

Netlogix Limited Carrier terms and conditions. These terms and conditions shall apply to the exclusivity of all other terms, where a Carrier agrees to provide services to Netlogix.

Services

1. Provision of Services: In performing the Services:

- a. The Carrier must collect the Goods from the Collection Points and deliver the Goods to the Delivery Points;
- b. The Carrier will work collaboratively with NGX and all other carriers engaged by NGX to achieve optimal delivery of the Services in a safe, compliant and cost-effective manner. NGX will require all other carriers engaged by it to collaborate in a similar manner. This obligation does not require the Carrier to do anything that will amount to a breach of the Commerce Act 1986.
- c. The Carrier must co-operate with NGX to ensure that NGX is able to provide services to its Customers.
- d. The Carrier must ensure all its drivers, and its owner drivers, where appropriate, participate in site induction programmes carried out by NGX Customers. The Carrier is responsible for any site loss or damage caused or contributed to by non-site inducted drivers.

1.2 Standard of Services: The Carrier must:

- a. provide the Services to the best of its skill and ability and to the standard of best practice in the road transport industry;
- b. ensure its drivers and owner drivers are fit for work and capable of undertaking allocated tasks and are appropriately qualified, trained and inducted to enter Customer Collection Points and Customer Delivery Points;
- c. ensure its drivers and its owner drivers comply with all safety and compliance procedures, policies and requirements reasonably requested by NGX and Collection Point and Delivery Point personnel.
- d. ensure that all vehicles and other equipment used in the provision of the Services are in good working order, repair and condition at all times and fit for the purpose of providing the Services;
- e. ensure it, and its drivers and owner drivers comply with all applicable legislation, regulations and codes of practice when performing the Services;
- f. obtain and maintain, at its own expense and at all times, all licences, consents, authorisations and approvals necessary for the Carrier to provide the Services;
- g. comply with all lawful and reasonable requests of NGX and its Customers including security, health and safety requirements (under the Health and Safety at Work Act 2015), site rules and codes of conduct.
- h. ensure all loads carted for NGX:
 - i. are carried by vehicles that have correct and current road user charge permits; and
 - j. are carried by vehicles that are within vehicle dimension and mass (VDAM) specification; and
 - k. are restrained and secured (at a minimum) in accordance with NZTA published Truck Loading Guidelines or NGX or NGX Customer guidelines; and
 - l. are carried in accordance with all other applicable Land Transport Rules and legislation specific to the vehicles and or the Goods being carried; and
- i. the Carrier will provide all necessary load restraints for timber, steel and other products types, including weather protective tarps for loads. All drivers must be

- ii. trained with safe using of all load restraint, and tarps to appropriate legislative; and
- the Carrier will ensure all loads are covered, when required by NGX with tarps, to prevent water ingress and without product damage.

- m. ensure that drivers are, at all times, contactable by mobile phone. Mobile phone(s), equipment and service contracts are to be supplied and maintained by the Carrier at their cost.
- n. supply all information reasonably required by NGX, in a format, in a media, with the frequency and by the times, all as specified by NGX.
- o. in the event of an incident, accident, near miss or hazard, inform NGX of such matter as soon as practicable.

1.3 Sub Contracting: The Carrier is not permitted to sub-contract the performance of any part of the Services to any other person without prior approval of NGX in writing (which may be withheld in NGX's absolute discretion). Notwithstanding any NGX approved sub contract arrangement, the Carrier shall remain responsible for the performance of the Services.

1.4 Owner Drivers: For the purpose of clause 1.3, any owner driver under contract solely to the Carrier is approved to perform the Services.

1.5 Inspection: For the purpose of ensuring compliance by the Carrier with this clause 1, NGX may, subject to giving the Carrier reasonable notice:

- a. inspect any premises or vehicles used by the Carrier or any sub-Carrier to the Carrier for the purpose of storing, delivering or handling Goods; and
- b. inspect or review any health and safety and other compliance manuals, policies, documented procedures and drug and alcohol policies used by the Carrier in its business; and
- c. request any other information reasonably required by NGX to confirm performance of the Carrier's obligations under this Agreement.

2. NGX Obligations

2.1 Forecasts: NGX will provide the Carrier with reasonable advance notice of the requirements for Services and advice of volumes of Goods to be moved to or from relevant Collection Points and Delivery Points.

2.2 EDI: NGX and the Carrier will ensure that all electronic data interchange systems including web portal, mobile portal content, and any other applicable content specified by NGX is maintained to ensure timely transfer of information to and from the carrier.

3. Ownership of Goods

3.1 Ownership: Ownership of the Goods shall at all times remain with Customers, or the consignor to them, as the case may be. The Carrier will use its best endeavours to ensure the Goods are secure from unauthorised access, loss or damage.

3.2 No Lien: Nothing in this Agreement shall give the Carrier any claim or lien over the Goods and the Carrier will not assert any such claim or lien.

4. Rates and Payment

- 4.1 **Rates:** NGX shall pay the Carrier for the Services provided in accordance with the pricing schedule as agreed between both parties.
- 4.2 **GST:** The Rates are exclusive of GST. GST shall be calculated by NGX to the Carrier upon the delivery of a valid buyer created tax invoice by NGX to the Carrier and payable per clause 4.4.
- 4.3 **Invoices:** NGX shall generate a buyer created tax invoice at least monthly for the Services provided in the preceding month. Carriers should not raise tax invoices to NGX unless prior arrangement had been made with NGX.
- 4.4 **Payment:** Subject to clause 4.5, invoices are payable on the last day of the month following for the Services provided in the preceding month.
- 4.5 **Supporting Information:** The Carrier must provide proof of delivery (POD) and such other reference codes and consignment note summaries as NGX may reasonably require validating change to Services provided within 24 hours of actual delivery of the Goods using NGX provided web-portal except where alternative means of POD (such as weighbridge dockets generated at the Delivery Points and or Collection Points) is agreed with NGX in writing. Charges for deliveries with no POD or PODs not accompanied by the required information will not be paid. Charges for deliveries where a POD is completed after 48 hours of actual delivery of the Goods may be paid later than the payment date referred to in clause 4.4.
- 4.6 **Payment by Customers:** NGX is not obliged to pay the Carrier for the performance of any particular Service until NGX has received the corresponding payment for that Service from Customer for whom that Service was performed. NGX will use all reasonable endeavours to ensure such payment is received by it on due date, or as soon as reasonably possible thereafter.

5. KPI's

- 5.1 **Party Representatives:** Each of NGX and the Carrier shall appoint a representative ("Relationship Manager") whose responsibility shall be to manage and monitor the provision of the Services and liaise with the other party.
- 5.2 **KPI's:** The Carrier shall perform the Services in accordance with the Key Performance Indicators as set out in Schedule-1. The Carrier's performance of the Services shall be measured and reviewed against the KPI's.
- 5.3 **Regular Meetings:** Each party's representative appointed under clause 7.1 will meet at least once every 6 months at such time and place as may be agreed from time to time to review issues or concerns arising out of the provision of the Services and to discuss the Carrier's performance against the KPI's.

6. Insurance

- 6.1 The Carrier must during the term hold and keep current the insurance cover required by NGX with an insurer approved by NGX.
- 6.2 The Carrier must at all times pay all premiums payable by it pursuant to the Accident Compensation Act 2001 for its employees and deemed employees.

- 6.3 The Carrier shall upon request provide NGX with evidence of such insurance cover and the payment of premiums.

7. Liability, Damage or Lost Goods

- 7.1 **Damage or Lost Goods:** The Carrier must promptly provide NGX with details of any damage to or loss of any Goods occurring during the pick-up and delivery.
- 7.2 **Goods Acceptance & Delivery:** Carrier must check and make note of damage to the Goods before acceptance of the Collection Points and delivery at the Delivery Points (such note should be made on the consignment note counter signed by the despatch personnel at Collection Points and or receiving personnel at Delivery Points).
- 7.3 **Limited Liability:** All Goods shall be carried "at limited carriers risk" in terms of the Contract and Commercial Law Act 2017.
- 7.4 **Indemnity:** In respect of any liability not covered by clause 7.3, subject to clause 7.5, each party shall be responsible for, and shall indemnify the other, its employees and agents from and against any liability, loss or claim arising as a result of or caused by the negligence, breach of contract or breach of statutory duty of the indemnifying party, including loss or damage to property, provided that each party's liability for such loss, destruction or damage shall be limited to insurance cover agreed per event or series of events.
- 7.5 **Exclusions:** Neither party shall be liable to the other or to any other person for any consequential or indirect loss, loss of profits or loss of opportunity, including any liability for consequential loss under section 259(3)(c) of the Contract and Commercial Law Act 2017.

8. Confidentiality

- 8.1 **Acknowledgement:** Each party acknowledges that it does not have any claim, right, title, property or other interest of any kind or nature in the Confidential Information of the other party.
- 8.2 **Obligations:** A party must not during or after the term of this Agreement:
- except in the proper course of performance of this Agreement, disclose to any person without the previous consent in writing of the other party the terms of this Agreement or any Confidential Information of the other party; or
 - use or attempt to use any Confidential Information of the other party in any manner which may cause injury or loss to the other party or in any manner other than that contemplated by this Agreement.
- 8.3 **Exceptions:** Disclosure of Confidential Information is permitted:
- when required by law;
 - when required to enforce a party's rights or to defend any claim or action under this Agreement;
 - where the information has already entered the public domain other than as a result of a breach by one of the parties of its obligations pursuant to this clause 10.
- 8.4 **Sub Carriers and/or Owner Drivers:** The Carrier must ensure that any NGX approved sub-Carrier or Owner Driver is fully aware of and bound by these obligations of

confidentiality and the Carrier will be responsible for any breach by its sub-Carrier.

8.5 **Survive:** The obligations created under this Agreement to preserve the confidentiality of the Confidential Information survive termination of this Agreement.

9. Force Majeure

9.1 **Force Majeure Event:** If a party ("Affected Party") becomes unable, wholly or in part, to carry out an obligation under this Agreement (other than an obligation to pay money) due to an event beyond its reasonable control ("Force Majeure") the Affected Party must give to the other party prompt written notice of:

- a. reasonable particulars of the Force Majeure; and
- b. so far as is known, the probable extent to which the Affected Party will be unable to perform or be delayed in performing its obligation.

9.2 Effect:

- a. Subject to compliance with clause 9.1, the relevant obligation, so far as it is affected by the Force Majeure, will be suspended during, but no longer than, the term of the Force Majeure.
- b. The Affected Party must use all possible diligence to overcome or remove the Force Majeure as quickly as possible, although it is not required to settle any labour or other dispute creating the Force Majeure on terms contrary to its wishes or to contest the validity or enforceability of any law, regulation or decree by way of legal proceedings.
- c. Either party may, after giving notice to the other party, terminate this Agreement if the Force Majeure continues for 20 working days.

10. Termination

10.1 **Default:** If either party:

- a. goes into liquidation, has a receiver and/or manager appointed to it or any part of its assets, enters into a scheme of arrangement with creditors or suffers any other form of external administration;
- b. fails, within 7 days after receipt of notice, to remedy any breach of its obligations under this Agreement which is capable of remedy; or
- c. breaches any of its obligations under this Agreement which is not capable of remedy,

the other party may, by notice to the other, terminate this Agreement with immediate effect.

10.2 **Termination Notice:** This Agreement may be terminated by either party by giving one month's written notice of termination to the other party.

10.3 **Termination for Breach:** The Carrier or NGX may terminate this Agreement at any time during the Initial Period or any subsequent period of this Agreement pursuant to the provisions of clause 10.

10.4 **Termination by NGX:** In addition to the right of termination contained in clause 10, NGX may also terminate this Agreement immediately by written notice to the Carrier:

- a. Upon conviction of the Carrier for any criminal offence; or

- b. Upon evidence of any act of fraud or dishonesty by the Carrier or any intention to commit fraud or failure to account to NGX for money due to NGX and received by the Carrier within 24 hours of receipt of that money; or
- c. If the Carrier breaches, or fails to properly or promptly perform, any of the Carrier's obligations and fails to remedy the situation to NGX's satisfaction within 2 working days after notice from NGX of the breach or failure; or
- d. Notwithstanding clause 3.1c. if the Carrier fails to properly or promptly perform any of its material obligations under this contract; or
- e. Upon evidence of consumption by the Carrier or any Approved Driver working for the Carrier of intoxicating liquor or drugs other than those prescribed by a registered medical practitioner at any time either during the performance of this Agreement or while the Carrier's Vehicle is being operated; or
- f. Upon failure by the Carrier to obtain or retain a goods service licence; or
- g. If the Carrier is the subject of complaints regarding the performance of the Services by NGX customers; or
- h. If the Carrier is or becomes insolvent or bankrupt or is or goes into receivership or liquidation; or
- i. If in the reasonable opinion of NGX an action by the Carrier is incompatible with the Carrier's continuing obligations and duties under this Agreement; or
- j. If the Carrier has a conflict of interest with NGX's interest which NGX reasonably considers sufficiently inappropriate; or
- k. If the Carrier breaches the confidentiality requirements of the Agreement;
- l. If on 3 or more occasions within a consecutive 6-month period the Carrier neglects, or fails to perform or observe, any of the Carrier's obligations under this Agreement and notice in respect of such neglect, failure to perform or non-observance has been given on each occasion pursuant to clause 4.1c.

10.5 **Other NGX Remedies:** In addition to the right to terminate conferred by clause 1.1, NGX may upon the occurrence of the events specified in clause 1.1:

- a. Withhold any payment otherwise due to the Carrier until the matter is resolved to NGX's satisfaction;
- b. Immediately suspend this Agreement:
 - i. by written notice to the Carrier;
 - ii. have the Service in respect of which the breach arose performed by its own personnel or anyone else at the Carrier's cost.

10.6 **Termination by the Carrier:** In addition to the right of termination contained in clause 10 the Carrier may also terminate this Agreement immediately by written notice to NGX:

- a. If NGX neglects or fails to perform or observe any of its obligations under this Agreement and such neglect or default is incapable of being remedied, or, if capable of being remedied, such neglect or default continues unremedied for 10 working days after written notice of default has been given to NGX by the Carrier; or
- b. If any order for its winding up is made by any court or if a receiver is appointed in respect of NGX; or

- 10.7 **Carrier's Obligations on Termination:** Upon termination of this Agreement the Carrier agrees to return to NGX all manuals, materials, in-truck-tablets, and any other items provided to the Carrier by NGX (without taking copies) and agrees immediately to discontinue the use of NGX's fleet colour on the Carrier's Vehicle and remove from the Carrier's Vehicle all logos, signage and forms of advertising indicative of the Carrier's association with NGX. This will be done solely at the Carrier's expense.
- 10.8 **Customer Contract:** The Carrier's right to perform any particular Service automatically terminates when NGX no longer has the right to perform that Service for its Customer.
- 10.9 **Rights Accrued:** Termination of this Agreement shall not affect any rights or remedies each party may have accrued up to the date of termination.
- 10.10 **Survival:** The provisions of clauses 7, 8, 11 and any other provision expressed or implied to continue, shall continue to apply notwithstanding termination of this Agreement.
11. **Dispute Resolution**
- 11.1 **Notice:** A party must, as soon as reasonably practicable, give the other party notice of any dispute arising in respect of, or in connection with, this Agreement.
- 11.2 **Resolution:** Each party's Relationship Manager appointed under clause 5.1 shall meet to discuss the dispute within 10 Business Days of receipt of notice of the dispute, with a view to achieving a resolution of the dispute.
- 11.3 **Failure to Resolve Dispute:** If the Relationship Managers fail to resolve the dispute within 20 Business Days of notice of the dispute being provided, either party may take such legal action, including the commencement of legal proceedings, as is deemed appropriate or necessary to resolve or determine the dispute.
12. **Notices**
- 12.1 A notice under this Agreement must be in writing and may be given to the addressee by:
- delivering it to the address of the addressee
 - sending it by pre-paid registered post to the address of the addressee; or
 - sending it by email to the email address of the addressee,
 - and the notice will be deemed to have been received by the addressee on receipt.
- 12.2 An email is deemed to have been received on production of a notification message that the email has been delivered to (or read by) the recipient.
13. **Miscellaneous**
- 13.1 **No Partnership:** Nothing contained in this Agreement creates an agency, partnership, joint venture or employment relationship between NGX and the Carrier or any of their respective officers, employees, agents or Carriers.
- 13.2 **Amendment:** This Agreement may only be varied by the written agreement of the parties.
- 13.3 **No Assignment:** The Carrier may not assign its rights and obligations under this Agreement without first having obtained the written consent of NGX. Such consent may be withheld in NGX's absolute discretion. For the purpose of this Agreement a transfer of shares in the Carrier whereby there is a change in effective control is deemed to be an assignment.
- 13.4 **No Waiver:** No waiver of any term of this Agreement is binding on a party unless it is in writing and signed by or on behalf of that party. Any such waiver is not a waiver of any other breach.
- 13.5 **Further Assurance:** Each party must promptly sign all documents and do all things that the other party from time to time reasonably requests to effect, perfect or complete this agreement and all transactions incidental to it.
- 13.6 **Severance:** If any provision in this Agreement is held invalid or unenforceable in whole or in part then such provision shall be severed from this Agreement and the remainder of the Agreement shall continue unaffected.
- 13.7 **Counterparts:** This Agreement may be executed in any number of counterparts (including by facsimile or pdf transmission copies) and, provided that both parties have executed a counterpart of this Agreement, the counterparts together shall constitute a binding and enforceable agreement between the parties.
- 13.8 **Entire Agreement:** This Agreement constitutes the entire agreement between the parties in relation to its subject matter and supersedes any prior agreement or arrangement in respect of the Services.
- 13.9 **Governing Law:** This Agreement is to be governed by the laws of New Zealand and the parties agree to submit to the non-exclusive jurisdiction of the Courts of New Zealand.
14. **Definitions**
- Definitions:** In this Agreement, unless the context otherwise requires:
- "Agreement"** means this Agreement, including the Schedules.
- "Business Day"** means any day other than a Saturday, Sunday or Public Holiday in New Zealand.
- "Collection Points"** means the collection points specified in Schedule 1.
- "Commencement Date"** means the commencement date of services.
- "Confidential Information"** means, in respect of a party, all trade secrets and know-how, financial information and other commercially valuable information and other non-public information of whatever description and in whatever form relating to the party including, all information relating to the Goods.
- "Goods"** means the Goods specified in Schedule 1, as may be varied from time to time by agreement between the parties.
- "GST"** means goods and services tax payable pursuant to the Goods and Services Tax Act 1985
- "KPI's"** means the key performance indicators
- "Rates"** means the rates payable by NGX for the Services specified in Schedule 2 and as may be amended from time to time in accordance with this Agreement.
- "Services"** means the services to be provided by Carrier specified