

Pegasus

SHIPPING AGENCY

January 2019

1. Role of Pegasus Shipping Agency

- 1.1. The business of Pegasus Shipping Agency is to arrange the receipt, packing, storing, transport, customs clearance, delivery and other handling of goods as a forwarding and customs agent and accordingly, except to the extent that an incidental part of the services is directly performed by Pegasus Shipping Agency and except where the paragraph 2.2 applies the relationship between the Customer and Pegasus Shipping Agency shall be that of principal and agent only.
- 1.2. Pegasus Shipping Agency may refuse to provide services to any person, or for any class of goods.
- 1.3. The Customer authorises Pegasus Shipping Agency, as agent, to enter into contracts for the carriage and/or handling of the goods by any route or means with, and to entrust the goods to, any contractor or subcontractor on terms agreed between such persons and Pegasus Shipping Agency, and agrees that such terms will bind the Customer, as principal.
- 1.4. The Customer authorises Pegasus Shipping Agency to depart from any instructions given by it or on its behalf in any respect if, in Pegasus Shipping Agency's opinion, it is necessary or desirable to do so.

2. Application of Conditions

- 2.1. Subject to paragraph 2.2, these Conditions govern all dealings between Pegasus Shipping Agency and the Customer, including the provision of any advice or information and shall prevail over any terms and conditions in any document used by the Customer purporting to have contractual effect.
- 2.2. In any case where Pegasus Shipping Agency issues a Bill of Lading or other transport document in which Pegasus Shipping Agency is described as the carrier, the terms and conditions of such transport document (including all limitations and exclusions of liability) shall, to the extent of any inconsistency, prevail over these Conditions.

- 2.3. For the avoidance of doubt, if there is any matter dealt with in these Conditions that is not dealt with in any transport document issued by Pegasus Shipping Agency, or which relates to a period of time or stage of transit not covered by such transport document, these Conditions shall apply to the maximum extent permitted by the law.
- 2.4. No modification or waiver of any term of these Conditions shall bind Pegasus Shipping Agency unless in writing and signed by a Director or other representative of Pegasus Shipping Agency holding written authority signed by the Director.

3. Parties Benefitting from or Bound by Conditions

- 3.1. These Conditions shall also benefit, and be enforceable by, every contractor, subcontractor, servant and agent of Pegasus Shipping
- 3.2. The Customer warrants that it is authorised to accept and does accept these Conditions on behalf of all the other persons who have, or may acquire, any interest in the goods.

4. Application of legislation

- 4.1. Where any legislation applies to the services provided by Pegasus Shipping Agency then:
 - (a) these Conditions shall be read subject to any provision which is mandatory;
 - (b) Pegasus Shipping Agency shall be entitled to any rights, immunities from or limitations of liability under such legislation.
- 4.2. Without limiting the generality of paragraph 4.1:
 - (a) Sections 10, and 18 to 27 of the Carriage of Goods Act 1979 shall apply to the services provided by Pegasus Shipping Agency only to the extent that they extend or enlarge Pegasus Shipping Agency's rights and powers under these Conditions;
 - (b) Where the Customer carries on a "business" as defined in the Consumer Guarantees Act 1993, it agrees it is acquiring the services of Pegasus Shipping Agency for the purposes of that business and nothing in that Act shall apply.

5. Preparation and Packing of Goods

- 5.1. The Customer warrants that:
 - (a) all goods have been properly and sufficiently packed and prepared to withstand the risks of carriage and handling having regard to their nature and destination;

(b) all marks, weights, numbers, brands, contents, descriptions, values and other particulars furnished to Pegasus Shipping Agency relating to the goods are correct; and

(c) the Customer has complied with all applicable laws and government regulations of any country to, from, through or over which the goods may be carried relating to the nature, packaging, labelling or carriage of goods.

6. Prohibited goods

6.1. Without prior notification and agreement, Pegasus Shipping Agency will not accept or deal with:

(a) goods which it is unlawful to carry or handle, or which can only be carried or handled with a permit;

(b) dangerous goods or good likely to cause damage;

(c) any perishable goods or goods which require special handling or packaging;

(d) valuables of any kind;

(e) household effects.

6.2. Where Pegasus Shipping Agency agrees to accept or deal with any goods referred to in paragraph 6.1, the Customer will provide all documents and information relating to the goods (including any relevant permits) necessary to enable Pegasus Shipping Agency to:

(a) comply with the law; and

(b) arrange for the goods to be carried or handled safely and in a manner which is likely to minimise loss.

6.3. If the Customer delivers any goods referred to in paragraph 6.1 to, or causes Pegasus Shipping Agency to carry or handle the goods, or arrange for the goods to be carried or handled by any contractor or subcontractor without prior notification and agreement

(a) neither Pegasus Shipping Agency nor any such contractor or subcontractor shall be liable for any loss or damage whatsoever arising out of its dealings with the goods;

(b) the Customer shall be liable for all loss or damage whatsoever caused by, to or in connection with the goods however cause arising;

(c) the Customer shall indemnify Pegasus Shipping Agency, the contractors, subcontractors and their respective servants, and agents against all penalties, claims, damages, costs and expenses whatsoever arising as a result; and

(d) in the case of goods referred to in paragraph 6.1 a, b, and c, the goods may be destroyed or otherwise dealt with at the sole discretion of Pegasus Shipping Agency, the contractor, subcontractor or any other person in whose custody they may be at the expense of the Customer without Pegasus Shipping Agency, the contractor, subcontractor or such person being responsible or

7. Delivery

The goods shall be deemed to have been delivered when they are delivered to the address given to Pegasus Shipping Agency by the Customer or consignee for that purpose.

8. Payment of Charges and Expenses

- 8.1. The Customer agrees to pay all charges made by Pegasus Shipping Agency in accordance with the terms of any separate agreement relating to the services provided or, if there is no such agreement, Pegasus Shipping Agency's standard charges, and any other expenses (including, without limitation, taxes or duties) reasonably incurred by Pegasus Shipping Agency in connection with the goods or the services provided by Pegasus Shipping Agency.
- 8.2. Pegasus Shipping Agency shall be under no obligation to incur or pay any expenses unless the Customer has provided Pegasus Shipping Agency with sufficient funds to meet the same.
- 8.3. Pegasus Shipping Agency may fix its charges by weigh, measurements or value, and may at any time have or require the goods to be re-weighed, re-measured or re-valued and re-fix its charges accordingly.
- 8.4. All quotations given by Pegasus Shipping Agency are based on costs for freight, insurance and other charges, rates of exchange, taxes, duties and other imposts, prevailing at the date of quotation and on the latest available quotations from contractors and subcontractors used by Pegasus Shipping Agency. If such costs increase at any time as a result of variations in any of the foregoing, the charges payable by the Customer shall increase accordingly.
- 8.5. Pegasus Shipping Agency's charges and expenses shall be deemed earned as soon as any handling of the goods has occurred. Unless otherwise agreed in writing, Pegasus Shipping Agency's charges and expenses shall be paid, without any deductions or set off and if not so paid, the Customer agrees to pay interest at 1.5 percent per month on the unpaid balance until the payment is made.
- 8.6. All charges as invoiced are deemed to be due in full either;

- (a) in the case of importing goods to New Zealand, prior to release of the goods to the consignee; and
 - (b) in the case of exporting goods from New Zealand, prior to release of documents to the shipper
- 8.7. The Customer shall remain liable to Pegasus Shipping Agency for all Pegasus Shipping Agency's charges notwithstanding any direction that the whole or any part of them shall be payable by some other person.
- 8.8. If at any time any payment due by the Customer to Pegasus Shipping Agency is in arrears, Pegasus Shipping Agency reserves the right to suspend any further services to that Customer. Any incidental charges arising from this suspension, such as storage, are also for the account of the Customer.
- 8.9. Pegasus Shipping Agency reserve the right to recover all legal costs and incidental expenses as a result of expenses occurred recovering any outstanding monies owed or disputed.
- 8.10. Pegasus Shipping Agency can make credit checks on the Customer as required on the Personal Property Securities Register "PPSR" and can further:
- (a) register Pegasus Shipping Agency's General Security Agreement on the PPSR for any debt due or any future interest or advances;
 - (b) register Pegasus Shipping Agency's security on the PPSR over the inventory and proceeds of sale of the inventory within a
- 8.11. Pegasus Shipping Agency reserves the right to offset any amounts receivable from the Customer against any amounts payable to that Customer or any company affiliated with the Customer. This right exists irrespective of the date the liability has been created or debt incurred with Pegasus Shipping Agency.
- 8.12. All charges invoiced and due to Pegasus Shipping Agency in New Zealand are payable in New Zealand dollars. The company is entitled to charge a currency conversion premium when converting charges levied in foreign currencies into New Zealand dollars.
- 8.13. The Customer is responsible for compliance with statutory requirements administered by but not limited to: New Zealand Customs Service, Ministry of Agriculture and Forestry and Land Transport Safety Authority. Any costs incurred as levies, charges, billable items, excise, GST, fines or ancillary charges however incurred are to be paid by the consignee. These may also include (but are not limited to) storage, demurrage, detention, fumigation, destruction additional handling and administration costs. Where Pegasus Shipping Agency is facilitating any of these movements and or acting on behalf of the Customer then a margin is added for the managing, funding and administering of such services.

9. Container Detention and/or Demurrage, Cargo Storage, Wharf Demurrage, Vehicle Waiting time, Power and Monitoring Charges.

- 9.1. The Customer acknowledges that all freight rates quoted include a limited amount of storage time in depots, ports and/or container hire in the case of full container shipments via sea transport. This applies in the case of the place of loading as well as the place of unloading.
- 9.2. Outside this time allowed in the freight charges, additional charges will apply. These charges vary according to the individual tariffs applicable but can be obtained upon request from Pegasus Shipping Agency
- 9.3. Cartage charges do not include waiting time for vehicles delayed for whatever reason by the Customer. Pegasus Shipping Agency reserves the right to recover from the Customer any costs associated with waiting time for vehicles arranged to carry the Customers
- 9.4. Freight charges for temperature controlled containers include a limited amount of cost to cover Power and Monitoring at the port of loading and the port of discharge. Outside of this additional costs will apply. These can be quoted by Pegasus Shipping Agency upon
- 9.5. Pegasus Shipping Agency will advise Customers prior to shipment in the case of exports and prior to arrival in the case of imports of the allowable time included in the freight charges.
- 9.6. The customer agrees that all charges, costs and expenses arising under clauses 9.1, 9.2, 9.3, 9.4 and / or 9.5, howsoever incurred, shall be payable in full by the Customer on demand, without any deductions or set off and if not so paid, the Customer agrees to pay any interest that may be charged on the unpaid balance until the payment is made.

10. Brokerage and other Remuneration

The Customer acknowledges that Pegasus Shipping Agency may have a pecuniary interest in any contract entered into by Pegasus Shipping Agency as its agent in terms of these Conditions and agrees that Pegasus Shipping Agency may receive and retain all brokerage, commission, discounts, allowances and other remuneration paid by the other party to the contract and customarily received or retained by Shipping and forwarding agents and Insurance Brokers, in addition to the charges and expenses referred to in paragraph 8, and need not disclose to the Customer the nature or amount thereof.

11. Insurance

- 11.1. Freight charges payable to Pegasus Shipping Agency by the Customer do not include insurance cover for the cargo carried.
- 11.2. Insurance of the goods is the responsibility of the Customer.
- 11.3. In the first instance any suspicion of loss or damage should be reported to the Customers Insurer.

11.4. Pegasus Shipping Agency will arrange insurance on the goods as the agent of the Customer only if there is an express written agreement to do so between Pegasus Shipping Agency. Any such insurance:

(a) may in the discretion of Pegasus Shipping Agency, be on a separate, or an open or general policy;

(b) shall be at the expense of the Customer; and

(c) will be subject to the usual exceptions and conditions of the policies of the insurer accepting the risk.

If the insurer disputes liability for any reason, the Customer shall have recourse against the insurer only and Pegasus Shipping Agency shall not be under any responsibility or liability, notwithstanding that the premium on any policy may not be the same as that charged to or paid by the Customer.

12. Lien

12.1. Immediately they come into the possession of Pegasus Shipping Agency or any contractor or subcontractor, all goods and documents relating to goods shall be subject to a particular and general lien security payment of all moneys due to Pegasus Shipping Agency by the Customer or the consignee, consignor or owner, whether in respect of such goods or otherwise, and whether or not such moneys are overdue for payment.

12.2. If any moneys due to Pegasus Shipping Agency are not paid within fourteen (14) days after notice to the debtor that the lien is being exercised, the goods may be sold by auction or otherwise at the debtor's expense, and the net proceeds applied in reduction of the indebtedness. No such sale shall prejudice or affect Pegasus Shipping Agency's rights to recover and balance owing to Pegasus Shipping Agency for its services or the cost of the detention and sale.

13. Limitation of Liability

13.1. All handling which is subject to the Carriage of Goods Act 1979 shall be performed at limited carrier's risk

13.2. Subject to paragraph 13.1 and to any other mandatory provision of law to the contrary, Pegasus Shipping Agency shall not be under any liability, liable, however caused or arising, and (without limiting the generality of the foregoing) whether arising or resulting from through negligence, breach of contract on the part of Pegasus Shipping Agency or otherwise for:

(a) any damage to or loss, deterioration, contamination, mis-delivery, delay in delivery or non-delivery of the goods;

(b) any loss of or damage to perishable goods due to any failure or breakdown of machinery or plant, shortage of power or labour, or pilferage, theft or burglary (or any attempt at the same) whether by any servant or agent of Pegasus Shipping Agency or any other

(c) in connection with any instruction, advice, information or service given or provided to any person whether in respect of the goods or any other matter or thing;

(d) any direct, indirect or consequential loss or damage caused by or arising from delay, loss of market or loss of or damage to the goods, or otherwise howsoever and whether or not Pegasus Shipping Agency had actual or constructive notice that such loss or damage could arise.

- 13.3. The Customer shall indemnify Pegasus Shipping Agency against any claims (whether resulting from the negligence of Pegasus Shipping Agency or otherwise) brought by any person in connection with any matter or thing done, said or omitted by Pegasus Shipping Agency in connection with its dealings with the Customer or the goods.
- 13.4. All of the rights, immunities and limitations of liability in these Conditions shall continue to have full force and effect in all circumstances and notwithstanding any breach of contract by, or any negligence on the part of, Pegasus Shipping Agency.
- 13.5. Subject to paragraph 13.1, 13.2, 13.3, 13.4, in any case Pegasus Shipping Agency's liability has not been effectively excluded by these Conditions, such liability shall to the maximum extent permitted by law be limited to the lesser of:
- (a) \$100; or
 - (b) The cost of resupplying the handling of the goods; or
 - (c) The replacement value of the good
- 13.6. Where paragraph 13.5 applies, the maximum aggregate liability of Pegasus Shipping Agency for all claims arising out of any one incident or occurrence shall be limited:
- (a) In any case where liability arises as a result of mis-delivery, delay in delivery or non-delivery of any good, to \$10,000; and
 - (b) In any other case to \$100,000.
- 13.7. Where as a result of the application of paragraph 12.6 not all claims can be paid in full, all claims properly payable shall abate pro rata.

14. Actions against Pegasus Shipping Agency

- 14.1. Pegasus Shipping Agency shall be under no liability whatsoever unless:

(a) written notice of any claim, giving full particulars of any alleged loss or damage, is received by Pegasus Shipping Agency within fourteen (14) days after delivery of the goods or the date when they should have been delivered;

(b) any action shall have been commenced by the Customer in a Court of competent jurisdiction within six (6) months from the date of dispatch of the goods.

15. Governing Law

These Conditions, and any act or contract to which they apply, shall be governed by and interpreted in accordance with New Zealand law. All actions against Pegasus Shipping Agency shall be brought in a Court of New Zealand.

16. Application

16.1. These Standard Trading Conditions are deemed invoked and accepted by both parties on the basis of the first financial transaction taking place and will remain in effect thereafter.

16.2. If any provision of these Standard Trading Conditions is unenforceable, such unenforceability shall not affect any other part of such provision or any other provision thereof. However, for the avoidance of doubt, sections 6-10 Contractual Remedies Act 1979 are hereby excluded and shall have no operation or effect in relation to this contract.

17. Interpretation In these Conditions:

(a) "container" includes any container, trailer, transportable tank, flat or pallet, or any similar article of transport used to consolidate goods;

(b) "contractor" includes any person carrying or handling the goods for the Customer under a contract arranged by, or with the authority of, Pegasus Shipping Agency as agent for the Customer;

(c) "the Customer" includes any person referred to in paragraph 1.3 and any "contracting party" in terms of the Carriage of Goods Act 1979;

(d) "dangerous goods" includes noxious goods, explosives, poisons, corrosive, inflammable or radioactive substances, compressed gases, goods harbouring or likely to harbour or encourage vermin, borer or other pests, and any other goods, or substances which, in the opinion of Pegasus Shipping Agency, are likely to cause damage or injury to other goods, property or persons;

(e) "Pegasus Shipping Agency" means Pegasus Shipping Agency Shipping Ltd, its employees, officers, agents, and subsidiary and

(f) “goods” means the goods or other cargo which are the subject of instructions issued to Pegasus Shipping Agency by the Customer and includes any container not supplied by or on behalf of Pegasus Shipping Agency;

(g) “handling” includes any packing, storage, trans-shipment, unloading, loading, customs clearance, delivery and other services relating to the goods;

(h) “subcontractor” means any person carrying or handling the goods for the Customer under a contract in terms of which Pegasus Shipping Agency is, or is deemed to be, a principal;

(i) “valuables” includes bullion, coins, negotiable instruments, securities of any kind, precious stones, jewellery, antiques and works of art, and

(j) Terms which are defined in the Carriage of Goods Act 1979 have the same meaning.

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