

PACIFICA SHIPPING - Conditions of Carriage (20 Mar 2020)

These conditions apply to all goods accepted for carriage by the carrier on behalf of the contracting party.

1. This contract of carriage is subject to and governed by the provisions of the Carriage of Goods Act 1979.
2. The attention of the contracting party (ie. the person who has entered into the contract with the carrier for the carriage of the goods) is drawn to the warranty which is implied on the part of the contracting party:
 - a. that the goods are fit to be carried and stored in accordance with the contract in the condition and in the manner in which they are tendered for carriage; and
 - b. that unless otherwise notified to the carrier, the provisions of every enactment (if any) with which the contracting party is required to comply, relating to the consignment for carriage of the goods to be carried pursuant to the contract, have been complied with. The contracting party is required to indemnify the carrier for any liability incurred to other parties arising from a breach of warranty.
3. Freight may be charged by weight or measurement and the carrier may at any time re-weigh or re-measure the goods or require them to be re-weighed or re-measured. If there has been an incorrect declaration of either, proportional additional freight may be charged accordingly.
4. If the carrier accepted the goods for carriage on the condition that freight and other charges would be paid by the consignee, and payment has not been made, the contracting party agrees to pay to the carrier all sums which remain due and owing in respect of the carriage without deduction or set-off and regardless of whether there is any dispute.
5. Up to 48 hours prior to the vessels cut-off a booking can be cancelled or decreased without incurring any penalty. Thereafter, a cancellation fee of NZ\$150 + GST per container will be charged in the following instances:
 - a. When a confirmed booking is cancelled, transferred (at shipper's request) to the next available sailing or reduced within 48 hours of the vessels cut-off at the intended port of load
 - b. When a container is not available to be loaded at the agreed port on the prescribed vessel as booked (referred to as a "no show").
6. Charges for containers and trailers will be levied where a consignee fails to return the unit within a specified time frame, or where damage or loss occurs whilst in their care. Refer to Container and Trailer Hire Agreement Documents for specific conditions of hire. The contracting party shall return all of the carrier's equipment or property used by it on request or immediately following its use (whichever is the earlier), in the same condition as when the contracting party received the equipment or property.
7. The contracting party shall (and shall ensure that its subcontractors, employees and agents shall) in addition to complying with all laws and regulations applicable to the nature, packaging, labelling, storage or carriage of the contracting party's goods, at all times:
 - a. comply with the carrier's safety and security policies;

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- b. comply with the carrier's container policies (including policies relating to demurrage and detention), and any other policies notified to the contracting party;
- c. comply with the carrier's policies in relation to hazardous, awkward, inflammable or dangerous cargo, and in relation to cargo with special requirements (including refrigerated or high value cargo);
- d. provide directions to the carrier for the proper care of any goods with special requirements (including temperature controlled or perishable goods). The carrier is not liable for any loss or damage sustained or incurred as a result of the contracting party's failure to provide such directions to the carrier in writing prior to the time the goods are accepted for carriage. The carrier may check the temperature of temperature controlled goods at any time by any means it determines appropriate; and
- e. be responsible for properly packing, stuffing and securing its goods in compliance with all applicable laws and regulations, and so as to ensure that the goods are safe for transport and able to withstand the ordinary risks of storage and carriage, having regard to the nature of the goods.
8. If the consignee fails to take delivery of the goods within the time prescribed in the Carriage of Goods Act 1979 the carrier will hold them at the risk and expense of consignee and will not be responsible for any loss of or damage to them, no matter how it was caused, during that period.
9. The carrier is authorised to release the goods to anyone holding the relevant consignment note (whether in conventional or electronic or any other customary form) entitling it to uplift those goods. The carrier shall not be responsible for verifying any consignment note, and excludes all liability for any loss suffered by the contracting party or consignee in the event that a consignment note is subsequently found to be incorrect or fraudulent.
10. The carrier shall be under no liability in respect of loss of or damage to the goods during the period of the carriage unless:
- a. written notice of claim giving particulars of the alleged loss or damage is received by the carrier within fourteen (14) days after the date of despatch of the goods; and
- b. an action against the carrier has been commenced within six (6) months after the delivery of the goods or, in the case of non-delivery, within six (6) months and fourteen (14) days after the date of despatch of the goods.
11. The contracting party shall:
- a. be responsible for paying all charges in respect of any service provided to it by the carrier;
- b. pay all amounts owing to the carrier without set-off or deduction, and
- c. not be entitled to withhold payment in the event of a dispute.

12. The carrier may at its discretion impose special charges or vary existing charges for the services it provides. If the contracting party's goods or its packaging are such that the carrier incurs additional costs in handling them, the contracting party shall pay those additional costs including, without limitation, any costs incurred as a result of the packaging not conforming to the carrier's requirements.

13. The contracting party acknowledges that all carriage rates are quoted exclusive of goods and services tax. Goods and services tax is payable in addition to the carrier's charges, and any tax or similar charge imposed by government or any regional or other authority in relation to the contracting party's use of the carrier's services is payable by the contracting party.

14. The carrier may, without prejudice to any of its other rights and remedies, charge interest on a daily basis at a rate of 5% per month for any overdue amounts owing by the contracting party calculated from the day that payment became overdue until the day on which the overdue amount (including interest charged under this clause) has been received in full in cleared funds by the carrier. The contracting party shall also pay to the carrier all reasonable fees and charges incurred by the carrier in enforcing the contracting party's obligations of payment under these Conditions of Carriage (including legal costs).

15. General Average to be adjusted according to the York-Antwerp rules 1994, covering all goods carried on or under deck. General average on a vessel not operated by the carrier shall be adjusted according to the requirements of the operator of that vessel.

16. Any time for delivery given by the carrier to the contracting party or consignee is approximate only and is not deemed to be of the essence. The carrier is not liable for failure or delay to carry out the agreed carriage services where such failure or delay is a result of any event or circumstance outside the carrier's reasonable control. The carrier shall however use reasonable endeavours to remedy the consequences of any such event or circumstance, and to resume performance of its obligations. The carrier shall not however be required to use or arrange any alternative form of carriage on behalf of the contracting party.

17. Where carriage services are acquired by the contracting party for the purposes of a business, the parties agree that the Consumer Guarantees Act shall not apply to those carriage services.

18. If the carrier is found to be liable in any circumstances or for anything whatsoever not governed by the limitations of liability set out in the Carriage of Goods Act 1979, then, notwithstanding any other clause in these Conditions of Carriage, the maximum aggregate liability of all claims for loss or damage suffered by the contracting party (or anyone claiming under it) arising out of any one event is \$2000.

19. The carrier excludes all liability for all indirect, special or consequential losses, expenses, damages or other such cost or liability (including loss of profits or revenue) suffered by the contracting party (or any consignee or other person whatsoever) through any cause whatsoever (whether in contract, tort or otherwise).

20. The contracting party acknowledges and agrees that:

a. if Option 1 is ticked on the tax invoice, then goods are carried "AT OWNER'S RISK" for the purposes of the Carriage of Goods Act 1979. This means that the carrier will pay no compensation to the contracting party if the goods are lost or damaged, unless the carrier intentionally loses or damages them; otherwise

b. if Option 1 is not ticked, then the goods are carried at "LIMITED CARRIER'S RISK" for the purposes of the Carriage of Goods Act 1979. For the purposes of the limitation of liability set out in section 15 of that Act, a unit of goods means the container load of goods where contained in a container, and includes the container where it is provided by the contracting party; and in either case, the contracting party is responsible for insuring all cargo for its full actual or replacement value.

21. The contracting party is liable for all loss or damage to any cargo, equipment or other property belonging to or in the possession of the carrier or an Actual Carrier or its employees, representatives or agents, where such loss or damage is caused directly or indirectly by any failure to comply with these Conditions of Carriage or any act or omission of the contracting party, regardless of whether the contracting party is negligent or at fault.

22. The carrier may:

a. refuse to provide or suspend carriage services to the contracting party; or

b. only accept goods for carriage under special conditions or arrangements; at the carrier's discretion, without prejudice to any of its other rights and remedies.

23. The carrier may, at the risk and expense of the contracting party, for any reason and at any time, open and inspect any cargo either before or after accepting it for carriage. The contracting party shall provide the carrier with reasonable assistance in its inspection. The carrier shall properly seal all cargo after any such inspection. The carrier shall not incur any liability or affect any warranty given by the contracting party in respect of any cargo for either having inspected or having failed to inspect any cargo.

24. Where the carrier uses an Actual Carrier (as defined by the Carriage of Goods Act 1979), the contracting party's goods are carried subject to the Actual Carrier's conditions of carriage. In the event of conflict between the Actual Carrier's conditions of carriage and these Conditions of Carriage (or any other terms applicable to carriage by or on behalf of the carrier), then these Conditions of Carriage (or any other applicable terms, as the case may be) shall prevail.

25. The contracting party shall not assign or transfer any of its rights or obligations under these Conditions of Carriage without the carrier's written consent. The carrier may at any time assign or transfer any of its rights or obligations under these Conditions of Carriage.

26. Nothing in these Conditions of Carriage shall constitute or be deemed to constitute any relationship of employment, agency, joint venture or partnership between the parties. Neither party has authority to bind the other or act on its behalf except to the extent expressly agreed in writing.

27. No failure or delay by the carrier in insisting upon the strict performance of these Conditions of Carriage or exercising any right under these Conditions of Carriage will operate as a waiver of those matters. No waiver of any breach shall be deemed to be a waiver of any subsequent breach.

28. These Conditions of Carriage are governed by the laws of New Zealand. New Zealand courts have non-exclusive jurisdiction.



29. These Conditions of Carriage constitute the entire agreement between the parties and no earlier representation, warranty or agreement (whether written, oral or otherwise) in relation to any matter dealt with in these Conditions of Carriage has any force or effect. No subcontractor, agent or employee of the carrier has any authority to make any promise or representation in conflict with these Conditions of Carriage.

30. The rule of construction known as the contra proferentum rule does not apply to these Conditions of Carriage. The illegality, invalidity or unenforceability of any provision of these Conditions of Carriage shall not affect the legality, validity or enforceability of any other provision.

31. Everything expressed or implied in these Conditions of Carriage which involves more than one person binds and benefits those persons jointly and severally.

32. The carrier may amend these Conditions of Carriage at any time, effective from the date that the amended Conditions of Carriage are published on the carrier's website <http://www.pacship.co.nz/>

