

Terms and Conditions of Transport: Apr 2013



PRELIMINARY

1.1 This contract is made between Buxton & Company Limited ("the Contractor") and any of its customers ("the Customer"). All business undertaken by the Contractor, including the provision if any, advice, information or other services is undertaken upon and subject to these conditions.

1.2 In these conditions singular words shall include the plural and vice versa, the word "person" shall include corporations, the expression "the contract" shall mean the contract between the Contractor and the Customer including these conditions, and where there is more than one customer, they shall be bound jointly and severally under these conditions.

VARIATION OF CONDITIONS

2.1 These conditions may be altered by mutual consent of the Contractor and of the Customer. The Contractor's consent for any such alteration may only be given by its Managing Director, and must be evidenced in writing.

3. CONTRACTOR'S RIGHTS AND OBLIGATIONS

3.1 The Contractor accepts goods for carriage only upon these terms and conditions.

3.2 The Contractor may enter into any contract with any sub-contractor to carry out the whole or any part of the contract. The Customer agrees that all work may be performed on behalf of the Contractor by any sub-contractor, who has the right to rely on the benefit of these conditions.

3.3 The Contractor is not a common carrier and does not undertake the obligations or liabilities of one. The Contractor may in its absolute discretion refuse to accept for carriage any goods or any class of goods and shall not be obliged to give any reasons for such refusal.

3.4 The Contractor will endeavour to carry out the work within the time desired, but shall not be liable for loss through any delay from any cause beyond its control. The Contractor may make a deviation from any route without affecting its liability.

3.6 The Contractor shall not be responsible or liable for any article not specified in the contract. Unless required and an extra charge is paid, the contract need not show the condition of any goods or contents of any container. The fact that anything is or is not stated in the contract shall not create any inference as to the state or condition of any goods.

4. CUSTOMER'S RIGHTS AND OBLIGATIONS

4.1 The Customer warrants that any goods removed or stored under the contract are owned by the Customer, or that the Customer has full right, power and authority to allow such removal or storage. The Customer shall indemnify the Contractor against any claim arising or expense incurred as a result of any breach of this warranty.

4.2 The Customer will ensure that no article required to be removed is left behind, that no goods or fixtures are taken away in error and articles left in unoccupied premises are protected. The Customer shall indemnify the Contractor against all claims in respect of any such matter.

4.3 The Customer will not give to the Contractor for packing, removal or storage: Any article or substance which is, or is likely to be, of a dangerous, corrosive, inflammable, explosive or damaging nature, or anything likely to encourage vermin, bora, or any other pest. The Customer shall indemnify the Contractor against all claims in respect of such goods.

a) Jewellery, watches, trinkets, precious stones or metals, money, deeds, securities, stamps, coins or goods or collections of a similar kind. b) Prohibited or stolen goods, drugs, aerosols, paints, firearms and ammunition. c) The customers will empty, properly defrost and clean refrigerators and deep freezers. We are not responsible for the contents. d) Any animals and their cages or tanks including pets, birds or fish. e) Goods that require special licence or government permission for export or import.

4.4 The Customer will notify the Contractor if there is not suitable and convenient access to the place from which the goods are to be removed. The Contractor may make an extra charge due to any access restrictions and will not be liable for any goods damaged through the lack of such access.

4.5 The Customer will obtain at your own expense, all documents, permits, licences, and customs documents necessary for the removal to be completed.

QUOTES

5.1 A quote is not binding on the Contractor unless acceptance in writing is received from the Customer within 28 days of the date shown on the quote. A quote is given on the understanding that the work is carried out by the route and method to be decided by the Contractor. Any interruption or postponement that may increase the cost will be covered by an extra charge to the Customer.

5.2 Quotes do not include the following and such work shall be subject to these conditions and paid for at a charge to be fixed by the Contractor:

a. The taking down or putting up of any electrical, gas or other fittings which require the services of a tradesperson; b. The taking up, relaying or fitting of carpets or floor coverings; c. The re-fixing of any fittings; the disconnection or reconnection of washing machines or dishwashers. d. The re-hanging of pictures or curtains or the removal of commodities other than household effects, office furniture or such like; e. The cost of dismantling or re-fixing any special articles such as pianos or billiard tables; f. The cost of special packing which may be necessary to secure safe transport of fragile articles, unless such packing is expressly mentioned in the service proposal; or g. The cost of making a detailed inventory of goods packed in any containers.

5.3 When an estimate is for a specified quantity and additional goods are dealt with all these conditions will apply and an extra charge to be fixed by the Contractor will be made.

5.4 No person other than the Contractor shall have the authority to alter or qualify in any way the terms and conditions of an estimate.

6. STORAGE AND DELIVERY

6.1 Customers whose goods are stored are required to furnish a current postal or email address to which communications may be sent and to register their signature with the Contractor. When goods are uplifted, or after receipt of goods into storage, the Contractor shall prepare a receipt for an inventory of the goods received. This shall be final and conclusive between the Contractor and the Customer and no discrepancy will be recognised.

6.2 Reasonable notice must be given and mutually agreed between the Customer and the Contractor before removal of goods from storage, usually accommodated with 7 working days notice.

6.3 The Contractor shall not be bound to deliver any goods except to the Customer or to a person authorised by the Customer in writing. The Contractor shall not be bound to deliver any goods from the storage without the written order of the Customer and until payment of all amounts owing in respect of such goods is made.

6.4 The Customer shall remove its goods from the storage of the Contractor within one Calendar month of it being required to do so by the Contractor by notice in writing. If the Customer refuses or fails to remove goods within such time the Contractor, in accordance with the provisions of the Carriage of Goods Act 1979, may examine the goods and sell them or any part of them at public auction. The Contractor may apply the proceeds of sale towards payment of the amount owing to the Contractor in respect of such goods by the Customer and any balance shall be payable to the Customer, without interest.

6.5 The Customer shall notify the Contractor in writing of any articles which may be liable to customs duties or other official restrictions, and shall indemnify the Contractor against any expenses which may be incurred if the Contractor is not notified.

6.6 If the goods are delayed for any reason, or if the Customer is unable to receive the goods at the place where they are to be delivered immediately on their arrival, the Contractor may unload them into its own or any other storing place. Delivery at any such storing place shall be deemed to be delivery in accordance with the contract. The Contractor shall have a lien in terms of the Carriage of Goods Act 1979 on such goods for all storage and other charges incurred up to the time that the Customer takes delivery of the goods.

6.7 The Contractor may at any time during the removal transfer the goods from vehicle to vehicle or when in storage from one warehouse to another.

6.8 If the Customer makes their own arrangements to collect the goods from our storage, the Contractor is entitled to make a charge for handling them over. The Contractor's liability will cease upon handing over the goods.

7. CHARGES AND PAYMENTS

7.1 Removal and packing charges are required by cleared funds upon delivery without deduction, unless otherwise arranged. Payment is to be made in cash, bank cheque, funds transfer, unless contrary arrangements have been made prior to removal date and agreed in writing by the contractor.

7.2 Rents and warehousing charges, in addition to any removal and packing charges under 7.1, are due and payable monthly in advance, preferably by automatic payment and do not include removing, packing, unpacking, stowing, un-stowing, restoring or delivering. A separate charge for receiving and delivering shall be made to Customers who convey their own goods to or from the storage. The Contractor shall be entitled to charge interest for late payment at the rate of 7% above the Contractor's trading bank's base lending rate at the time, from the date that payment is due until actual payment is made, including on any interest quantity accrued at date of payment.

7.3 If any charges due to the Contractor in respect of any goods stored by the Contractor are not paid within three calendar months after becoming due, the Contractor may give notice to the Customer of its intention to sell the goods via a Carriers lien. If all amounts due to the Contractor are not paid within 2 months after the giving of such notice, the Contractor may deal with the goods in accordance with its active and particular lien under the Carriage of Goods Act 1979.

7.4 The Contractor reviews their storage charges periodically. The Customer will be given 28 days notice in writing of any increases.

7.5 The Contractor is authorised to pay any charge owing to any storage contractor from whose premises the goods are removed, or to any carrier by land, sea or air delivering the goods to the Contractor and all such payments shall be repaid by the Customer to the Contractor on demand.

7.6 If goods are to be delivered to a building then they are to be delivered on the ground floor or to the first floor if there is unrestricted access to the ground floor, otherwise an extra charge may be made by the Contractor.

7.7 Storage paid in advance will be credited when a delivery date from storage falls within the advance-billed period of storage.

7.8 If debt collection agencies are engaged to recover any debt due to the contractor, all associated collection costs are for the customers care.

8. LOSS OR DAMAGE

8.1 Unless expressly agreed otherwise in writing and unless the relevant provisions of the Carriage of Goods Act in that regard (where applicable) have been fully complied with, all goods will be carried and stored at owner's risk. The Contractor shall be under no liability for any loss of or damage to the goods, howsoever arising or caused, whether direct, indirect or consequential and whether or not the same was reasonably foreseeable or known by the Contractor to be probable.

8.2 The Customer will arrange any insurance themselves both for storage and removal. The Contractor makes no offer of insurance implied or otherwise. The Customer warrants that he/she relies solely on his/her own skill and judgment in accepting any insurance policy arranged by the Customer.

8.3 Any clause which excludes or limits the liability of the Contractor for loss or damage shall apply to any of the Contractor's employees, so that each employee's liability shall be excluded or limited in the same way.

8.4 The Customer agrees to indemnify the Contractor against all loss, damage or liability and any action, suit, proceeding, claim or demand taken or made by any person against the Contractor as follows:

a. payable by the Contractor to any third party from the Contractor's handling of any goods or the entry upon any premises to handle goods; b. any other act or omission on the part of the Contractor, its servants or agents in the reasonable performance of its obligations under these conditions; c. all payments the Contractor may make to any of its own servants or agents by way of indemnity to them.

8.5 The Contractor shall be entitled without notifying the Customer to contest and defend any action, suit, proceeding, claim or demand as set out in clause 8.4 above.

8.6 The Customer should particularly note that damage caused by the Contractor's vehicles to driveways, footpaths, underground pipelines, or cables, sewerage or other underground installation is uninsurable. Should the Contractor's staff be instructed by the Customer, Consignor, Consignee or Shipper or any person acting on their behalf to drive across an area where such damage is likely to occur, compliance with such instructions will not in any way involve the Contractor or its insurers in responsibility for any subsequent damage which may be sustained.

9. NOTICES

9.1 Any notice or other communication may be given to or served upon the Customer by ordinary pre-paid post addressed to the Customer at its last address known to the Contractor, and shall be deemed to have been received by the Customer on the 7th day after the day on which it was posted.

9.2 Notices may also be sent by way of facsimile or email and shall be deemed to have been received by the Customer on the same day on which they were transmitted by facsimile or email.

10. MISCELLANEOUS

10.1 The terms and conditions as set out above and on the front of this document shall prevail over the terms and conditions set out in any document purported to have a contractual effect used by the Customer, the owner, or any other person having an interest in the goods. However, where the provisions of the Consumer Guarantees Act 1993 apply, these conditions will be subject to the provisions of that Act.

10.2 The Contractor may obtain and disclose credit reference information about the Customer on the opening of an account with the Contractor and whenever the Customer is in default of these conditions.

11. GOVERNING LAW & DISPUTE RESOLUTION

11.1 "If there is dispute between the parties arising out of, or in connection with, these conditions neither of the parties is to commence any proceedings relating to that dispute until the following procedure has been complied with:

- The party claiming a dispute has arisen must give written notice to the other party specifying the nature of the dispute.
- The parties will endeavour, in good faith, to resolve the dispute referred to in the notice by using informal dispute resolution techniques.

If the parties do not agree on a dispute resolution technique within ten (10) Working Days after the date notice of a dispute was given, the dispute is to be mediated according to the standard mediation agreement of LEADR New Zealand Incorporated (Lawyers Engaged in Alternative Dispute Resolution), and the Chair of LEADR (or the Chair's nominee) will select the mediator and determine the mediator's remuneration.

Nothing in this clause shall prevent any party from seeking urgent interlocutory relief."

11.2 These conditions shall in no way vary the Contractor's rights under any statutory exception, exemption, limitation, or other protection.

11.3 These conditions shall be interpreted according to the laws of New Zealand and the parties hereby submit to the exclusive jurisdiction of the New Zealand courts.

11.4 The Contractor shall be under no liability whatsoever to the Customer unless written notice of loss of or damage to the goods is given to the Contractor within 7 days of the date of delivery of the goods or the date when they should have been delivered. Any action against the Contractor shall be absolutely barred unless notice is given to the Contractor as aforesaid and any proceedings are issued and served within six months of the date of delivery of the goods or the date when they should have been delivered. Section 19(2) of the Carriage of Goods Act shall be of no application".

12. ENTIRE AGREEMENT

12.1 The terms and conditions set out on this page and on the front of this document constitute the entire agreement between the parties and supersede and extinguish all earlier negotiations, representations, understandings and agreements; whether oral or in writing, between the parties