



## **GENERAL CONDITIONS OF CONTRACT**

### **1. APPLICATION OF THESE CONDITIONS OF CONTRACT**

- 1.1 These general conditions of contract (**Conditions**) shall apply between CODA and you, the customer, (**Customer**) for the provision of Services to you by us unless otherwise agreed in writing. All instructions or requests for Services will be deemed given and accepted on the basis of these Conditions. If you deliver Goods to us or request our Services, you will be deemed to have accepted these Conditions notwithstanding anything that may be stated to the contrary in your instructions or request.
- 1.2 These Conditions apply to all of our Services. In the case of conflict, the Conditions applicable to the Services have the following order of priority (unless otherwise expressly stated in any Contract):
- (a) any Contract with us;
  - (b) these Conditions;
  - (c) the consignment note for the goods.
- 1.3 In these Conditions, "you" and "your" are references to the Customer (being the person who is contracting with CODA), whether as principal or as agent for another. "We", "us" and "our" are references to CODA Group LP and any related company (within the meaning of that expression in section 2(3) of the Companies Act 1993) or limited partnership carrying on business using or incorporating the group trading name of "CODA". Unless the context otherwise requires, defined expressions used in these Conditions shall have those meanings set out in clause 12.

### **2. CODA'S SERVICES**

- 2.1 Our Services commence when we receive the goods. From that time we earn our charges and become entitled to payment for our Services in full. In making payment to us, you must not make any deduction or set off for any reason. If you have a claim against us, that must be dealt with as an entirely separate issue.
- 2.2 We rely on the details supplied to us but we do not admit their accuracy or completeness and our signature is only an acknowledgement for the number of items picked up or received by us.
- 2.3 We will not exchange any pallets and you must not transfer any pallet to our pallet accounts unless we agree in writing.
- 2.4 We will not collect any cash on delivery unless we agree in writing.
- 2.5 We will have delivered the goods if at the delivery address we obtain an acknowledgement of delivery, or we have delivered the goods in accordance with the requirements of our Contract with you, or if the receiver collects them from us.
- 2.6 If we have contracted on the basis that payment of our charges must be made in full prior to delivery and such payment has not been received, we will advise the person who is to pay our charges that we are ready to effect delivery and clause 2.8 will apply.
- 2.7 If the goods are to be collected from us, we will have delivered the goods when they are collected. If the goods have not been collected by the end of the 5<sup>th</sup> working day after we notify the receiver that the goods are available for collection, clause 2.8 will apply.
- 2.8 Where goods have not been collected or delivered (as the case may be) we may at your risk and expense leave the goods at the delivery address if you so authorise us, store the goods (in which case additional storage charges may apply) or return them to the sender (each of which constitutes delivery). Where clause 2.6 applies, payment in full must be made before we will relinquish possession of the goods.
- 2.9 We can:
- (a) deviate from any usual route or method of transport to provide the Services;
  - (b) sub-contract the whole or any part of our Services;
  - (c) do anything that we consider to be appropriate including selling, disposing of or destroying goods if the goods appear to be deteriorating and are likely to become offensive; or if they are in or are about to enter a dangerous state and such action is necessary to avoid the threat of harm to persons or property;
  - (d) open and inspect the goods at any time without notice to you to determine their nature, condition, ownership or destination;
  - (e) carry, store, handle, remove, assemble, erect, pack, unpack, load, unload or consolidate the goods with others;
  - (f) lease, hire or enter into any agreement for, or use, any aircraft, ship, container, pallet or rail wagon to provide the Services; and
  - (g) complete any documents required to comply with any laws.
- 2.10 Without limiting clause 2.9(d) above, where you load the goods, we may charge for reloading, adjusting and additional carriage at our charges or else refuse to carry the goods if the load exceeds the weight or measurement specified on the vehicle and if other applicable terms and conditions or our procedures regarding loading have not been adhered to, or if we consider the load to be unevenly distributed or otherwise unsafe.
- 2.11 We may in our sole discretion re-weigh and re-measure any goods we receive. Should any goods be under-declared in weight or volume by you, we reserve the right to re-weigh or re-measure the goods and charge the correct charges and an additional administration surcharge may apply.
- 2.12 All packaging, pallets and other such items in which the goods are packed or stored are deemed to form part of the goods for the purposes of assessing the weight and measurement of the goods and calculating the charges payable by you.
- 2.13 We may store your goods and charge you our applicable charges for unloading, storage, detention and any other Services if:

- (a) we are unable (due to circumstances beyond our control) to deliver the goods in terms of the Contract; or
  - (b) you have not collected the goods within one working day of the time at which we notify you that the goods are available for collection; or
  - (c) you have not accepted delivery of the goods within one working day of the time at which we notify you that the goods are available for delivery.
- 2.14 Where we store goods on your behalf, whether by agreement or under clause 2.13:
- (a) you must collect the goods within one working day of receiving notice from us to collect them;
  - (b) the goods are stored at your own risk and expense in all respects. To the maximum extent allowed by law all responsibility or liability expressly or impliedly imposed on us in respect of such storage is excluded (including liability for negligence) and in particular we shall have no liability to you as a bailee of the goods whether in contract or in tort or otherwise; and
  - (c) you indemnify us against any loss or damage we suffer as a direct or indirect result of such storage.
- 2.15 If we store the goods:
- (a) we can require you to remove them if you don't pay the charges when due;
  - (b) we don't have to make goods available to you until all charges have been paid and you sign, or a person authorised in writing by you signs, a receipt for them; and
  - (c) we can return goods to your last known address at your cost if you don't remove them when we require or we give you notice to remove them.
- 2.16 We may charge detention charges on any vehicle that is not loaded or unloaded by you within one working day of:
- (a) the vehicle being delivered to you; or
  - (b) us notifying you that the vehicle is available for collection or delivery of the goods.
- 2.17 We may, at any time and for any reason, refuse to deliver or handle goods or provide Services for any person or for any class of goods. We will not, unless expressly agreed by us in writing and at owner's risk for the purposes of the Act, provide Services in relation to dangerous goods. Where we agree to handle or carry dangerous goods, then they are carried subject to the following:
- (a) you must supply us with any declaration or other documentation required by us or by law in relation to dangerous goods; and
  - (b) dangerous goods must be packed, labelled and loaded in accordance with all laws and regulations applicable to the carriage of dangerous goods, and in accordance with any procedures, guidelines or code of practice specified by regulation or by us.
- 2.18 Subject always to clause 6.4 of these Conditions, dangerous goods, other than Class 1 explosives designated under or pursuant to the Hazardous Substances and New Organisms Act 1996, must be collected by you within 2 working days of being notified of their availability for collection. Class 1 explosives must be collected by you within 2 working hours of being notified of their availability for collection. Dangerous goods not so collected will be at your own risk and responsibility and you indemnify us against any loss, damage, cost or expense that we incur during or as a result of any delay on your part. We may, at your risk and expense, dispose of any dangerous goods left on our premises.
- 3. CUSTOMER'S OBLIGATIONS**
- 3.1 You confirm:
- (a) you are either the owner or the authorised agent of the owner of the goods and have authority to enter into the Contract;
  - (b) you or your agent have fully and accurately described the goods, their value and weight;
  - (c) you will comply with all applicable laws; and
  - (d) the goods are fit to be carried and stored in accordance with the Contract in the condition and packed in the manner in which they are tendered for the Services.
- 3.2 You must, or cause your agent to:
- (a) provide us with all necessary documentation for the Services and fully, accurately and legibly complete the label on the goods and the sender and receiver panel on the front of the Contract on any of our, or your, documentation;
  - (b) give us an appropriate declaration about any dangerous goods and notify us if the goods require special handling;
  - (c) if you are not the receiver, make the goods conform to the receiver's requirements;
  - (d) comply with all our applicable procedures and ensure that the goods comply with all our applicable procedures;
  - (e) if our Services include storage or holding of goods:
    - (i) give us at least one working days notice if you intend to collect them or have them collected or redelivered; and
    - (ii) remove the goods within one working day if we give you notice to remove them; and
  - (f) if requested by us, do all things and execute all documents necessary or that we require to give full effect to the Contract and the transactions contemplated by it.
- 3.3 You indemnify us against any cost or liability we incur, pay or have to pay in dealing with any claim against us for loss or damage to property or illness, injury or death, to the extent caused:
- (a) by the goods or your breach of the Contract or these Conditions;
  - (b) because one of your representations is incorrect; or
  - (c) by a negligent or unlawful act or omission or wilful misconduct of you, the sender or the receiver or any person acting for you, the sender or the receiver,
- and there is no need for us to suffer loss or damage before enforcing this right of indemnity.

- 3.4 If you use any of our equipment or property you must return it on request or immediately following its use, and it must be in the same condition as when you received it.
- 4. PAYMENT FOR CODA'S SERVICES**
- 4.1 You will pay all charges owing to us in full and without set off or deduction at the time specified by us, provided that if no time has been specified or agreed with us, payment will be due on the 20<sup>th</sup> day of the month following the month in which the services were provided.
- 4.2 You must pay the charges if the person nominated to pay the charges doesn't do so.
- 4.3 You must also pay:
- (a) an additional charge if there is any delay outside our control in loading or unloading greater than 30 minutes;
  - (b) any cost to comply with any laws or requirements of any market, harbour, dock, railway, airline, shipping, excise, customs or warehouse authority;
  - (c) any excise, customs duty or applicable tax or similar charge (including any fine or penalty) imposed by the government, or by any regional or other authority;
  - (d) the cost of labour or machinery or both to load, unload, maintain or protect the goods; and
  - (e) any other charges specified in these Conditions.
- 4.4 If you require paper invoices to be posted to you, an administration charge will apply. There is no charge for the provision of electronic invoices or statements to you.
- 4.5 You must examine each account invoice and notify us within 7 working 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.
- 4.6 If payment is not made in accordance with clause 4.1, we may in our sole discretion:
- (a) charge default interest at the rate of 5% over our normal bank overdraft interest rate from time to time (whether or not our account is in overdraft at any material time), on any amount not paid by the due date, calculated from the due date of each invoice until the date we receive payment in full;
  - (b) charge you all costs incurred by us in the collection of any overdue amount from you including, without limitation, all legal costs on a solicitor/client basis and any collection agency charges incurred by us, up until the date of payment including any costs incurred in attempting to recover money from any guarantor of your obligations;
  - (c) withdraw or change any terms of credit in place with you; and
  - (d) suspend or refuse to deliver any further goods to you or perform any Services for you until any default by you under these Conditions has been remedied.
- Any payment received by us will first be applied in reduction of interest and any costs incurred by us under this clause, the remaining balance of any such payment will then be applied to reduction of any other amounts outstanding to us.
- 4.7 We may change our rates schedule or other agreed charges at any time without notice to you. We may at our sole discretion fix or impose any administration or special charges.
- 4.8 Our charges do not include GST unless expressly stated to do so. GST is payable in addition to any applicable charges.
- 4.9 Any written quote which we give in respect of the Services, will remain open for a period of 20 working days. We will not be bound by quotes unless they are in writing.
- 5. CONTRACT AND COMMERCIAL LAW ACT 2017**
- 5.1 Subpart 1 (*Carriage of goods*) of Part 5 of 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.
- 5.2 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.
- 6. LIMITATION OF CODA'S LIABILITY**
- 6.1 Where the goods are to be carried at "limited carrier's risk", we will pay you the cost price of the lost or damaged goods to the maximum amount as provided in section 259(2) of the Act (which includes GST, where applicable) per "unit of goods" that are lost or damaged. The applicable "unit of goods" will be determined in accordance with the Act.
- 6.2 Where the goods are to be carried on "owner's risk" terms, we will pay no compensation if the goods are lost or damaged, unless we intentionally lose or damage them.
- 6.3 To the maximum extent permitted by law, we exclude all liability to you or any other person for, and you indemnify us against any claim by any person about, any loss, damage, misdelivery, delay, deterioration, contamination, our failure to deliver the goods or perform the Services, and whether arising because of breach of contract, bailment, tort including negligence (including negligent advice), our wilful act or omission or breach of statutory duty.
- 6.4 Our express agreement is required for the carriage, handling or storage of the following items, which must not be tendered to us for carriage, handling or storage without a full declaration being made as to their nature and all matters relevant to their safe keeping and handling including, where dangerous goods are involved, the provision of all paperwork and information required by law: Documents, goods in prepaid wallets, satchels or envelopes, appliances with electrical components, computers, jewellery, pictures or picture frames, porcelain china, ceramic items, crystal, marble or enamel goods, goods the production, sale, import or export of which is prohibited by

laws, dangerous goods, glass (including bottles and their contents), windscreens, car panels, precious stones or metals, currency or negotiable instruments, produce, liquids, perishable goods, floor or wall tiles, fragile goods, regulated waste, cigarettes or goods under bond. Where we agree to carry any such goods, they will be carried only on "owner's risk" terms. You indemnify us against any loss, liability, damage or expense that we may incur as a result of your breach of any of the provisions of this clause 6.4.

- 6.5 We will not pay for any loss of or damage to goods if it is caused by ordinary loss in weight or volume, shrinkage, ordinary leakage, ordinary wear and tear, insufficient and/or unsuitable packing or preparation, delay, inherent vice, a force majeure event, electrical or mechanical derangement or because you or your agent overloaded or incorrectly loaded the transport vehicle.
- 6.6 Where we provide any Service to you other than the carriage of goods or an incidental service under the Act, including, without limitation, the provision of containers 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 during the provision of that Service is limited to the amount charged by us for providing the Service and is further limited by clauses 6.3, 6.4, 6.5 and 6.7.
- 6.7 To the maximum extent permitted by law, we exclude all liability to you or any other person for any indirect, economic, special or consequential loss or damage including but not limited to loss of revenue, profit, production, use, business, anticipated savings or claims by you or your customer, even if we know they are possible or otherwise foreseeable.
- 6.8 We are not liable for errors or omissions in publications or schedules or for statements or representations made by our employees, agents or representatives as to any nature of our Services.
- 6.9 Where you are using our Service for business purposes, you acknowledge that none of the rights or remedies provided under the Consumer Guarantees Act 1993 will apply. Furthermore, all other warranties and obligations on our part implied by statute, general law, international convention or custom are expressly excluded to the fullest extent permitted by law.
- 6.10 We contract as agent and trustee for our employees, agents and subcontractors so they also have the benefit of the Contract and these Conditions (including any exclusions or limitations of liability we have) to the same extent as us and as if they were parties to it.
- 6.11 Any insurance of the goods is the Customer's sole responsibility.

## 7. **FORCE MAJEURE**

- 7.1 If we cannot carry out an obligation under the Contract either in whole or in part because of a force majeure event, then our obligations under the Contract will be suspended for the duration of the event or waived to the extent applicable.

## 8. **LIEN**

- 8.1 We shall have a general and particular lien over all goods and documents relating to goods in which you have an interest, and which at any time and for any reason come into our possession or the possession of our agents or subcontractors, for all sums that are owed to us by you, whether or not overdue for payment and whether or not the goods in our possession are those to which the debt relates. The lien claimed by this clause is additional to and not in substitution for any other lien right that may be available to us at common law, and is not to be interpreted as abrogating our common law rights in any way. We reserve the right to elect, where necessary, whether to rely on the lien rights conferred by this clause 8.1 or any rights available to us at common law.

## 9. **PERSONAL PROPERTY SECURITIES ACT 1999**

- 9.1 You grant to us a security interest (**Security Interest**) in the goods and all of your other personal property from time to time in our possession (**Property**) as security for the payment of all amounts due or which become due on any account to us by you or any other person interested in the Property.
- 9.2 On or at any time after we become entitled to terminate the Contract (whether we have terminated or not):
- (a) the Security Interest will become immediately enforceable;
  - (b) all amounts then due and unpaid to us by you will, without notice (where the law permits), become immediately due and payable and you will immediately pay such amounts; and/or
  - (c) we may enforce the Security Interest by exercising rights which are exercisable after the Security Interest becomes enforceable.
- 9.3 After the Security Interest becomes enforceable, we (in addition to any powers granted at law or otherwise), to the maximum extent permitted by law, have the power to do anything in respect of the Property that you could do. Without limitation to those powers, we may store the Property (at your risk and expense), open any package and sell all or any of the Property as we think fit (including on a deferred payment or vendor finance basis).
- 9.4 You undertake that you will not change your name without notifying us in writing of the proposed name change and the new name at least 5 working days before the change takes effect.
- 9.5 The rights conferred on us as a chargeholder by law are in addition to the rights conferred by the Contract and, to the extent permitted by law, may be exercised by us.
- 9.6 You waive your rights to receive a copy of any verification statement in relation to the Security Interest and agree, to the extent permitted by law, that as between you and us:
- (a) sections 114(1)(a), 133 and 134 of the PPSA will not apply;
  - (b) you will have none of the rights referred to in sections 116, 120(2), 121, 125, 129 and 131 of the PPSA; and
  - (c) where we have rights in addition to, or existing separately from, those in Part 9 of the PPSA, those rights will continue to apply and, in particular, will not be limited by section 109 of the PPSA.

9.7 You will, whenever requested by us and at your cost, do or cause to be done anything for more satisfactorily protecting the Property and Security Interest and priorities provided for in this agreement and/or for assisting in the execution or exercise by us of any right.

## **10. CODA'S CLAIM PROCEDURE**

- 10.1 If goods are damaged at the time of delivery, the receiver must note this damage on the driver's scanner/delivery manifest/point of delivery receipt. You must also give written notice to CODA's Claim Administrator in accordance with clause 10.3.
- 10.2 Where goods are not delivered ("loss"), you must give written notice to CODA's Claim Administrator in accordance with clause 10.3.
- 10.3 Where there is damage to the goods identified at the time of delivery or loss of the goods, you must give written notification (which includes by email) of the loss of or damage to the goods and your intention to make a claim to CODA, within 5 working days of the date of delivery or the date when they should have been delivered, whichever comes first. The written notice must provide reasonable particulars of the consignment, the relevant goods and the nature of the loss of or damage to the goods.
- 10.4 Where concealed damage to the goods is not apparent at the time of delivery (no visible external damage) but discovered by you within 2 working days of delivery (the maximum permitted time for inspection), you must give written notice (which includes by email) of the concealed damage to the goods and your intention to make a claim to CODA's Claim Administrator within 7 working days of the date of delivery.
- 10.5 In any case where written notification of the loss of or damage to the goods from you is not given within the specified time detailed in clauses 10.3 or 10.4, we shall have no liability in respect of such loss or damage and no action may be brought by you against us in respect of this loss of or damage to the goods.
- 10.6 To assess and validate a claim, we may elect to appoint an assessor to inspect the damaged goods. The receiver or owner of the goods must permit the assessor to carry out such an inspection. Subject to the duty to mitigate the loss referred to below, wherever practical the damaged goods and the packaging should be retained until we have assessed the claim.
- 10.7 You have a duty to mitigate your loss by taking such steps by way of sale, repair, dumping or otherwise as is appropriate to the nature of the goods. Where we accept legal liability for a claim, no payment will be made until the loss has been mitigated and the final claim value (after deduction of salvage, where obtained) has been calculated correctly.
- 10.8 Following notification of the loss or damage of goods in accordance with this clause, you must lodge with us, claim documents detailing the loss or damage of goods, and the final claim value, within 20 working days of date of delivery of the goods or the date when they should have been delivered, as the case may be. In any case where the claim documents are not provided to us within the specified time, we shall have no liability in respect of such loss or damage and no action may be brought against us in respect of the same.
- 10.9 Any action against us in respect of a claim for loss or damage of goods will be absolutely barred unless you have complied with the requirements of our claims procedure and proceedings are brought and served on us within six months from the date when the goods were delivered or should have been delivered, as the case may be.
- 10.10 The provisions of sections 274 to 281 of the Act shall not apply.
- 10.11 We will not consent to any applications to the court for an extension of the time limits under clauses 10.3, 10.4 and 10.8; and you agree to contract out of the provisions of the Act that in some circumstances allow such extensions to be given.

## **11. GENERAL CLAUSES**

- 11.1 If a condition or part of a condition is unenforceable, it must be severed from and does not affect the rest of the Contract.
- 11.2 We are not bound by any waiver, discharge or release of a condition or any agreement which changes the Contract, unless it is in writing and signed by us.
- 11.3 Except as expressly set out in the Contract, you acknowledge that the Contract records the entire understanding relating to the matters dealt with in the Contract and that you are not relying on any other representations, warranties or statements regarding the nature, characteristic or quality of the Services provided by us (with the intent that we will not be liable for any errors or omissions in publications or schedules or for statements or representations made by our employees, agents or representatives that are not expressly recorded in the Contract).
- 11.4 These Conditions will prevail over the terms and conditions set out in any document used by you or the sender, the receiver and any other person having an interest in the goods and purporting to have contractual effect.
- 11.5 We may amend these Conditions from time to time without notice. The Conditions applicable to the Services are the Conditions current at the time at which the goods are accepted by us. The most up to date Conditions of Contract will be posted on our website from time to time as changes occur.
- 11.6 You authorise us to collect any information we consider relevant to assessing your creditworthiness or financial position. You also authorise us to use any information we obtain in relation to providing Services to you for any purpose associated with our operations or marketing. Any information we obtain may be disclosed to any of our related companies.
- 11.7 A reference to any law includes any statutory modification, substitution or re-enactment of it.
- 11.8 The laws of New Zealand apply to the Contract and these Conditions and you must bring any proceedings against us in a court in New Zealand.

## 12. DEFINITIONS

**"Act"** means the Contract and Commercial Law Act 2017.

**"charges"** means our quoted charges for Services calculated under our rates schedule applicable at the time we accept the goods or any charges agreed to by us in writing, together with any taxes, duties and government charges levied on the Services and any other amounts payable under the Contract or these Conditions.

**"Conditions"** means these general conditions of contract, as amended by us from time to time.

**"Contract"** means any written agreement (i.e. shipping, transport, warehousing, cross docking, logistics or other services agreement) between you and us, and which sets out the terms upon which the Services are provided to you and shall include these Conditions unless expressly agreed otherwise.

**"dangerous goods"** means any articles or substances which are, or may become, a risk to health, safety, property or the environment and include, without limitation, articles or substances so classified, specified or listed in, or designated pursuant to, the Hazardous Substances and New Organisms Act 1996 or the Land Transport Rule: Dangerous Goods 2005.

**"force majeure event"** means anything outside our reasonable control including, without limitation, fire, storm, flood, earthquake, lightning, explosion, accident, road or rail closures, rail derailments, wharf delays for whatever reason including severe weather events, war, terrorism, sabotage, epidemic, quarantine restriction or labour dispute or labour shortage.

**"goods"** means the goods picked up or received from you or on your behalf.

**"laws"** means all applicable laws, regulations, guidelines, codes, standards or policies of New Zealand.

**"PPSA"** means the Personal Property Securities Act 1999. Except where inconsistent with the context, terms defined in the PPSA will have the same meaning where used in these Conditions.

**"our procedures"** means all our applicable procedures, policies, guidelines, codes and requirements, as documented by us from time to time including, without limitation, freight handling codes, health and safety procedures, security and access procedures.

**"Services"** means the shipping, transport, warehousing, cross docking, logistics and other service operations we undertake with regard to the goods and includes operations undertaken using our IT systems, processes and software.

**"sign"** or **"signature"** includes provision in electronic form.

**"subcontractor"** means any person we engage to provide Services to you or for your goods on our behalf and any person who is an employee, agent or subcontractor of that person.

**"vehicle"** means any truck, van, ship or other vehicle or any rail or TSF wagon, container, tank or other equipment of any kind, except where the context otherwise requires.

**"working day"** means any day between 8.30 am and 5 pm which is not a Saturday, Sunday or public holiday under the Holidays Act 2003.

**"working hour"** means any hour during a working day.

**"writing"** means any representation of words, figures or symbols capable of being rendered in visible form.