



Mackleys

SOLVING TRANSPORT LOGISTICS

TRANSPORTATION TERMS AND CONDITIONS

These Terms will apply to all Services provided to the Customer by Mackley Carriers (2008) Limited (“Mackleys”) under a Services Order.
These Terms are available on Mackleys’ website (www.mackleys.co.nz)

1. Definitions

Act means Part 5, Subpart 1 of the Contract and Commercial Law Act 2017.

Certified means that the Lifting Attachments or designated lifting points on the Goods (or both) have been certified as being appropriate for use in the lifting of the Goods by an engineer qualified to give the certification.

Charges means the charges for the provision of the Services as set out in the Service Order.

Force Majeure Event means any circumstances beyond Mackleys’ reasonable control and includes: fire, earthquake, storm, flood, landslide, adverse weather conditions; explosion, accident, road or rail closures, rail derailment, wharf delays, strike, lockout, work stoppage or other industrial action; shortage of diesel or motor fuel; sabotage, riot, civil disturbance, terrorism, insurrection, embargo, epidemic, pandemic, quarantine restriction, national emergency (whether in fact or law) or act of war (declared or not); inability to gain access to a delivery address; seizure or destruction of any goods by a regulatory or government authority; act or omission of any third person or public authority.

Goods means the goods that are the subject of a Services Order.

Services means the provision of transportation services that are the subject of a Services Order.

Services Order means any agreement to provide the Services to the Customer that arises when Mackley issues a signed transportation quote or a written order confirmation to the Customer pursuant to clause 4.3.

Working Day means any day (other than a Saturday, Sunday or statutory public holiday) on which registered banks are open for business in Christchurch.

2. Interpretation:

2.1 References to “include” or “including” do not imply any limitations.

3. **Contract of Carriage:** These Terms constitute a contract of carriage at “limited carrier’s risk” (as defined in the Act), unless these Terms are expressed to be at “declared value” (as defined in the Act) in the Service Order.

3.1 Pursuant to the Act, where the transport of the Goods under these Terms are at “limited carrier’s risk”, Mackleys’ total maximum liability for Goods lost or damaged in the course of Mackleys providing the Services is limited to **\$2,000 for each unit for Goods lost or damaged**.

3.2 Where the transport of the Goods is at “declared value” Mackleys’ total maximum liability for Goods lost or damaged is limited to the “declared value” stated in the Service Order.

4. Services Order

4.1 All Customer orders for Services are to be made by submitting a completed transportation quote or a request for Services to Mackleys.

4.2 The Customer must set out in its request for Services:

- (a) the quantity and description of the Goods to be transported;
- (b) any packaging that will be used to transport to the Goods;
- (c) the transportation services required, including any services incidental to the transportation of the Goods;
- (d) the pick-up date and time;
- (e) the pick-up site;
- (f) the delivery site, delivery date; and
- (g) any other relevant information required by Mackleys to be provided.

4.3 An order for services is not binding on Mackleys unless Mackleys has issued to the Customer a signed transportation quote or a written order confirmation.

4.4 The Customer may vary or amend a Services Order 24 hours prior to the pick-up date by notifying Mackleys in writing. If the variation or amendment to the Services Order results in a change to the cost of providing the Services, then Mackleys may vary the Charges to reflect the cost changes by issuing an amended Services Order.

5. Acceptance and Delivery

5.1 The Goods are accepted for carriage by Mackleys:

- (a) if a mobile crane truck is needed to load the Goods, at the time Mackleys confirms a date and pick up time; or
- (b) in all other cases, at the time the Goods are loaded onto Mackleys’ vehicle.

5.2 The Goods are delivered when:

- (a) If the mobile crane truck is needed to unload the Goods, the Goods are unloaded and placed at the agreed location at the delivery site, as specified in the Services Order; or

- (b) In all other cases, at the time the Goods arrive (and prior to unloading) at the delivery site.

5.3 All pick-ups and deliveries of the Goods will be made on a Working Day between 6.00am and 6.00pm. If the Customer requires the Goods to be picked-up or delivered outside those times, then Mackleys may charge the Customer a minimum charge or surcharge determined by Mackleys in addition to the Charges.

5.4 The Customer is responsible for ensuring that the pick-up site and delivery site can be safely accessed by Mackleys for the purpose of providing the Services, having regard to (without limitation) the nature and type of the Goods and the equipment and vehicles needed for Mackleys to perform the Services.

5.5 Mackleys may refuse pick-ups or stop deliveries in the event that the pick-up site or delivery site cannot be safely accessed by Mackleys (as determined by Mackleys at its sole discretion).

5.6 Where the delivery of the Goods require a traffic management plan approved by a regulatory or local authority, the Customer will meet all costs associated with the preparation and implementation of the plan, and obtaining the relevant regulatory or local authority approval prior to the delivery date.

6. Loading and Unloading of the Goods

6.1 The Customer will be solely responsible for ensuring that, prior to pick-up, the Goods are in a form that will enable the safe lifting of the Goods, including:

- (a) ensuring that all appropriate devices or attachments necessary for the safe lifting of the Goods (“Lifting Attachments”) are Certified for use in lifting the Goods;
- (b) ensuring that the Goods are appropriately packaged (including being inside a container or speciality packaging where applicable); and
- (c) ensuring the Goods comply with any information provided with the Services Order including with respect to weight and dimensions.

6.2 The Customer will advise Mackleys the designated Certified lifting points to use for the lifting of the Goods and provide any specialist equipment necessary for the safe lifting of the Goods (“Customer Equipment”).

6.3 Upon Mackleys’ request, the Customer must provide evidence that the Lifting Attachments or the designated lifting points on the Goods have been Certified.

6.4 Normal lifting devices such as chains, straps and spreader bars will be supplied by Mackleys.

6.5 Mackleys will not be liable for any loss or damage to the Goods or other property of the Customer or a third party caused by one or more of the following:

- (a) the Lifting Attachments being faulty or breaking;
- (b) the Customer Equipment being faulty, breaking or not appropriate to be used for the lifting of the Goods;
- (c) the failure of the Goods to comply with information provided with the Services Order; or
- (d) any lifting points being incorrectly designated or failing.

6.6 The Customer shall indemnify and hold Mackleys harmless against any cost, expense, loss or damage suffered or incurred by Mackleys in connection with any event listed in clauses 6.5(a) to (d) occurring.

6.7 If, due to the nature of the Goods it is not practicable for the Customer to comply with clauses 6.1 and 6.2, then Mackleys will provide (at the Customer’s cost) all necessary Lifting Attachments and equipment for the lifting of the Goods.

6.8 To the extent that the use of a mobile crane truck to load or unload the Goods constitutes an “incidental service” under the Act, Mackley’s total liability in respect of any loss or damage caused to the Goods in the course of the Goods being lifted for the purpose of loading or unloading is limited to **\$2,000 for each unit for Goods lost or damaged**.

7. The Goods

7.1 The Customer warrants that:

- (a) it is the owner of the Goods, or is in lawful possession of the Goods;
- (b) it is duly authorised to arrange the transport and delivery of the Goods;
- (c) the Goods are safely and appropriately packaged for the purpose of lifting, transport and delivery (having regard to the nature of the Goods);
- (d) the labelling and packaging of the Goods for transport and delivery comply with the requirements of every applicable statute, regulation and industry standard; and
- (e) the quantity and description of the Goods are fully and accurately described in the Services Order.

- 7.2 Without limiting the Customer's warranties given under section 273 of the Act, all cartons, containers, or any other transportation containers or packaging provided by the Customer to the Mackleys in connection with the Services ("Customer's Container"), will be at the Customer's risk and neither Mackleys nor any employee, agent or contractor for Mackleys will be liable for any loss or damage to the Customer's Container unless caused by the negligence or wilful default of Mackleys.
- 7.3 Except as agreed by Mackleys in writing, Mackleys will not accept for transport and delivery any goods that require a Dangerous Goods Endorsement pursuant to the Land Transport Rule: Dangerous Goods 2005 ("Hazardous Goods").
- 7.4 If Mackleys agrees in writing to transport and deliver the Hazardous Goods, the carriage of the Hazardous Goods is "at owner's risk" (as defined in the Act) and Mackleys will not be liable to pay any compensation to the Customer for any loss or damage caused to the Hazardous Goods, unless Mackleys intentionally loses or damages the Hazardous Goods.
- 7.5 If the Hazardous Goods pose a threat to the health or safety of Mackley's employees, agents or contractors, or any other person at any time during pick-up, transportation or delivery, then Mackleys may deal with the Hazardous Goods in any way that it considers necessary or appropriate without liability to the Customer.
- 7.6 Nothing in this clause 7 limits the rights of Mackleys under section 291 of the Act.

8. Charges and Payment

- 8.1 The Customer will pay the Charges to Mackleys for the provision of the Services. The Charges will be subject to the application of a Fuel Adjustment Factor and are exclusive of GST (with GST being payable in addition to the Charges).
- 8.2 Subject to clause 8.3, the Customer must pay, without deduction or set-off, the Charges for the Services prior to the delivery date in accordance with the invoice issued by Mackleys.
- 8.3 Where Mackleys has accepted the Customer's Credit Application form, the Charges for the Services must be paid, without deduction or set-off, by the 20th of the month following the date of the invoice issued by Mackleys.
- 8.4 Payment of the Charges is only made when the funds are cleared and in Mackleys' nominated account.
- 8.5 Credit card payment will incur a surcharge equivalent to 3% of the amount paid by the credit card.
- 8.6 If the Charges for the Service are not paid by the invoice due date, then without prejudice to any other rights or remedies available to Mackleys under these Terms or at law, Mackleys will be entitled to do any one or more of the following:
- charge a late payment administration fee of \$100;
 - cancel or suspend the Service Order;
 - charge interest on any amount owing on a daily basis at the per cent per annum rate equal to the overdraft interest rate charged by Mackleys' bank from time to time (whether or not Mackleys' account is in overdraft at any material time), plus 5% per annum from the invoice due date for payment until payment is received in full by Mackleys; and
 - withdraw any discount applied by Mackleys against the Charges so that the Customer is liable for the full amount of the Charges without the discount.
- 8.7 The Customer will be responsible for all losses, costs and disbursements (including legal costs on a solicitor/client basis) incurred by Mackleys in recovering any amount owing by the Customer to Mackleys.

9. Disputed Invoice

- 9.1 If the Customer has a bona fide dispute in relation to any amount claimed in an invoice, then the Customer will advise Mackleys in writing of the nature of the dispute and pay any undisputed portion of the invoice in accordance with these Terms. Mackleys will use all reasonable endeavours to provide the Customer with all information the Customer reasonably requires to verify the amount claimed in a disputed invoice.
- 9.2 Any dispute in relation to an invoice will be dealt with in accordance with clause 16 and the Customer will, within 2 Working Days of the date of resolution or determination of the dispute, pay to Mackleys such amount as is agreed or determined in accordance with clause 16.

10. Health and Safety

- 10.1 When present on Mackleys' premise, the Customer must comply with, and must procure that its employees, agents and contractors comply with, all health and safety laws and regulations and Mackleys' health and safety policies.
- 10.2 The Customer will ensure that the pick-up site or delivery site is prepared for the safe pick-up or delivery of the Goods, including provision to set up an exclusion zone prior to the pick-up or delivery date, in accordance with Mackleys' instructions, applicable health and safety legislation and regulations, regulatory authority standards and industry standards ("Safety Requirements").
- 10.3 Mackleys' and its employees, contractors and agents may refuse to provide the Services or cease providing the Services if the pick-up site or delivery site does not comply with the Safety Requirements, as determined by Mackleys (at its discretion).

11. Liability

- 11.1 If any of the Goods are damaged or lost by Mackleys in the course of providing the Services and the damage or loss is caused by the intentional act or omission of Mackleys, then Mackleys will reimburse the Customer the actual costs the Customer incurs to repair or replace the lost or damaged Goods, provided that valid third party invoices and documentation specifying the details of the actual costs incurred are

supplied to Mackleys. The remedy provided under this clause 11 is, to the extent permitted by law, the Customer's sole and exclusive remedy, whether under these Terms or otherwise at law.

- 11.2 Subject to clause 11.3, and to the extent that loss or damage is not otherwise limited or excluded by these Terms, Mackleys' total maximum liability for any loss or damage suffered or incurred by the Customer in the course of Mackleys providing the Services (other than the loss or damage to the Goods themselves) is limited to the net proceeds of any insurance available to Mackleys in respect of the relevant liability giving rise to the insurance claim (but specifically excluding any insurance proceeds available to Mackleys for legal or defence costs).
- 11.3 Notwithstanding any other provision in these Terms, Mackleys will not be liable for any loss of income or profits, special damage or injury of any kind, or any consequential or indirect loss or damage suffered by the Customer or any other third party in connection with Mackleys' provision of the Services.
- 11.4 Mackleys will not be liable for any damage to kerbs, footpaths, or other property at the pick-up address, pick-up site, delivery address or delivery site caused by Mackleys in connection with the performance of the Services, except to the extent the damage was caused by Mackleys' negligence.

12. Indemnity

- 12.1 To the extent permitted by law, the Customer indemnifies and holds harmless Mackleys against all losses, liabilities, claims, proceedings, legal fees (on a solicitor-client basis) and costs of any kind that Mackleys incurs as a result of the Customer's negligence, wilful default or breach of any of its obligations under these Terms.

13. Insurance

- 13.1 The Customer is solely responsible for obtaining insurance for any risk not expressly assumed by Mackleys under these Terms.

14. Actions against Mackleys

- 14.1 Without limiting any provision in these Terms that excludes or limits the liability of Mackleys, the Customer may not commence any action or proceedings against Mackleys in connection with the delivery of the Goods, unless:
- a written notice of the claim giving full particulars of the alleged loss or damage is received by Mackleys within 3 Working Days after the delivery of the Goods; and
 - legal proceedings is commenced by the Customer within 6 months from delivery date.
- 14.2 The Customer must send the notices referred to in this clause 14 to accounts@mackleys.co.nz.
- 14.3 Sections 274-281 inclusive of the Act shall, to the extent permitted by law, only apply to these Terms and each Service Order to the extent that those sections extend or enlarge the rights and powers of Mackleys under the Contact.

15. Force Majeure

- 15.1 If Mackleys cannot perform the Services or cannot perform the Services within the specified timeframe due to a Force Majeure Event, Mackleys will notify the Customer within a reasonable timeframe of becoming aware of the Force Majeure Event. Mackleys will endeavour to take reasonable steps to mitigate against the effects of the Force Majeure Event and, where practicable, keep the Customer informed. Mackleys will not, under any circumstances, be liable to the Customer for any loss (whether direct, indirect or consequential), damages, loss of profits or claims that the Customer suffers or incurs as a result of Mackleys' failure to perform, or delay in performing, the Services as a result of the Force Majeure Event. All Services that are affected by the Force Majeure Event will resume as soon as reasonably possible after the Force Majeure Event has ended or abated.
- 15.2 Mackleys may cancel (in whole or in part) a Services Order or suspend any of its obligations under these Terms by notice to the Customer if the Force Majeure Event continues for a period of 21 consecutive days.
- 15.3 If, as a result of the Force Majeure Event, Mackleys incurs an increase in the costs of providing the Services, then Mackleys may vary the Charge to reflect the increase in costs by giving the Customer no less than 3 Working Days written notice. The new Charge will apply in respect of the relevant Service after the expiry of the notice period and will be deemed to be incorporated into the Services Order.
- 15.4 For the purpose of clause 15.3, an increase in costs includes an increase in the cost of fuel or increase in transportation time due to route detours or road closures.

16. Disputes

- 16.1 If a dispute arises out of or about the Terms (Dispute), a party must comply with this clause 16 before starting court proceedings (except proceedings for interlocutory relief). A party claiming a Dispute has arisen must give the other party notice setting out details of the Dispute. During the 14 days after a notice is given under this clause (or longer period if the parties to the Dispute agree in writing), each party must make reasonable efforts to resolve the Dispute amicably by good faith discussions between the parties' representatives and if necessary senior management.
- 16.2 If the parties cannot resolve the Dispute within that period, they must refer the Dispute to a mediator for mediation under the terms of the Resolution Institute, if one of them requests.
- 16.3 If the parties to the Dispute cannot agree on a mediator within seven days after a request under clause 16.2, the chairman of the Resolution Institute or the chairman's

nominee will appoint a mediator. Each party to a Dispute must pay its own costs of complying with this clause and must equally pay the costs of any mediator.

16.4 A party to a Dispute may terminate the dispute resolution process by giving notice to each other after it has complied with clauses 16.1 - 16.3.

16.5 If a party to a Dispute breaches clauses 16.1 - 16.3, the other party does not have to comply with those clauses in relation to the Dispute.

17. Confidentiality

17.1 The Customer acknowledges that from time to time it may have access to certain information relating to Mackleys or the affairs of Mackleys or its customers and which are not in the public domain (“**Confidential Information**”). The Customer agrees and undertakes to Mackleys that it will not disclose Mackleys’ Confidential Information or use Mackleys’ Confidential Information for the Customer’s own benefit, without the prior written consent of Mackleys.

18. Other provisions:

18.1 The parties agree that the:

- (a) Services supplied under these Terms are supplied by Mackleys and acquired by the Customer in trade within the meaning of the Fair Trading Act 1986 and the Customer Guarantees Act 1993;
- (b) Services supplied under these Terms will be acquired by the Customer solely for the Customer’s business purposes;
- (c) Consumer Guarantees Act 1993 and sections 9, 12A and 13 of the Fair Trading Act 1986 will not apply to these Terms or any Services supplied under these Terms; and
- (d) it is fair and reasonable to exclude the application of those statutes and provisions.

18.2 The Customer acknowledges that it has had a reasonable opportunity to review these Terms and receive legal advice.

18.3 Sections 283 to 290 inclusive and 292 of the Act will apply to these Terms only to the extent that those provisions extend or enlarge Mackleys’ rights and powers under these Terms.

18.4 The Customer authorises Mackleys to use and disclose to third parties the Customer’s personal information (as defined in the Privacy Act 2020) for purposes related to the provision of Services, including to undertake a credit assessment of the Customer and direct marketing. All personal information will be held at Mackleys’ business premises and the Customer may request access and correction of his or her personal information.

18.5 Mackleys reserves the right to amend these Terms from time to time. The amended Agreement will be posted on Mackleys’ website and the amended Terms will apply to Service Orders entered into between Mackleys and the Customer after the date the amended Terms are posted on Mackleys’ website. It is the Customer’s responsibility to regularly check Mackleys’ website to ensure that it is familiar with the latest Terms.

18.6 The Customer may not assign its rights or obligations under these Terms without the prior written consent of Mackleys. Mackleys has the right to assign its rights and obligations without the consent of the Customer.

18.7 These Terms, together with the Service Orders, constitute the sole and entire agreement between the parties in relation to their subject matter and supersede all prior negotiations, dealings, agreements and understandings between the parties.

18.8 If there is a conflict between a provision in these Terms and a provision in a transportation quote or written sales order confirmation, then the provision in these Terms prevail, to the extent of that inconsistency.

18.9 These Terms and all transactions between Mackleys and the Customer are governed by New Zealand law and the parties submit to the exclusive jurisdiction of the New Zealand courts.

19. Fuel Adjustment Factor (FAF)

19.1 Because of fluctuating fuel prices, and since fuel is a large part of Mackleys’ direct costs, Mackleys may (without notice to the Customer) adjust the quoted Charges depending on price of fuel at the time of transport. FAF is calculated as a percentage of a base price, excluding GST. The chart below is matched to the Caltex price on the Price Watch website <http://www.pricewatch.co.nz>. The price is set on the last working day of the previous month and remains at that percentage for the month.

Increment Categories	FAF
Cent/Ltr	
115-120	0.80%
120-125	1.60%
125-130	2.40%
130-135	3.20%
135-140	4.00%
140-145	4.80%
145-150	5.60%
150-155	6.40%
155-160	7.20%
160-165	8.00%
165-170	8.80%