

Freight Direct



"For a personal freight forwarding service"

Freight Direct (NZ) Ltd, Unit 25, 203 Kirkbride Rd, Airport Oaks, Auckland, New Zealand
PO Box 53-167, Auckland Airport 2022 Phone 64 9 2757646 Fax 64 9 2757686

APPLICATION FOR CREDIT

CUSTOMER DETAILS

1. Full Legal Name (*not trading name*) _____
2. Trading as (*if different from above*) _____
3. Trading / Business Address _____
4. Postal Address (*if different*) _____
5. Business Telephone No(s) _____ Fax No _____
6. Business Email Address _____
7. Nature of Business _____ Years in Business _____
8. Type of Business (*circle one*) Limited Company / Sole Trader / Partnership / Trust / Other
9. Name of Person to Contact re Your Account _____
Phone (DDI): _____ Email: _____
10. Ownership – Please insert Owner(s) / Director(s) personal details in full
Name: _____
Address: _____
Name: _____
Address: _____
11. NZ Customs Deferred Account Y/N _____ NZ Customs Client Code: _____

TRADE REFERENCES

| | Company Name | Phone Number | No of Years | Av Mth Spend |
|---|--------------|--------------|-------------|--------------|
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |

I/We have read and agree to be bound by the terms and conditions of trade as printed overleaf or attached. I/We warrant to Freight Direct (NZ) Ltd that the above information is to the best of my/our knowledge, information and belief, true and correct, and that I/we am/are duly authorized to enter into this application and future contracts on behalf of the above named customer. I/We authorize Freight Direct (NZ) Ltd to contact the above named trade references and make whatever other enquiries it may determine to ascertain the credit worthiness of the customer prior to granting credit. I/We agree to pay all invoices on the due date shown on the invoice and acknowledge that disbursements are payable within 48 hours. I/We acknowledge that Freight Direct are not responsible for any insurances unless specifically requested and agreed upon.

Signed: _____ Date: _____

Print Name: _____ Designation: _____

FREIGHT DIRECT (NZ) LTD TERMS & CONDITIONS OF TRADE

1. DEFINITIONS

- 1.1 "Freight Direct" shall mean Freight Direct (NZ) Limited, and any agents, employees or subsidiary companies thereof.
- 1.2 "Customer" shall mean any person (including anybody or body corporate) at whose request or on whose behalf Freight Direct provides a service.
- 1.3 "Goods" shall mean the cargo and any container not supplied by or on behalf of Freight Direct, in respect of which Freight Direct provides a service.
- 1.4 "Dangerous Goods" shall mean any goods which are or may become dangerous, inflammable, radioactive, and corrosive or which may contain vermin or other pests.
- 1.5 "Valuable Goods" shall mean cigarettes, spirits, precious metals and jewelry, works of art, thoroughbred horses and any other goods which would generally be considered valuable.
- 1.6 "Owner" shall mean the owner, shipper and consignee of the Goods and any other person who is or may become interested in the Goods and anyone acting on their behalf.
- 1.7 "Authority" shall mean any duly constituted legal or administrative body acting within its legal powers and exercising jurisdiction within its constituted boundaries.
- 1.8 "Container" shall mean any container, tank, trailer, pallet, or means of transportation used to carry or consolidate goods. .

2. OBLIGATIONS OF THE CUSTOMER

- 2.1 **The Customer acknowledges that all business undertaken by Freight Direct is carried out subject to the terms and conditions herein and, despite any term used in any form produced by the Customer, these conditions are deemed to be a condition of any agreement between Freight Direct and its Customers.**
- 2.2 The Customer warrants that he is either the Owner or the authorized agent of the Owner of the Goods and that he is authorized to accept and is accepting these Conditions not only for himself but also as agent for and on behalf of the Owner of the Goods.
- 2.3 The Customer warrants that he has reasonable knowledge of matters affecting the conduct of his business, including the terms of sale and purchase of the Goods and all other matters relating thereto.
- 2.4 The Customer shall give sufficient and executable instructions to enable Freight Direct to perform its service.
- 2.5 The Customer warrants that the description and particulars of the Goods are complete and correct.
- 2.6 The Customer warrants that the Goods are properly packed and labeled.

3. SPECIAL INSTRUCTIONS

- 3.1 Unless otherwise previously agreed in writing, the Customer shall not deliver to Freight Direct or cause Freight Direct to deal with or handle Dangerous Goods. If the Customer is in breach of this clause he shall be liable for all loss or damage whatsoever caused by or to or in connection with the Goods howsoever arising and shall defend, indemnify and hold harmless Freight Direct against all penalties, claims, damages, costs and expenses whatsoever arising in connection therewith and the goods may without notice be destroyed or otherwise dealt with at the sole discretion of Freight Direct or any other person in whose custody they may be.
- 3.2 If Freight Direct agrees to accept Dangerous Goods and then in the opinion of Freight Direct or any other person they constitute a risk to other goods, property, life or health they may without notice be destroyed or otherwise dealt with at the expense of the Customer or Owner.
- 3.3 The Customer undertakes not to tender for transportation any Goods which require temperature control without previously giving written notice of their nature and particular temperature range to be maintained and in the case of a temperature controlled Container stuffed by or on behalf of the Customer further undertakes that the Container has been properly pre-cooled or pre-heated as appropriate, that the Goods have been properly stuffed in the Container, and that its thermostatic controls have been properly set by the Customer. If the above requirements are not complied with Freight Direct shall not be liable for any loss of or damage to the Goods caused by such non-compliance.
- 3.4 No insurance shall be effected except upon express instructions given in writing by the Customer and all insurances effected by Freight Direct are subject to the usual exceptions and conditions of the policies of the insurance company or underwriters taking the risk. Unless otherwise agreed in writing Freight Direct shall not be under any obligation to effect a separate insurance on each consignment but may declare it on any open or general policy. Freight Direct is an agent in respect of the effecting of insurance and should the insurers dispute their liability for any reason the insured shall have recourse against the insurers only and Freight Direct shall not be under any responsibility or Liability whatsoever in relation thereto notwithstanding that the premium upon the policy may not be at the same rate as that charged by Freight Direct or paid to Freight Direct by its customers.

- 3.5 Except in accordance with express instructions previously received in writing and accepted in writing by Freight Direct, Freight Direct shall not be obliged to make any declaration for the purposes of any Statute, convention or contract as to the nature or value of any Goods or as to any special interest in delivery.
- 3.6 Unless otherwise previously agreed in writing or otherwise provided for under the provisions of a document signed by Freight Direct, instructions relating to the delivery or release of Goods against payment or against surrender of a particular document shall be in writing and Freight Directs liability shall not exceed that provided for in respect of miss delivery of Goods.
- 3.7 Unless previously agreed in writing that the Goods shall depart or arrive by a particular date, Freight Direct accepts no responsibility for departure or arrival dates of Goods.

4. INDEMNITIES

- 4.1 The Customer and Owner shall defend, indemnify and hold harmless Freight Direct against all liability, loss, damage, costs and expenses arising (i) from the nature of the goods unless caused by Freight Directs negligence, (ii) out of Freight Direct acting in accordance with the Customer's or Owner's instructions, or (iii) arising from a breach of warranty or obligation by Freight Direct or arising from the negligence of the Customer or Owner.
- 4.2 **Except to the extent caused by Freight Directs negligence the Customer and Owner shall be liable for and shall defend indemnify and hold harmless Freight Direct in respect of all duties, taxes, imposts, levies, deposits and outlays of whatsoever nature levied by any Authority and for all payments, fines, costs, expenses, loss and damage whatsoever incurred or sustained by Freight Direct in connection therewith.**
- 4.3 **Advice and information, in whatever form it may be given, are provided by Freight Direct for the Customer only and the Customer shall defend, indemnify and hold harmless Freight Direct for all liability, loss, damage, costs and expenses arising out of any other person relying on such advice or information.**
- 4.4 **The Customer undertakes that no claim be made against any servant sub-contractor or agent of Freight Direct which imposes or attempt to impose upon any of them any liability whatsoever in connection with the Goods, if any such claim should nevertheless be made, to indemnify Freight Direct against all consequences thereof.**
- 4.5 **Without prejudice to the foregoing, every such servant, sub-contractor or agent shall have the benefit of all provisions herein, as if such provisions were expressly for their benefit. In entering into this contract Freight Direct, to the extent of those provisions, does so not only on his behalf, but as agent and trustee for such servants, sub-contractors and agents.**
- 4.6 **The Customer shall defend, indemnify and hold harmless Freight Direct from and against all claims, costs and demands whatsoever and by whomsoever made or preferred in excess of the liability of Freight Direct under the terms of these Conditions and without prejudice to the generality of this clause this indemnity shall cover all claims, costs and demands arising from or in connection with the negligence of Freight Direct, its servants, agents and subcontractors.**

5. PAYMENT

- 5.1 The Customer shall pay to Freight Direct all sums immediately when due without deduction or deferment on account of any claim, counterclaim or set off.
- 5.2 When Freight Direct is instructed to collect freight, duties, charges or other expenses from anyone other than the Customer, the Customer shall be responsible and liable for any amounts unpaid when due and will pay any amounts forthwith and without delay.
- 5.3 Should any accounts remain unpaid Freight Direct shall be entitled to charge a one-off fee of \$50.00 for late payment along with interest at 12% per annum from the date of due of payment on any outstanding amounts.
- 5.4 Any expenses, disbursements or other costs incurred by Freight Direct in the enforcement of its rights under this contract shall be recoverable in full from the Customer.

6. RIGHTS OF FREIGHT DIRECT

- 6.1 Freight Direct shall be entitled, except insofar as has otherwise been agreed in writing, without notice to the Customer to enter into contracts for the carriage of goods by any route or means and/or for the storage, packing, transshipment, loading, unloading or handling in any way of the goods.
- 6.2 Freight Direct shall be entitled to depart from the Customer's instructions in any respect if, in the opinion of Freight Direct, there is good reason and it is in the Customer's interest to do so.
- 6.3 Freight Direct may be required to comply with the instructions or recommendations of any Authority. The responsibility of Freight Direct in respect of the goods shall cease on the delivery or disposition of the goods in conjunction with any such instruction or recommendation.

- 6.4 If at any time the performance of Freight Directs obligations, in the opinion of Freight Direct or any person whose services Freight Direct makes use of is or is likely to be effected by any hindrance, risk, delay, difficulty or disadvantage whatsoever and which cannot be avoided by reasonable endeavours by Freight Direct or such other person, Freight Direct may, on giving notice in writing to the Customer or Owner or without notice where it is not reasonably possible to give such notice, treat the performance of its obligations as terminated and place the Goods or any part of them at the Customer or Owner's disposal at any place which Freight Direct may deem safe and convenient, whereupon the responsibility of Freight Direct in respect of the Goods shall cease. The Customer shall be responsible for any additional costs of carriage to and delivery and storage at such place and all other expenses incurred by Freight Direct.
- 6.5 If delivery of the Goods or any part thereof is not taken by the Customer or Owner at the time and place when and where Freight Direct, or any person whose services Freight Direct makes use of, is entitled to call upon the Customer or Owner to take delivery thereof, Freight Direct or such other person shall be entitled to store the Goods in the open or under cover at the sole risk and expense of the Customer.
- 6.6 Notwithstanding clauses 6.4 and 6.5, Freight Direct shall be entitled but under no obligation at the expense of the Customer to sell or dispose of the Goods; (i) on giving 21 days notice in writing to the Customer if in the opinion of Freight Direct the Goods cannot be delivered as instructed, or (ii) without notice, if the Goods or any part thereof have perished, deteriorated or altered, or are in immediate prospect of doing so in a manner which has caused or may be reasonably expected to cause loss or damage to any person or property or to contravene applicable regulations.
- 6.7 Freight Direct shall have a particular and general lien on all Goods or documents relating to Goods in its possession for all sums due at any time from the Customer or Owner and on giving 28 days notice in writing to the Customer, shall be entitled to sell or dispose of such Goods or documents at the expense of the Customer and without liability to the Customer and Owner and apply the proceeds in or towards the payment of any such sums.
- 6.8 Freight Direct shall be entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by or paid to freight forwarders.
- 6.9 The Company shall have the right to enforce against the Owner and the Customer jointly and severally any liability of the Customer under these Conditions or to recover from them any sums to be paid by the Customer which upon demand have not been paid.
- 6.10 If a Container has not been packed or stuffed by Freight Direct, Freight Direct shall not be liable for loss of or damage to the contents if caused by: (i) the manner in which the Container has been packed or stuffed, (ii) the unsuitability of the contents for carriage in containers (iii) the unsuitability or defective condition of the Container provided, or (iv) the Container not being properly sealed by the Customer at the commencement of the carriage.
- 6.11 The Customer shall defend, indemnify and hold harmless Freight Direct against all liability, loss, damage, costs and expenses arising from one or more of the matters covered by 6.10 above.
- 6.12 Where Freight Direct is instructed to provide a Container, in the absence of a written request to the contrary, Freight Direct is not under any obligation to provide a Container of any particular type or quality.

7. LIABILITY

- 7.1 Except insofar as otherwise provided by these Conditions, Freight Direct shall not be liable for any loss or damage whatsoever arising from:
- The act or omission of the Customer or Owner or any person acting on their behalf
 - Compliance with the instructions given to Freight Direct by the Customer, Owner or any other person entitled to give them
 - Insufficiency of the packing or labeling of the Goods except where such service has been provided by Freight Direct
 - Handling, loading, stowage or unloading of the Goods by the Customer or Owner or any person acting on their behalf
 - Inherent vice of the Goods
 - Riots, civil commotions, strikes, lockouts, stoppage or restraint of labour from whatsoever cause
 - Fire, flood or storm
 - Breakdown or failure of refrigeration or cooling equipment or facilities, or
 - Any cause which Freight Direct could not avoid and the consequences whereof it could not prevent by the exercise of reasonable diligence
- 7.2 Subject to clause 7, howsoever caused Freight Direct shall not be liable for loss or damage to property other than the Goods

themselves, indirect or consequential losses or damage, or loss of profits.

8. COMPENSATION

- 8.1 Except insofar as otherwise provided by these Conditions, the liability of Freight Direct, howsoever arising, and notwithstanding that the cause of loss or damage be unexplained shall not exceed the following:
- In respect of claims for delay where not excluded by the provisions of these Conditions, the amount of Freight Directs charges in respect of the Goods delayed.
 - In respect of all other claims the lesser of the value of, or NZ\$2.50 per gross kilogram of, the Goods lost, damaged, misdirected, or miss delivered in respect of which a claim arises.
 - Notwithstanding clause 8.1(a) or 8.1(b), in relation to valuable goods Freight Directs liability shall in no circumstances exceed NZD100,000 each accident.
- 8.2 Compensation shall be calculated by reference to the invoice value of the Goods plus freight and insurance if paid.
- 8.3 If there be no invoice value for the Goods, the compensation shall be calculated by reference to the value of such Goods at the place and time when they were delivered to the Customer or Owner or should have been so delivered. The value of the Goods shall be fixed according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.
- 8.4 Freight Direct shall be discharged of all liability unless notice of any claim is received by Freight Direct or its agent within 14 days of the date of the event giving rise to the claim.

9. MISCELLANEOUS

- 9.1 Any notice served by post shall be deemed to have to be given on the second day following the day on which it was posted to the address of the recipient of such notice last known to Freight Direct
- 9.2 Every and any variation, cancellation or waiver of these conditions must be in writing signed by a director of Freight Direct. Notice is hereby given that no other person has or will be given authority to alter these conditions.
- 9.3 The defenses and limits of liability provided for by these Conditions shall apply in any action against Freight Direct whether such action be founded in contract or in tort.
- 9.4 If any legislation is compulsorily applicable to any business undertaken, these Conditions shall, as regards such business, be read as subject to such legislation and nothing in these Conditions shall be construed as a surrender by Freight Direct of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation and if any part of these Conditions shall be construed as a surrender by Freight Direct of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation and if any part of these Conditions be repugnant to such legislation to any extent such part shall as regards such business be over-riden to that extent and no further.
- 9.5 Headings of clauses or groups of clauses in these Conditions are for indicative purposes only.

10. JURISDICTION

- 10.1 These conditions and any claim or dispute arising out of or in connection with the services of Freight Direct shall be subject to the law of New Zealand and any such claim or dispute shall be determined by the Courts of New Zealand and no other court.

11. COMPANY AS AGENT

- 11.1 To the extent that Freight Direct acts as an agent, Freight Direct does not make or purport to make any contract with the Customer for the carriage, storage or handling of the Goods nor for any other physical service in relation to them and acts solely on behalf of the Customer in securing such services by establishing contracts with third parties so that direct contractual relationships are established between the Customer and such third parties.
- 11.2 Freight Direct shall not be liable for the acts and omissions of such third parties referred to in sub-clause 11.1 above.
- 11.3 Freight Direct when acting as an agent has the authority of the Customer to enter into contracts on the Customer's behalf and to do such acts so as to bind the Customer by such contracts and acts in all respects notwithstanding any departure from the Customer's instructions.
- 11.4 Except to the extent caused by Freight Directs negligence, the Customer shall defend, indemnify and hold harmless Freight Direct in respect of all liability, loss, damage, costs or expenses arising out of any contracts made in the procurement of the Customer's requirements in accordance with clause 11.1.
- 11.5 Where there is a choice of rates according to the extent or degree of liability assumed by persons carrying, storing, handling the Goods, no declaration of value where optional will be made unless otherwise agreed in writing.

12. COMPANY AS PRINCIPAL

- 12.1 **All services are provided by Freight Direct as agents unless Freight Direct expressly agrees to act as principal, or carriage, handling or storage services are provided by Freight Direct itself**
- 12.2 To the extent that Freight Direct contracts as principal for the performance of the Customer's instructions, Freight Direct undertakes to perform or in its own name to procure the performances of the Customer's instructions and subject to the provisions of these Conditions shall be liable for the loss of or damage to the Goods occurring from the time that the Goods are taken into its charge until the time of delivery.
- 12.3 Where Freight Direct contracts as a principal and sub-contracts the performance of Freight Directs services and it can be proved that the loss of or damage to or in respect of the Goods arose or was caused whilst the Goods were in the care or custody of the sub-contractor Freight Direct shall have the full benefit of all rights limitations and exclusions of liability available to such sub-contractor in the contract between Freight Direct and such subcontractor and in any law, statute or regulation and the liability of Freight Direct shall not exceed the amount recovered, if any, by Freight Direct from such sub-contractor.
- 12.4 Notwithstanding other provisions in these Conditions, if it can be proved where the loss of or damage to the Goods occurred, Freight Directs liability shall be determined by the provisions contained in any international convention or national law, the provisions of which:
- a) Cannot be departed from by private contract, to the detriment of the claimant, and
 - b) Would have applied if the claimant had made a separate and direct contract with the actual provider of the particular service in respect of that service or stage of carriage where the loss or damage occurred and received as evidence thereof any particular document which must be issued if such international convention or national law shall apply.
- 12.5 **Notwithstanding other provisions in these Conditions, if it can be proved that the loss of or damage to the Goods occurred at sea or inland waterway and the provisions of clause 12.3 do not apply, Freight Directs liability shall be determined by the Hague Visby Rules Reference in the Hague Visby Rules to carriage by sea shall be deemed to include reference to carriage by inland waterways and the Hague Visby Rules shall be construed accordingly.**
- 12.6 **Notwithstanding the other provisions of this section, if the loss of or damage to the Goods occurred at sea or on inland waterways, and the Owner, Charterer or operator of the vessel establishes a limited fund, the liability of Freight Direct shall be limited to the proportion of the said limited fund allocated to the Goods.**
- 12.7 **If Freight Direct acts as a principal in respect of a carriage of Goods by air, the following notice is hereby given: If the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to cargo. Agreed stopping places are those places (other than the places of departure and destination) shown under requested routing and/or those places shown in carrier's timetables as scheduled stopping places for the route. The address of the first carrier is the airport of departure.**
- 12.8 **The current Both-to Blame Collision Clause as adopted by BIMCO is incorporated in these conditions.**
- 12.9 **With respect to transportation within USA or Canada the responsibility of Freight Direct shall be to procure transportation by carrier's (one or more) and such transportation shall be subject to such carrier's contracts and tariffs and any law compulsorily applicable. Freight Direct guarantees the fulfillment of such carrier's obligations under their contracts and tariffs.**
- 12.10 **If and to the extent that the provisions of the Harter Act of the USA 1893 would otherwise be compulsorily applicable to regulate Freight Directs responsibility for the Goods during any period prior to loading on or after discharge from the vessel on which the Goods are to be or have been carried, Freight Directs responsibility shall instead be determined by the provisions of these Conditions, but if such provisions are found to be invalid such responsibility shall be determined by the provisions in the Carriage of Goods by Sea Act of the USA 1936.**

