

EXPRESS COURIERS LIMITED – Terms and conditions

1. WHERE THESE TERMS APPLY

1.1 Purchase or use of any of our services by you constitutes acceptance of these terms.

2. OUR RESPONSIBILITIES TO YOU

2.1 We will endeavour to deliver items correctly addressed to addresses within our delivery network within the delivery target for the relevant service. However, we do not guarantee Delivery of your item within these delivery targets.

2.2 Delivery shall occur when your item is:

- (a) delivered to the relevant delivery address unless we have agreed to obtain a signature at the relevant delivery address (in which case Delivery of the item will occur on collection of a signature unless we have been given authority by the recipient to leave the item at the relevant delivery address without collection of a signature); or
- (b) collected by the recipient or other authorised person from a Postshop, CourierPost branch or depot through our Card to Call Service; or
- (c) returned to you because we were not able to deliver it to the recipient for any reason.

2.3 You agree that we are entitled to rely on the instructions of the recipient in relation to the Delivery of an item, and that the recipient’s instructions will prevail over your instructions, unless we have agreed otherwise in writing with you.

3. YOUR RESPONSIBILITIES TO US

3.1 You must make sure all information given to us in connection with our services is correct and complete.

3.2 You must not give us any item for Delivery that:

- (a) is inadequately or incorrectly packaged;
- (b) contains anything that is illegal or is capable, as packed, of causing injury or damage to property;
- (c) contains cash;
- (d) is a Dangerous Good or Prohibited Item; or
- (e) is a Valuable Item or Perishable Item.

If you give us any of the items referred to above for Delivery, you agree that we are not liable to pay any compensation to you for any loss or damage to, or delay in delivery of, that item (unless we have consented to carry it in accordance with clause 3.8 below).

3.3 It is your responsibility to check whether the item you are sending complies with clauses 3.1 and 3.2. Acceptance of any item by us does not release you from this obligation.

3.4 You acknowledge that we are not in a position to ascertain the contents of any item given to us for Delivery and we will not in any circumstances be deemed to be aware of the contents.

3.5 You warrant that all personal information, including all personal information relating to your customers, that you disclose to us has been collected, stored, used and disclosed in a manner consistent with the requirements of the Privacy Act 1993 and the Information Privacy Principles contained in the Privacy Act 1993. You indemnify us for all loss or damage suffered by us as a consequence of breach of this warranty.

Our rights to compensation from you

3.6 You agree to indemnify us, our employees and agents against any cost, claim, liability, damage or loss of any kind incurred by us as a result of a failure by you to comply in any way with any of clauses 3.1, 3.2 and/or 3.3.

Dangerous Goods and Valuable, Prohibited or Perishable Items

3.7 Notwithstanding clause 3.2 above, we may, at our sole discretion, agree in writing to carry items which contain Dangerous Goods, or Valuable, Prohibited or Perishable Items.

3.8 You must disclose to us in advance that your item contains Dangerous Goods or Valuable, Prohibited or Perishable Items.

Right to inspect items

3.9 At any time we may:

- (a) open and inspect any item and refuse to accept any item for Delivery for any reason;
- (b) re-weigh, re-value or re-measure items and, where necessary, charge the higher applicable charges accordingly (including an administration fee).

3.10 Our decision as to the weight, value or measurement of an item is final.

4. PAYMENT FOR OUR SERVICES

4.1 You must pay for our services in accordance with the charges set out in:

- (a) any current Price and Services Schedule that we have provided to you in writing; or
- (b) our brochures or on our Website (as amended from time to time) as applicable, where no Price and Services Schedule has been provided, or the Price and Services Schedule provided has expired on its terms.

4.2 You must pay any goods and services tax and other similar taxes payable in relation to the purchase or use of our services.

4.3 We will send our account customers a monthly bill for our charges. You must pay the bill by the 20th of the month following the month at which our bill is dated.

4.4 No reduction shall be made by way of set-off in respect of any claims against us (or for any other reason).

4.5 We may charge you interest on any unpaid amount of any invoice at the overnight overdraft daily interest rate charged by our principal bank calculated daily and compounding monthly from the due date until the date you pay the unpaid amount.

4.6 If you dispute any invoice or any part of any invoice, you must advise us of the reasons in writing as per clause 10.2 within fourteen days of receipt of the invoice. Pending determination of the dispute, you must pay the undisputed portion of the invoice. Within seven days of the date of determination or resolution of any disputed invoice, the disputed amount of the invoice as determined must be paid.

General Lien

4.7 You agree that we may exercise a general lien against any property belonging to you in our possession for all sums outstanding for the provision of services under these terms and conditions.

4.8 If the lien is not satisfied within thirty (30) days of the due date we may, having given notice of the lien, at our option:

- (a) remove any product and store it in such a place and in such a manner as we think fit and proper and at your expense;
- (b) sell any product or part thereof at your expense and on such terms as we shall think fit, and apply the proceeds in or towards discharge of the lien and costs of sale without being liable to any person for damage caused; or
- (c) if we deem the product to be unsaleable, dispose of the product as we think fit without any liability to you.

5. OUR LIABILITY

Limitation of our liability

5.1 Subject to the specific exclusions or limitations of liability in these terms the provision of our services is “at limited carriers risk” as defined in the Act. Our liability to you is limited to a maximum of \$1,500 for the loss of or damage to an item however the loss or damage arises (including as a result of negligence).

Exclusions of our liability

5.2 We have no liability to you for loss or damage to the extent that the loss or damage:

- (a) results from any event outside our control;
- (b) occurs after Delivery;
- (c) results from any act or omission by you, including a breach of any of your obligations under these terms; or
- (d) results from any fraudulent, unauthorised or unlawful use of our Card to Call Service.

5.3 We have no liability to you for:

- (a) any indirect or consequential loss or damage or for any loss of profit (or any other form of economic loss) arising in connection with our services;
- (b) any delay in Delivery of any item, unless we have expressly agreed otherwise in writing; or
- (c) loss or damage unless you can provide proof that you gave the item to us for Delivery.

5.4 The exclusions of our liability set out above apply however the loss or damage arises (including as a result of negligence) and are subject only to the contrary terms of any statute including the Consumer Guarantees Act 1993 (where applicable).

5.5 You agree that where you are using our services and/or acquiring products from us for the purposes of your business the provisions of the Consumer Guarantees Act 1993 do not apply.

Notification of claims

5.6 For claims for partial loss or damage, we will not be liable to you unless you give us written notice of any partial loss or damage within seven days after Delivery of the item.

5.7 For claims for total loss we ask that written notice is provided within seven days after discovery of the total loss of that item.

5.8 You may not bring any action against us unless that action is brought within six months of the date on which you gave us the item for Delivery.

5.9 The provisions of sections 18, 19, 20, 23, 24 and 25 of the Act do not apply to our services.

6. EVENTS OUTSIDE OUR CONTROL

6.1 We are not required to provide our services, or carry out any of our obligations referred to in these terms, if it is not reasonably practical for us to do so because of an event outside our control.

7. CHANGES TO THESE TERMS

7.1 We may change these terms and any of the prices or other terms contained in a Price and Services Schedule by giving you 30 days’ notice.

7.2 Any changes to these terms, or the prices or terms contained in a Price and Services Schedule, must be recorded in writing.

8. ENDING OUR SERVICES

8.1 Either you or we may end an obligation we have to purchase or provide services under these terms (as the case may be) by giving 30 days’ notice in writing.

8.2 We may at any time, by giving you notice in writing, end any obligation we have to provide our services to you if you do not comply with any obligation to us under these terms.

9. PRIVACY

9.1 Pursuant to the Privacy Act 1993, you consent to us collecting, using and holding information about you for our business purposes including contacting you about products and services that may be of interest to you by email or using other contact details.

9.2 If you are an account customer you consent to our collecting, using and holding general credit information about you and to our disclosing that information to any third party in connection with credit management and control purposes. You understand that we may credit check you and you agree that we may collect information from any person who can provide us with information relevant to these purposes.

9.3 You can access and request correction of any of the personal information we hold about you by writing to our privacy officer or emailing our privacy officer privacy@ecl.co.nz

10. OTHER MATTERS

10.1 Except as otherwise agreed by us in writing, these terms (including any applicable Price and Services Schedule) and the terms of any applicable consignment note constitute the entire agreement between us and you for the provision of our services.

10.2 Any notice from you to us must be in writing, signed by you or your authorised representative, and sent to the following address (or such other address as we may advise you by notice in writing):

Express Couriers Limited
P O Box 90 949
AUCKLAND
Attention: National Sales Manager

10.3 We may transfer or subcontract to a third party any of our rights and/or responsibilities under these terms. You may not transfer or subcontract your rights or responsibilities under these terms.

10.4 These terms are governed by and are subject to New Zealand law and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

10.5 Unless required by law, you must keep all Price and Services Schedules, other pricing information and any service variations discussed and/or agreed with you strictly confidential. You must not disclose any of this information to any other party.

10.6 These terms and conditions shall prevail over any other terms and conditions.

11. INTERPRETING THESE TERMS

11.1 For the purposes of these terms (unless the context otherwise requires):

“**Act**” means the Carriage of Goods Act 1979.

“**Card to Call Service**” means the processing system used to arrange collection, redelivery or redirection of an undelivered item.

“**Dangerous Goods**” means all items listed in the IATA Dangerous Goods Regulations, any substance or article prescribed as Dangerous Goods for the purposes of the Hazardous Substances and New Organisms Act 1996 and associated regulations, any item listed as such on our Website or in our brochures as amended from time to time.

“**Delivery**” shall have the meaning given in clause 2.2.

“**event outside our control**” includes any delay in acceptance of an item by an addressee; our inability to gain access to a delivery address; seizure or destruction of an item by customs or any other regulatory or government authority; an act of God; earthquake, volcanic activity, flood, fire, storm or adverse weather condition; sabotage, riot, civil disturbance, epidemic, national emergency or act of war; governmental action; strike, lock-out, work stoppage or other industrial problem; traffic congestion; or delay in aircraft or other transport.

“**item**” means any packet, parcel, document, article or other item given to us for Delivery.

“**Perishable Item**” means any item of a perishable nature including without limitation, plants, flowers, produce, biological specimens, organisms and cultures, frozen chilled food, blood, serum and chilled medical supplies, items which need to be delivered within a limited time span or any other item we list as a perishable item on our Website or in our brochures as amended from time to time.

“**Price and Services Schedule**” means a schedule or other document, including any proposal provided to you, containing price and/or services information which is stated to be subject to these terms and which we have provided to you, as amended in accordance with these terms.

“**Prohibited Item**” means any item we advertise or list as a prohibited item on our Website or in our brochures as amended from time to time.

“**recipient**” means the person or other entity named as the recipient on the item.

“**relevant delivery address**” means, as the case may be, either the original delivery address on the item as given by you, or another delivery address as directed by the recipient using our Card to Call Service (or by a person with authority to use the Card to Call Service on behalf of the recipient);

“**Valuable Item**” means any item listed as such on our Website or in our brochures as amended from time to time, including but not limited to any item of a fragile nature (including without limitation glassware and lighting), any traveller’s cheque, stamp or voucher, any deed, negotiable instrument (including any bearer security, bill of exchange or uncrossed cheque), bond or share, any credit, debit or other bank card, any bullion, precious metal or stone, any jewellery or watch, any collectible or antique or any painting or work of art.

“**We**” means Express Couriers Limited, its related businesses and companies, successors and assigns. “**Our**” and “**us**” have a corresponding meaning.

“**Website**” means our websites www.courierpost.co.nz, www.pace.co.nz, www.contractlogistics.co.nz, www.roadstar.co.nz and www.expresscouriers.co.nz.

“**You**” means the person accessing, purchasing or using any of our services.

EFFECTIVE 1 OCTOBER 2010