Terms and Conditions of Carriage

1. **Definitions and Interpretations:**
   Definitions: In this Agreement, unless the context requires otherwise:
   "**Account Application**" means the account application form on the face page of these terms and conditions.
   "**Act**" means the Contract and Commercial Law Act 2017, Part 5, Subpart 1 as amended, replaced or re-enacted from time to time.
   "**Administration Charges**" means any administration charges by the Company to the Customer in its sole discretion.
   "**Agreement**" means the agreement constituted by the Account Application, these terms and conditions of carriage, your Business Proposal, our charges in accordance with the Agreement, the terms on any courier ticket or other Company document in relation to the provision of our services to you and any variation or amendment to any one of these.
   "**Additional Days Delivery**" means additional days added to any target delivery date from time to time.
   "**Authority to Leave"** means a form signed by the Customer authorising the Company to deliver and leave Goods at an address specified by the Customer in such form.
   "**Business Proposal**" means the business rates proposal submitted by the Company to the Customer and accepted by the Customer.
   "**Carriage**" means the whole of the operations and services provided by the Company in respect of the receipt, carriage and delivery of the Goods.
   "**Company**" or "**we**" means Parcel Express Limited and its employees, agents, subcontractors, and assignees.
   "**Customer**" means the person, firm or company specified as the Customer in the Account Application or the entity that purchased courier tickets from the Company and which term includes any "Contracting Party" as defined in the Act.
   "**Dangerous Goods**" includes loaded firearms and ammunition, noxious, dangerous, or inflammable Goods, any Goods likely to cause damage or which it is unlawful to carry, or advised by the Company from time to time to be dangerous goods.
   "**VFF**" means variable fuel factor charges as determined by the Company from time to time and set out on our website www.parcelexpress.co.nz.
   "**Goods**" has the meaning given to it in the Act.
   "**High Risk Items**" includes bullion, cash, coins, negotiable instruments, (such as vouchers) securities or bearer securities (including credit cards and uncrossed cheques), traveller's cheques, precious stones, jewellery, stocks, bonds, antiques, paintings or any works of art, passports, goods of a fragile nature, Dangerous Goods, Firearms, Perishable Items, second hand goods or car parts, items over 1.8 metres in length, or any other high risk item advised to the Customer by the Company from time to time as such.
   "**Onforward**" means rural delivery or delivery to remote areas as designated by the Company from time to time.
   "**Perishable Items**" means Goods of a perishable nature, refrigerated items and/or items which need to be delivered within a limited time span.
   "**Proof of Delivery**" in relation to a delivery means:
   I. a GPS geo-location in relation to the Delivery Address;
   II. a photo showing the Goods at the Delivery Address;
   III. a Delivery Address that is a business address, a scanned location barcode;
   IV. a Receiver's signature electronic name, or electronic signature - charges may apply;
   V. a Consignee Identification confirmation;
   VI. a Scanned Authority to Leave barcode;
   VII. a Company stamp;
   VIII. any other reliable acknowledgement of receipt or confirmation of delivery to the Delivery Address.
   "Residential Deliveries" means delivery of Goods to a residential delivery area as designated by the Company.
   "RUC Surcharge" means road user charges as determined by the Company from time to time and set out on our website www.parcelexpress.co.nz
2. **Parties:** This Agreement is made between the Customer and the Company. All business undertaken by the Company, including the provision of any advice, information, Carriage of Goods or other services, is undertaken upon and subject to this Agreement which constitutes the entire agreement between the parties. The parties agree that to the extent there is inconsistency between the Business Proposal and this Agreement that the terms of this Agreement shall prevail.
3. **Consumer Guarantees Act 1993:** Where the Customer is a business (as defined by the Consumer Guarantees Act 1993); it agrees that it is acquiring the Company's services for the purpose of a business and that the Consumer Guarantees Act 1993 does not apply. Where the Consumer Guarantees Act 1993 applies, this Agreement will be read subject to the provisions of the Consumer Guarantees Act 1993.
4. **Contract and Commercial Law Act 2017, Part 5, Subpart 1:** Subject to the provisions of the Act, sections 284, 285, 286, 287, 288, 289, 290, 291 and 292 of the Act shall apply to this Agreement only to the extent that they extend or enlarge the Company's rights and powers in terms of this Agreement. Sections 274, 275, 276, 277, 278, 279 and 280 of the Act are modified by clause 19 of this Agreement and sections 274, 275, 276, 277, 278, 279 and 280 of the Act shall, in relation to any matter arising out of the provisions of those sections, have effect subject to the express terms set out in this Agreement.
5. **Subcontract:** The Company may subcontract the performance of all or any part of this Agreement.
6. **Protection of Servants, Agents and Contractors:** The Customer undertakes that no claim or allegation shall be made by the Customer against any subcontractor, servant or agent of the Company which attempts to impose any liability whatsoever in connection with the performance, manner or performance or non-performance of the Company's obligations hereunder.
7. **Ownership of Goods:** The Customer expressly warrants to the Company that it is the owner or the authorised agent of the Goods and that it is authorised to accept and does accept this Agreement not only for itself but also for and on behalf of all other persons who are or may hereafter become interested in the Goods.
8. **Acceptance of Goods for Delivery:** Subject to the other provisions of this Agreement (in particular but not by way of limitation clauses 12 and 13), Goods are accepted for Carriage by the Company at the time the Company collects those Goods for delivery. The Company shall have no liability whatsoever in respect of those Goods prior to that time.

Please Sign & Date:_____

9. **Delivery:** The Goods shall be deemed to have been delivered when they are physically deposited at the address notified to the Company in writing by the Customer for that purpose, or have been collected from the Company's premises or from the premises of an authorised agent of the Company. The Customer accepts that no form of acknowledgement that delivery of Goods has occurred is required to be obtained by the Company except in those instances where the Customer has specified in writing, and the Company has agreed, that the Company shall obtain proof of delivery of Goods. In addition, where:
   (a) the delivery is to an Onforward area; or
   (b) the Customer has signed an Authority to Leave form or given the Company verbal consent to leave the Goods at an address as specified by the Customer to the Company; or
   (c) the Company can only deliver Goods to a physical address; or
   (d) the Customer has used a non signature courier ticket or electronic label,
   the Customer agrees that no proof of delivery or form of acknowledgement that delivery has occurred need be obtained by the Company, regardless of any form of courier ticket used by the Customer.
   The Company can only deliver to a physical address and the Customer must provide the Company with a physical address for delivery in writing. We are not liable for the loss of any Goods presented to us for delivery to a postal address. If the Customer provides an incorrect address or the Company is otherwise unable to deliver the Goods for any reason, the Company will return the Goods to the Customer's address as set out in the Application Form or as otherwise notified by the Customer to the Company from time to time.
   The Company will endeavour to deliver Goods (correctly addressed) within the delivery target period as may be advised by the Company in writing for the relevant service. However, we do not guarantee delivery of Goods within these delivery targets.
   Where the delivery of Goods is to an Onforwarding Area, the Customer acknowledges that Additional Days for Delivery may apply.
   The Customer agrees that we are entitled to rely on the instructions of the recipient in relation to the delivery of Goods, and that the recipient's instructions will prevail over the Customer's instructions, unless we have agreed otherwise in writing.
10. **Packing:** The Customer warrants that all Goods have been labelled correctly and that the contents of Goods packages are adequately and securely packed, wrapped and cushioned for transportation. The Company does not provide special handling for packages bearing "fragile", package orientation markings (e.g. "UP" arrows or "This way up" markings) or any similar markings.
11. **Insurance:** Insurance of the Goods is the responsibility of the Customer at all times.
12. **Exclusion of Certain Items:**
   (a) Pursuant to Section 28(1) of the Act the Company will not accept or deal with, and the Customer shall not give to the Company, any High Risk Items or Perishable Items except in accordance with this clause;
   (b) The Company will only deal with any High Risk Items or Perishable Items, and the Customer will only give such Goods to the Company, if the Company has expressly agreed in writing to deal with those High Risk Items or Perishable Items and the Customer or the Customer's authorised agent has complied with all relevant laws including (without limitation), in the case of Dangerous Goods, the Dangerous Goods Act 1974 and associated regulations, and the requirements/procedures set out in the Standards Association of New Zealand Code of Practice for the Transport of Hazardous Substances on Land as amended from time to time;
   (c) The Customer acknowledges that the Company is not in a position to ascertain the contents of any consignment of Goods given to it for delivery and will not under any circumstances be deemed to be aware of the contents;
   (d) If the Customer delivers any Dangerous Goods to or causes such Goods to be dealt with by the Company, the Dangerous Goods may be destroyed or otherwise dealt with at the sole discretion of the Company or any other person in whose custody they may be and at the expense of the Customer without the Company or such other person being responsible or accountable for the value thereof except where the Company has agreed in writing to deal with certain Dangerous Goods presented by the Customer or the Customer's authorised agent for consignment, in which case the Company's liability shall be limited to the amount determined by clause 19;
   (e) Any unauthorised High Risk Items will be carried "at owners risk" within the meaning of the Act and the Company will not accept any liability for such items.
13. **Rights of Inspection:** The Company has the right to open any package, inspect any Goods, and refuse Carriage to any person or Goods in respect of any consignment that by reason of the dangerous or other character of its contents is likely, in the sole judgment of the Company, to soil, taint, or otherwise damage other Goods or equipment carried by the Company, or place the Company at risk, or that is economically or operationally impractical to transport, or that is improperly packed or wrapped.
14. **Charges:**
   (a) The Customer agrees to pay the Company's charges (including VFF and RUC) to the Company on the 20th of the month following the month in which the invoice is dated, where the Company has agreed to provide the Customer with credit. Alternatively, the Company's charges (including VFF and RUC) are payable on the date of purchase of any courier ticket or other service.
   (b) All charges may be varied by the Company by giving notice in writing to the Customer at any time. The notice shall state the date from which the new charge or charges shall be effective. This includes renegotiated rates based on any change in the Customers freight mix and volume. For the avoidance of doubt, any changes to VFF or RUC are not variations or changes that require the Company to give notice in writing to the Customer under this Agreement.
   (c) All pricing provided by the Company is supplied on the basis that charging will be calculated on either a weight or cubic formula whichever is the greater based upon a standard conversion rate of 200 kgs per cubic metre. For the avoidance of doubt, this condition applies even if not explicitly stated on an individual price or quotation provided to the Customer by the Company.
   (e) The Company reserves the right to impose charges on the Customer to account for any fines or similar costs incurred by the Company as a result of undeclared and/or improperly packaged Dangerous Goods being included with any Goods given to the Company by the Customer.
   (d) VFF and RUC will be applied to all invoices. Refer to our website www.parcelexpress.co.nz for the current levy percentage and in relation to VFF and RUC. The Customer acknowledges and agrees that VFF and RUC is subject to change without notice and such change is not a variation under clauses 14(b) or 22.
   (f) The Company reserves the right to impose charges on the Customer in respect of any Goods that do not carry the required payment identification (courier tickets and/or type of Goods) where the Company has measured and weighed such Goods to determine the correct payment required. The Company's decision as to weight, value or measurement of an item is final.
   (g) Additional charges apply for Onforward, Saturday Delivery, Signature, Residential Deliveries, Rural Deliveries and/or Administration Charges.
   (h) Only full books or packs of product will be accepted for credit. Refer clause 24.

Please Sign & Date:_____

(i) All prices quoted exclude GST.

15. **Payment Terms:**

(a) Payment terms are the 20th of the month following the month in which the invoice is dated. If any account is in dispute, the undisputed portion of the account shall be payable in accordance with the terms of this Agreement.

(b) The Company has the right to withhold any services to any Customer whose account is in arrears until such time as the account is paid in full.

(c) The Company has the right to charge interest on any overdue accounts and to recoup from the Customer any fees incurred by the Company in relation to a collection agency engaged by the Company to collect any amounts due but unpaid by that Customer. Interest will be charged on any overdue account at 2% per month, calculated monthly in arrears and such interest charge will be added to the total amount due by the Customer. For the avoidance of doubt, interest will accrue at this rate on any judgment sum obtained by the Company against the Customer.

(d) Where the Customer is using an electronic manifest label based solution, the Customer agrees to submit electronic manifests to the Company on a daily basis detailing items sent to allow timely invoicing to occur. In the event that the consignment information provided by the Customer is inaccurate, not supplied on a daily basis or information that is provided is unrated or inaccurately rated in the Company's sole opinion then the Company reserves the right to charge an administration fee of $30.00 per day to cover the costs associated with correcting any non-compliant information.

16. **Indemnity:** The Customer will indemnify the Company against all losses (including loss of profit), penalties, claims, damages (including damage or deterioration by or to any other consignment), costs and expenses of any kind whatsoever, howsoever caused or arising from and, (without limiting the generality of the foregoing) whether caused or arising directly or indirectly:

(a) out of any default or negligence of the Customer (including but not limited to a failure to comply with the terms of this Agreement);

(b) as a result of any claim by any third party;

(c) out of the Customer passing any courier tickets to any third party; and

(d) suffered or incurred by the Company in connection with, or resulting from, the Carriage of the Goods or any matter or thing done said or omitted by the Customer in connection with the Goods.

17. **Lien:** All Goods (and documents relating to Goods) shall, immediately they come into the possession of the Company, be subject to a particular and general lien and right of detention for all moneys due to the Company by the Customer or the consignee, consignor or owner of the Goods, whether in respect of such Goods or otherwise. If any moneys due to the Company are not paid within fourteen (14) days after notice has been given to the person from whom the moneys are due that such Goods are being detained, then they may be sold by auction or otherwise at the sole discretion of the Company and at the expense of such person, and the net proceeds applied in or towards satisfaction of any such indebtedness. Any such sale of Goods shall not prejudice the right of the Company to recover any balance due or payable in respect of the services provided hereunder or the cost of the said detention and sale of Goods. If the Company reasonably believes any Goods are unsalable, the Company may dispose of them as it sees fit. If at any time payment from the Customer to the Company shall be in arrears, any subsisting obligation of the Company shall be suspended and the Company shall not be under any liability to the Customer during such period.

18. **Set-off:**

(a) The Customer authorises the Company to set-off, withhold or deduct without prior notice or demand any amount due or payable to the Company by the Customer under this Agreement or any other agreement from any payment made by the Company to the Customer in full or partial satisfaction of any amount owing to the Customer by the Company under this Agreement or any other agreement. For the avoidance of doubt, this right of set-off applies to any amount due or payable under any agreement relating to the supply of goods and/or services between the Company and Customer.

19. **Company's Liability:** Subject to clause 12 and 20:-

(a) If the courier tickets used are of a type which specify that any Goods carried using such tickets will be carried at "Declared Value Risk", which includes but is not restricted to the N3, S3, N5 and S5 courier tickets, then the Company's liability for loss or damage to Goods in such case is limited to $100.00 including GST per *"unit of goods"* as defined in the Act.

(b) If:

(i) the Account Application or Business Proposal indicates that any Goods carried under this Agreement are at "Declared Value Risk" and the declared value amount is less than $2000 including GST per "*unit of goods*" as defined in the Act; or

(ii) the courier tickets supplied by the Company and used by the Customer are of a type which specify (either on the courier ticket or in the relevant Business Proposal) that the maximum liability of the Company is less than $2000 including GST per "*unit of goods*" as defined in the Act, then this Agreement, and the Company's liability in respect of that particular consignment of Goods shall be at "Declared Value Risk" as defined in the Act. In such cases, the liability of the Company in respect of loss or damage to Goods is limited to the amount specified in the relevant Business Proposal or Account Application Form. If an amount is not specified in any of those documents, the liability of the Company in respect of the particular consignment of Goods is limited to $100.00 including GST per *"unit of goods"* as defined in the Act. In all other cases (and subject to clauses 7, 12, 16, 19 and 22), this Agreement is at "Limited Carriers Risk" as defined in the Act. For the avoidance of doubt, where any Carriage by the Company is at "Declared Value Risk", the maximum liability of the Company shall not be more than $2000 including GST per "*unit of goods*" as defined in the Act.

(c) Any other Goods carried by the Company under this Agreement are carried at "Limited Carrier's Risk" as defined in the Act. The maximum liability of the Company in respect of any one item carried by the Company under the Act is limited to the lesser of $2000 including GST per "*unit of goods*" as defined in the Act or the current cost value of each consignment of Goods. A minimum claim value of $5.00 including GST per unit of goods applies in all instances.

(d) Subject to the provisions of the Act imposing liability in respect of the loss of or damage to the Goods, the Company shall not be under any direct or indirect liability whatsoever (whether in contract, tort or otherwise) for any direct or indirect losses (including loss of profits), penalties, damages, costs or expenses of any kind whatsoever (including indirect or consequential loss or damage) brought, claimed, suffered or incurred by the Customer or any third party, in connection with, or resulting from, the Carriage of the Goods or any matter or thing done, said or omitted by the Company, in connection with the Goods or this Agreement howsoever caused or arising and (without limiting the generality of the foregoing) whether caused intentionally or arising as the result of negligence of the Company or otherwise.

(e) The Company will have no liability to the Customer for any:

(i) delay in delivery of any Goods unless the Company has specifically agreed otherwise in writing;

(ii) loss or damage of any Goods unless the Customer can provide proof that the Goods were given to the Company for delivery and have not been delivered. For the avoidance of doubt, such liability shall be limited to such amounts as set out in (a) to (c) above.

20. **Actions against the Company:** The Company shall be under no liability to the Customer whatsoever unless:
(a) written notice of any claim, giving full particulars of any alleged damage or destruction, is received by the Company within seven (7) days after the delivery of the Goods or, in the case of loss of the Goods, within fourteen (14) days of the date of despatch of the Goods, subject to our standard claims procedures; and
(b) an action shall have been commenced by the Customer in a Court of competent jurisdiction within three (3) months from the date of despatch of the Goods, and sections 274, 275, 276, 277, 278, 279 and 280 of the Act are hereby modified by this clause 20, and clause 19 above.
21. **Notice:** Any notice to be given under this Agreement shall be deemed to be received if delivered, or forwarded by registered post, to: in the case of the Customer, the Customer's address as specified on the Application Form or otherwise notified by the Customer to the Company from time to time;
22. **Variations:** The Company may review, vary and amend this Agreement at any time provided that any variations and amendments are notified to the Customer in writing.
23. **Force Majeure:** The Company shall not be liable to the Customer for any failure to carry out its obligations under this Agreement or for any loss or damage suffered by the Customer where such failure or such loss or damage is caused by mechanical breakdown of any equipment, weather conditions, strikes, lockouts, labour disputes or restraint of labour, act of God, war (whether declared or not), any act, regulation or restriction imposed by Government, riot or civil commotion, any act or omission of the Customer, its servants, subcontractors or agents, or any cause beyond the control of the Company.
24. **Courier Tickets:** Parcel Express Limited shall be under no liability to credit or refund any part unused book of Courier Tickets. Parcel Express Limited will at its discretion credit to a customers account an amount for unused books of tickets at the purchase value, less an administration fee of twenty percent (20%). Courier Tickets are sold at a discounted rate and are valid for a period of (12) calendar months from the date of purchase. Any customer that does not have usage within twelve (12) calendar months should use the companies charge rate system.
25 **General:** The terms and conditions set out herein shall prevail over the terms and conditions set out in any document used by the Company (unless expressly acknowledged to override this Agreement), the Customer, the owner or any other person having an interest in the Goods and purporting to have a contractual effect.
26. **Privacy:** The Customer agrees that the Company may collect, hold and use the information that the Customer has provided to the Company, in the Application Form, any survey it completes or during the continuity of the relationship and that the Company may use such information to carry out credit checks, administer the Customer's account including to collect any debts, provide the services and for keeping the Customer up to date with the Company's products and services. The Customer may access its information or request a correction to the information the Company holds, by contacting the Company. The Customer warrants that all personal information (including all personal information relating to the Customer's customers) that the Customer discloses to the Company has been collected, stored, used and disclosed in a manner consistent with the requirements of the Privacy Act 1993 and the Information Privacy Principles contained in the Privacy Act 1993. The Customer indemnifies the Company for all loss or damage suffered by the Company as a consequence of breach of this warranty.
27. **Confidentiality:** The Customer agrees, unless required by law, to keep all information relating to the Company, including the Company's pricing confidential and not to disclose such information except with the written consent of the Company.
28. **Miscellaneous:**
(a) No rights under this Agreement may be assigned by the Customer without the Company's prior written consent, which is at the Company's absolute discretion.
(b) If any provision of this Agreement is held by a court to be unlawful, invalid or unenforceable, the validity and enforceability of the remaining provisions are not affected.
(c) This Agreement is governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of this Agreement.

Please Sign & Date:_____