



FLIWAY GROUP LIMITED

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**CUSTOMER CREDIT ACCOUNT APPLICATION**

Full legal name of Business: \_\_\_\_\_

Trading Name (if different from above): \_\_\_\_\_

Postal Address: \_\_\_\_\_

Business Type: \_\_\_\_\_ Line of Business: \_\_\_\_\_  
(e.g. company, sole trader, partnership, trust, other) (e.g. electronics, bathroomware, furniture)

GST No: \_\_\_\_\_ Customs Client Code: \_\_\_\_\_ Customs Deferred Payment scheme: Y/N Network Agency Group: Y/N

**Details of proprietors, partners or directors**

Name: \_\_\_\_\_ Address: \_\_\_\_\_ Phone: \_\_\_\_\_

Name: \_\_\_\_\_ Address: \_\_\_\_\_ Phone: \_\_\_\_\_

**Credit References (2 required)**

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

**Contact Details**

**Accounts Contact**

Name: \_\_\_\_\_  
Position: \_\_\_\_\_  
Physical address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

**Operations Contact**

Name: \_\_\_\_\_  
Position: \_\_\_\_\_  
Physical address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

We hereby apply for a credit account with Fliway for the following services:

<input checked="" type="checkbox"/> Service	Fliway Company	Maximum Spend (month)	Credit Limit
<input type="checkbox"/> Transport	Fliway Transport Ltd	\$ _____	\$ _____
<input type="checkbox"/> Freight Forwarding	Fliway International Ltd	\$ _____	\$ _____
<input type="checkbox"/> Storage Activity	Fliway Logistics Ltd	\$ _____	\$ _____

Payment terms are weekly, unless otherwise agreed. Disbursements are payable on invoice. Fliway emails invoices throughout the month and a statement monthly from each Fliway Company.

If the Customer is not a New Zealand company a personal guarantee and cash on delivery payment terms maybe requested.

***I the undersigned hereby agree to the terms and conditions of Fliway [www.fliway.com](http://www.fliway.com) that form part of this agreement.***

***By executing this agreement it is deemed I have read and accepted them, and they shall apply to all dealings with Fliway.***

Name: \_\_\_\_\_ Position: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

*(Office use only)*

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_

Account #: \_\_\_\_\_ Fliway Transport Ltd Terms: \_\_\_\_\_

Account #: \_\_\_\_\_ Fliway International Ltd Fliway Rep: \_\_\_\_\_

Account #: \_\_\_\_\_ Fliway Logistics Ltd Fliway Branch \_\_\_\_\_

## **TERMS AND CONDITIONS OF CREDIT**

1. **Credit Accounts** - Fliway reserves the right to offer credit facilities to any customer. It further reserves the right to suspend or cancel credit facilities extended to any customer should it so wish for any reason.
2. **Payment Terms** - Are weekly unless otherwise agreed. For weekly payment terms, all invoices issued by Fliway during a calendar week must be paid by Friday of the following week. All other payment terms must be authorised by Fliway. All disbursements paid on behalf of the Customer are payable on demand, and until such payments are received, the Carrier is under no obligation to release any of the Customer's goods in the possession of the Carrier. All payments must be made strictly in accordance with the terms authorised by Fliway. Overpayments will be refunded on request, provided the request is received within 2 months of the overpayment.
3. **Price Estimates** - All price estimates are based on prices ruling at the time for freight services and disbursements. All price estimates will be exclusive of GST and are valid for 30 days except where the written consent of Fliway is obtained. Price estimates are subject to change should the requirements of the service differ to our understanding when preparing such estimate.
4. **Requests for Credits on Invoices** - Should there be a request for a credit note or a dispute on the account (other than for an LCR claim where clause 21 of our conditions of carriage apply), this request must be lodged in writing addressed to our Credit Control Department within 2 months of invoice date. Disputes or credits received outside this period will not be considered.
5. **Cancellation** - All freight services ordered shall be charged and payable and will not be credited without the consent of Fliway provided that such consent may not be unreasonably withheld. If consent to a credit is given, then the credit will exclude any costs incurred by Fliway as a result of the cancellation.
6. **Default** - The applicant agrees to immediately reimburse to Fliway all costs and expenses incurred in instructing a solicitor/debt collection agency to recover such amount overdue for payment. Such costs and expenses shall bear interest from the date upon which they are incurred up to and including the date upon which they are reimbursed.
7. **Interest** - Interest at 3% per month calculated on a daily basis may be charged on any money outstanding from the date payment is due until the date payment is received, chargeable without further notice.
8. **Payment** - The Customer agrees to pay via Electronic Funds Transfer the Carrier's standard charges and those of any subcontractor engaged by the Carrier and any other costs incurred or money expended by the Carrier in connection with the goods. Credit Card payments will only be accepted by Fliway with prior consent being given, and a credit card fee may apply. Freight shall be considered earned as soon as goods are loaded and dispatched. Except under a special arrangement previously made in writing with the Carrier, no credit will be given for the Carrier's charges which are to be paid to the Carrier at the time the goods are delivered to the Carrier for carriage.
9. **Set-Off** - The Carrier shall be entitled to set off any amounts due from the Customer against any amounts due to the Customer. The right to any set-off shall apply irrespective of any receivership or liquidation of the Customer. The Customer has no right to set off any amounts due from the Carrier whether liquidated or contingent (including claims for goods damaged or lost by the Carrier or its sub-contractors or agents) against any amounts due by the Customer to the Carrier.
10. **Lien** - All Goods (and documents relating to Goods) shall, immediately they come into possession of Fliway, be subject to a particular and general lien and right of detention for all moneys due to Fliway by the Customer or the consignee, consignor or owner, whether in respect of such Goods or otherwise. If any moneys due to Fliway are not paid within fourteen (14) days after notice has been given to the person from whom the moneys are due that such Goods are being detained, then they may be sold by auction or otherwise at the sole discretion of Fliway and at the expense of such person, and the net proceeds applied in or towards satisfaction of any such debt. Any such sale shall not prejudice the right to recover any balance due or payable in respect of the services provided hereunder or the cost of the said detention and sale. If Fliway reasonably believes any Goods are unsalable, Fliway may dispose of them as it sees fit. The lien provided for in this clause is additional to (and does not displace, supersede or modify) the liens provided for in sections 285 to 292 of the Contract and Commercial Law Act 2017 and/or any lien that may arise at common law.
11. **Privacy Act 2020** - This contract is the only document of interpretation.
  - 11.1 The Customer authorises Fliway to:
    - (a) Collect, retain and use any information about the Customer for the purpose of assessing the Customers creditworthiness or marketing products or services to the Customer; and
    - (b) To disclose information about the Customer, whether collected by Fliway from the Customer directly or obtained by Fliway from any other source, to any other credit reporting agency for the purpose or obtaining a credit reference, debt collection or notifying a default by the Customer.
  - 11.2 Where the Customer is an individual the authorities under (clause 11.1) are authorities or consents for the purpose of the Privacy Act 2020.
  - 11.3 The Customer shall have the right to request from Fliway a copy of the information about the Customer retained by Fliway and the right to request Fliway to correct any incorrect information about the Customer held by Fliway.
12. **Severability** – In the event that any provision of the agreement is held to be invalid or unenforceable, the remaining provisions of this agreement remain in full force.

## GENERAL CONDITIONS

- 13. Parties** - This contract is made between the Customer and Fliway Transport Ltd (**Fliway**). Services may be provided by Fliway or any other company in the Fliway group of companies. This contract is entered into for the benefit of all of the other companies in the Fliway group of companies, and may be enforced by them as if the reference to Fliway or the Carrier was a reference to the company providing the service.
- 14. Contract.** All business undertaken by Fliway, including the provision of any advice, information or other services, is undertaken upon and subject to these conditions. This agreement constitutes the entire understanding of the parties in regards to the provision of services and supersedes all prior agreements and understandings, whether written or oral between the parties. The terms and conditions herein may not be altered, supplemented or amended by the use of any additional documents(s) that purport to be an agreement of the parties. Any attempt to amend these terms and conditions or to enter an order for service(s) which is subject to additional or altered terms and conditions shall be null and void.
- 15. Variation of Terms** – Fliway reserve the right, in our sole discretion, to change these Terms and Conditions from time to time. Unless Fliway make a change for Legal or Administrative reasons, Fliway will provide reasonable advance notice before the updated terms become effective. The Customer agrees that we may notify you of the updated terms by posting them on Fliway’s website [www.fliway.com](http://www.fliway.com) and that the Customers use of our service after the effective date of the updated terms constitutes the Customers agreement to the updated terms.
- 16. Compliance with Law** - The goods shall comply with the requirements of any applicable law relating to the nature, labelling and packaging and carriage of goods, and the expenses and charges of the Carrier in complying with the provisions of any such law or with any order or requirement there under or with the requirement of any harbour, dock, railway, shipping, customs, warehouse or other authority or company, or the expenses, charges, levies or fines arising out of the breach of any applicable law, shall be paid by the Customer.
- 17. Paramount Clause: Consumer Guarantees Act 1993** - Where the Customer is a business (as defined by the Consumer Guarantees Act 1993), it agrees that is acquiring the Company’s services for the purpose of a business and that the Consumer Guarantees Act 1993 does not apply. Where the provisions of the Consumer Guarantees Act 1993 apply, the provisions of this Agreement will be read subject to the application of that Act, and in the case of any conflict, the provisions of that Act will apply.
- 18. Hazardous Products**
- (a) The Customer warrants to Fliway that none of the Products carried or stored are or will be Hazardous Products.
  - (b) The Customer shall not tender any potentially Hazardous Products for carriage or storage without presenting a full description of the goods to Fliway along with supporting documentation that complies with all current New Zealand laws.
  - (c) If any of the Products are, notwithstanding the warranty in clause 17(a), Hazardous Products, the Customer will indemnify Fliway against Loss, damage, disability or costs it sustains or incurs as a result of those Products being Hazardous Products.
- 19. Force Majeure** - Fliway is not in breach of the Contract and is not liable for any delay or reduction in providing the goods or services (or inability to provide the goods or services) caused by any Force Majeure Event. Fliway may alter rates in order to perform services due to a Force Majeure Event. In this clause, a Force Majeure Event means an event or circumstance beyond Fliway’s reasonable control, including fire, floods, storms, tempest, earthquake or other act of God, any act of a public enemy, war, riot, terrorism, acts of civil or military authority, any act of a person engaged in subversive activity or sabotage, epidemics or quarantine restrictions, failure or defect of electrical power or telecommunications connections or services, prohibition or restrictions on the import or export of goods or services, industrial and labour disputes or stoppages or any act or omission (including laws, regulations, disapprovals or failures to approve) of any governmental agency.

## CARRIAGE CONDITIONS

- 20. Contract and Commercial Law Act 2017** - Subject to the provisions of the Act, Sections 284-292 shall apply in addition to any rights and powers granted to the Carrier under this contract. This contract does not displace, supersede or modify the liens provided for in sections 285 to 292 of the Act. Section 281 shall not apply to the contract. Sections 274-280 and 283 are modified by this contract and shall, in relation to any matter arising out of the provisions of those sections, have effect subject to the express terms contained in this contract.
- 21. Liability of the Carrier**
- (a) The goods shall be carried in accordance with the terms of the type of contract option selected on the consignment note. If no option is selected, the goods are deemed to be carried “at limited carrier’s risk”.
  - (b) Fliway has no liability to the Customer for any loss or damage to the extent that the loss or damage:
    - i. Results from any event outside of Fliway’s control
    - ii. Occurs after delivery of the relevant goods; or
    - iii. Results from any act or omission by the Customer, including a breach of any of the Customers obligations under these terms

- (c) Fliway is not liable (whether in contract, tort – including negligence, or otherwise) for:
  - i. Any amount exceeding the lesser of proven damage / loss or the sum provided in Section 259(2) of the Contract and Commercial Law Act.
  - ii. Any loss of profits or loss of opportunity or any indirect or consequential loss or damage of any kind including, without limitation, any loss or damage of the kinds referred to in section 259(3)(b) and (c) of the Contract and Commercial Law Act.
  - iii. Secondhand equipment of any kind, and glass.
  - iv. Damage to packaging only
  - v. Any items mentioned in clause 28.

**22. Notification of Claims and Limitation of Actions** - The Carrier shall be under no liability whatsoever unless:

- (a) Written notice of any claim giving reasonable particulars of the event giving rise to the claim, and any alleged damage or loss, is received by the Carrier within 7 days after delivery to the delivery address on the consignment note or, in the case of non-delivery, within 14 days after the date of dispatch; and
- (b) An action shall have been commenced by the Customer in a Court of competent jurisdiction within six months of delivery or, in the case of non-delivery, within six months and fourteen days of the date of dispatch.

Immediately following your written notice referred to in (a) above, you will receive an acknowledgement of the claim and a request to provide various documents and other information necessary to process your claim; including a tax invoice and returning the product to Fliway. Failure to provide evidence of value within 3 months of request date will negate the claim.

Please be aware we have a duty both to our insurance company and to our own internal quality and loss prevention procedures to investigate how any one claim has occurred. We will do our best to process this claim within 4 weeks of receiving the information requested above. **At no time may the payment of an account be withheld pending the outcome of a claim.**

- 23. Subcontractors** - All or part of any work accepted by Fliway may be fulfilled by Fliway engaging or entrusting the Customer's goods to its authorised subcontractors on such terms agreed between Fliway and its subcontractors. The Customer agrees that all work may be performed on behalf of Fliway by any such subcontractor. In carrying out the work on behalf of Fliway, the Customer acknowledges that the subcontractor has the right to rely on the benefit of these conditions.
- 24. Protection of Servants and Agents** - The Customer undertakes that no claim or allegation shall be made against any servant or agent of the Carrier which attempts to impose upon any of them any liability whatsoever in connection with the goods and, if any such claim or allegation should nevertheless be made, to indemnify the Carrier and any such servant or agent against all consequences thereof.
- 25. Ownership of Goods** - The Customer expressly warrants to the Carrier that it is the owner or the authorised agent of the owner of the goods and that it is authorised to accept and does accept these conditions not only for itself but also for and on behalf of all other persons who are or may hereafter become interested in the goods.
- 26. Delivery** - The goods shall be deemed to have been delivered when they are delivered to the delivery address specified on the consignment note. In the event that the customer refuses to accept delivery through no fault of Fliway, delivery will be deemed to be effected and the customer will be responsible for payment for freight and storage costs until the items can be delivered. The customer will be liable for additional freight costs.
- 27. Insurance** - Insurance of the goods is the responsibility of the Customer. The Customer has the option on our consignment note to arrange a "Declared Value Risk" contract of carriage. This has the effect of increasing the statutory limit imposed by the Contract and Commercial Law Act for any one unit of goods. The cost of this Declared Value Risk contract of carriage will be charged to the customer.
- 28. Weight and Measurement** – Fliway has the right to check the weight and measurement of the Customers freight at any time and alter any consignment note accordingly. The cost of carrying out the check may be charged to the customer if the weight and measurement of the freight, as determined by the check, exceeds the declared weight or measurement of the freight. All packaging, pallets and other such items in which freight is packaged or stored are deemed to form part of the freight for the purposes of assessing the weight and measurement of the freight.
- 29. Exclusion of Certain Items** - Pursuant to Section 293(1) of the Contract and Commercial Law Act, unless the Carrier otherwise agrees in writing, the Carrier will not accept or deal with any:
  - (a) Bullion, cash, negotiable instruments, precious stones, jewellery, antiques, paintings, passports, or other valuables; or
  - (b) Noxious, dangerous inflammable/perishable goods, firearms or any goods likely to cause damage or which it is unlawful to carry; or
  - (c) Freight that is not packaged adequately for transit. (e.g. glass)

The Customer expressly warrants and agrees that it will not give any such goods to the Carrier. If the Customer delivers such goods as contained in clause 28(b) to, or causes such goods to be handled or dealt with by, the Carrier or any subcontractor or agent of the Carrier, the Customer shall be liable for all loss, damage or deterioration whatsoever caused by, to or in connection with any other consignment, and shall indemnify the Carrier and any subcontractors and agents of the Carrier against all penalties, claims, damages, costs and expenses whatsoever arising in connection therewith, and the goods may be destroyed or otherwise dealt with at the sole discretion of the Carrier and any subcontractor and agent of the Carrier or any other person in whose custody they may be, at the expense of the Customer, without the Carrier and the subcontractor, agent or such other person being responsible or accountable for the value thereof.

- 30. Packaging Valuable Items** - All requests for art/antique/collectable/other valuable movements are subject to specific standards for packaging/crating and declaration of value. It is recommended that any art pieces over 1m long are crated. Bubble wrap alone is not substantial enough for artwork. Bubble wrap, covered with card, and any corners capped may be appropriate for specific items. If the packaging of a piece is below standard, Fliway reserves the right not to accept the item in its current state, or, to undertake and charge on the costs of organising appropriate packaging. In addition, the value of art/antique/collectable/other valuable pieces needs to be declared when booking a job. This is important as such items may be impossible to replace and very hard to ascertain a clear value. A registered valuation may be required prior to obtaining insurance cover. For art/antiques/collectables/other valuables, "Value" is defined as the selling value of the piece. Specific dedicated vehicles run by our special services division may be, at the discretion of the company, more appropriate for high value art/antique/collectable/other valuable movements, and would require specific price estimates.
- 31. Indemnity** - Should any loss consequential or otherwise be sustained by the Carrier or its subcontractors or agents, the Customer hereby indemnifies the Carrier and its subcontractors and agents against all such losses and claims of whatsoever nature that may be so incurred.
- 32. Private Deliveries** - When doing private deliveries, Fliway is responsible for products until they are delivered through the front entrance of the property (provided that they fit through this entrance unhindered). No liability will be accepted for damage to furniture or property in any other circumstances. Fliway will make additional charges for or refuse to deliver products to upper levels, over balconies or through windows. If no prior advice is given to Fliway relating to deliveries of this nature, products may be returned to the point of collection and a charge made as if this delivery was made.

## **STORAGE CONDITIONS**

**In the absence of a specific Warehousing and Distribution Agreement between the parties the default conditions below will apply.**

- 33. Notification of Visibly Damaged Goods on Receipt** - If Fliway identifies any Products received from the Customer that are visibly damaged it must:
- Notify the Customer in writing or email of the damaged Products; and
  - Quarantine the damaged Products until the Customer advises Fliway of its suggested action to be taken.
- 34. Damaged Products**
- Fliway shall only be liable for losses caused by damage to or loss of products where the damage or loss is due to Fliway's negligence, gross negligence or wilful misconduct.
  - Except as otherwise provided in this agreement Fliway shall not be liable to the Customer for any losses resulting from Fliway's non-performance of or failure to perform the Services.
  - Fliway agrees that it must promptly notify and provide details to the Customer of all Products damaged whilst in the possession, power or control of Fliway. Fliway must give the Customer access to such Products to enable inspection by the Customer personnel to determine the extent of damage to each Product.
  - If a dispute arises relating to the quantification of losses either party may require an independent assessment by a qualified expert of the quantification of losses to be undertaken. The Parties must agree on the identity of the expert within 10 Working Days and, if they cannot agree, the expert may be appointed by the President of the New Zealand Institute of Chartered Accountants.
  - Subject to the above clauses (a) and (d) and clause 42 Fliway agrees to pay the Customer for such losses within thirty (30) days of the losses being quantified.
- 35. Returns** - Fliway is responsible for processing all returns of Products by the Customer branches, trade partners and customers including:
- Arranging for collection of returned products from the Customer's trade partners and customers in accordance with the Customer's reasonable instructions;
  - Ensuring all returns are authorised by the Customer;
  - Accurate completion of a proof of delivery for each return to any Warehouse;  
Ensuring compliance with all applicable legislation including but not limited to New Zealand's Consumer Guarantees Act 1993.
- 36. Insurance**
- The Customer acknowledges that it retains ownership of all Products that are the subject of the Services set out in this Agreement and is responsible for insuring the Products against loss, damage, theft, and all other risks.
  - Fliway must carry Bailee Insurance to cover stock held within Fliway Premises under the storage arrangement i.e. not in transit.
  - The customer must maintain the relevant insurances for products stored by Fliway.

**37. Assignment** - Neither party may assign or otherwise transfer its interest in this agreement without the prior written consent of the other party such consent of the other party such consent not to be unreasonably withheld.

### **38. Storage Termination**

- (a) Either party may terminate this Agreement immediately by notice in writing to the other party, if the other party:
  - i. Ceases to carry on business;
  - ii. Becomes insolvent;
  - iii. Makes an assignment for the benefit of its creditors; or
  - iv. Makes any composition with any of its creditors;
  - v. Has proceedings for voluntary or involuntary administration commenced in respect of it;
  - vi. Has an administrator, a receiver or trustee of the whole or any part of its property appointed;
  - vii. Defaults under any of its obligations under this Agreement and where the default is capable of being remedied fails to remedy the default within twenty eight (28) days of becoming aware of the default.
- (b) Fliway can terminate without cause, giving 30 days notice.
- (c) Termination of the Agreement does not prejudice any right of action or remedy hereunder or in respect of any antecedent breach of any of the covenants or agreements of any party herein contained or any other provision which by its terms applies after the termination of this Agreement, including (without prejudice to the generality of the foregoing) clause 40 (Confidentiality).

### **39. Effect of Termination**

- (a) If either party has issued a valid notice of termination under clause 37(a) then representatives from the Customer and Fliway must meet as soon as reasonably practicable prior to the termination date at Fliway's registered office or as otherwise agreed by the parties to prepare a plan for the removal of the Products from the Warehouses.
- (b) Subject to all outstanding amounts having been paid by the Customer to Fliway, on termination of this Agreement Fliway undertakes to release and deliver as directed by the Customer all of the Products it may be holding for whatever reason at the cost to the Customer.
- (c) Final Settlement of all monies due is to be made before the release of all and any remaining goods.

### **40. Contract Rates**

#### **40.1 Payments for Services**

- (a) Fliway agrees to issue invoices for Services provided according to the Contract Rates and the Customer agrees to pay such invoices in accordance with this Agreement.
- (b) The Contract Rates are stated in New Zealand dollars. The Customer shall pay Fliway's invoices without deduction or set off as agreed in clause 2.
- (c) Contract Rates will be adjusted annually on 1<sup>st</sup> of July by the latest annual CPI increase plus 2%.
- (d) Fliway's rates for the Services exclude all applicable duties and taxes. The Customer should pay Fliway GST payable (and any other duties or taxes payable) in respect of the Services.

#### **40.2 Special Services**

- (a) Additional services provided by Fliway as requested the Customer including the unpacking, repacking, transfer and inspection, of the Products by Fliway will be charged to the Customer at the hourly labour rate or a fixed lump sum quotation as agreed by the parties.

#### **40.3 Storage Calculation**

- (a) Storage at the warehouse is calculated daily. Storage charges will be calculated based on the maximum position on any day for the agreed billing period and applied across all days. Daily storage position is calculated based on a stock on hand inventory snapshot plus inbound received to the warehouse for the specific day.

### **41. Confidentiality**

- (a) Fliway warrants, covenants and agrees with the Customer that all confidential information that is the property of the Customer will be held in trust and confidence, and that Fliway will take all steps and do all such things as may be necessary or prudent or desirable in order to safeguard its confidentiality.
- (b) Fliway warrants, covenants and agrees with the Customer that neither it nor any of its employees, agents, representatives nor any company related to it will, whether directly or indirectly, or in any other manner whatsoever, use or disclose to any third party, without the Customer's prior written consent, which the Customer may grant or withhold at its absolute discretion, the Information or any part of it.

- (a) The obligations of Fliway in this clause do not extend to information which:
  - i. Was rightfully in the possession of Fliway prior to the beginning of negotiations between the parties concerning the earliest agreement between Fliway and the Customer;
  - ii. Was already public knowledge, or becomes so after execution of this Agreement (otherwise than as a result of a breach of this Agreement); or
  - iii. Is required by law to be disclosed where failure to disclose would constitute a breach of the law; in these circumstances only the minimum information necessary to comply with the law must be disclosed.
- (b) Fliway and the Customer will each keep the terms of this Agreement and any information provided by either party to the other confidential.

#### 42. Stocktake and Stock Count

- (a) Fliway will undertake a stocktake of Products with 60 days notice on a date to be agreed by the parties, such stocktakes are to be paid for by the Customer at Fliway's standard rates.
- (b) As part of the annual stocktake, Fliway will identify stock variances, if any, since the previous annual stocktake, or, if no annual stocktake has yet taken place, since the commencement of this Agreement.
- (c) Fliway is not liable for any stock variances.

#### 43. Liability

**43.1 Exclusions and limitations** - Except where the parties expressly agree to the contrary, notwithstanding any provision to the contrary in this Agreement, the liability of a party (for the purposes of clause 42.1, the Liable Party) to the other party (for the purposes of this clause 42.1, the Claimant Party) under this Agreement will be limited, restricted or reduced as follows:

- (a) **Actions of Claimant Party:**  
The liability will not extend to any liability, loss or damage to the extent that the Claimant Party has, by its actions or inaction, directly or indirectly contributed to such liability, loss or damage.
- (b) **No consequential loss:**  
The liability will not extend to, or include, loss of profits, or liability for consequential or indirect loss or damage or any nature whatsoever (including, without limitation, any loss of business or revenue, loss of an asset or loss of production, contract or goodwill);
- (c) **Limitation of Liability:**  
The maximum liability of one party to the other party under this agreement shall be limited to one months spend with Fliway. This clause shall not apply to the Customer's liability to pay Fliway for Services;
- (d) **Time Limit:**  
Each party must give the other notice in writing of a claim within one month of the date that party becomes aware of the event giving rise to a claim or the possibility of a claim, otherwise the other party will have no liability.

#### 43.2 Mitigation

Each party will take all reasonable steps to avoid or mitigate any loss or liability which might give rise to a claim under this Agreement

#### 43.3 Liability in Tort Excluded

Neither party will be liable to the other party in tort (whether as a result of negligence or otherwise) for any reason whatsoever in relation to the subject matter of this Agreement, it being intended that the relationship of the parties will be solely governed by contract.

#### 43.4 Exclusion of implied warranties

Except for such guarantees as cannot be excluded by virtue of the Consumer Guarantees Act 1993 ("Act"), all warranties, descriptions, representations or conditions whether implied by law, trade custom or otherwise, are expressly excluded to the fullest extent permitted by law. The guarantees implied by the Act are expressly excluded where the Customer is acquiring goods or services for the purposes of a business

## OCEAN / AIR FREIGHT CONDITIONS

- 44. New Zealand Law** - Fliway is a New Zealand registered company these Terms and Conditions are written with reference to New Zealand laws. The laws applying in all cases to any Contract will be New Zealand laws. In some instances however Local Laws may impose obligations or limitations irrespective of this choice of law. If in any case the effect of a Local Law is to regard any part of this Contract to be illegal or unenforceable, then the offending part will be deemed severed from these Terms and Conditions, or if necessary modified, but only to the extent required to render the remaining parts fully enforceable as they are written.
- 45. Carrier** - Shall mean Fliway, its servants and agents. Sub-contractor shall mean, and include any other person, firm, corporation or company with whom the Carrier may arrange for the carriage of any goods the subject of this contract, and any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the mentioned persons.
- 46. The Carrier is Not a Common Carrier** and will accept no liability as such. The Carrier reserves the right to refuse the carriage or transport of goods for any person, corporation or company and the carriage or transport of any class of goods at its discretion.
- (a) These conditions shall be subject to either the Australian Sea Carriage of Goods Act 1924 or the New Zealand Contract and Commercial Law Act 2017 or the Maritime Transport Act 1994, and to any rules limiting liability thereunder, if applicable.
- i. Fliway shall not be under any liability for any loss or damage to or mis-delivery, delay in delivery, concealed damage, deterioration, evaporation, non-delivery of goods, loss of use or consequential loss concealed damage or damage by inherent vice or nature of the goods or merchandise carried (including chilled, frozen, refrigerated or perishable goods) either in transit or in storage whether caused by the negligence wrongful act or default of the carrier or by any other cause whatsoever;
- ii. In the event of the contract including any handling, installation, removal, assembly or erection of any kind what so ever it is undertaken on the strict basis that the Carrier accepts no liability for any loss, damage or injury of Any kind whatever, however a rising caused, incurred or occurring during any part of the movement. The disclaimer extends to include not only loss or damage to itemised equipment itself, but loss, damage or injury to any person, property or thing damaged during the movement and to include any loss consequently or otherwise arising from any loss, damage or injury aforesaid.
- iii. The Consignor will indemnify the Carrier against all claims of any kind whatsoever, how so ever caused or arising and (without limiting the generality of the foregoing) whether caused or arising as a result of the negligence of the Carrier or otherwise, brought by any person in connection with any matter or thing done said or omitted by the Carrier in connection with goods.
- (b) Where it cannot be proved during which stage of transport the loss or damage occurred the same shall be deemed to have occurred within New Zealand and accordingly the limitations of liability under paragraph (a) shall apply.
- (c) The provisions hereof are subject to any overriding provisions of any national or state legislation or international convention.
- (d) Subject to section 284 of the Contract and Commercial Law Act 2017, if the Consignor fails to pay freight, the Carrier may bring an action for the recovery of freight against the Consignee if property in the goods has passed to the Consignee
- 47. The goods are accepted by the Carrier subject to the following conditions:**
- (a) That they comply with the requirements of any applicable law relating to the nature, condition and packaging of the goods and the expenses and charges of the Carrier in complying with the provisions of any such law or with any order or requirement thereunder or with the requirement of any harbour, dock, railway, shipping, customs, warehouse or other authority or Company shall be paid by the Consignor;
- (b) If any of the goods are subject to the control of any relevant customs authorities all customs duty, excise duty and costs which the Carrier becomes liable to pay or pays in respect of such goods pursuant to any law relating to customs or excise shall be paid by the Consignor
- (c) That the goods are fully described in writing in the space provided hereon including the name and nature of the value of all goods subject to special rates of carriage, or of a noxious, dangerous, hazardous or inflammable nature or capable of causing damage or injury to any other goods, or to any person or animals with which, or to any store, vessel, vehicle, wagon, van, aircraft or other conveyance of any kind whatsoever in which, they may be loaded, carried, packed or stored, or which are liquid or partly liquid, and that additional freight charges shall be paid on such goods if deemed necessary by the Carrier; and
- (d) The Carrier shall not be bound by any agreement purporting to vary these conditions unless such agreement shall be in writing and signed on behalf of the Carrier by an Officer of the Carrier.

- 48. Insurance** will not be arranged by the carrier except with the express instructions in writing of the consignor and then only at their expense and on lodgement of a declaration as to value prior to collection.
- (a) The limit of the cover provided by such insurance as is arranged by the Carrier for the Consignor shall be the amount specified in the declaration as to value and the following exclusions shall apply;
    - i. All claims resulting from wear, tear, moths vermin, damp mildew or loss of market, loss damage or expense proximately caused by delay or inherent vice or nature of the subject matter insured;
    - ii. All claims resulting from gradual deterioration rust and/or oxidation unless caused by or resulting from fire, collision, overturning or other accident to the conveyance. AND such insurance shall be otherwise on the terms and conditions normally offered for such class of business by the underwritten with whom such insurance is affected PROVIDED HOWEVER that the said limit shall not be construed as an agreed value. The agreed value shall be the amount representing the value of the goods as invoiced by the Consignor with a limit in any event of the amount specified in the declaration of value.
- 49. Every special instruction** to the effect that charges shall be paid by the Consignee shall be deemed to include a stipulation that if the Consignee does not pay the said charges within 7 days of the date set for payment or, if no date is set for payment, within 7 days of delivery or tendered delivery of the goods, then the Consignors shall pay the said charges.
- 50. The Carrier may charge freight by weight, measurement or value**, and may at any time re-weigh, or re-value or re-measure or require the goods to be re-weighed, re-valued or re-measured and charge the proportional additional freight accordingly. Volumetric conversion of 1 cubic metre to 333kgs for within island shipments and 500kg for inter-island shipments will be applied where applicable.
- 51. Should the Consignee of the goods** described hereon not be in attendance at the address given during normal trading hours, when delivery is attempted an additional charge may be made at ruling rates for each call until delivery is accomplished. The Carrier will only deliver goods at intermediate points by special arrangement and if facilities for such delivery are available all hours.
- 52. Quotations**
- (a) All prices are subject to exchange rate conversion at the time of shipment and dimensions/weight variances from those provided as the basis for the quotation.
  - (b) The quote excludes any additional charges which may be incurred from any Government or border agencies, local or overseas, including duties, taxes and any other factors beyond our control.
  - (c) Unless otherwise stated, insurance cover is not included in our quotation.
- 53. Goods may be on-forwarded by any means at the Carriers sole discretion.**
- 54. The Consignor authorises the Carrier** (if the Carrier should think fit to do so) to arrange for the carriage of the goods by an independent contractor or sub-contractor of the Carrier. The Carrier may enter into any such contract or sub-contract as principal or as agent for the Consignor. In respect of the sea carriage of goods such contract shall be deemed to be made by the Carrier as agent for the Consignor and shall be subject to the terms of the regular form of Bill of Lading in use by the contracting Steamship Company.
- 55. Liability**
- (a) In respect of any clause herein which excludes or in any way limits the liability of the Carrier in respect of this Contract, the Carrier in addition to acting for itself is acting as agent or and trustees for each of its servants and also any other person or company with whom the Carrier may arrange for the carriage or other handling of the goods and the servants of such person or company so that its servants and such person or company and his or its servant are parties to this contract so far as the said clause or clauses containing exclusions or limitations of liability are concerned and in so far as may be necessary to give effect to this clause the Carrier shall hold the benefit of these conditions for its servants and for any such person or company and his or its servants, and
  - (b) In respect of any term (including any implied term) in any contract or sub-contract which the Carrier may enter into pursuant to this contract by which the contractor or subcontractor (notwithstanding the provisions of paragraph (a) above) accepts some measure of liability for loss or damage to goods in transit the Carrier will hold the benefit of such term as agent of and trustee of the Consignor.

- 56. All the rights**, immunities and limitations of liability in the above conditions of carriage shall continue to have their full force and effect in all circumstances and notwithstanding any breach of the contract or of any conditions hereof by the Carrier.
- (a) Packing in regard to goods which the Carrier has been requested by the Consignor to pack and which are described on the face hereof, the Carrier shall not be liable for any damage or loss whatsoever whether in the course of packing or in transit or otherwise and howsoever occasioned to the said goods or any of them;
  - (b) When the Carrier is required to load or unload any liquids, part liquids, substances or any commodities or products into bulk tanks or vessels, drums or containers, the Carrier shall not be liable for any loss, damage or contamination of product during any such loading or unloading operation or packing, whilst such product is in transit by any means of transportation or whilst goods are held in store or bulk storage for any reason whatsoever.
- 57. The Carrier may carry the goods** or have them carried by any method which the Carrier in its absolute discretion deems fit and notwithstanding any instructions verbal or otherwise of the Consignor that the goods are to be carried by another method.
- 58. When insurance cover** has been arranged by the Carrier and the Consignee has signed an unqualified receipt, transit damage must be notified within 48 hours of receipt of the goods, otherwise no claim will be recognised nor will liability for any damage be accepted.
- 59. It is agreed that the person delivering to the Carrier** for forwarding is authorised to sign this consignment note for the Consignor.
- 60. Freight shall be considered earned as soon as the goods are loaded and dispatched** whether the goods are delivered to the Consignee or not and whether damaged or otherwise. Under no circumstances shall any payment for freight be refunded.
- 61. Container detention, demurrage, storage and waiting time** - The Customer acknowledges that all freight rates quoted include a limited amount of storage time at depots, ports and container hire in the case of Full Container Load (FCL) shipments via sea freight. The Customer agrees that outside of the time allowed, all charges, costs and expenses incurred for container detention, demurrage, storage and waiting time shall be payable in full by the Customer. The Customer agrees to pay any interest that may be charged on the unpaid balance until full payment is made.
- 62. If the carriage involves an ultimate destination** or stop in a country other than the country of departure, the "Warsaw Convention" maybe applicable and the convention governs and in most cases limits the liability of the carrier in respect of loss, damage, or delay to cargo.
- 63. Carrier undertakes to complete the carriage hereunder with reasonable dispatch** - except within USA where carrier tariffs will apply, carrier may use alternate carriers or aircraft and may without notice and with due regard to the interests of the shipper use other means of transportation. Carrier is authorised by shipper to select the routing and all intermediate stopping places that it deems appropriate or to change or deviate from the routing shown on the face hereof.
- 64. Subject to the conditions herein, the carrier shall be liable for the goods** during the period they are in its charge or the charge of its agent.
- (a) Except when the carrier has extended credit to the consignee without the written consent of the shipper, the shipper guarantees payment of all charges for carriage due in accordance with carrier's tariffs, conditions of carriage and related regulations applicable laws (including national laws implementing the Convention) government regulations, orders and requirements.
  - (b) When no part of the consignment is delivered, a claim with respect to such consignment will be entertained even though transportation charges thereon are unpaid.
  - (c) If the shipper fails to pay freight, the Carrier may bring an action for the recovery of freight against the consignee if property in the goods has passed to the consignee
- 65. Notice of arrival of goods will be given promptly to the consignee** or to the person indicated in the face hereof as the person to be notified. On arrival of the goods at the place of destination, subject to the acceptance of other instructions from the shipper prior to arrival of the goods at the place of destination, delivery will be made to, or in accordance with the instructions of the consignee. If the consignee declines to accept the goods or cannot be communicated with, disposition will be in accordance with instructions of the shipper.
- 66. Complaints**
- (a) The person entitled to delivery must make a complaint to the carrier in writing in the cases:
    - i. Of visible damage to the goods, immediately after discovery of the damage and at the latest within fourteen (14) days from receipt of the goods:
    - ii. Of other damage to the goods, within 14 days from the date of receipt of the goods:
    - iii. Of delay, within 21 days of the date the goods are placed at his disposal; and
    - iv. Of non-delivery of the goods, within 120 days from the date of the issue of the air waybill.

- (b) For the purpose of 5(a) complaint in writing may be made to the carrier whose air waybill was used, or to the first carrier or to the last carrier or to the carrier who performed the transportation during which the loss, damage or delay took place.
- (c) Any rights to damages against carrier shall be extinguished unless an action is brought within two years from the date of arrival at the destination, or from the date on which the aircraft/vessel ought to have arrived, or from the date on which the transportation stopped.

**67. The shipper shall comply with all applicable laws and government regulations** of any country to, from, through or over which the goods may be carried, including those relating to the packing, carriage or delivery of the goods, and shall furnish such information and attach such documents as may be necessary to comply with such laws and regulations. Carrier is not liable to the shipper for loss or expense due to the shipper's failure to comply with this provision.

**68. The first carrier's name may be abbreviated on the face hereof**, the full name and its abbreviation being set forth in such carrier's tariffs, conditions of carriage, regulations and timetables. The first carrier's address is the airport of departure shown on the face hereof. The agreed stopping places (which may be altered by carrier in case of necessity) are those places, except the place of departure and the place of destination, set forth on the face hereof or shown in carrier's timetables as scheduled stopping places for the route. Carriage to be performed hereunder by several successive carriers is regarded as a single operation.

**69. If the sum entered on the face of the air waybill** as "Declared Value for Carriage" represents an amount in excess of the applicable limits of liability referred to in the above Notice and in these Conditions and if the shipper has paid any supplementary charge that may be required by the carrier's tariffs, conditions of carriage or regulations, this shall constitute a special declaration of value and in this case carrier's limit of liability shall be the sum so declared. Payment of claims shall be subject to proof of actual damages suffered.

**70. In cases of loss, damage or delay** of part of the consignment, the weight to be taken into account in determining carrier's limit of liability shall be only the weight of the package or packages concerned. NOTE: Notwithstanding any other provision, for foreign air transportation as defined in the US Federal Aviation Act as amended, in case of loss or damage or delay of a shipment or part thereof, the weight to be used in determining the carrier's limit of liability shall be the weight which is used (or a pro rata share in the case of a part shipment loss, damage or delay) to determine the transportation charge for such shipment.

**71. Any exclusion or limitation of liability applicable** to carrier shall apply to and be for the benefit of carrier's agents, servants and representatives and any person whose aircraft is used by carrier for carriage and its agents, servants and representatives. For purpose of this provision carrier acts herein as agent for all such persons.