



## CENTRECONNECT SERVICE: TERMS AND CONDITIONS OF CARRIAGE

### 1. APPLICATION AND COVERAGE

1.1. CentrePort Limited ("**Company**") provides an intermodal transportation service, operated by third party transport companies (each a "**Carrier**") including KiwiRail Limited ("**KiwiRail**"), across rail, road and sea, between CentrePort Wellington and certain central North Island and upper South Island locations ("**CentreConnect Service**"). These are the Terms on which the Company provides the CentreConnect Service, being:

- (a) the road, rail and/or sea transportation of empty and/or full shipping containers ("**Product**") between the collection point and delivery points (as notified by the Company to the Customer from time to time);
- (b) the loading and unloading of Product at the relevant collection and delivery points (as notified by the Company to the Customer from time to time); and
- (c) Ancillary Services for Product (as notified by the Company to the Customer from time to time).

***By making a booking request or presenting any Product for, or using, any CentreConnect Service, you ("Customer") accept these Terms.***

1.2. These Terms are supplemental to, and do not derogate from, any other contract or arrangement between the Company and the Customer or other applicable terms, charges and tariffs concerning facilities and services provided by the Company other than the CentreConnect Service.

### 2. COMPANY TO PROVIDE CENTRECONNECT SERVICE

2.1. The Company agrees to provide, or procure the provision of, the CentreConnect Service for Product properly booked for carriage in accordance with these Terms.

2.2. The Company may provide the CentreConnect Service by any mode and Carrier(s) the Company considers appropriate. If, for any reason, rail transportation is unavailable, the Company will endeavour to provide, or procure the provision of, the CentreConnect Service using alternative transportation (in whole or in part). If that unavailability is caused by an event or circumstance beyond the Company's control (including a KiwiRail "block of line" when a section of KiwiRail's rail network is non-operational for repair and/or remedial work or an Interislander ferry is removed from service), additional charges may apply for any alternative transportation provided by the Company.

### 3. FORECASTING AND BOOKINGS

3.1. The Customer shall, in good faith, use its reasonable endeavours to provide accurate quarterly, monthly, fortnightly and weekly forecasts to the Company of the Customer's expected requirements for the CentreConnect Service. Each such forecast will be

indicative and non-binding.

3.2. The Customer will make booking requests to transport Product on the CentreConnect Service in such form and manner as the Company (or Carrier) may specify from time to time. A booking request must be received at least 24 hours prior to the relevant cut-off time for receipt of the Product notified by the Company or Carrier. Each such booking request must include:

- (a) the associated shipping line booking reference for the import or export of that Product from CentrePort Wellington; and
- (b) the Customer's unique CentreConnect Service booking code provided by the Company.

The Customer's booking for the provision of the CentreConnect Service is not valid until such time as the Company provides a written confirmed scheduled booking confirmation to the Customer.

3.3. The Company and the Carrier are entitled to rely on, and are not responsible for verifying the authenticity of, any booking request received by the Company or the Carrier using your unique CentreConnect Services booking code or any other EDI message which appears to have originated from the Customer. The Customer must pay for any such booking in accordance with these Terms.

3.4. CentreConnect Service booking requests may only be cancelled or varied by the Customer with at least 24 hours' prior notice to the Company and the Carrier. Ancillary Service Charges may apply. Any purported cancellation or variation after this time without prior written consent from the Company and the Carrier may be rejected and the full Freight Rates charged on the basis of the original booking.

3.5. The Customer will provide all such other information and documentation reasonably requested by the Company or the Carrier from time to time in respect of the Customer's requirements for the CentreConnect Service and/or Product booked for carriage on the CentreConnect Service, including any declaration or documentation required by the Company or the Carrier and/or applicable law for any Dangerous Goods or Hazardous Substances approved for carriage in accordance with clause 5.4. The Customer acknowledges and agrees that all information and documentation provided by the Customer under these Terms may be shared between the Company and the Carrier to the extent necessary for the proper performance of the CentreConnect Service.

3.6. The Company (or the Carrier on behalf of the Company) may at any time accept or reject, in whole or in part, any request to provide the CentreConnect Service in relation to particular Product, including without limitation due to insufficient available capacity on the service.



3.7. Collection and delivery points, cut-off times and other operational or procedural details for the CentreConnect Service as notified by the Company are indicative only and are subject to change. The Company will endeavour to:

- (a) minimise disruption to the Customer's operations from service changes; and
- (b) provide the Customer with notice of any material service changes,

in each case to the extent practicable in the circumstances and to the extent that such service changes impact on the Customer.

#### 4. PRICING AND PAYMENT

4.1. The Customer will pay the Freight Rates for all Product booked by or on behalf of the Customer on the CentreConnect Service, together with:

- (a) a Fuel Adjustment Factor ("**FAF**") at the rate determined and notified by the Company from time to time; and
- (b) a Track User Charge ("**TUC**") at the rate determined and notified by the Company from time to time; and
- (c) the applicable charges for any Ancillary Services provided to the Customer in connection with the CentreConnect Service ("**Ancillary Service Charges**"), including any relevant FAF; and
- (d) goods and services tax chargeable under the Goods and Services Tax Act 1985.

4.2. The prevailing Freight Rates, TUC and Ancillary Service Charges will be notified by the Company to the Customer from time to time.

4.3. The Company may review and vary the Freight Rates, TUC and Ancillary Service Charges, including to reflect additional or varied Carrier rates or charges and/or any increase in the costs incurred by the Company in providing the CentreConnect Services. Any variation to the Freight Rates, TUC or the Ancillary Service Charges (including imposing additional charges) will be notified to the Customer at least 30 days prior to the change becoming effective. Any such variation will apply to all CentreConnect Services provided from the effective date of such variation.

4.4. Each invoice issued by the Company in relation to the CentreConnect Service is payable by the Company in full, in New Zealand dollars, without any set-off, counterclaim, deduction or withholding whatsoever, by the 20<sup>th</sup> day of the month after the month the invoice is issued.

4.5. If any amount is not paid when due, interest may be charged on the overdue amount from the due date for payment until payment in full at a rate of 3% per annum above the prevailing Bank of New Zealand prime overdraft rate (or, if no such rate can be determined, the rate certified by the Company's principal banker to be the rate at which it would lend the Company the moneys

over the period for which the moneys concerned are due).

4.6. The Freight Rates do not include charges for any services provided by the Company other than the CentreConnect Service (including marine services, stevedoring, storage and demurrage charges), all of which shall be payable by the Customer at the applicable rate for such services (as advised by the Company from time to time ) in addition to the Freight Rates.

#### 5. OBLIGATIONS OF THE CUSTOMER

5.1. The Customer will ensure that Product booked for carriage on the CentreConnect Service is made available at the place directed by the Carrier and/or the Company at the relevant collection point on or before any cut-off times, and in the manner, notified by the Company or Carrier from time to time.

5.2. The Customer will use its reasonable endeavours to ensure that the performance of the CentreConnect Services is not impeded, delayed or prevented by the Customer or the Customer's employees, agents, subcontractors or representatives ("**Personnel**"). The Customer will not make any requests for CentreConnect Services or require the Company or any Carrier to perform any CentreConnect Services in a manner that does not comply with and conform with all laws which are relevant to the carrying out of the CentreConnect Services.

5.3. The Customer represents and warrants that all Product in respect of which the Company is requested to provide services:

- (a) is properly packed and labelled, is in every way safe for carriage and handling, does not exceed its rated gross capacity, and is in a fit and proper condition to be handled or otherwise dealt with in the normal course of business by the Company and the Carrier; and
- (b) complies with any Carrier requirements notified or otherwise published by the Company or Carrier (including the requirements of the KiwiRail Freight Handling Code (as updated and amended from time to time by KiwiRail and published on KiwiRail's website)), and with all applicable laws and legal requirements.

5.4. Unless agreed in writing, the Customer shall not deliver to the Company, or cause the Company to deal with or handle, any goods which are or may become of a dangerous, inflammable, radio-active or damaging nature and goods likely to harbour or encourage vermin or other pests ("**Dangerous Goods**") or any hazardous substances, as defined in the Health and Safety at Work (Hazardous Substances) Regulations 2017 ("**Hazardous Substances**"). Additional charges and requirements may apply for handling or storing Hazardous Substances or Dangerous Goods.

5.5. The Customer represents and warrants that all information and documentation provided by or on behalf



of the Customer under or in connection with the CentreConnect Service or these Terms is accurate, complete and not misleading (including by omission).

- 5.6. The Customer will ensure that at all times when on Company or Carrier premises it strictly complies (and will ensure that its Personnel strictly comply) with all Company (and Carrier) directions and instructions and all notifications, signage, documentation and other operational, security, health & safety or environmental processes, procedures, plans, policies and requirements notified or otherwise published by the Company (and by the Carrier) from time to time (each of which is deemed to be incorporated into these Terms).
- 5.7. The Customer shall be liable for and indemnifies the Company, its employees, officers, agents and subcontractors (including the Carrier and the Carrier's Personnel) (each an "**Indemnified Person**") from and against any loss, cost, liability, claim or expense (including legal costs on a solicitor-client basis) suffered or incurred by an Indemnified Person in connection with:
- any breach by the Customer (or any of its Personnel) of its obligations under these Terms; or
  - any loss or damage to any property of any Indemnified Person as a result of any act or omission of the Customer (or any of Personnel).

## 6. STORAGE AND DEMURRAGE

- 6.1. Without limiting any separate agreement between the parties relating to storage of Product at CentrePort Wellington, if the Carrier (on behalf of the Company) stores Product for the Customer at the Carrier's premises (or those of its sub-contractors) prior to or following the departure or arrival of the CentreConnect Service (including where the Carrier is unable to deliver the Product or the Customer has not collected the Product within the applicable collection period (as notified by the Company from time to time)):
- the Product is stored at your risk and expense in all respects. To the maximum extent allowed by law, all responsibility or liability expressly or impliedly imposed on the Company (or the Carrier) in respect of such storage is excluded, and if the Contract and Commercial Law Act 2017 ("**Carriage of Goods Law**") applies to such storage, that storage will be deemed to be "at owner's risk" (which means that the Company and the Carrier will pay no compensation if the goods are lost or damaged, unless the Company or the Carrier intentionally loses or damages them); and
  - the Customer indemnifies the Company against any loss or damage suffered or incurred by the Company, the Carriers (or their Personnel) as a direct or indirect result of the storage.
- 6.2. The Company may charge, and the Customer will pay:
- demurrage at the relevant rate listed on the Company's standard tariff (or otherwise agreed in

writing), for the storage of Product at CentrePort Wellington; and

- the applicable Ancillary Service Charges, for the storage of Product at Carrier premises.

## 7. LIABILITY

- 7.1. Subject to clause 6.1 and the remainder of this clause 7, the carriage of Product under these Terms will be "at limited carrier's risk" under and in accordance with the Carriage of Goods Law, with the applicable unit of goods being a container.
- 7.2. In no circumstances will the Company have any liability
- for any indirect, special, consequential or exemplary loss or damage; any delay of any kind; or any loss of profits or savings, loss of business or production, loss of income or revenue, loss of anticipated profits or savings, loss of opportunity or economic loss (in each case whether direct or indirect, including any loss or damage of the kinds referred to in sections 259(2)(b) and (c) of the Carriage of Goods Law and regardless of whether such loss or damage was reasonably foreseeable or you were actually told of the possibility of such loss);
  - for any loss or damage arising from the Customer's act or omission (including incorrect information provided by the Customer, a failure to comply with these Terms or overloading or incorrect loading of any container) or for ordinary wear and tear; or
  - for any amount in excess of the amount the Company recovers from the relevant Carrier (unless, and to the extent, the loss or damage arises from the Company's own negligence).
- 7.3. Without limiting clauses 6.1 and 7.2, the Company shall only be liable under or in connection with these Terms for physical loss or damage to the Product which occurs between the time at which that Product is accepted for carriage by or on behalf of the Company at the relevant collection point and the time at which that Product is unloaded from the transportation vehicle at the relevant delivery point and then only in accordance with this clause 7. All other liability (whether arising in contract, tort (including negligence), statute or otherwise) to the Customer or any other person is excluded to the maximum extent permitted by applicable law.
- 7.4. The Company and/or the Carrier may at any time, without liability to the Customer or any other person, open any container and/or inspect any Product where the Company or Carrier reasonably considers it necessary to do so for the protection of persons or property or to clear and reinstate the rail line following any derailment or incident involving any train or other vehicle carrying the Product.
- 7.5. The Company shall not be liable under or in connection with these Terms unless:
- notice of any claim is given within 21 days of the date that the Product was, or ought to have been, delivered in accordance with these Terms; and



- (b) proceedings in respect of the claim are filed within 6 months of the date on which the Product was accepted for carriage by or on behalf of the Company.

The provisions of sections 274 to 281 of the Carriage of Goods Law shall not apply.

- 7.6. The Customer must take all reasonable steps to avoid or mitigate any loss, damage or liability that might give rise to any claim under these Terms. The Company will not be liable for any loss, damage or liability that could have been avoided by the Customer.
- 7.7. The Customer acknowledges and agrees that it is acquiring services under these Terms for the purposes of a business and, accordingly, that the provisions of the Consumer Guarantees Act 1993 do not apply to the CentreConnect Service or these Terms and are excluded to the maximum extent permitted by law. Any other rights the Customer may have which are implied by statute, common law or custom are excluded from application to the CentreConnect Service and these Terms to the maximum extent permitted by law.

## 8. TERMINATION

- 8.1. Either party may terminate these Terms at any time by giving written notice to the other party if:
- (a) the other party breaches, or fails to properly or promptly perform, any of its material obligations under these Terms and has failed to remedy the breach or perform the obligation to the other party's reasonable satisfaction within 14 days after receiving written notice; or
  - (b) the other party suffers any insolvency event (including, without limitation, the appointment of any receiver, liquidator, administrator or statutory manager, the entry into any assignment, arrangement or composition for the benefit of creditors generally, an inability to pay debts as they fall due or any analogous event under the laws of any relevant jurisdiction).
- 8.2. Either party may terminate these Terms upon 3 months' written notice to the other party.
- 8.3. These Terms will automatically terminate on the expiry or earlier termination of the Company's agreement with KiwiRail in respect of the CentreConnect Service.

## 9. GENERAL

- 9.1. Any dispute or difference between the parties in connection with these Terms which is not resolved by good faith negotiations may be referred by either party to binding arbitration, in Wellington, before a single independent arbitrator subject to and in accordance with the provisions of the Arbitration Act 1996 (excluding clauses 4 and 5 of the Second Schedule). If the parties are unable to agree on an arbitrator within 14 days of referral of the dispute to arbitration, one shall be appointed by the President of the New Zealand Law Society (or his or her nominee) upon application by either party.

- 9.2. The Company may amend these Terms from time to time. Any such amendments will be effective when notified to the Customer or on such other date as may be specified by the Company. By requesting or continuing to request (or being deemed to request) any CentreConnect Service after the effective date, the Customer accepts and agrees to be bound by such amendments.
- 9.3. The Company may give notices to the Customer under or in connection with these Terms (including any service changes; booking or other procedural changes; Freight Rate, Ancillary Service Charges, TUC, or FAF variations; or amendments to these Terms) by posting such notices or communications on the Company's website.
- 9.4. Notwithstanding anything else in these Terms, a party is not liable for any loss or damage, nor any failure or delay in performing, or any breach of, an obligation under these Terms, if the loss, damage, failure, delay or breach arises from a cause beyond the reasonable control of that party including, without limitation, act of god, earthquakes, landslides, floods, fires, adverse weather conditions, strikes or industrial disturbances, epidemic, pandemic, national emergency, civil unrest or any restrictions, restraint, intervention, direction or embargo by any governmental agency.
- 9.5. The Customer must keep these Terms confidential, and each party must keep any information provided by the other party in connection with the CentreConnect Service confidential, except where disclosure is required by law, necessary for the purposes of performing this agreement (including disclosure by the Company to a Carrier) or where the other party has given its prior written consent.
- 9.6. The Company may subcontract any of its obligations under these Terms without notice to, or the consent of, the Customer.
- 9.7. Neither party may assign or transfer any of its rights or obligations under these Terms without the prior written consent of the other party (not to be unreasonably withheld or delayed).
- 9.8. These Terms shall be governed by and interpreted in all respects in accordance with the laws of New Zealand and the parties submit themselves to the exclusive jurisdiction of the New Zealand Courts.
- 9.9. These Terms (together with any document referred to in these Terms) contains the entire agreement between the parties on the provision of the CentreConnect Service and replaces all earlier negotiations, representations, warranties, understandings and agreements (including any customer terms and conditions), whether oral or written, between the parties relating to the CentreConnect Service.

