

TERMS OF TRADE FOR BUSINESS RELOCATIONS LTD



GENERAL TERMS AND CONDITIONS OF Business Relocations Ltd (BRL) (“the Contractor”)

1. CONTRACT

- a. The quotation is not binding on the Contractor unless acceptance in writing is served within 21 days of the date shown thereon. Acceptance of quotation shall form a binding contract between the Contractor and the Customer upon these terms and conditions.
- b. The contract is conditional upon the Customer making the work available to the Contractor within 30 days of acceptance of the quotation the Contractor reserves the right to charge increased costs to cover increases in the cost of labour, fuel, road user charges and other fixed costs of the Contractor, or his subcontractors or agents.
- c. The Contractor at its discretion may enter into any contract with any other contractor, to carry out the whole or part of the contract and all these conditions shall so far as is applicable apply hereto.
- d. Any work of any kind done by the Contractor whether under this contract or in pursuance of any further instructions or request of the Customer (being work of the nature of removing, packing, transporting or otherwise dealing with goods) shall be governed by these conditions.
- e. Any representation, undertaking or warranty made by the Contractor or any agent or representative of the Contractor unless recorded in writing and annexed hereto is cancelled and withdrawn and shall not apply to this contract or to any contract collateral to this contract. These terms and conditions shall not be modified or varied unless expressed in writing and agreed by the Contractor.
- f. It shall be a condition precedent to the exercise of any right of the Customer by the Customer whatsoever in respect hereof that all monies payable by the Customer to the Contractor in accordance with this contract or any other contract between the parties have been so paid.
- g. The contract is subject to all conditions, stipulations, and exceptions expressed in any regulation, bill of lading, consignment note or contract of any railway, shipping company, airline or other carrier under which the goods are carried and to the charges levied by such railway, shipping company, airline or other carrier in force at the time and to all alterations to any of these conditions, stipulations, exceptions or to charges levied by any railway, shipping company, airline or other carrier before the work in the terms of this contract has been physically completed.

2. QUOTATION

- a. The quotation has been calculated on the basis that all work can be conveniently effected by adequate site access, lifts, staircases and doorways, but the Contractor may at his discretion use any balcony, window or tackle and make an extra charge therefore.
- b. The quotation is made on the understanding that the work is to be carried out in ordinary working hours and a charge may be made to cover any extra cost due to delay on the part of the Customer, owner, consignor or consignee of the goods. Ordinary hours are defined as 7.30am to 5.00pm Monday through Friday, public holidays excluded.
- c. The Contractor reserves the right, in the event of lift breakdown or unavailability to make additional charges for time lost or additional costs incurred as a result of such breakdown or unavailability and the quotation can be reasonably amended after acceptance by the Customer if the Contractor is affected by any unforeseen and unavoidable circumstance beyond the control of the Contractor which if known of previously would have resulted in a different costing of the quotation.

- d. When a quotation is for a specified quantity, number, weight or dimension and additional goods are removed, an extra charge may be fixed by the Contractor and all these conditions will apply for such additional goods.

3. PAYMENT

- a. Payment is to be made within seven days of the date of the invoice.
- b. Receipt of any cheque or bill of exchange shall not comprise payment until the same has been honoured or cleared.
- c. If the Customer fails to make payment by the due date, it shall be liable to pay the Contractor, by way of liquidated damages interest at the rate of 18% per annum for the period during which it remains unpaid calculated on a daily basis, minimum one month fee.
- d. If the Customer shall default in making payment of the whole or any part of the contract price then the Contractor shall be entitled to recover from the Customer all costs and disbursements which it incurs in recovering or endeavouring to recover such money including fees and disbursements of any other debt collection agency, court costs and legal fees in connection therewith.
- e. If the Customer shall fail to pay any amount owing on the due date or commit any other default under this contract and any such default shall continue for seven days or if the Customer is placed in receivership, liquidation or enters into any composition with its creditors then:
 - i. The total price payable by the Customer shall immediately become payable and the Contractor may enforce payment of the balance purchase price and interest shall be payable thereon under clause 3 c) not withstanding that the delivery of the goods has not been fully effected and that but for this clause payment would not then be due.
 - ii. The contractor shall be entitled to refuse to deliver any goods for the Customer under this contract or any other contract until any default on the part of the Customer is remedied;
 - a) The Contractor may by written notice to the Customer cancel this contract; and any rights exercised by the Contractor pursuant to this clause shall not terminate the Customer's liabilities under the contract or to pay damages for any breach.

4. GENERAL LIEN

- a. The Customer warrants that the goods removed, packed and/or warehoused or to be removed, packed and/or warehoused, pursuant to the request of the Customer are owned by the Customer or that the Customer has the full right, power and authority to procure such removal, packing and/or warehousing by the Contractor.
- b. All property received by the Contractor will be subject to a general lien for all monies owing to or liabilities incurred by the Contractor and the delivery or sale thereof shall not affect such lien in respect of the remainder. In respect of any period in which a lien is being asserted, the Contractor having given notice of the lien at its option either:
 - I. Remove such goods or part thereof and store them in such a place and manner as the Contractor shall think proper and all the risk and other expenses of the Customer or as the case may be; or
 - II. Open any package and sell such goods or part thereof upon such terms as it shall think fit and apply the proceeds in or toward discharge of the lien and costs without being liable to any person for damage thereby caused.

5. LIMITATION OF LIABILITY

- a. The goods are carried at “Owners Risk”. This means the carrier will pay no compensation if the goods are lost or damaged unless he intentionally loses or damages them.
- b. Without limiting the foregoing, and also in any case where the foregoing does not apply:
 - I. The Contractor shall not be liable for loss of, or damage howsoever caused to –
 - A. Any goods contained in any drawer, package, case or container not packed or unpacked by the Contractor,
 - B. Any goods removed from or into the premises where there are workmen other than of the Contractor unless a detailed written claim is made at the time of such removal.
 - C. Any goods which are inherently brittle or defective or in such a condition that they cannot be moved without risk or damage.
 - D. Computer software programmes, nor shall the Contractor be liable for any loss arising from, or related to, loss or damage to any computer software programme.
 - II. The Contractor’s liability under this contract or any contract collateral hereto is limited to replacing (or at the election of the Contractor repairing) any lost or damaged goods to the entire exclusion of any other remedy (including any remedy for breach of a fiduciary duty) which, but for this clause, the Customer might have and the Contractor shall be under no liability for any damage, injury, direct or consequential or other loss or loss of profits or costs, charges and expenses on the part of the Customer or any other person other than to repair or replace as mentioned above (including for breach of fiduciary duty).
 - III. The Contractor shall not be liable for loss or damage to any goods or to any property by any article or substance which is, or likely to be of dangerous, corrosive, inflammable, explosive or damaging nature, containing liquid materials or anything likely to encourage vermin, borer or other.
- c. The Contractor will endeavour to carry out the work within the time desired, however no claim can be made against the Contractor for disruption of the clients normal trading due to unforeseen delays and/or late deliveries due to industrial problems, mechanical breakdown, stress or weather, or any other cause beyond its control.
- d. In respect of any clause herein which excludes, or in any way limits the liability of the Contractor for loss or damage the Contractor in addition to acting for himself, is acting as agent for each of his servants, so that each such servant shall be party to the contract so far as each such clause is concerned.

6. DAMAGED GOODS OR PREMISES

- a. Any claim for damaged goods must be in writing within 7 days after the delivery of the goods alleged to be damaged. Any claim for loss must be made within 7 days after the date of the goods alleged to have been lost in the ordinary course have been delivered. The Contractor shall not be liable for any such loss or damage unless a claim is made in writing within 7 days, time being the essence.
- b. Any claim for damage to premises must be pointed out to the Contractor or his representative at the time of removal or relocating of the goods and confirmed in writing within 48 hours after the damage is alleged to have occurred otherwise the Contractor shall not be liable for any such damage.

7. CUSTOMER’S RESPONSIBILITIES

- a. It is the responsibility of the Customer to see that no goods required to be moved are left behind, that no goods or furniture are taken away in error and that goods left in unoccupied premises are adequately protected from theft, loss or damage. The Contractor accepts no liability in respect of any such matter and the Customer shall indemnify the Contractor against all claims in respect thereof.
- b. The Customer shall declare in writing to the Contractor all articles which may be liable to customs duties or official restrictions and shall indemnify the Contractor against all claims, fines, costs, charges and expenses which may be incurred by the Contractor by reason of any error or omission on the part of the Contractor as a result the information given in any such declaration by the Customer or as a result of any omission on the part of the Customer to make such declaration.
- c. If the goods are delayed en route by reason of any default or declaration or for any reason or if the Customer or consignee is unable to receive the goods in the premises or at the place where they are to be delivered immediately on their arrival, the Contractor shall be at liberty to unload them into its own or any other storage place. Delivery at any such storage place shall be deemed to be delivered in accordance to the contract. The Contractor shall have a general lien on such goods for all storage and other charges incurred up to the time at the Customer shall have removed the goods from such place of storage.

8. GENERAL

- a. The Contractor is not a common carrier and does not undertake the obligations or liabilities of a common carrier. The Contractor in his absolute discretion can refuse to accept goods or any class of goods and shall not be obliged to give any reason for such refusal. The Contractor accepts goods for carriage only upon the terms of these conditions of contract.
- b. In these conditions single words shall include the plural and vice versa, the word “person” shall include corporation, 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 hereunder, jointly and severally.
- c. If any clause or part of a clause is held to be invalid or unenforceable for whatever reason, to the extent not inconsistent with the aforementioned invalid clause, the remaining provisions shall remain in full force and effect.
- d. The failure by the Contractor to enforce any terms and conditions herein or to exercise in whole or in part any right which the Contractor may have, shall not be deemed to be a waiver thereof and shall not be deemed to be a waiver of any subsequent breach of any term or condition or right.
- e. These terms and conditions can be unilaterally varied by the Contractor and such variation shall have effect from the date that the Customer receives notice of such variation or at some later specified date.
- f. Unless stated in the quotation all amounts and monies expressed in New Zealand currency. The quotation and ensuing contract shall be construed and interpreted in accordance with the laws of New Zealand.
- g. The headings are provided solely for the purpose of Section headers and shall not be used to assist in the interpretation of any terms and conditions of the contract.
- h. Any notice or other communications to be given or served upon the Customer including any receipt or inventory may be given or served upon the Customer personally or by ordinary prepaid post addressed to the Customer at the last address of the Customer known to the Contractor and if posted shall be deemed to have been received by the Customer on the 7th day following the day on which it shall have been posted.

STORAGE TERMS AND CONDITIONS

1. The Customer:

- a) has the right to store their property with Business Relocations Ltd;
- b) is deemed to have knowledge of the property in storage;
- c) warrants that they are the owner of the property in store, and/ or are entitled at law to deal with them in accordance with all aspects of this Agreement;
- d) will provide own insurance cover unless agreed in writing with BRL.

2. Business Relocations Ltd (BRL)

- a) is a bailee of the property, and
- b) is entitled to claim a lien over the property for any unpaid fees, costs or expenses incurred by the Customer accessing their property.

FEES, COSTS AND EXPENSES:

3. The Customer:

- a) must pay BRL promptly all charges invoiced.

4. The Customer is responsible to pay:

- a) the storage fee being the amount indicated in this Agreement or the amount notified to the Customer in writing by BRL from time to time. The storage fee is payable in advance and it is the Customer's responsibility to ensure that payment is made directly to BRL, on time, in full, throughout the period of storage;
- b) a late payment fee, as indicated in the Agreement, becomes payable each time a payment is late;
- c) any costs or expenses incurred by BRL in collecting late or unpaid storage fees, maintaining the property, selling the property in enforcement of lien, or in enforcing this Agreement in any way, including but not limited to postal, telephone, debt collection, advertising, and/or the default action (including legal costs on client/solicitor basis) costs.

5. **The Customer will be responsible** for payment of any government taxes or charges (including any property and services tax) being levied on this Agreement, or any supplies pursuant to this Agreement.

DEFAULT:

6. **The Customer acknowledges that** in the event of the storage fee, cost, expenses or any other money owing under this Agreement, not being paid in full within forty five (45) days of the due date, BRL may, without further notice, sell or dispose of any property on such terms that BRL may determine. BRL may also require payment of default action costs, including any costs or expenses associated with accessing the Customer's property, maintaining the property, and disposal or sale of the Customer's property. Any excess moneys recovered by BRL on disposal will be returned to the Customer. In the event that the Customer cannot be located, excess moneys will be deposited with the Public Trustee or equivalent authority.

ACCESS AND CONDITIONS:

7. The Customer:

- a) has the right to access their property by arrangement with BRL acknowledging that BRL operates an unmanned store and there will be a charge for BRL staff;
- b) must not store any property that are dangerous, hazardous, illegal, stolen, inflammable, explosive, environmentally harmful, perishable or that are a risk to the property of any person;
- c) the Customer must not store items which are irreplaceable, such as currency, jewellery, furs, deeds, paintings, curios, works of art and items of personal sentimental value;
- d) cannot assign this Agreement;

8. **BRL may** refuse access to the goods by the Customer where money is owing by the Customer to BRL, whether or not a formal demand for payment of such money has been made.

9. **No oral statements** made by BRL or its employees shall form part of this Agreement, and no failure or delay by BRL to exercise its rights under this Agreement will operate to waive those rights.

NOTICE:

10. **Notices must be given in writing** and left at, or posted to, or faxed or emailed to the address of the Customer or BRL. In the event of not being able to contact the Customer, Notice is deemed to have been given to the Customer by BRL if BRL serves that Notice to the last notified address of the Customer. Further, the Customer and BRL agree that BRL may give notice of any sale in enforcement of a lien arising in relation to this Agreement in a newspaper distributed throughout the state, and may include the Customer's name for this purpose.

RISK AND RESPONSIBILITY: LIMITATION OF LIABILITY AND INDEMNITY:

11. **If the Customer** is using the store for the purposes of business storage then the guarantees and remedies in the Consumer Guarantees Act 1993 ("the Act") are excluded.

12. If the Act applies the Customer acknowledges that:

- a) BRL does not have control over or knowledge of the type of property stored within the storage facility, and
- b) the storage facility is not air conditioned or humidity controlled; and
- c) the Customer bears the sole risk and responsibility for all loss, damage and deterioration of property caused by dampness, mildew, flood, fire, water or spillage of any materials from any other space; and
- d) the Customer bears the sole responsibility and risk for all loss, damage and deterioration arising from removal or delivery of the property.

13. The Customer:

- a) agrees that the terms of this document constitute the whole contract with BRL and that, in entering this contract, the Customer relies upon no representations other than those contained in this Agreement.
- b) acknowledges that it has raised all queries relevant to its decision to enter this Agreement with BRL and that BRL has, prior to the Customer entering into this Agreement, answered all such queries to the satisfaction of the Customer. The Customer acknowledges that any matters resulting from such queries have, to the extent required by the Customer and agreed to by BRL, been reduced to writing and incorporated into the terms of this Agreement.

MEDIATION OF DISPUTES:

14. **The parties must** endeavour to settle any dispute in connection with this Agreement by mediation. Such mediation is to be conducted by a mediator who is independent of the parties and appointed by agreement of the parties or, failing agreement within 7 days of receiving any party's notice of dispute, by a person appointed by the President of the New Zealand Law Society P.O. Box 5041, Wellington, Telephone 04 472-7837 Fax 04 473-7909.
15. **It is a condition** precedent to the right of either party to commence arbitration or litigation other than for interlocutory relief that it has first offered to submit the dispute to mediation.