



## **FEDEX SOUTH AFRICA (PTY) LTD**

**Registration number 2013/082888/07**

**FSP Number 45088**

### **TERMS OF CARRIAGE**

**The customer's attention is drawn to the following provisions of these terms and conditions:**

- Clause 2.2 and 2.3, where the Customer warrants that the information that it gives FedEx and that is contained in FedEx waybill is correct and accepts the onus to check documentation for the correctness of information.
- Clause 2.4 and 5.5, where the Sender (i) warrants that the recipient or Consignee of a parcel will pay FedEx charges or (ii) that the Sender accepts liability for FedEx charges if not paid by the Consignee or recipient.
- Clause 3.2 and 3.3, which places the onus on the customer to properly package and secure parcels and to mark fragile parcels, and which absolves FedEx from liability if fragile parcels are not so marked.
- Clause 3.5, which states that FedEx shall not be liable for damages due to late delivery of consignments;
- Clause 4, in which the Customer gives certain warranties in respect of parcels and consignments to be handled by FedEx, accepts responsibility for the actions of the sender of consignments if the Customer is not the sender and indemnifies FedEx against damages that it may suffer in the event of a breach of any warranty.
- Clause 6, which entitles FedEx to sell goods over which it has a lien if the Customer does not dispute its claim;
- Clause 7, in which it is agreed that the Customer's goods are handled by FedEx at the Customer's risk and which limits FedEx liability to R1,000.00 per consignment in the event of the loss of or damage to a consignment and in which the Customer indemnifies FedEx against consequential loss that the Customer or any other person may suffer as a result of the loss of or damage to a consignment and in which provision is made for the Customer requesting insurance for a consignment, subject to certain conditions;

#### **1. INTERPRETATION:**

- 1.1. Unless the context indicates a contrary intention, the following words and expressions bear the following meanings in this agreement:
  - 1.1.1. "Consignee" means the person to whom a consignment is to be delivered by FedEx;
  - 1.1.2. "Consignment" means a parcel or batch of parcels to be collected, transported and delivered by FedEx on a single occasion on the Customer's instructions and in respect of which a single waybill is completed and/or issued;
  - 1.1.3. "the Customer" means the customer who instructs FedEx to perform a service;
  - 1.1.4. FedEx means FedEx South Africa Proprietary Limited, registration number 2013/082888/07 and included its employees, agents and subcontractors, where appropriate in the context;
  - 1.1.5. "Hazardous goods" are goods that are commonly regarded as dangerous or hazardous goods in the courier, transport and/or logistics industries, which are corrosive, explosive, combustible, unstable or otherwise capable of causing harm or damage and which require special handling or precautions to prevent harm or damage to persons or property;
  - 1.1.6. "Handle" means the collection, transport, storage and delivery of parcels and consignments and includes any dealing with the parcel by FedEx in the course of providing any service in respect thereof;
  - 1.1.7. "illegal substances" means any substance, matter, article, good or thing, the possession of which is unlawful or illegal, or requires a special license, permit or authorization;
  - 1.1.8. "Parcel" means a package of goods or documents to be collected, transported and delivered by FedEx on the Customer's instructions;
  - 1.1.9. "Sender" means the person from whom a consignment is to be collected by FedEx;
  - 1.1.10. "Service" means the collection, transportation and delivery of consignments by FedEx on the Customer's instructions;
  - 1.1.11. "Tariff Schedule" means FedEx schedule of tariffs of fees, surcharges and other charges in respect of its various service offerings that is in force from time to time and which is available on FedEx website, at any of FedEx offices, or on telephonic request to FedEx;
  - 1.1.12. "Waybill" means FedEx waybill that accompanies consignments that are collected, transported and delivered by or on behalf of FedEx for the Customer, and which is printed by the Customer from FedEx website based service ordering system (or other computer interface) or comprises a pre-printed form that is completed by the customer.

- 1.2. In these terms and conditions:
  - 1.2.1. An expression which denotes:
    - 1.2.1.1. any gender includes the other genders;
    - 1.2.1.2. a natural person includes a juristic person and vice versa; and
    - 1.2.1.3. the singular includes the plural and vice versa.
- 1.3. Any reference to:
  - 1.3.1. "Days" means calendar days, unless qualified by the word "business", in which instance a "business day" shall be any day (other than a Saturday, Sunday or public holiday in the Republic of South Africa);
  - 1.3.2. "Business hours" means the hours between 08h00 and 17h30 on any business day;
2. REQUEST FOR SERVICE
  - 2.1. The Customer shall request FedEx to collect, transport and deliver a consignment:
    - 2.1.1. electronically, via FedEx website customer interface;
    - 2.1.2. by telephone;
    - 2.1.3. in person at one of FedEx service centres; or
    - 2.1.4. in such other manner that FedEx may accept a request for a service.
  - 2.2. The Customer warrants that all information given to FedEx by it, the Consignee or sender of a consignment relating to the services is correct.
  - 2.3. It is the responsibility of the Sender to properly complete the (Air) Waybill.
  - 2.4. The Customer:
    - 2.4.1. must check the waybill (whether generated electronically, or completed by the customer to ensure that all information on the waybill is correct;
    - 2.4.2. must immediately notify FedEx if any of this information is not correct; and
    - 2.4.3. warrants to FedEx that all information on the waybill is correct, unless the Customer has notified FedEx in writing that any information is incorrect.
  - 2.5. If the sender indicates on the waybill or in its instructions to FedEx that the recipient will pay the charges for FedEx services:
    - 2.5.1. the sender warrants that the recipient will accept the charges; and
    - 2.5.2. if the recipient refuses to accept the charges, FedEx may return the consignment to the sender and the sender will, whether FedEx returns the parcel/consignment or not, be liable to pay all charges incurred by FedEx, including the charges for the failed delivery to the recipient and those for the redelivery to the sender.
3. COLLECTION, TRANSPORTATION AND DELIVERY
  - 3.1. The Customer must ensure that consignments are ready for collection at the time arranged for collection, and that the waybill and all other documents that must accompany the consignment have been fully and accurately completed.
  - 3.2. The Customer bears the responsibility for ensuring that parcels are properly and appropriately packaged and sealed before delivery to or collection by FedEx and that the packaging provides adequate protection from any damage that may occur during normal handling and transportation.
  - 3.3. If the contents of any parcel are fragile or if, for any reason, special care is required to be taken when handling the parcel, the Customer must clearly indicate this fact on the packaging. If this is not clearly indicated, FedEx will not under any circumstances be held responsible for any damage caused to the contents of the parcel. If this is indicated, FedEx will only be responsible for damage to the contents of the parcel if its staff failed to exercise special care and was negligent, and then only to the extent provided for in 7, as applicable.
  - 3.4. FedEx shall have the sole discretion to determine the route and method of transport of consignments, and shall be entitled to use subcontractors and/or agents for the collection, transportation and/or delivery of consignments.
  - 3.5. FedEx shall use its best endeavours to deliver consignments within the time requested by the Customer or determined by FedEx particular service selected by the Customer. However, the Customer shall have no claim against FedEx whatsoever for compensation or for damages of any nature whatsoever suffered as a result of late delivery.

#### 4. CONTENTS OF PARCELS AND CONSIGNMENTS

- 4.1. Unless specifically agreed in respect of a particular parcel or consignment, FedEx will not provide any service in respect of illegal substances, antiques, ammunition, artwork, bank and treasury bonds, bulk cargo, bullion, explosives, furs (raw and finished), hazardous goods, household and personal effects, jewellery, live animals (including fish, reptiles, arachnids and insects), money (notes and coins, patterns, plans, designs or manuscripts, perishables, precious metals, precious stones, stamps or watches).
- 4.2. The Customer warrants in respect of each parcel and/or consignment in respect of which it requests FedEx to provide services that:
  - 4.2.1. the parcel and/or consignment will not contain any goods of the nature referred to in 4.1;
  - 4.2.2. the aggregate value of the contents of the parcels that comprise the consignment is less than R500,000.00;
  - 4.2.3. the parcel has been properly and sufficiently packed, with adequate precautions having been taken to prevent damage to the contents in the course of normal handling, and prepared for carriage;
  - 4.2.4. the Customer is the owner of the goods in the consignment or is authorized by the owner of the goods instruct FedEx to handle the consignment and to render services in respect of the parcel and that, consequently FedEx possession and handling of the consignment will be lawful;
  - 4.2.5. FedEx handling of the parcel and/or consignment and performing the services in respect thereof will not violate or contravene any law or regulation relating to the importation, transportation, storage and/or distribution of any goods or class of goods;
  - 4.2.6. the mass and dimensions of the parcel disclosed to FedEx are correct; and
  - 4.2.7. the description, value and all other information provided by the Customer to FedEx in respect of the goods in any parcel and/or consignment is accurate and correct and FedEx and/or its subcontractors and/or agents may rely on this information when handling the parcel or consignment and/or making representations and/or declarations to any authority in respect thereof.
- 4.3. FedEx may (but shall not be obliged to) inspect the contents of any parcel and to open, unpack and repack parcels for this purpose. Such inspection will not release the Customer from any obligation or warranty under this paragraph.
- 4.4. Warranties, undertakings and consents given by the Customer in relation to parcels and/or consignments are given whether the Customer is the sender or consignee in respect of the parcel/consignment concerned. For the avoidance of doubt, if the Customer is not the sender, the Customer bears the risk of the sender doing anything in breach of these warranties.
- 4.5. Customer indemnifies FedEx against any loss or claims that it may suffer due to any breach of any of the above warranties or undertakings, including (but not limited to) any fines, penalties or claims arising from inaccuracy or omission of descriptions and particulars relating to the goods.

#### 5. PAYMENT

- 5.1. The Customer shall pay FedEx charges for the service rendered by FedEx according to FedEx tariff of fees, surcharges and other charges for the selected service which is current at the time that the service is rendered or in accordance with a quotation given by FedEx for the specific service. For the avoidance of doubt, a quotation given by FedEx for a specific service or services and accepted by the Customer will determine the contract price for that/those service(s), irrespective whether the quoted charges are more or less than FedEx normal charges for similar services.
- 5.2. Payment must be made by the customer:
  - 5.2.1. by electronic funds transfer before the consignment is collected by FedEx;
  - 5.2.2. by giving FedEx employees its credit card particulars and authorizing FedEx to process the payment via the Customer's credit card, before the consignment is collected by FedEx;
  - 5.2.3. in cash or by credit card at one of FedEx service centres before collecting the consignment, if FedEx has agreed to payment being made upon collection of the consignment; or
  - 5.2.4. in such other manner that FedEx agrees to in writing before the consignment is collected by FedEx.
- 5.3. If payment is to be made when a consignment is collected from FedEx, the consignment must be collected and payment becomes due within 7 days after FedEx has notified the Consignee that it is ready for collection.

- 5.4. If the mass and/or dimensions of a parcel/consignment are found by FedEx to differ from the mass and/or dimensions disclosed to FedEx by the Customer, then FedEx shall charge the Customer for the services in respect of that parcel/consignment in accordance with the actual mass and dimensions, and any quotation for such charges issued by FedEx shall be adjusted in accordance with the correct mass and dimensions. As FedEx has sophisticated measuring equipment, if the Customer disputes FedEx determination of the mass and/or dimensions of a parcel/consignment, the Customer shall bear the onus of proving that FedEx measurements are incorrect. If the Customer has paid FedEx for the services by credit card, the customer agrees that FedEx may use its credit card particulars to recover payment of the shortfall directly from the Customer's credit card provider. In all other instances, the Customer must pay FedEx the shortfall between the amount paid by the Customer and the adjusted charges within 24 hours after being notified of the amount payable.
- 5.5. If the sender indicates on the waybill or in its instructions to FedEx that the consignee will pay the charges for FedEx services:
  - 5.5.1. the sender warrants that the consignee will accept the charges; and
  - 5.5.2. if the consignee refuses to accept the charges, FedEx may return the parcel/consignment to the sender and the sender will, whether FedEx returns the parcel/consignment or not, be liable to pay all charges incurred by FedEx, including the charges for the failed delivery to the consignee and those for the redelivery to the sender.
6. LIEN
  - 6.1. FedEx has a lien over any consignment (and the contents of the parcels comprising the consignment) that is in its possession, as security for any claim that FedEx has against the Customer, whether such claim is in respect of the consignment(s) in FedEx possession (and over which FedEx is exercising its lien) or not.
  - 6.2. If the Customer does not dispute FedEx claim within 30 days after receiving written notice that FedEx is exercising its lien and intends selling the goods in its possession to reduce the Customer's indebtedness to it, then FedEx may sell such goods by public auction or by private treaty.
  - 6.3. If FedEx sells any goods in terms of 6.2, it shall, as soon as reasonably practicable after the sale, furnish the Customer with an account for the proceeds of the sale of the goods. If the proceeds of the sale exceed the amount that the Customer owes FedEx, the account must be accompanied by payment of the surplus.
  - 6.4. If FedEx exercises its right to sell the goods, the Customer shall have no claim against FedEx in respect of the sale of the goods, unless (and then only to the extent that) the goods are sold for less than their fair market value.
7. RISK AND INSURANCE
  - 7.1. All parcels and consignments are handled at the Customer's sole risk.
  - 7.2. Notwithstanding the provisions of 7.1, in the event of the loss of or damage to a consignment, FedEx will compensate the Customer by paying the LESSER of R1,000.00 or the actual loss incurred by the Customer subject to the Customer opting for the documentation and liability cover. The payment of this compensation is conditional upon:
    - 7.2.1. the damage to or loss of the item(s) concerned being endorsed by the recipient on the delivery receipt ; and
    - 7.2.2. the Customer providing FedEx with documentary proof (e.g. an invoice/quotation) of the value of the missing or damaged item(s).
  - 7.3. For the avoidance of doubt, if a consignment is lost, damaged or destroyed, FedEx liability to the Customer in respect of the loss or destruction will be limited to the cost of repairing or the value of all of the goods in the consignment or R1,000.00.
  - 7.4. If the Customer requires FedEx to arrange insurance cover for any consignment (subject to maximum available cover of R500,000):
    - 7.4.1. it must request the insurance before the consignment is collected;
    - 7.4.2. the Customer must pay FedEx the premium for the additional insurance cover at the same time as it pays for the services; and
    - 7.4.3. the insurance cover will be subject to the terms and conditions of the insurance policy, which are available from FedEx upon request.
  - 7.5. If the Customer requires insurance cover for second-hand machinery or equipment (including electronic equipment):
    - 7.5.1. the machinery or equipment may not be more than 10 years old;
    - 7.5.2. a pre-shipment inspection of the goods must be carried out by an engineer or technician appointed by the Customer or the sender detailing the physical, mechanical and/or electrical condition of the goods and the packaging methods employed;

- 7.5.3. the inspection report must be provided to and the risk accepted by the insurers before the goods will be covered;
- 7.5.4. if the equipment or machinery is older than 10 years, if no pre-shipment assessment is conducted, if the report is not submitted to the insurers or if the insurers do not accept the risk, the Customer's claim will be limited to loss or damage arising from water damage caused by heavy weather, piracy, pilferage, overturning, derailment, road accident or loss or damage during loading or offloading.
- 7.6. For the avoidance of doubt, if no additional insurance is requested by the Customer in terms of 7.4, if the conditions in 7.5 are not met or if a claim is repudiated by the insurers, the Customer shall have no claims against FedEx in respect of a lost or damaged consignment in excess of the compensation of R1,000.00 referred to in 7.2.
- 7.7. Where the Customer has elected to have additional insurance as contemplated in 7.4 or 7.5 above, the Customer must notify FedEx of any claim in respect of a lost, damaged or destroyed parcel within 30 days after the date upon which the loss or damage occurs, or the Customer will have no claim in respect of the loss."
- 7.8. If any claim is repudiated by the insurers, the Customer must contest the repudiation within 180 days after receiving notice of repudiation, failing which the customer will have no claim under the insurance policy.
- 7.9. When FedEx arranges insurance for the Customer, it acts as a referee only and not as an insurance expert. None of FedEx employees are authorised to offer advice in respect of insurance.
- 7.10. FedEx will not be liable to the Customer for any consequential damages that the Customer or any other person may suffer as a result of any loss of, damage to, destruction of or late delivery of any parcel. The Customer indemnifies FedEx against any such claims for consequential loss and also against any claims by third parties that are not covered by the insurances contemplated in this clause 7.
- 7.11. Nothing in these terms and conditions should be interpreted as seeking to exclude FedEx liability for damage suffered by the Customer due to the gross negligence of FedEx or that of any person acting for or on FedEx behalf".
8. DOMICILIA AND NOTICES
- The Customer chooses as its domicilium citandi et executandi for the receipt of any notices and/or legal processes arising from FedEx provision of the services at its address on the waybill OR the address which it has inserted in FedEx website customer interface OR the address which it has telephonically given to FedEx employees when requesting the service. This means that documents may be served at one of these addresses even if the Customer is not there, and that such service will be regarded as adequate service for legal purposes.
9. LEGAL COSTS
- If FedEx takes legal action to enforce payment of any amount due by or any of its rights against the Customer, or to successfully defend any claim against it by the Customer, the Customer will be liable to pay the legal costs incurred by FedEx on the scale as between attorney and own client, including collection commission and tracing costs.
10. GENERAL
- 10.1. These terms and conditions constitute the whole agreement between FedEx and the Customer. No representations or warranties other than those set out herein are binding on FedEx.
- 10.2. No addition to or variation of these terms and conditions and no waiver of any right arising from this Agreement shall be of any force or effect unless reduced to writing and signed by FedEx and the Customer.
- 10.3. If any provision of these terms and conditions are found to be invalid, unlawful or unenforceable, such provision will be severable from the remaining terms and conditions, which will continue to be valid and enforceable.