



AIR NEW ZEALAND

**CONDITIONS  
OF  
CARRIAGE**

**CARGO  
INTERNATIONAL**

**Issued by Air New Zealand Limited  
Last updated October 2004**

**CONDITIONS OF CARRIAGE  
FOR CARGO**

**INTERNATIONAL**

**CONTENTS**

		<b>Page</b>
<b>ARTICLE 1</b>	<b>Definitions</b>	<b>3</b>
<b>ARTICLE 2</b>	<b>Applicability</b>	<b>4</b>
<b>ARTICLE 3</b>	<b>Cargo Acceptable for Carriage</b>	<b>6</b>
<b>ARTICLE 4</b>	<b>Documentation</b>	<b>8</b>
<b>ARTICLE 5</b>	<b>Rates and Charges</b>	<b>9</b>
<b>ARTICLE 6</b>	<b>Carriage</b>	<b>11</b>
<b>ARTICLE 7</b>	<b>Shipper's Right to Alter Delivery Instructions</b>	<b>14</b>
<b>ARTICLE 8</b>	<b>Delivery</b>	<b>15</b>
<b>ARTICLE 9</b>	<b>Authority and Indemnity of Shipper</b>	<b>17</b>
<b>ARTICLE 10</b>	<b>Carrier's Right to Sub-contract</b>	<b>17</b>
<b>ARTICLE 11</b>	<b>Successive Carriers</b>	<b>17</b>
<b>ARTICLE 12</b>	<b>Carrier's Liability</b>	<b>18</b>
<b>ARTICLE 13</b>	<b>Limitations on Claims and Actions</b>	<b>19</b>
<b>ARTICLE 14</b>	<b>Over-riding Law</b>	<b>20</b>
<b>ARTICLE 15</b>	<b>Modification and Waiver</b>	<b>20</b>
<b>ARTICLE 16</b>	<b>Governing Law</b>	<b>20</b>
<b>ARTICLE 17</b>	<b>Application of Consumer Guarantees Act</b>	<b>20</b>
<b>SCHEDULE 1</b>	<b>Special Handling Procedures For Perishable Cargo</b>	<b>21</b>

## ARTICLE 1 — DEFINITIONS

- 1.1 *Agent* means, except where the context otherwise requires, any person who has authority, express or implied, to act for or on behalf of Carrier in relation to the carriage of cargo.
- 1.2 *Air Waybill* means the document entitled "*Air Waybill*" made out by or on behalf of the shipper which evidences the contract between the shipper and carrier for carriage of cargo by Carrier.
- 1.3 *Cargo* means anything carried or to be carried in an aircraft except mail, or baggage carried pursuant to a passenger ticket or baggage check, but includes baggage moving under an Air Waybill or Shipment Record.
- 1.4 *Cargo Receipt* means a document delivered by Carrier to the Shipper permitting identification of the Shipment and access to the information contained in the Shipment Record.
- 1.5 *Carriage* means carriage of Cargo by air or by another means of transport, whether gratuitously or for reward.
- 1.6 *Carrier* includes the air carrier issuing the Air Waybill or preserving the Shipment Record and all carriers that carry or undertake to carry Cargo or to perform any other services related to such air carriage.
- 1.7 *Carrier's Regulations* includes Carrier's tariffs, the special conditions applicable to perishable cargo in Schedule 1 hereto and other publications of Carrier relating to acceptance and carriage of Cargo.
- 1.8 *Charges Collect* means the charges for carriage of Cargo and incidental thereto entered on the Air Waybill or Shipment Record for recovery from the consignee against delivery of the Shipment.
- 1.9 *Conditions* means these conditions of carriage.
- 1.10 *Consignee* means the person whose name appears on the Air Waybill or Shipment Record, as the party to whom the Shipment is to be delivered by Carrier.
- 1.11 *Convention* means, unless the context requires otherwise, whichever of the following instruments is applicable to the contract of carriage:
- The Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw, 12 October 1929; ("The Warsaw Convention");

- The Warsaw Convention as amended at The Hague on 28 September 1955;
  - The Warsaw Convention as amended by Additional Protocol No. 1 of Montreal 1975;
  - The Warsaw Convention as amended at The Hague 1955 and by Additional Protocol No. 2 of Montreal 1975;
  - The Warsaw Convention as amended at The Hague 1955 and by Protocol No. 4 of Montreal 1975;
  - The Convention for the unification of certain rules relating to International Carriage by Air signed at Montreal, 28 May 1999.
- 1.12 *Customs Clearance Agent* means a customs broker or other agent of the consignee designated to perform customs clearance services.
- 1.13 *Days* means full calendar days, including Sundays and statutory holidays provided that for purposes of notification the balance of the day upon which notice is despatched shall not be counted.
- 1.14 *Shipment* means the piece or pieces of Cargo covered by one Air Waybill or Shipment Record.
- 1.15 *Shipment Record* means a record other than an Air Waybill preserved by Carrier evidencing the carriage of the Shipment to be performed under the contract of carriage.
- 1.16 *Shipper* means the person whose name appears on the Air Waybill or Shipment Record as the party contracting with carrier for carriage of the Cargo.
- 1.17 *Special Drawing Right* means the Special Drawing Right of the International Monetary Fund.
- 1.18 *Special Cargo* means dangerous goods, live animals, perishable and fragile goods, human remains and other goods or items of a similar nature or designated as such by Carrier because of their nature, inherent defect, vice or other quality.
- 1.19 Words importing a particular gender include the other genders.

## **ARTICLE 2 — APPLICABILITY**

### **2.1 General**

These Conditions shall apply to all carriage of Cargo, and all other services incidental thereto, performed by or on behalf of Carrier, provided however that if such carriage is “international carriage” as defined in the Applicable Convention (see 1.3) such carriage shall be subject to the provisions of the applicable Convention and to these Conditions to the extent that these Conditions are not inconsistent with the provisions of the applicable Convention.

### **2.2 Applicable Laws & Carrier’s Conditions**

All carriage and other services performed by Carrier are subject to:

2.2.1 applicable laws (including national laws implementing the Convention or extending the rules of the applicable Convention to carriage which is not “international carriage” as defined in the applicable Convention) government regulations, orders and requirements;

2.2.2 These Conditions and other applicable conditions, rules, regulations and time-tables (but not the times of departure and arrival therein specified) of Carrier which may be inspected at any of its offices and at airports from which it operates regular services.

### **2.3 Gratuitous Carriage**

Carrier reserves the right to exclude the application of all or any part of these Conditions to gratuitous carriage of Cargo.

### **2.4 Charters**

2.4.1 With respect to carriage of Cargo performed pursuant to a charter agreement with Carrier, such carriage shall be subject to the terms and conditions of the charter contract entered into by Carrier, and these Conditions shall not apply except to the extent provided in the charter contract.

2.4.2 In case of any divergence between the applicable provisions of these Conditions and the conditions contained or referred to in the charter agreement, the latter shall prevail and the Shipper, by accepting carriage pursuant to a charter agreement, whether or not concluded with the Shipper, agrees to be bound by the applicable terms.

2.4.3 Where there is no separate charter contract these Conditions shall apply except to the extent the Carrier excludes the application of all or any part of these Conditions to the charter.

## **2.5 Change Without Notice**

These Conditions and the published rates and charges for carriage of Cargo are subject to change without notice. However, no such change shall apply to a contract of carriage after the date of issuance of the Air Waybill by Carrier or after the date the rate or charge for the carriage has been entered in the Shipment Record.

## **2.6 Effective Rules**

All carriage of Cargo governed by these Conditions shall be subject to Carrier's rules, regulations and tariffs in effect on the date of issuance of the Air Waybill by Carrier or the date of the Shipment Record, whichever is applicable, provided that in the event of any inconsistency between these conditions and Carrier's rules, regulations and tariffs, these Conditions shall prevail.

## **2.7 Waiver**

It is agreed that no servant or agent of Carrier nor any other person has any authority to waive or vary any of these Conditions unless such waiver or variation is in writing and signed by an authorised officer of Carrier.

## **2.8 Exemptions from Liability to Continue**

All the rights, immunities and exemptions from liability in these Conditions shall continue to have their full force and effect in all circumstances and notwithstanding any breach of this contract or of any of its provisions by Carrier or any other person entitled to benefit from such provisions and irrespective of whether such may constitute a fundamental breach of contract or a breach of a fundamental term.

## **2.9 Severability**

It is hereby agreed that if any provision or part of any provision of these Conditions is unenforceable the affected provision or provisions shall be deemed deleted and such unenforceability shall not affect any other part of such provision or any other provision hereof.

# **ARTICLE 3 - CARGO FOR CARRIAGE**

## **3.1 Acceptability of Cargo**

Subject to the availability of suitable equipment and space and the provisions of Article 3.2 below, Carrier agrees to carry the Shipment tendered for carriage unless otherwise excluded by Carrier's Regulations and provided:

- a) its carriage, exportation or importation is not prohibited by the laws or regulations of any country to be flown from, to or over;
- b) it is packed in a manner suitable for carriage;

- c) it is accompanied by the requisite shipping documents;
- d) it is not likely to endanger aircraft, persons or property, or cause annoyance to passengers.

### **3.2 Refusal of Carriage**

Carrier reserves the right to refuse carriage of any Cargo in its absolute discretion, without any liability for such decision.

### **3.3 Packing and Marking of Cargo**

#### *3.3.1 Suitable and safe packing*

Shipper is responsible for ensuring that Cargo tendered for carriage is packed in a manner appropriate for air carriage and carriage by any other intended means so as to ensure that it can be carried safely with ordinary care in handling and so as not to injure or damage any persons, other Cargo or property.

#### *3.3.2 Marking*

Each package of the Cargo shall be legibly and durably marked with the name and full address of the Shipper and Consignee and all pieces in a shipment shall be so marked and appropriately referenced each other.

#### *3.3.3 Protection from weather*

Shipper is responsible for packing Cargo so as to protect it from all weather conditions to which it may be exposed, including but not limited to rain, snow, wind, heat and cold.

#### *3.3.4 Valuables*

Packages containing valuables must be sealed by a method approved by Carrier.

### **3.4 Valuation of Shipment**

Carrier may refuse carriage of Shipments having a declared value for carriage in excess of NZ\$5,000,000.

### **3.5 Refusal of COD Shipments**

Carrier will not accept Shipments on a cash-on-delivery basis.

### **3.6 Special Cargo Acceptable only under Prescribed Conditions**

Special Cargo is acceptable for carriage only under the conditions laid down by Carrier for carriage of such Cargo as set out in Schedule 1 hereto.

### **3.7 Carriage of Perishables**

No controlled refrigeration is available nor shall any be provided once a Shipment has left the Carrier's Cargo terminal cool-room on departure. Shipments of perishable Cargo must be packed and documented strictly in accordance with the provisions of Schedule 1 hereto. In the event of deterioration of a Shipment of perishables for whatever reason, Carrier in its sole discretion may take such steps as it deems appropriate, including its disposal, destruction or return to Shipper

### **3.8 Responsibility for Non-Observance of Conditions Relating to Special Cargo**

The Shipper shall indemnify Carrier for any loss, damage, delay, liability or penalty which Carrier may incur because of any non-observance by the Shipper of any condition relating to carriage of any Special Cargo.

### **3.9 Dangerous Goods**

The Shipper shall not tender for carriage any volatile or explosive Cargo or Cargo which is or may become dangerous, inflammable or offensive or which is or may be liable to injure persons or damage any property whatsoever, without presenting a full description of the Cargo disclosing the nature of such Cargo, and in any event the Shipper shall be liable for all loss and damage caused by such Cargo. If in the sole opinion of Carrier the Cargo is or is liable to become dangerous, inflammable, explosive, volatile, offensive or otherwise likely to cause damage, the same may at any time be retained, destroyed, disposed of, abandoned or rendered harmless by Carrier at the cost of the Shipper, without compensation to the Shipper and without prejudice to Carrier's right to recover any charges hereunder.

### **3.10 Compliance with Laws and Regulations**

The Shipper warrants that it has complied with all the laws and regulations relating to the acceptance, nature, packaging, labelling, storage or carriage of Cargo and that the Cargo is packed in a manner adequate to withstand the ordinary risks of carriage by air having regard to its nature. The Shipper hereby indemnifies Carrier for any liability whatsoever and all costs and expenses as a result of or arising out of the Shipper's failure to comply with each of these warranties, including but not limited to compliance with all the applicable dangerous goods regulations.

### **3.11 Carrier's Right of Inspection**

Carrier reserves the right to inspect the packaging and contents of all Shipments and to enquire into the correctness or sufficiency of information or documents tendered in respect of any Shipment, but Carrier shall be under no obligation to do so, and assumes no liability with regard to such inspection or enquiry or its decision not to conduct such inspection or enquiry.

### **3.12 Unit Load Devices**

When the Shipper undertakes to load a unit load device (ULD) it must comply with Carrier's loading instructions, be liable for and shall indemnify Carrier against all consequences of any non-compliance with such instructions. In particular, but in no way limiting such instructions, the Shipper must ensure that the unit load device is packed in such a way as to protect the Cargo therein from any weather conditions that it may be exposed to.

## **ARTICLE 4 — DOCUMENTATION**

### **4.1 Air Waybill**

The Shipper shall make out, or have made out on his behalf, an Air Waybill in the form, manner and number of copies prescribed by Carrier, and shall deliver such Air Waybill to Carrier simultaneously with the tender of Cargo for carriage. However, charges for carriage and other fees and levies, insofar as they have been ascertained, shall be inserted in the Air Waybill by Carrier. Carrier may require the Shipper to make out, or have made out on his behalf, separate Air Waybills when there is more than one package or when the Shipment cannot be carried in one aircraft or cannot, without breach of applicable laws or Carrier's Regulations, be carried on one Air Waybill.

### **4.2 Shipment Record**

Carrier may substitute for the delivery of an Air Waybill, a Shipment Record, to preserve a record of the carriage to be performed. If a Shipment Record is used, Carrier shall, if so requested by the Shipper, deliver to the Shipper a Cargo Receipt permitting identification of the Shipment and access, in accordance with Carrier's regulations, to the information contained in the Shipment Record.

### **4.3 Apparent Condition/Packing of the Cargo**

If the apparent order and condition of Cargo and/or packing is in any way defective the Shipper shall, if an Air Waybill is delivered, include on the Air Waybill a statement of such apparent order and condition. If no Air Waybill is delivered the Shipper shall advise Carrier of the apparent order and condition of Cargo, to enable Carrier to insert an appropriate reference thereto in the Shipment Record. However, if the Shipper fails to include such statement in the Air Waybill or to advise Carrier of the apparent order and condition of Cargo, or if such statement or advice is incorrect, Carrier may include in the Air Waybill or insert in the Shipment Record a statement of the apparent order and condition of the Cargo, or note a correction thereto, but Carrier is under no obligation to do so.

### **4.4 Completion of Air Waybill by Carrier**

Carrier may at the request of the Shipper express or implied, make out the Air Waybill, in which event, subject to proof to the contrary, Carrier shall be deemed to have done so on behalf of the Shipper. It is the responsibility of the Shipper to ensure that the Air Waybill handed over with Cargo contains all the required particulars.

### **4.5 Responsibility for Particulars**

- 4.5.1 The Shipper is responsible for the correctness of the particulars and statements relating to Cargo inserted by the Shipper or on his behalf in the Air Waybill or furnished by the Shipper or on his behalf to Carrier for insertion in the Shipment Record. The Shipper shall indemnify Carrier against all damage suffered by the Shipper or by any other person (including the Shipper) to whom Carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and

statements furnished by the Shipper or on his behalf.

- 4.5.2 The Shipper's particulars as to value, unless no value be declared, shall be conclusive evidence, as against the Shipper and consignee, of the value of the shipment. Where no value is declared, the Shipper warrants that the shipment requires no special security or handling.

#### 4.6 **Alteration**

Air waybills, the writing on which has been altered or erased, may not be accepted by Carrier.

### **ARTICLE 5 — RATES AND CHARGES**

#### 5.1 **Applicable Rates and Charges**

Rates and charges for carriage governed by these conditions are those published by Carrier and in effect on the date of issuance of the Air Waybill by Carrier, or on the date the rate or charge for the carriage has been entered in the Shipment Record.

#### 5.2 **Basis of Rates and Charges**

Rates and charges will be based on the units of measurement and subject to the rules and conditions published in Carrier's Regulations and rate tariffs.

#### 5.3 **Services not included in Published Rates and Charges**

Except as otherwise provided in Carrier's Regulations, rates and charges for carriage apply only from airport to airport and do not include any ancillary service given by Carrier in connection with carriage.

#### 5.4 **Payment of Charges**

##### 5.4.1 *Payment Rate*

Rates and charges are published in the currency shown in the applicable rate tariffs, and shall be paid in a currency acceptable to Carrier. When payment is made in a currency other than in the currency in which the rate or charge is published, such payment will be made at the rate of exchange established for such purpose by Carrier. The current statement of rates of exchange is available for inspection at Carrier's office where payment is made.

##### 5.4.2 *Payment Due*

Full applicable charges, whether prepaid or collect, and all fees, duties, taxes, charges, advances and payments, made or incurred or to be incurred by Carrier and any other sums payable to Carrier in respect of the Cargo and/or its carriage, will be deemed fully earned, whether or not Cargo is lost or damaged, destroyed or disposed of pursuant to Articles 3.7 or 3.9 hereof,

misdelivered or fails to arrive at the destination specified in the Air Waybill or Shipment Record. All such charges, sums and advances will be due and payable upon receipt of the Cargo by Carrier, except that they may be collected by Carrier at any stage of performance of the contract of carriage.

5.4.3 *Shipper's Guarantee*

The Shipper guarantees payment of all unpaid charges, unpaid collect charges, advances and disbursements of Carrier. The Shipper also guarantees payment of all costs, expenditures, fines, penalties, loss of time, damage and other sums which Carrier may incur or suffer by reason of the inclusion in the shipment of articles the carriage of which is prohibited by law, or the illegal, incorrect or insufficient marking, numbering, addressing or packing of packages or descriptions of Cargo, or the absence, delay or incorrectness of any export or import licence or any required certificate or document, or any improper customs valuation, or incorrect statement of weight or volume.

5.4.4 *Payment for Excess*

If the gross weight, measurement, quantity or declared value of Cargo exceeds the gross weight, measurement, quantity or declared value on which charges for carriage have been previously computed, Carrier shall be entitled to require payment of the charge on such excess.

5.4.5 *Charges Collect Shipments*

Charges collect shipments will be accepted only to those countries listed in Carrier's Regulations and subject to the conditions contained therein. In any event Carrier reserves the right to refuse Shipments on a charges collect basis to any country where regulations prevent the conversion of funds into other currencies or the transfer of funds to other countries. Information on countries to which charges collect service is available may be obtained from the offices and representatives of Carrier.

5.4.6 *Payments to be in Cash*

All charges applicable to a Shipment are payable in cash at the time of acceptance thereof by Carrier in the case of a prepaid Shipment, (being a Shipment for which the charges are to be paid by the Shippers, or at the time of delivery of the Shipment by Carrier, in the case of a collect shipment, being a shipment on which the charges are to be paid by the consignee.

5.4.7 *Cancellation of Carriage for Non-Payment*

Carrier may cancel the carriage of any Shipment upon refusal by the Shipper, after demand by Carrier, to pay the charges or portion thereof so demanded, without any liability for such cancellation.

## **5.5 Carrier's General Lien**

Carrier shall have a lien on the Cargo and any documents relating to its carriage and on any other Cargo of the Shipper in the possession of Carrier or any documents relating to all amounts unpaid in respect of its carriage, and, in the event of non-payment, shall have the right to sell the Cargo by public auction or private sale provided that prior to such sale Carrier shall have given notice thereof by facsimile or mail to the Shipper or to the consignee at the address stated in the Air Waybill or Shipment Record, and to pay itself out of the proceeds of such sale. No such auction or sale shall discharge any liability to pay any deficiencies, for which the Shipper and the Consignee shall remain jointly and severally liable. By taking delivery or exercising any other right arising from the contract of carriage, the Consignee agrees to pay such amounts.

## **ARTICLE 6 — CARRIAGE**

### **6.1 Compliance with Government Requirements**

6.1.1 The Shipper shall comply with all applicable laws, customs and other government regulations of any country to, from, through or over which Cargo may be carried, including those relating to the packing, carriage or delivery of Cargo, and shall, together with the shipment, furnish such information and deliver such documents as may be necessary to comply with such laws and regulations. Carrier shall not be obliged to enquire into the correctness or sufficiency of such information or documents. Carrier shall not be liable to the Shipper or any other person for loss or expense due to Shipper's failure to comply with this provision. The Shipper shall indemnify Carrier against any damage occasioned by the failure of the Shipper to comply with this provision.

6.1.2 Carrier shall not be liable for refusing to carry any Shipment if Carrier reasonably determines in good faith that such refusal is required by any applicable law, government regulation, demand, order or requirement.

### **6.2 Disbursements and Customs Formalities**

Carrier is authorised (but shall be under no obligation) to advance any duties, taxes or charges and to make any disbursement with respect to the Cargo and the Shipper and consignee shall be jointly and severally liable for the reimbursement thereof. Carrier shall be under no obligation to incur any expense or to make any advance in connection with the forwarding or re-forwarding of the Cargo except against prepayment by the Shipper. If it is necessary to make customs entry of the Cargo at any stopping place, and no customs clearance agent has been named on the face of the Air Waybill or in the Shipment Record, the Cargo shall be deemed to be consigned to the Carrier carrying the Cargo to such stopping place. For any such purpose a copy of the Air Waybill, or of the Shipment Record, certified by Carrier shall be deemed an original.

## 6.3 Schedules, Routings, Delays and Cancellations

### 6.3.1 *Timetables*

Times shown in Carrier's timetables or elsewhere are approximate and not guaranteed and form no part of the contract of carriage. No time is fixed for commencement or completion of carriage or delivery of Cargo. Unless specifically agreed otherwise and so indicated in the Air Waybill or Shipment Record, Carrier undertakes to carry the Cargo with reasonable despatch but assumes no obligation to carry the Cargo by any specified aircraft or over any particular route or routes, or to make connections at any point according to any particular schedule. Carrier is hereby authorised to select or deviate from the route or routes of the shipment, notwithstanding that the same may be stated on the face of the Air Waybill or in the Shipment Record. Carrier is not responsible for errors or omissions either in timetables or other representations of schedules. No employee, agent or representative of Carrier is authorised to bind Carrier by any statements or representations of the dates or times of departure or arrival, or operation of any flight.

### 6.3.2 *Substitution of Carrier and Carriage*

Carrier may without notice substitute alternative carriers or other means of carriage.

### 6.3.3 *Cancellations*

Carrier reserves the right without notice, to cancel, terminate, divert, postpone, delay or advance any flight, or the further carriage of any Cargo, or to proceed with any flight without all or any part of the Cargo, in its own absolute discretion.

### 6.3.4 *No Liability in Event of Delay*

In the event any flight is so cancelled, diverted, postponed, delayed or advanced or is terminated at a place other than the place of destination or in the event the carriage of any shipment is so cancelled, diverted, postponed, delayed, advanced or terminated, Carrier shall not be under any liability for such action.

### 6.3.5 *Storage or Transfer in Event of Termination*

In the event the carriage of the shipment or any part thereof is so terminated, delivery thereof by Carrier to any transfer agent for transfer or delivery or the placing of such shipment in storage shall be deemed completed delivery under the Air Waybill or Shipment Record, and Carrier shall be without any further liability with respect thereto, except to give notice of the disposition of the shipment to the Shipper or to the consignee, at the address stated in the Air Waybill or Shipment Record. Carrier may, but shall not be obliged to, forward the shipment for carriage by any other route or forward the shipment as agent for the Shipper or the consignee for

onward carriage by any means of transportation on behalf of the Shipper or the consignee. The cost of doing so attaches to the Cargo.

#### 6.3.6 *Priority of Carriage*

Subject to applicable government laws, regulations and orders, Carrier is authorised to determine the priority of carriage as between shipments, and as between Cargo and mail or passengers. Carrier may likewise decide to remove any articles from a shipment, at any time or place whatsoever, and to proceed with the flight without them. If, as a result of determining such priority, Cargo is not carried or carriage thereof is postponed or delayed or if any articles are removed from a shipment, Carrier will not be liable to Shipper or consignee or to any other party for any consequences.

#### 6.4 **Carrier's Right to Store or Deliver to Another Carrier**

If in the opinion of Carrier it is necessary to hold the Shipment at any place for any purpose, either before, during or after carriage, Carrier may, upon giving notice thereof to the Shipper at the address stated in the Air Waybill or Shipment Record, store the shipment for the account and at the risk and expense of the Shipper, in any warehouse or other available place, or with the customs authorities, or Carrier may deliver the shipment to another transportation service for onward carriage to the consignee. The Shipper shall indemnify Carrier against any expense or risk so incurred.

### **ARTICLE 7 — SHIPPER'S RIGHT TO ALTER DELIVERY INSTRUCTIONS**

#### 7.1 **Right to Alter Delivery Instructions**

Any alteration to instructions for delivery of the Cargo must be made by the Shipper or the Shipper's designated agent, if any, and must be applicable to the whole Shipment under a single Air Waybill or Shipment Record. The right of alteration may only be exercised if the Shipper or Shipper's agent produces the part of the Air Waybill or Shipment Record which was delivered to him, or communicates such other form of authority as may be prescribed by Carrier, to Carrier. Alteration of delivery instructions must be given in writing in the form prescribed by Carrier. In the event that any alteration in delivery instructions results in a change of consignee, the new consignee shall be deemed to be the consignee appearing on the Air Waybill or in the Shipment Record.

#### 7.2 **Shipper's Option**

7.2.1 Subject to the Shipper's liability to carry out all its obligations under the contract of carriage and provided that alteration of delivery instructions will not prejudice Carrier or other Shippers, the Shipper may at its own expense dispose of the Cargo either:

- a) by withdrawing it at the airport of departure or of destination; or
- b) by stopping it in the course of the journey on any landing; or

- c) by calling for it to be delivered at the place of destination or in the course of the journey to a person other than the consignee named in the Air Waybill or Shipment Record; or
- d) by requiring it to be returned to the airport of departure;

7.2.2 Carrier shall promptly inform the Shipper if, in the opinion of Carrier, it is not reasonably practicable to comply with the alteration to delivery instructions of the Shipper.

### **7.3 Payment of Expenses**

The Shipper shall be liable for and shall indemnify Carrier for all losses or damage suffered or incurred by Carrier as a result of the exercise of Shipper's right to alter delivery instructions and shall reimburse Carrier for any expenses occasioned by the exercise of such right.

### **7.4 Extent of Shipper's Right**

The Shipper's right to alter delivery instructions shall cease at the moment when, after arrival of Cargo at the destination, the consignee takes possession or requests delivery of the Cargo or Air Waybill, or otherwise indicates acceptance of the Cargo. Nevertheless, if the consignee declines to accept the Air Waybill or the Cargo, or if the consignee cannot be communicated with, such right of alteration shall continue to vest in the Shipper.

## **ARTICLE 8 - DELIVERY**

### **8.1 Notice of Arrival**

Notice of arrival of the Shipment will, in the absence of other instructions, be sent to the consignee and any other person whom Carrier has agreed to notify as evidenced in the Air Waybill or Shipment Record; such notice will be sent by ordinary methods. Carrier is not liable for non-receipt or delay in receipt of such notice. It shall be the responsibility of the consignee to collect the Cargo with reasonable dispatch.

### **8.2 Delivery of Shipment**

Except as otherwise specifically provided in the Air Waybill or Shipment Record, delivery of the Shipment will be made only to the consignee named therein, or its agent or such other person as produces the Shipper's authority to Carrier to accept delivery of the Cargo. Carrier shall not be bound to enquire into the correctness of such authority. Delivery of the Cargo to the consignee shall be deemed to have been effected:

- a) when Carrier has delivered to the consignee or its agent any authorisation from Carrier required to enable the consignee to obtain release of the Shipment;
- b) when the Shipment has been delivered to customs or other government authorities as required by applicable law; or

- c) if applicable law does not require delivery to customs or other government authorities, when consignee, its agent or person presenting consignee's authority takes delivery of the Cargo from Carrier.

### 8.3 **Place of Delivery**

The consignee must accept delivery of and collect the Shipment at the airport of destination.

### 8.4 **Receipt by Consignee**

Receipt of the Cargo by the consignee without complaint is prima facie evidence that the same has been delivered in good order and condition and in accordance with the contract of carriage.

### 8.5 **Failure of Consignee to Take Delivery**

#### 8.5.1 *Shipper's Instructions*

Subject to the provisions of Article 8.2 of these Conditions hereof, if the consignee refuses or fails to take delivery of the Shipment after its arrival at the airport of destination, Carrier will endeavour to comply with any instructions of the Shipper set forth on the face of the Air Waybill or Shipment Record.

#### 8.5.2 *Right of Sale if No Instructions*

If such instructions are not set forth or cannot reasonably be complied with, Carrier shall notify the Shipper of the consignee's failure to take delivery of the Shipment and request his instructions. If no such instructions are received within thirty (30) days, in respect of non-perishables, and immediately, in respect of perishables, Carrier may sell the Shipment in one or more lots at public or private sale, or destroy or abandon such shipment.

#### 8.5.3 *Shipper's Liability for Charges and Expenses*

The Shipper is liable for all charges and expenses resulting from or in connection with the failure to take delivery of the Shipment, including, but not limited to, storage and carriage charges incurred in returning the Shipment if so required by the Shipper's instructions. If the Shipment is returned to the airport of departure and the Shipper refuses or neglects to make such payments within 15 days after such return, Carrier may dispose of the Shipment or any part thereof at public or private sale after giving the Shipper ten (10) days' notice of its intention to do so.

### 8.6 **Disposal of Perishables**

#### 8.6.1 *Carriage*

When a Shipment containing perishables is delayed while in the possession of Carrier, is unclaimed or refused at place of delivery, or for other reasons

is liable to deteriorate, Carrier may immediately in its sole discretion take such steps as it deems appropriate, including but not limited to:-

- a) the disposal of the Shipment or any part thereof at public auction or private sale without notice; or
- b) the storage of the Shipment or any part thereof; or
- c) the destruction or abandonment of all or any part of the Shipment.

#### 8.6.2 *Proceeds of Sale*

In the event of sale, Carrier is authorised to pay itself out of the proceeds, all charges, advances and expenses and to account to the Shipper in respect of any balance of such proceeds.

### 8.7 **Consignee's and Shipper's Liability for Costs and Charges**

By accepting delivery of the Air Waybill and/or the Shipment the consignee shall become liable for payment of all costs and charges in connection with carriage of the Cargo. Unless otherwise agreed the Shipper shall not be released from its own liability for these costs and charges and will remain jointly and severally liable with the consignee. Carrier may make delivery of the Shipment or the Air Waybill conditional upon payment of these costs and charges.

## **ARTICLE 9 - AUTHORITY AND INDEMNITY OF SHIPPER**

### 9.1 **Authority to Tender Cargo for Carriage**

It is agreed that any person who tenders Cargo to Carrier for carriage for or on behalf of the Shipper is authorised to do so upon and subject to these conditions.

### 9.2 **Shipper's Authority**

The Shipper warrants that in agreeing to these conditions it has the authority of the person or persons owning or having any interest in the Cargo or any part thereof.

### 9.3 **Shipper's Indemnity**

Without prejudice to the generality of the foregoing, Shipper undertakes to indemnify Carrier in respect of any liability whatsoever and howsoever arising (including without limitation, negligence or breach of contract or wilful act or default of Carrier or others) in connection with the Cargo, to any person (other than Shipper) who claims to have, who has or who may hereafter have any interest in the Cargo or any part thereof. It is agreed that this indemnity operates irrespective of whether Carrier's liability arises from events which may constitute a fundamental breach of contract or a breach of a fundamental term.

## **ARTICLE 10 - CARRIER'S RIGHT TO SUB-CONTRACT**

### **10.1 Carrier's Right**

The Carrier and any sub-contractor shall be entitled to sub-contract all or any part of the carriage of the Cargo.

### **10.2 Terms of Contract of Carriage Applicable to Sub-Contractor**

Every exemption, limitation, condition herein contained and every right, exemption from liability, defence and immunity of whatsoever nature applicable to Carrier or to which Carrier is entitled hereunder shall also be available and shall extend to protect (a) all sub-contractors, (b) every servant or agent of Carrier or of a sub-contractor, (c) every other person (other than Carrier) by whom the services or any part thereof are provided, and (d) all persons who are or may be vicariously liable for the acts or omissions of any person falling within (a), (b) or (c) hereof, and for the purpose of this clause Carrier is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and each of them and all such persons and each of them shall to this extent be or be deemed to be parties to this contract.

## **ARTICLE 11 - SUCCESSIVE CARRIERS**

11. Carriage to be performed under one contract of carriage by several successive carriers is regarded as a single operation.

## **ARTICLE 12 — CARRIER'S LIABILITY**

### **12.1 Limitation of Liability**

Subject to Article 12.4, unless the Shipper has made a special declaration of interest in delivery of the Cargo at destination pursuant to the Convention and has paid the supplementary sum applicable, liability of Carrier shall not exceed the applicable Convention limit. If the Shipper has made such special declaration, it is agreed that any liability shall not exceed the declared value for carriage stated on the face of the Air Waybill or included in the Shipment Record. All claims shall be subject to proof of value.

### **12.2 Inherently Defective Cargo**

In any event, Carrier is not liable if destruction, loss or damage to Cargo is proved to have resulted solely from inherent defect, quality, nature or vice of that Cargo. The Carrier shall not be liable for the deterioration, perishing or other change in condition of any Cargo which because of any inherent defect or its quality, nature or vice is likely to deteriorate, perish or alter condition as a result of the incidents of carriage by air or any change in environment, temperature, altitude or length or time in transit or storage.

### **12.3 Contributory Negligence**

If the damage was caused or contributed to by the negligence or other wrongful act or omission of the claimant, or the person from whom rights are derived, Carrier shall be wholly

or partly exonerated from liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage.

#### **12.4 Exclusion of Liability**

Except as may be otherwise provided in the applicable Convention, Carrier is not liable to the Shipper, consignee or any other person having an interest in the Cargo in tort or contract or bailment or otherwise for any delay in collection of Cargo or loss of or damage to or deterioration of Cargo or mis-delivery or failure to deliver or delay in delivery of Cargo for any reason whatsoever including, without limiting the foregoing, the negligence or breach of contract or wilful act or default of the Carrier whether or not the same occurs in the course of performance by or on behalf of Carrier under this contract, or as a result of events which are in the contemplation of Carrier and/or Shipper, or as a result of events which are foreseeable by them or either of them, or as a result of events that may constitute a fundamental breach of contract or a breach of a fundamental term.

#### **12.5 Animals**

Carrier will not be liable for any loss, damage or expense arising from death due to natural causes or death or injury of any animal (as classified in the IATA Live Animal Regulations) caused by the conduct or acts of the animal itself or of other animals, including but not limited to biting, kicking, goring or smothering, nor for that caused or contributed to by the condition, nature or propensities of the animal, or by defective packing of the animal, or by the inability of the animal to withstand unavoidable changes in its physical environment, inherent in the carriage.

#### **12.6 Applicable Weight**

In the case of loss, damage or delay of part of the Shipment, or of any object contained therein, the weight to be taken into consideration in determining the amount to which Carrier's liability is limited shall be only the weight of the affected part of that Shipment, where unpackaged, or otherwise the package or packages concerned. Nevertheless, when the loss, damage or delay of part of the Shipment, or of an object contained therein, affects the value of other packages covered by the same Air Waybill, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

#### **12.7 Determination of Value**

In the absence of proof to the contrary, the value of any such part of the Shipment lost, damaged or delayed as the case may be, shall be determined by reducing the total value of the shipment in the proportion that the weight of that part of the Shipment lost, damaged or delayed has to the total weight of the Shipment.

#### **12.8 Indemnity**

The Shipper, owner and consignee whose property causes damage to or destruction of another shipment or of the property of Carrier, shall indemnify Carrier for all losses and expenses incurred by Carrier as a result thereof.

## **12.9 Liability of Other Carrier**

Any Carrier issuing an Air Waybill for carriage over the lines of another Carrier does so only as agent for such other Carrier. Any reference in a Shipment Record to carriage to be performed by another Carrier shall be deemed to refer to carriage to be provided as principal by such other Carrier. Carrier shall not be liable for the loss, or delay of or damage to Cargo not occurring on its own line except that the Shipper shall have a right of action for such loss, damage or delay on the terms herein provided against the first Carrier and the consignee or other person entitled to delivery shall have such right of action against the last Carrier under the contract of carriage.

## **ARTICLE 13 - LIMITATIONS ON CLAIMS AND ACTIONS**

### **13.1 Time Limits on Complaints**

No action shall be maintained in the case of loss or damage to Cargo unless a complaint is made to Carrier in writing by the person entitled to delivery. Such complaint shall be made:

- a) in the case of damage to or partial loss of the Cargo, immediately after its discovery and at the latest within 14 days from the date of receipt of the Cargo;
- b) in the case of delay, within 21 days from the date on which the Cargo was placed at the disposal of the person entitled to delivery;

### **13.2 Time Limit on Action**

Any right to damages against Carrier shall be extinguished unless an action is brought within two years after the arrival at destination, the date on which the aircraft ought to have arrived or the date on which carriage stopped.

## **ARTICLE 14 - OVER-RIDING LAW**

14. Insofar as any provision contained or referred to in the Air Waybill or Shipment Record or these conditions may be contrary to applicable law, government regulations, orders or requirements, such provision shall remain applicable to the extent that it is not over-ridden thereby. The invalidity of any such provision shall not affect any other part.

## **ARTICLE 15 - MODIFICATION AND WAIVER**

15. No agent, servant or representative of Carrier has authority to alter, modify or waive any provision of the contract of carriage or of these Conditions.

## **ARTICLE 16 - GOVERNING LAW**

16. These Conditions are to be interpreted in accordance with the laws of New Zealand.

## **ARTICLE 17 – CONSUMER GUARANTEES ACT (NZ)**

17. If any services to which these Conditions apply are acquired or held out as being acquired for the purposes of a business, the provisions of the Consumers Guarantee Act 1993 (NZ) shall not apply to Carrier's supply of such services.

### **SCHEDULE 1**

#### **SPECIAL CONDITIONS APPLICABLE TO PERISHABLE CARGO**

##### **1 Perishable Cargo**

All Shippers must make suitable arrangements with Carrier for carriage of perishable Shipments to ensure that the contents are delivered to the consignee in good condition.

##### **2 Documentation and Labelling**

Shipper's handling instructions must be shown on the Air Waybill. The Air Waybill must show the full name, address and telephone number of both Shipper and consignee, and all requisite health certificates and permits must be attached.

3 Packages must be labelled with the IATA Perishable label and must be marked with the full name, address and telephone number of the consignee. Special handling requirements must not include specific temperatures at which the Cargo must be stored or carried and Cargo may be rejected for carriage if such requirements are specified.

##### **4 Packaging & Handling**

4.1 Packing must be of a standard that will ensure adequate protection of the contents, prevent spillage or leakage and contamination of other Cargo for the entire carriage.

4.2 No controlled refrigeration facility is available once the Shipment has left the Carrier's Cargo terminal cool-room on departure. Actual temperatures encountered en route will vary.

4.3 Where the Shipper loads the Cargo into a ULD off airport, Shipper must ensure that the Cargo is fully chilled prior to loading into the ULD.

4.4 Where the Cargo is loaded at Carrier's Cargo terminal, the Cargo must be delivered to Carrier in a refrigerated environment.

##### *4.5 Vegetables/Fruit/Flowers*

Fresh vegetables, fruit and flowers must be packed in well-ventilated containers, which must be strong enough to prevent crushing and bruising of the contents. Dry ice is not to be used.

#### *4.6 Seafood Shipments*

As there is the possibility of severe damage to the aircraft or contamination of other Cargo unless seafood consignments are packed correctly, seafood consignments must be packed in accordance with the Carrier's Seafood Packaging Regulations, details of which can be obtained from Carrier's Cargo Offices.

#### *4.7 Acceptance*

Perishable Shipments will not be accepted on a charges forward basis except on certain conditions as agreed with Carrier. The contents must be in apparent good condition; otherwise the shipment will not be accepted for carriage. Shipments which are inadequately packaged or with an Air Waybill annotated with specific handling instructions will not be accepted. Any instructions on an Air Waybill that require or purport to require Carrier to carry Cargo at any specific temperature, will not be accepted for carriage, or if accepted, will not be treated as a waiver or amendment of these conditions of Carriage.

#### *4.8 Delivery*

The Shipper shall notify the Consignee of the expected delivery time of a shipment of perishable Cargo and shall procure the Consignee to collect such Cargo with reasonable despatch given to the nature of the Cargo concerned.