander terminals. Effluent must not be dumped on any port company owned land.
- (g) Any empty Livestock stock crates, vehicles or other Livestock containers to be carried on a Ship must have been thoroughly hosed and washed down prior to being checked in for carriage in order to remove any effluent and to minimise all odours or spillage during carriage.

11.5 Vehicle and crate design

- (a) For the purposes of this clause, the term "vehicle" includes a stock truck and/or trailer with removable stock crates or a stock truck and/or trailers of a monocoque design.
- (b) All vehicles carrying livestock must comply with NZS5413 : 1993 Code of Practice for the Manufacture and use of Stock Crates on Heavy Vehicles, NZS5444 : 1989 Load Anchorage Points for Heavy Vehicles, any regulations promulgated from time to time under the Transport Act 1962, including any amendments or replacements of the same, and any other applicable laws, government regulations or orders, or regional or local authority bylaws.
- (c) All vehicles must be designed so as to ensure adequate ventilation of the vehicle including when the vehicle is stationary. Vehicles with fully enclosed decks must have an appropriate mechanical ventilation system.

- (d) Double decked vehicles must be covered in a manner designed to prevent injury to the Animals, and to prevent any possible damage to the Ship, including due to Animals rearing up above the vehicle's end or side walls during embarking, travel, and disembarking.
- (e) All vehicles carrying Livestock must be constructed with a means of access so as to permit Livestock carried on the vehicle to be tended, where reasonably required.
- (f) Stock crate retention devices should be capable of restraining the stock crate when fully loaded under all conditions that could reasonably be encountered during carriage on the Ship.

11.6 Refusal to carry Animals or Livestock

Without prejudice to any other rights we have, we may refuse to provide Commercial Vehicle Services if we have reasonable grounds to believe:

- (a) such services will involve transportation of sick, wild, unmanageable or fierce Animals;
- (b) such services will involve carriage of Livestock which may reasonably result in injury, sickness, or damage to the Livestock; or
- (c) you have breached any term of these Conditions, or have failed to meet any of the requirements of these Conditions in relation to the carriage of Animals or Livestock.

12. GENERAL

12.1 Delays, deviations and changes to services

All timetables, schedules or other representations regarding the timing for the departure or arrival of any Freight Service are merely an indication of the same and do not bind us. All timetables and schedules are subject to change without notice. We:

- (a) will use all reasonable efforts to carry Freight in accordance with the Contract and on time, but the time of departure or arrival of any Freight Service is at our discretion and will depend upon its operating situation. We do not assume responsibility for Freight making connections for other travel arrangements, or for meeting any appointment or deadline, or for arriving in time for any function, engagement, or ceremony or any other obligation.
- (b) are not liable for any loss or damage caused by failure or delay to take aboard or land Freight as a result of bad weather, industrial disruption, mechanical failure, any action taken with the intention of preserving the safety of Freight, any circumstances not reasonably foreseeable, or beyond our control or any other cause. Any decision to take aboard or land Freight is at our sole discretion. We may over carry any Freight not landed and land it at its intended destination at the first available opportunity. We may charge for any such overcarriage, if reasonable in the circumstances;
- (c) may at any time without notice, abandon, cancel or alter any Freight Service, substitute a carrier or mode of transport, commence a Freight Service before or after the scheduled date or time of departure, deviate from a route for any purpose, tow and assist any other vessel or vehicle in all situations, and sail with or without pilots and, except as otherwise provided in these Conditions, we will not be liable to you for any loss, cost or expense suffered as a result of, or arising in relation to, any of the foregoing.

12.2 Actual Carriers

Where we use an Actual Carrier, your Freight is carried subject to the Actual Carrier's conditions of carriage, provided that, if there is a conflict between the Actual Carrier's conditions of carriage and the Contract, the Contract will prevail.

12.3 No liability for errors, omissions or representations

We are not liable for errors or omissions in publications or schedules or for statements or representations made by our employees, contractors, agents or representatives as to any nature of the Freight Services.

12.4 Sale of Rail Freight

Without limiting clauses 9.1, 9.2 and 9.3, we may sell your Rail Freight on such terms and conditions as we see fit and without notice to you, if you:

- (a) fail to collect it by the time required under the Contract; or
- (b) fail to pay the Freight Rates or any other moneys owing by you to us within 7 days of such payment being due.

The proceeds of sale will be applied towards the cost of sale and to repay any moneys owing by you to us. Any balance will be paid to you.

12.5 Collection/disclosure of information

You authorise us to collect any information we consider relevant to assessing your creditworthiness or financial position. You also authorise us to use any information we obtain in relation to providing services to you for any purpose associated with our operations (including collections of any charges under the Contract) or marketing. Any information we obtain may be disclosed to our subsidiaries, contractors, Actual Carriers or agents.

12.6 Force Majeure

To the extent allowed by law, we are not liable for loss or damage to any Freight, or failure to perform any contracted services, as a result of an event outside our reasonable control, including war, strikes, lock-outs, flood, fire, earthquakes or mechanical breakdown, and we may terminate the Contract at any time upon the occurrence of such an event.

12.7 General Average – Carriage of Commercial Vehicles

In relation to the carriage of Commercial Vehicles by Ship, General Average will be adjusted according to the York/Antwerp Rules 1974. However, you must contribute in General Average to the payment of any sacrifices, losses, or expenses of a General Average nature that may be made or incurred, resulting from any cause, whether due to negligence or not, for which, or for the consequences of which, we are not responsible by statute, contract or otherwise. If we require, you must, before delivery of the Commercial Vehicle, pay us:

- (a) a deposit, which we may determine, to cover the estimated contribution to the General Average loss of each Commercial Vehicle; and
- (b) any salvage or special charges incurred in respect of each Commercial Vehicle or in respect of the Property lost or damaged as a result of the General Average act.

12.8 Termination

We may terminate the Contract at any time if you:

- (a) are, become, or are deemed to be, insolvent or bankrupt;
- (b) make an assignment for the benefit of, or enter into or make any arrangement or composition with, your creditors generally;
- (c) go into receivership or have a receiver, liquidator, trustee and manager (or either of them) (including a statutory manager) appointed in respect of all or any of your property;
- (d) are subject to any resolution passed, or any proceeding commenced, for your dissolution; or
- (e) breach or fail to properly or promptly perform any of your obligations under the Contract.

12.9 Effect of termination by us

- (a) If we terminate the Contract for any reason, you must collect your Freight by the time and from the location we require by notice to you.
- (b) We may allocate capacity to carriage of your Freight in reliance on any Contract for the provision of Freight Services. If we terminate the Contract and we do not source alternative freight to fill the capacity we had allocated for your Freight, without prejudice to any other right, power or remedy, you are liable for the costs and expenses arising from that unused capacity.
- (c) The termination of the Contract by us is without prejudice to any other right, power or remedy under the Contract, at law, or otherwise.

12.10 Subcontractors

You agree that we may provide some or all of the Freight Services through one or more subcontractors.

12.11 Promotions

You consent to us collecting, holding and using information about you for our business purposes and contacting you from time to time about our products or services that we believe may be of interest to you by email or through other contact details.