KIWIRAIL RAIL FREIGHT AND INTERISLANDER COMMERCIAL VEHICLE FREIGHT
GENERAL CONDITIONS OF CARRIAGE
(SECTION 4 OF FREIGHT HANDLING CODE)

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these Conditions the following terms have the meanings specified unless the context otherwise requires.

"**Act**" – means Part 5, subpart 1 of the Contract and Commercial Law Act 2017.

"**Actual Carrier**" – has the meaning given to it under the Act.

"**Ancillary Surcharges**" – means Our ancillary surcharges that apply in respect to Our Freight Services, applicable at the time We accept the Freight for carriage. We may amend the Ancillary Surcharges from time to time and will publish Our current Ancillary Surcharges at www.kiwirailfreight.co.nz. Any amendments take effect immediately once they are published on the website and You agree to be bound by the same.

"**Animal**" – includes Livestock.

"Block of Line" – means any section of Our rail network that is non-operational for a period of time to allow for either repair and/or remedial work, be it planned or unplanned, and which makes that section of the rail network unable to be used and which may disrupt the normal running of Rail Freight Services.

"Bookings" – means a booking on a Freight Service (placed in the manner advised by Us and in accordance with Our booking procedures) by You.

"**Business Day**" – means any day between 0800 hours and 1700 hours which is not a Saturday, Sunday or public holiday under the Holidays Act 2003.

"**Commercial Vehicle**" – means a vehicle weighing 3.5 tonnes gross mass or more, designed for the primary purpose of carriage of goods (including general freight and Animals) by road, but does not include:

(a) A caravan, motor home or other similar type of vehicle; or

(b) any vehicle which is being used for private rather than commercial purposes.

"**Commercial Vehicle Freight**" – means a Commercial Vehicle (together with its contents) carried across the Cook Strait by Ship.

"**Commercial Vehicle Services**" – means the services provided by Interislander for the carriage of Commercial Vehicle Freight.

"**Conditions**" – means these General Conditions of Carriage, as amended from time to time by KiwiRail.

"**Consignment Note**" – means the KiwiRail document (whether in paper or electronic form) titled "Consignment Note" containing details of the Freight.

"**Contract**" – has the meaning given to it in clause 2.2 of these Conditions.

"**Dangerous Goods**" – means any substances that have explosive, flammable, toxic, infectious, corrosive, radioactive or environmentally hazardous properties, and containers that have held dangerous goods.

"**Dangerous Goods Rule**" – means the Land Transport Rule: Dangerous Goods 2005.

"**Delivery Date**" – means the date on which the Freight is delivered to the delivery address specified in the Freight Confirmation or is otherwise available for collection by You.

"FAF" – means fuel adjustment factor which is a fuel levy payable in addition to the Freight Rates and Ancillary Surcharges (where applicable) as calculated and applied by Us. The FAF will be reviewed and adjusted by Us from time to time to reflect changes in Our fuel prices and advised to You by written notice or email notification. We may, at any time, review and change the methodology used by Us to measure, calculate and report the FAF. Any change to the methodology will be advised to You by written notice or email notification.

"Force Majeure Event" – means anything or any event outside the reasonable control of a party, including but not limited to earthquakes, landslides, floods, storm, volcanic activity or other natural disasters, adverse weather or sea conditions, lock-out, strikes or industrial disturbances, fire, riot, terrorism, war, epidemic, pandemic, national emergency, restrictions, directions or embargo by government, mechanical breakdown, rail network outage or any other event or circumstance of a similar nature.

"**Freight**" – means in each relevant case "goods" as defined in the Act that We agree to carry for You as Rail Freight or Commercial Vehicle Freight.

"**Freight Confirmation**" – means any KiwiRail confirmation issued by Us to You (whether in hard copy or in electronic form) recording Our agreement to carry the Freight described in the confirmation.

"**Freight Handling Code**" – means the Freight Handling Code referred to in clause 2.4 which applies in respect of the carriage of all Rail Freight.

"**Freight Payer Code**" – means a KiwiRail invoice account code which allows payment on credit payment terms by way of account rather than by cash.

"**Freight Rates**" – means the rates and charges, including FAF, payable by you to us for the carriage of Freight being:

(a) the rates and charges, including FAF, agreed to by Us in writing in the Contract; or

(b) if there are no such agreed rates and charges, Our rates and charges, including FAF, applicable at the time We accept the Freight for carriage.

"**Freight Services**" – means the services provided by KiwiRail for the carriage of Rail Freight and/or Commercial Vehicle Freight.

"**Interislander**" – means the KiwiRail business unit which trades as the Interislander (or any successor trading name), that operates Ship services across the Cook Strait.

"**Interislander Procedures**" – means the Interislander procedures applicable to Commercial Vehicle Services published at http://www.kiwirailfreight.co.nz/interislander-cv (or successor website) at the time Your Freight is accepted by Us in accordance with clause 4. We may amend the Interislander Procedures from time to time and will publish any amendments on the website. Amendments take effect immediately on publication on the website and You agree to be bound by the same.

"**KiwiRail**" – means KiwiRail Holdings Limited.

"**Livestock**" – means horses, sheep, pigs, cattle, deer, goats and all other animals that are typically raised or farmed for profit.

"**Manifest**" – means any information You provide to Us (whether paper or electronic) containing the specific details of the Freight for which You wish Us to provide Freight Services.

"**Material Adverse Change**" – means any fact, matter, event or circumstance that individually, or when aggregated with other relevant facts, matters, events or circumstances will, or is reasonably likely to, have a material adverse effect on the cost of provision, or commercial viability, of either or both of the Rail Freight Services and the Commercial Vehicle Services.

"**Maritime Rule**" – means Maritime Rule Part 24A: Carriage of Cargoes – Dangerous Goods.

"**Rail Freight**" – means Freight carried by rail.

"**Rail Freight Services**" – means the services provided by KiwiRail for the carriage of Rail Freight.

"**Ship**" – means any Interislander ferry.

"**Temperature Controlled Freight**" – means Freight which is required to be kept at a constant temperature or within a range of temperatures to prolong its useful life.

"**Transport Unit**" – means any tank, container, rail wagon, truck, trailer, van or other vehicle.

"**We**", "**Our**" and "**Us**" – refers to KiwiRail, Interislander, our actual agents and where applicable, any Actual Carrier.

"**You**" and "**Your**" – means the person contracting with Us as detailed in the Contract.

1.2 Interpretation

(a) Headings contained in these Conditions are included for reference only.

(b) Words in the singular include the plural and vice versa.

(c) "Includes", "Including" and similar words do not imply any limitation.

(d) References to clauses are to clauses in these Conditions.

(e) A reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether before or after the date of these Conditions).

(f) Reference to a "person" includes an individual, firm, company, corporation or unincorporated body of persons, or any authority, in each case whether or not having a separate legal personality, and a reference to "company" includes a person.

(g) A reference to dollars or $ is to an amount in New Zealand currency.

1.3 Governing law

These Conditions and the Contract are governed by New Zealand law and the parties to the Contract agree to submit to the non-exclusive jurisdiction of the courts of New Zealand.

The Act applies to most of Our services. Some provisions of the Act are mandatory, but others are not. Where they are mandatory, these Conditions reflect what they say and are intended to have the same effect even if different words are used. Where the Act's provisions are not mandatory and these Conditions say something different to what is in the Act, We have intentionally modified the provisions of the Act and these Conditions should be read accordingly.

We may not have included information about every mandatory aspect of the Act but those will still apply even if We have not done so.

2. APPLICATION

2.1 Governing Terms

These Conditions apply to all Freight Services. Your purchase or use of any Freight Services constitutes acceptance of these Conditions.

2.2 Priority of terms and conditions:

In the case of conflict, the terms and conditions applicable to the Freight Services have the following order of priority (unless otherwise expressly stated in any written agreement):

(a) any written agreement signed by both parties;

(b) the Freight Rates and Ancillary Surcharges;

(c) these Conditions;

(d) the Freight Confirmation (if any);

(e) the Consignment Note;

(f) the Special Freight terms (if applicable);

(g) in respect of Rail Freight, the Freight Handling Code (except section 4 of that Code), in respect of Commercial Vehicle Services, the Interislander Procedures and generally in respect to the Freight Services, any other written codes, procedures and guidelines issued by Us concerning the carriage of Freight or the operation of the Freight Services.

together, the "**Contract**".

The Contract governs Our provision and Your receipt of the Freight Services.

2.3 Entire Agreement

To the extent allowed by law, the Contract constitutes the entire agreement between Us and You for the Freight Services for the relevant Freight and excludes any other terms, agreement and arrangement, including those in any proposal or other

document provided by or to You or by or to any third party. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by the Contract. Any terms as to quality or performance implied by statute or common law are waived. You agree that You have not relied on any representation (other than as set out in the Contract) when entering into the Contract.

2.4 Freight Handling Code and amendments to these Conditions

These Conditions form part of the Freight Handling Code, being a code for standards and best practice for rail transportation of freight, issued by Us. The Conditions and the Freight Handling Code applicable the Freight Services are published on http://www.kiwirailfreight.co.nz/ (or successor website) and the versions at that address at the time Your Freight is accepted by Us in accordance with clause 4 will govern the Freight Services. We may amend these Conditions and the Freight Handling Code from time to time and will publish any amendments on our website on http://www.kiwirailfreight.co.nz/ (or any successor website). These amendments take effect immediately once they are published on the website and you agree to be bound by any amendments.

3. RATES AND CHARGES

3.1 Payment of Freight Rates

You will be responsible for paying the Freight Rates, all Ancillary Surcharges, any other rates and surcharges notified to You in respect of the Freight Services, any applicable fuel adjustment factor and any tax (including goods and services tax), excise, duty, charge, levy or similar charge (including any fine or penalty) imposed by government, or by any regional, local or other authority, in respect of, or incidental to, the Freight Services.

You must also pay:

(a) Our cost to comply with any laws or requirements of any market, port, railway, shipping, excise, customs or authority not included in Our charges;

(b) the cost of labour or machinery or both to load, unload, maintain or protect the Freight;

(c) any costs, expenses or losses incurred by Us pursuant to any clause in these Conditions;

(d) any other charges specified in these Conditions.

3.2 Change of Freight Rates and Ancillary Surcharges

(a) Unless We have given You a written quote in accordance with clause 3.9 and the 30 days have not expired, we may at our discretion at any time:

(i) vary the existing Freight Rates or Ancillary Surcharges; or

(ii) fix or impose any new or special Freight Rates or Ancillary Surcharges.

(b) Furthermore, in the event of a Material Adverse Change, we may at our discretion increase the Freight Rates or Ancillary Surcharges payable by You, to account for the cost impact of the Material Adverse Change.

We will notify You as soon as possible after We decide to fix, impose or vary the Freight Rates or Ancillary Surcharges. Any variation or additional Freight Rates or Ancillary Surcharges will only apply to the carriage of Freight which occurs after the date such variation or addition is posted on Our website or notified to You.

3.3 Taxes and Government Changes

If, at any time, there is any new or increased tax, duty, charge or levy imposed by Government or by any regional, local or other authority or there are any changes to any applicable law or any procedure or practice of any applicable regional, local or other authority that alters or varies the method or cost of providing the Freight Services, we will be are entitled to increase the Freight Rates and Ancillary Surcharges so as to account for the cost impact of such change and any reasonable additional costs that we incur as a result of it. We will notify You as soon as possible after We decide to vary the Freight Rates or Ancillary Surcharges. Any variation or additional Freight Rates or Ancillary Surcharges will only apply to the carriage of Freight which occurs after the date such variation or addition is posted on Our website or notified to You.

3.4 Payment

Payment for Freight Services must be made either before carriage or on credit payment terms by way of an authorised Freight Payer Code. If paying by way of a Freight Payer Code, payment is due to Us on or before the 20th day of the month following the date of invoice.

You must examine each account invoice and notify Us within fourteen (14) days of the date of such invoice of any alleged error(s). After such period, the invoice will be deemed for all purposes to be correct and no claim to the contrary may be brought by You against Us.

If You do not pay Our invoice in full by the due date, We may:

(a) elect not to continue to provide Freight Services to You;

(b) withdraw or change any credit payment terms in place with you;

(c) suspend the provision of any Freight Services until payment is made;

(d) instigate legal proceedings without further notice.

Any costs (including solicitor/client costs), fees or disbursements that We incur in the recovery of any unpaid outstanding amounts, together with any interest, will be added to the amount due from You.

3.5 Interest on overdue amounts

If you fail to pay an amount owing to Us by the due date we may charge you interest, on a daily basis, at the rate of 6% per annum above the business overdraft base rate of the Bank of New Zealand (or another major bank in New Zealand selected by Us). Interest may be charged on the amount owing (including interest payable under this clause) from the due date until the date it is paid in full.

All payments received by KiwiRail will first be applied in reduction of any interest charge and any costs incurred under clause 3.5. The remaining balance of such payments will then be applied in reduction of any other amounts due and outstanding.

3.6 Weighing and Measuring of Freight

We may at any time re-weigh, re-value or re-measure your Freight and charge the applicable Freight Rates and Ancillary Surcharges for the proportional additional freight (plus an administration fee). We do not accept responsibility for, or guarantee, Our weighing or measurement.

3.7 Pallets, Packaging etc

All packaging, pallets and other such items in which Freight is packed or stored are deemed to form part of the Freight for the purposes of assessing the weight and measurement of the Freight and calculating the Freight Rates payable for such Freight.

3.8 Set-off

You may not under any circumstances set off any moneys owed by You to Us against any claims for loss of or damage to any Freight or any other claims under the Contract.

3.9 Quotes

Any written quote which We give in respect of the carriage of Freight will remain open for a period of thirty (30) days, unless otherwise specified in the quote. We will not be bound by any quote unless it is in writing.

4. BOOKINGS, ACCEPTANCE, INSPECTION AND DELIVERY OF FREIGHT

4.1 Bookings

All Bookings for Freight Services must be made in accordance with the applicable Rail Freight Services or Commercial Vehicle Services booking procedures as advised by KiwiRail from time to time.

4.2 Rail Freight acceptance

Subject to clause 4.4, Rail Freight is accepted for carriage at the later of:

(a) the time We take possession of that Freight; or

(b) the time We receive from You the required and correctly completed Manifest for the Rail Freight and all applicable Dangerous Goods documentation.

We rely on the details supplied to Us, but we do not admit their accuracy or completeness. You must provide Us with all details relating to the Rail Freight as we may require.

4.3 Commercial Vehicle Freight acceptance

Subject to clause 4.4, Commercial Vehicle Freight is accepted for carriage at the later of:

(a) the time at which the Commercial Vehicle Freight has been stowed on board the Ship; or

(b) the time we receive from You the required and correctly completed Manifest for the Commercial Vehicle Freight and all applicable Dangerous Goods documentation; or

(c) any other time agreed in writing between the parties.

We rely on the details supplied to Us, but we do not admit their accuracy or completeness. You must provide us with all details relating to the Commercial Vehicle Freight as we may require.

4.4 Manifests

You are responsible for creating and providing to Us a Manifest for all Freight you are seeking to have Us provide Freight Services. The information provided on the Manifest and the provision of the Manifest must comply with Our requirements and manifest cut-off times.

4.5 Right to decline to accept

We may refuse to provide Freight Services to any person at any time and We reserve the right to refuse to accept any Freight for any reason without explanation, or to only accept Freight under special arrangements or conditions.

4.6 Right to inspect Freight

We may, at Your risk and expense, make enquiries about and inspect any Freight before or after accepting it for carriage. You must provide us with all reasonable information and assistance required to satisfy Our enquiries and for Our inspection. We do not incur any liability to You or to anyone else in respect of the Freight, and the warranty or warranties which You give to Us in respect of the Freight shall not be limited or otherwise affected, by reason of Us either having inspected or having failed to inspect the Freight.

4.7 Provision of Freight Services:

We will provide our Freight Services with the reasonable care, skill and diligence which would reasonably and ordinarily be expected from a skilled and experienced operator in the same type of undertaking under the same or similar circumstances. We can:

(a) deviate from any usual route or method of transport in providing Freight Services;

(b) subcontract the whole or any part of Freight Services;

(c) do anything that We consider to be appropriate including selling, disposing of or destroying Freight if the Freight appears to be deteriorating or is becoming or likely to become offensive or harmful; or if it includes Dangerous Goods which may harm persons or property; and

(d) complete any documents required to comply with any laws.

4.8 Ancillary Surcharges

The Freight Services are provided subject to the Ancillary Surcharges and You agree to comply with the terms of the Ancillary Surcharges.

5. OUR LIABILITY

5.1 Liability to You

Subject to the limitations and other provisions of the Contract, Our liability to You:

(a) for carriage of Your Freight starts at the time We accept the Freight for carriage and ceases at the earlier of:

(i) the time we deliver the Freight to you or any consignee specified in a Consignment Note);

(ii) the time You collect the Freight; or

(iii) the date that is five (5) days after We notify You that the Freight is ready for collection.

(b) subject to subclause (a), for the Freight Services is:

(i) at "Limited Carrier's Risk" as defined and limited in the Act; or

(ii) if we have otherwise agreed in the Contract that the carriage of Freight is to be on “Owner’s Risk” terms, then at "Owner’s Risk" as defined in the Act. We will pay no compensation if the Freight is lost or damaged, unless We intentionally lose or damage the Freight.

5.2 Limitation of liability

Without limiting clause 5.1, We are not liable to You (whether in contract, tort (including negligence), or otherwise) for:

(a) any amount exceeding the lesser of:

(i) the cost price of Your lost or damaged goods; and

(ii) the sum provided in section 259(2) of the Act per “unit of goods” that are lost or damaged. The applicable “unit of goods” will be determined in accordance with the Act; and

(b) any loss or damage to the extent arising directly or indirectly:

(i) from Your act or omission (regardless of whether You are negligent or at fault or not);

(ii) from, or is contributed to by, incorrect information provided by You or on Your behalf;

(iii) insufficient and/or unsuitable packing or preparation of the Freight, ordinary wear and tear, inherent vice or because You or Your agent overloaded or incorrectly loaded any Transport Unit; or

(iv) from any failure by You to comply with the Contract.

5.3 No consequential or indirect loss

We are not liable (whether in contract, tort (including negligence), or otherwise) for any loss of profits or savings, loss of business or production, loss of income or revenue, loss of anticipated profits or savings or any indirect, special or consequential or exemplary damages or losses of any kind, including any loss or damage of the kinds referred to in sections 259(2)(b) and (c) of the Act, regardless of whether such loss or damage was reasonably foreseeable or either party was actually told of the possibility of such loss or damage.

5.4 Compliance with laws

We are not liable for any loss or damage arising from what we reasonably believe to be Our compliance with any laws or government regulations, orders or requirements, or from Your failure to comply with any laws or regulations, orders or requirements.

5.5 Liability in respect of other services

Where We provide any service to You, other than the carriage of Freight, including without limitation the provision of any plant, containers or equipment, or the provision of storage facilities or storage services, Our liability to You (whether in contract, tort (including negligence), or otherwise) for any loss or damage suffered or incurred by You in connection with that service is limited to the amount charged by Us for that service and is further limited by clauses 5.2, 5.3, 5.4, 5.6, 5.7 and 5.8.

5.6 Notice of claim

To the maximum extent to which We are able to contract out of the Act, the following provisions apply.

(a) Notice of any claim against Us (whether for loss of or failure to deliver all or part of the Freight, damage to all or part of the Freight, or otherwise) must be received by Us within thirty (30) days after the date of incident or the applicable Delivery Date, whichever is the earlier date.

(b) Notices pursuant to subclause (a) above must be given in writing and be accompanied with such other information as We may reasonably require. Notices not complying with this subclause will be deemed not to have been given.

(c) No action or claim may be brought against Us (whether for loss of or failure to deliver all or part of the Freight, damage to all or part of the Freight, or otherwise) until notice required under subclause (a) has been provided and unless such claim or action is brought within six (6) months of the date on which We accept the Freight for carriage pursuant to clause 4.2 or clause 4.3.

(d) The provisions of sections 274 to 281 of the Act shall not apply.

(e) We will not consent to any applications to the court for an extension of the time limits under clause (a), and (c); and We contract out of the provisions of the Act that in some circumstances allow such extensions to be given.

5.7 Liability to third parties

We are not liable in contract, tort (including negligence), or otherwise for any direct or indirect losses, penalties, damages, costs or expenses of any kind (including loss of revenue, income or profits, or consequential loss) brought, claimed, suffered or incurred by any third party in connection with Our act or omission in relation to the Contract or the services We provide in connection with the Contract, whether caused intentionally or arising as a result of Our negligence or otherwise, and whether or not We are aware or ought to be aware that such losses, penalties, damages, costs or expenses may occur.

5.8 Freight Handling Code

In respect of Rail Freight, you must comply with the Freight Handling Code at all times. Notwithstanding anything else contained in the Contract, we will not be liable for any damage to Your Rail Freight where such loss or damage arises as a result of Your failure to comply with the Freight Handling Code.

5.9 Employees, contractors, representatives and agents

The exclusions and limitations of liability set out in this clause 5 and the indemnity set out in clause 6.3 below also apply to, and are for the benefit of, Our employees, contractors, representatives and agents together with any Actual Carrier and their employees, contractors, representatives and agents. The aggregate amount recoverable from Us and any of the people referred to in this clause, will not exceed the maximum amount of Our liability.

5.10 Duty to Mitigate

Both parties shall use all reasonable endeavours to mitigate and minimise any losses, damages, fines, liabilities, expenses and penalties suffered or incurred under or in connection with the Contract.

5.11 Calculation of the Freight Rates

The parties agree that the Freight Rates have been calculated on the basis that the limitations on liability contained in this clause 5 are reasonable and are enforceable in accordance with their terms.

6. YOUR OBLIGATIONS TO US

6.1 Warranties

You warrant that the Freight:

(a) complies with all laws and regulations (including the Dangerous Goods Rule and the Maritime Rule) relating to the nature, packaging, labelling, storage and carriage of that Freight;

(b) complies with all applicable requirements of the Freight Handling Code and the Interislander Procedures and any other procedures we may advise; and

(c) is properly and securely packed in such a manner as to ensure that it is secure and safe for transport and is able to withstand the ordinary risks of storage and carriage by any Transport Unit or Ship as the context may require, having regard to its nature.

You further promise to Us:

(d) You are either the owner or the authorised agent of the owner of the Freight and have authority to enter into the Contract and to send the Freight under the Contract;

(e) You or Your agent have fully and accurately described the Freight and its value and will provide Us with all documentation (fully and correctly completed) regarding the Freight that We reasonably require for the Freight Services;

(f) You will comply with all laws relating to the Freight and the Freight Services, including but not limited to the Act, the Land Transport Act 1998 and the Health and Safety at Work Act 2015;

(g) the Freight can be safely handled and transported and has been packed to withstand the ordinary risks of the Freight Services;

(h) You will comply with all Our applicable procedures and ensure that the Freight complies with all Our applicable procedures; and

(i) You will when on our sites comply with Our site, security and health and safety procedures and all safety directions of Our staff.

6.2 Use and Return of KiwiRail equipment

If You use any of Our plant, containers, wagons, equipment or property, such use is subject to Our standard terms of use and applicable Ancillary Surcharges and You must return it to Us by our required return date or earlier at Our request, and it must be returned in the same condition as when You received it.

You agree that if any of Our plant, containers, wagons, equipment or property are not being returned to Us in the same condition as when You received it, or You are aware of an accident or incident involving such items which may have caused damage, You will notify Us of any damage, incident or accident known to You and indemnify Us in respect of such damage in accordance with clauses 6.3 and 6.4 of these Conditions. Your failure to so notify Us does not prevent Us from exercising Our rights under clauses 6.3 and 6.4.

Further, You acknowledge and agree that if We give you possession of Our plant, containers, wagons or equipment ("**personal property**") at any time during Our provision of the Freight Services:

(a) the personal property is and remains at all times Our property and at all times You hold the personal property as bailee for Us; and

(b) You must not offer to sell, assign, sub-let, mortgage, pledge or otherwise part with possession or deal with the personal property in any way which is inconsistent with Our rights over the personal property; and

(c) We are permitted at any time to retake possession of the personal property from any place where it may be located, and may make entry onto or into private property for that purpose, including making forcible entry into buildings or other confined spaces.

6.3 Damage to equipment

You are liable to Us for, and agree to indemnify Us in respect of, all loss or damage to any plant, containers, wagons, equipment, railway tracks, rail infrastructure or any other property (whether in Your possession or otherwise) belonging to Us or Our employees, contractors, representatives or agents or any Actual Carrier or their employees, contractors, representatives or agents, and all indirect and/or consequential loss arising from such loss or damage, where such loss or damage arises directly or indirectly from or is a consequence of an act or omission by You or any of Your employees, contractors, representatives or agents (including port company personnel) (regardless of whether You or they are negligent or at fault or not) or any failure by You to comply with the Contract.

6.4 Indemnity

You will indemnify Us against all costs (including costs of and incidental to Us enforcing our legal rights against You on a solicitor and client basis and reasonable market rates for Our internal labour costs), claims, liabilities and expenses suffered or incurred by us which arise directly, indirectly from or as a consequence of an act or omission or, negligence on the part of You or any of Your employees, contractors, representatives of agents and/or any failure by You to comply with the Contract.

For the avoidance of any doubt, this indemnity extends to all losses incurred by Us where such an act, omission or negligence is the proximate cause of a train derailment or of train services having to be cancelled or postponed.

7. SPECIAL FREIGHT

7.1 Applicability

The terms and conditions contained in this clause 7 apply in addition to and, to the extent inconsistent with, prevail over the Freight Handling Code for Rail Freight. For the avoidance of doubt, this clause 7 also applies to Commercial Vehicle Freight.

7.2 Dangerous Goods

Dangerous Goods are carried subject to the following:

(a) You must supply Us with any declaration or other documentation required by Us or by law before We take possession of the Dangerous Goods; and

(b) You must ensure Dangerous Goods are packed, labelled, delivered to Us, loaded, segregated, unloaded and collected in accordance with:

(i) all laws and regulations applicable to Dangerous Goods;

(ii) any applicable industry guidelines or codes of practice; and

(iii) any KiwiRail procedures, including those detailed in the Freight Handling Code and the Interislander Procedures.

(c) We may, at Your risk and expense, dispose of any Dangerous Goods not collected within the foregoing timeframes.

7.3 Temperature Controlled Freight

Where we agree to carry Temperature Controlled Freight, that Freight is carried on the basis that We will not be liable for any loss or damage sustained or incurred as a result of Temperature Controlled Freight being carried at any incorrect temperature if You fail to advise Us in writing of the temperature at which such Freight should be carried, prior to the time that Freight is accepted by Us for carriage.

8. PACKING AND LOADING OF RAIL FREIGHT

8.1 Loading of Rail Freight

Without limiting clause 3, where You load the Rail Freight and the Rail Freight (or any part of the Freight):

(a) exceeds the weight or measurement specified on the Transport Unit and/or the weight and/or dimensions set out in the Freight Handling Code; or

(b) does not comply with any other applicable terms and conditions regarding loading; or

(c) We consider the load to be unevenly distributed or otherwise unsafe;

then We may refuse to carry the applicable Rail Freight or else charge You for reloading, adjusting, or removing the Rail Freight and any separate or additional carriage of that Rail Freight.

8.2 Liability for failure to load correctly

You will load all Rail Freight and Transport Units in accordance with the Freight Handling Code and ensure that such Rail Freight is properly and securely loaded and will not damage KiwiRail's property or equipment. You are liable for all costs, loss, damage and claims suffered or incurred by Us, which arise directly or indirectly from Your failure to load the Rail Freight or Transport Units in accordance with the Freight Handling Code or any other guidelines given by Us or in any manner which would be considered unsafe or dangerous by a reasonable and prudent carrier.

9. IN - TRANSIT STORAGE OF FREIGHT

9.1 In-transit Storage

Without prejudice to Our rights under clause 7.2 or 13.6, We may hold your Freight temporarily while in-transit prior to delivery or Your collection, and charge You applicable Freight Rates or Ancillary Surcharges for any applicable unloading and in-transit storage if:

(a) We are unable (due to circumstances beyond our control) to deliver the Freight as required by the Contract; or

(b) You have not collected it within the collection period applicable to Your Freight specified in any Laws, the Contract, our KiwiRail procedures or as notified by Us to You. .

9.2 Terms applying to In-transit storage

Where We temporarily in-transit store Freight on your behalf, whether by agreement or under clause 9.1:

(a) You must collect the Freight from Our in-transit storage facility within the collection period specified in any Laws, the Contract, our KiwiRail procedures or as notified by Us to You;

(b) We give no representations and make no guarantees as to the in-transit storage conditions or their suitability for temporary storage of the Freight and, to the maximum extent allowed by law, all responsibility or liability expressly or impliedly imposed on Us in respect of such in-transit storage is excluded; and

(c) You are liable for all rates and charges, costs, loss, damage and claims suffered or incurred by Us, as a direct or indirect result of the transportation and unloading to Our in-transit storage and the in-transit storage of Your Freight.

10. SPECIAL REQUIREMENTS FOR CARRIAGE OF COMMERCIAL VEHICLES

10.1 Interislander Procedures

In respect of Commercial Vehicle Freight, You must comply with the Interislander Procedures at all times. Notwithstanding anything else contained in the Contract, We will not be liable for any damage to Your Commercial Vehicle Freight where such loss or damage arises as a result of Your failure to comply with the Interislander Procedures.

10.2 Vehicle licensing and registration

Every Commercial Vehicle conveyed on its own wheels on to a Ship must display a current registration licence issued under the provisions of the Land Transport Act 1998. In the case of multiple unit vehicles e.g. a double trailer configuration, this requirement to display a current registration licence will apply to each unit of the vehicle configuration.

10.3 Securing points

A Commercial Vehicle exceeding 3,500 kilograms gross weight must be fitted with appropriate securing points in accordance with Maritime Rule Part 24B:Carriage of Cargoes – stowage and securing. A copy of the Maritime Rule Part 24B is available on the Interislander website.

10.4 Securing vehicles

To reduce the risk of loss or damage during carriage on a Ship We may use lashings to stabilise or secure any Commercial Vehicle Freight. We are not liable for any loss or damage to Commercial Vehicle Freight, or to any attachment or fitting on any Commercial Vehicle, if that loss or damage is caused by the chafing or moving of lashings which have been attached by Us in a manner reasonably calculated to ensure that any loss or damage resulting from carriage is minimised. In attaching or fitting lashings, We are not required to take into account the special requirements of any Commercial Vehicle or Commercial Vehicle Freight. Any special requirements will only be catered for at Our discretion and by prior arrangement.

10.5 Inflammable or dangerous substances

Despite clause 7.2, no Commercial Vehicle may contain or have attached to it any loose containers of motor fuel or other inflammable or dangerous substances.

10.6 Road tankers

Without limiting clause 7.2, any Commercial Vehicle that is an empty road tanker or similar vehicle used for the transport of motor fuels or like commodities must not be conveyed by Ship unless accompanied by a certificate, issued by a qualified industrial chemist, to the effect that the vehicle and its tanks are gas free. If not accompanied by a certificate issued to that effect, the vehicle may only be conveyed at Our discretion, on a particular carrier service directed by Us and subject to compliance with these Conditions and any special conditions We advise.

10.7 General Average – Carriage of Commercial Vehicles

In relation to the carriage of Commercial Vehicles by Ship, General Average will be adjusted according to the York-Antwerp Rules 1974 (and any revision of those rules adopted by Us). However, You must contribute in General Average to the payment of any sacrifices, losses, or expenses of a General Average nature that may be made or incurred, resulting from any cause, whether due to negligence or not, for which, or for the consequences of which, We are not responsible by statute, contract or otherwise. If We require, You must, before delivery of the Commercial Vehicle, pay Us:

(a) a deposit, which We may determine, to cover the estimated contribution to the General Average loss of each Commercial Vehicle; and

(b) any salvage or special charges incurred in respect of each Commercial Vehicle or in respect of the Property lost or damaged as a result of the General Average act.

11. CARRIAGE OF ANIMALS BY SHIP

11.1 Condition of Animals

All Animals carried as part of the Commercial Vehicle Services must be adequately fed and watered and otherwise in a suitable condition for carriage. All Animals must be accompanied by a person who is competent to, and who will be responsible for, feeding, watering and tending to those Animals, where this is required. We do not accept any responsibility for feeding, watering or otherwise tending to Animals.

11.2 Compliance with rules governing transport of Animals

Any Commercial Vehicle carrying Animals must comply with all applicable laws, government regulations or orders, or regional or local authority bylaws and animal welfare codes applying to the transportation of the Animals and all animal welfare recommendations produced or published by the Ministry for Primary Industries, from time to time. Any permits or any other documents required in relation to the transportation of, or concerning diseases of, Animals must be properly completed and, where applicable, must be carried with the Animals and shown to Our authorised personnel on request.

11.3 Compliance with Interislander Animal Welfare Policy

Any Commercial Vehicle carrying Animals must comply with all Our procedures and guidelines on the transportation and welfare of Animals, including the Interislander Animal Welfare policy.

11.4 Failure to deliver

If, as a consequence of any applicable laws, government regulations or orders, or regional or local authority bylaws concerning the carriage or diseases of Animals, the Commercial Vehicle Service is stopped at any point before, during or after carriage, and while the Animals are still in Our possession, We are deemed to have fulfilled Our obligations to deliver the Animals and may deal with them as We see fit. In those circumstances, You are not relieved from Your obligation to pay the applicable Freight Rates.

11.5 Effluent containment

(a) All Livestock to be carried by Ship must have been held off pasture for an appropriate length of time so as to minimise levels of effluent. In particular:

(i) sheep should be held off pasture for at least four (4) hours prior to commencement of carriage; and

(ii) cattle should be held off pasture for at least six (6) hours prior to commencement of carriage;

(b) The stock crate, vehicle or other container in which the Livestock are to be transported must have an appropriate effluent holding system designed to catch and retain all effluent emanating from the Livestock being carried.

(c) The preferred effluent holding system is a system incorporating under-floor holding tanks. Stock crates of a monocoque construction, or other stock crates or containers that contain effluent beneath floor gratings, may be accepted by Us in Our discretion. Where under-floor effluent tanks are not appropriate for a particular type of vehicle carrying small numbers of Livestock (including horse floats) We may, in Our discretion, permit a vehicle to be carried by Ship provided that the floor of the vehicle has been covered with a material suitable to absorb the level of effluent likely to arise during the carriage of that Livestock.

(d) The effluent holding system must be designed to contain such volumes of effluent as are reasonably likely taking into account the number and type of Livestock to be carried and the nature of the carriage to be undertaken. The

effluent holding system must have sufficient capacity to contain such levels of effluent as may be produced over a minimum period of six (6) hours.

(e) All effluent holding systems must be designed to preclude possible spillage of effluent onto the deck of the Ship including due to pitching (of up to ±10%) and rolling (of up to ±20%) of the Ship during carriage.

(f) All effluent holding systems must be empty prior to arrival for check in on any Ship. We do not undertake to provide facilities for the disposal of effluent at Interislander terminals. Effluent must not be dumped on any port company owned land.

(g) Any empty Livestock stock crates, vehicles or other Livestock containers to be carried on a Ship must have been thoroughly hosed and washed down prior to being checked in for carriage in order to remove any effluent and to minimise all odours or spillage during carriage.

11.6 Vehicle and crate design

(a) For the purposes of this clause 11.6, the term "vehicle" includes a stock truck and/or trailer with removable stock crates or a stock truck and/or trailers of a monocoque design.

(b) All vehicles carrying Livestock must comply with NZS5413 : 1993 Code of Practice for the Manufacture and use of Stock Crates on Heavy Vehicles, NZS5444 : 2005 Load Anchorage Points for Vehicles, any regulations promulgated from time to time under the Land Transport Act 1988, including any amendments or replacements of the same, and any other applicable laws, government regulations or orders, or regional or local authority bylaws.

(c) All vehicles must be designed so as to ensure adequate ventilation of the vehicle including when the vehicle is stationary. Vehicles with fully enclosed decks must have an appropriate mechanical ventilation system.

(d) Double decked vehicles must be covered in a manner designed to prevent injury to the Animals, and to prevent any possible damage to the Ship, including due to Animals rearing up above the vehicle's end or side walls during embarking, travel, and disembarking.

(e) All vehicles carrying Livestock must be constructed with a means of access which permits Livestock carried on the vehicle to be tended, where reasonably required.

(f) Stock crate retention devices should be capable of restraining the stock crate when fully loaded under all conditions that may be encountered during carriage on the Ship.

11.7 Refusal to carry Animals or Livestock

Without prejudice to any other rights We have, We may refuse to provide Commercial Vehicle Services if We have reasonable grounds to believe:

(a) such services will involve transportation of sick, wild, unmanageable or fierce Animals;

(b) such services will involve carriage of Livestock which may result in injury, sickness, or damage to the Livestock; or

(c) You have breached any term of these Conditions, or have failed to meet any of the requirements of these Conditions in relation to the carriage of Animals.

12. Privacy Act 2020

12.1 Personal Information

You hereby authorise Us to collect, hold, use and disclose any information about You relevant to any application for credit, any credit account granted (including receiving or disclosing information to other KiwiRail Group companies, or to any legal advisors, service providers, credit reference agency or any other persons in response to a credit inquiry or for debt collection purposes), for any law enforcement activity and to support Our planning, administrative, operational and analytical activity that We undertake to provide Our Freight Services to You; all in accordance with KiwiRail's privacy policy which can be read at www.kiwirail.co.nz.

12.2 Access

You have the right to access the personal information We hold about you and to request correction of Your personal information.

13. GENERAL

13.1 Delays, deviations and changes to services

All timetables, schedules or other representations regarding the timing for the departure or arrival of any Freight Service are merely an indication of the same and do not bind Us. All timetables and schedules are subject to change without notice. We:

(a) will use all reasonable efforts to carry Freight in accordance with the Contract and on time, but the time of departure or arrival of any Freight Service is at Our discretion and will depend upon its operating situation. We are not responsible for ensuring that any Freight makes connections for other transport or travel arrangements, or for meeting any appointment or deadline, or for arriving in time for any function, engagement, ceremony or any other obligation;

(b) are not liable for any loss or damage caused by failure or delay in taking aboard or landing Freight as a result of bad weather, industrial disruption, mechanical failure, any action taken with the intention of preserving the safety of Freight, any circumstances not reasonably foreseeable, or beyond Our control or any other cause. Any decision to take aboard or land Freight is at Our sole discretion. We may carry over any Freight not landed and land it at its intended destination at the next available opportunity. We may charge for any such over-carriage, if reasonable in the circumstances; and

(c) may at any time without notice abandon, cancel or alter any Freight Service, substitute a carrier or mode of transport, commence a Freight Service before or after the scheduled date or time of departure, deviate from a route for any purpose, tow and assist any other vessel or vehicle in all situations, and sail with or without pilots and, except as otherwise provided in these Conditions, We will not be liable to You for any loss, cost or expense suffered as a result of, or arising in relation to, any of the foregoing.

13.2 Block of Line

The Rail Freight Services are subject to any Block of Line (planned or unplanned) that may be notified by Us at any time. Any Block of Line may result in the cancellation, rescheduling, substitution or alteration of the Freight Services. We will not be liable to You for any loss, cost or expense suffered as a result of, or arising in relation to, any Block of Line.

13.3 Actual Carriers

Where We use an Actual Carrier, Your Freight is carried subject to the Actual Carrier's conditions of carriage, provided that, if there is a conflict between the Actual Carrier's conditions of carriage and the Contract, the Contract will prevail.

13.4 Subcontractors

You agree that We may provide some or all of the Freight Services through one or more subcontractors. Where We appoint a subcontractor pursuant to this clause, We remain liable for the performance of the Freight Services (and for any failure by the subcontractor to perform the Freight Services in accordance with the Contract) and We will not be relieved of any of our liabilities or obligations under the Contract.

13.5 No liability for errors, omissions or representations

We are not liable for errors or omissions in publications or schedules or for statements or representations made by Our employees, contractors, agents or representatives as to any nature of the Freight Services.

13.6 Sale of Freight

Without limiting clauses 9.1 and 9.2, We may sell your Freight on such terms and conditions as We see fit and without notice to You, if You:

(a) fail to collect it by the time required under the Contract; or

(b) fail to pay the Freight Rates or any other moneys owing by You to us within seven (7) days of such payment being due.

The proceeds of sale will be applied towards the cost of sale and to repay any moneys owing by You to Us. Any balance will be paid to You.

13.7 Force Majeure

To the extent allowed by law, We are not liable for loss of or damage to any Freight, or any delay or failure to perform any Freight Services or for any breach or failure to perform an obligation under the Contract which is the result of any Force Majeure Event, and We may terminate the Contract at any time upon the occurrence of such an event.

13.8 Termination for Cause

We may terminate the Contract at any time if You:

(a) are, become, or are deemed to be, insolvent or bankrupt;

(b) make an assignment for the benefit of, or enter into or make any arrangement or composition with, Your creditors generally;

(c) go into receivership or have a receiver, liquidator, trustee and manager (or either of them) (including a statutory manager) appointed in respect of all or any of Your property;

(d) are subject to any resolution passed, or any proceeding commenced, for Your dissolution; or

(e) breach or fail to properly or promptly perform any of Your obligations under the Contract.

13.9 Termination without Cause

We may terminate the Contract without cause at any time by giving You seven (7) days' notice in writing.

13.10 Effect of termination by Us

(a) If We terminate the Contact for any reason, You must collect your Freight by the time and from the location We require by notice to You.

(b) The termination of the Contract by Us is without prejudice to any other right, power or remedy under the Contract, at law, or otherwise.

13.11 Miscellaneous Terms

(a) Nothing in the Contract creates or evidences any partnership, joint-venture, agency or employer/employee relationship between the parties. Neither party has any right or authority to assume or create any obligations of any kind or to make representations or warranties, whether express or implied, for or on behalf of the other party or to bind the other party in any respect.

(b) Each party will promptly do every reasonable thing to complete its obligations under, and to further the intent of, the Contract.

(c) Nothing in the Contract represents a waiver or surrender by Us of any legal right, immunity, limitation or privilege.

(d) Where the Freight Services are used in trade, none of the rights or remedies provided under the Consumer Guarantees Act 1993 will apply. The parties agree that the Contract is an agreement in writing, that they are in trade, that they agree to contract out of the provisions of the Consumer Guarantees Act 1993 and that it is fair and reasonable for them to be bound by this provision. Furthermore, the parties agree that all other conditions and warranties implied at law are expressly excluded to the fullest extent permitted by law.

(e) If any provision of the Contract is or becomes unenforceable, illegal or invalid for any reason it shall be deemed to be severed from the Contract without affecting the validity of the remainder of the Contract and shall not affect the enforceability, legality, validity or application of any other provision of the Contract.