

Freight Controller-Licensing Agreement for FMS Dispatcher

This agreement is between Freight Controller as a division of Logistics At Work ACN 007 026 977 ("Freight Controller") and person named as the client in the Schedule/Proposal, ("the client").

Introduction

FMS Dispatcher is an electronic dispatch system that assists the client in controlling their freight costs. FMS Dispatcher was specifically designed to minimize the workload of a multi-carrier shipper and to provide dispatch data files electronically to carriers through the one system.

Technical Support

FMS Dispatcher is designed to enable the software to be updated and serviced via the internet. Most problems can be resolved quickly over the internet with assistance from our programmers and technicians who are available to guide the client through the restoration procedure. If the fault is found to be related to hardware, other software or user fault, a service charge may be applied.

Should a site visit be necessary which is subsequently determined to be related to hardware, other software or user fault, a service charge will be applicable with the client charged for a minimum of two (2) hours. (Certain areas will also attract travel and related costs.)

Database Conversion

Freight Controller will format the clients customer database prior to installation (matching suburbs to postcodes) to assist carriers in correctly sorting freight for transportation. The quality of the address information will depend on the accuracy of the information supplied by the client in the file. It remains the client's responsibility to verify the accuracy of the data prior to use. Freight Controller software automatically validates a new customers entry, however, the client must ensure all updated files e.g.; carriers files, postcodes files and rate files from Freight Controller are downloaded and installed without delay.

Installation

The agreed one-off installation fee will be charged to the client and will be payable within seven days of the date of the invoice. The basic installation fee as set out in the investment schedule (for one stand-alone workstation or server and up to three networked workstations) covers the initial set-up, including basic data file conversion (refer database conversion section), generic labels and consignment note format, major carrier label format, three rate files and one postcode file to suit two nominated carriers. Two hours of installation and system testing are done by remote login via the internet (systems protected by firewalls etc., may incur extra time and costs) for the client which includes one hour of basic user training on the day of installation. Follow up training is available by arrangement (at additional cost to the client). Excessive installation time; caused by permission issues or connectivity problems, are chargeable. A 24-hour, or one business day notification is required for cancellation of the agreed installation date or the client will be charged a two-hour labour fee as per your proposal's stated hourly fee.

Limited Warranty

At the sole discretion of Freight Controller, Freight Controller will arrange to replace FMS Dispatcher or arrange for provision of equivalent FMS Dispatcher or arrange to repair FMS Dispatcher whichever is the cheapest should FMS Dispatcher be found to be faulty or defective during the Licence Period. The warranty provided by Freight Controller in relation to FMS Dispatcher shall be limited to replacing FMS Dispatcher, or providing equivalent FMS Dispatcher or repairing FMS Dispatcher whichever is the cheapest and shall not encompass any claims relating to damages, including but not limited to loss of product, data, commercial damage, incidental, consequential, or other similar claims.

Any condition or warranty which would otherwise be implied by law to this agreement is hereby excluded. Where legislation implies in this agreement any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying application of or exercise or liability under such condition or warranty, the condition or warranty will be deemed to be included in this agreement.

Despite any other provision to the contrary in this agreement, Freight Controller will not arrange to provide to the client the benefit of the limited warranty provided by Freight Controller as set out above, if the fault or defect is related to hardware used by the client or other software used by the client; or if the fault or defect is directly or indirectly caused or contributed to by the client's error, negligence or breach of this agreement which includes but is not limited to unauthorized use, copying, modification, reverse engineering of FMS Dispatcher or the Media; or the Operating Manual.

For the avoidance of doubt, Freight Controller's responsibility if any to the client pursuant to this clause is limited to conveying to the client the benefit of the limited warranty given by Freight Controller in relation to FMS Dispatcher, and Freight Controller provides no further warranty to the client in relation to FMS Dispatcher.

Operating Manual

The client acknowledges Freight Controller's proprietary interest in the Operating Manual and covenants that it will not copy the Operating Manual except with the prior written consent of Freight Controller and for the purpose of using FMS Dispatcher in the manner reasonably contemplated by the parties.

License Agreement

Each warehouse using Freight Controller software will attract an annual fee for licensing and technical support. Receipt of the licensing fee grants a non-exclusive right to the client to use one copy or copies (as specified in this agreement) of the FMS Dispatcher system during the Licence Period. Each License Period of one year shall be paid 30 days in advance of the anniversary date. Failure to meet these terms will deem to be a request to cancel this agreement. Freight Controller is not required to provide updates or new releases to the client pursuant to this agreement. Freight Controller reserves the right to increase any fees charged by it and to impose other software servicing charges on the client upon giving one month's notice in writing to the client.

Freight Controller's Warranty

Freight Controller warrants that it has the right to grant the licence referred to in this agreement to the client.

Rate File Conversions

Freight Controller will, if required, convert soft copy rates files provided by the client, or clients preferred carriers, into the FMS Dispatcher format as part of the initial installation fee (up to three files, extra files attract a programming fee payable by the client). Freight Controller shall not be liable to validate or check that information. It remains the **client's responsibility to verify the accuracy of the supplied rates once loaded in the dispatcher system**. If after installation additional rates are required, Freight Controller will charge an hourly rate to the client to convert the new data. It is the client's responsibility to manage any rate increases or decreases once installed in the system, including Fuel Levies, to ensure accuracy of consignment pricing.

Cancellation/Expiration

In the event that the client fails to pay the Licence Fee by the due date, Freight Controller shall be entitled to suspend its remaining obligations under this agreement and to re-possess FMS Dispatcher. Should the services of Freight Controller be cancelled by either the client or Freight Controller or should the Licence Period expire, FMS Dispatcher and any other property or information of or relating to Freight Controller are to be returned by the client to Freight Controller at the client's cost within seven (7) days of such cancellation of services or expiration of the Licence Period. Freight Controller requires three months' notice of cancellation in writing.

Notice of Copyright

Australian and International copyright laws and treaties protect FMS Dispatcher. Freight Controller authorises the client to make archival copies of FMS Dispatcher for the sole purpose of back-up only. It is illegal to make copies of FMS Dispatcher without the prior written consent from Freight Controller. In particular, it is illegal to make copies of FMS Dispatcher for the client's own use or for the use of another person or company. Notwithstanding anything to the contrary set out in this agreement, this provision does not seek to exclude or limit the application of sections 47B (3), 47C, 47D, 47E or 47F of the *Copyright Act 1968 (Cth)*.

Ownership

Freight Controller retains ownership of FMS Dispatcher whether in their original form or as modified by Freight Controller or the client. All intellectual property rights in FMS Dispatcher are retained by Freight Controller. Nothing in this agreement affects the ownership of Moral Rights in FMS Dispatcher.

Modifications

The client shall not modify the whole or any part of FMS Dispatcher or combine or incorporate the whole or any part of FMS Dispatcher in any other program or system without the prior consent in writing from Freight Controller. If FMS Dispatcher is modified as set out above, the modifications shall, unless Freight Controller directs otherwise, be made in accordance with a written proposal submitted by the client to Freight Controller.

The client shall fully indemnify and hold harmless Freight Controller against any liability incurred if the said modifications infringe the intellectual property rights of a third person. FMS Dispatcher as modified remains the property of Freight Controller and this agreement shall continue to apply to FMS Dispatcher as modified. Notwithstanding anything to the contrary set out in this agreement, this provision is subject to any right of modification arising pursuant to sections 47B (3), 47C, 47D, 47E or 47F of the *Copyright Act 1968 (Cth)*.

Reverse Engineering

Except as expressly permitted by sections 47B (3), 47C, 47D, 47E or 47F of the *Copyright Act 1968*

(Cth), the client shall not reverse assemble or reverse compile FMS Dispatcher or any part of FMS Dispatcher.

Risk

Risk of loss or damage to FMS Dispatcher, the Media, and the Operating Manual shall pass to the client upon delivery of FMS Dispatcher to the client.

Security

The client shall be responsible for protecting FMS Dispatcher, the Media and the Operating Manual at all times from unauthorised access, use or damage.

Carrier and Client's Responsibility

1. Nothing in this agreement excuses the client from complying with the terms and conditions of its transportation service agreements with its customers or from complying with the provisions of the Australian Dangerous Goods Code (Road and Rail). By signing this agreement, the client as the transport carrier (irrespective of the party paying the freight charge) accepts total responsibility for all its transportation service transactions and indemnifies Freight Controller in relation to any claims whatsoever and howsoever caused whether directly or indirectly in relation to the provision of transportation services by the client.
2. Freight Controller send data to any carrier that requires an electronic file in one of the Freight Controller standard conversion formats free of charge. However, if the client requests a new or existing carrier who has requirements outside the Freight Controller standard data formats, a custom format will be written by Freight Controller or it nominated party to meet the carrier's requirements A one off charge will be apply with details being available at the time you request a quotation.
3. Freight Controller, and or its agents, will not be liable in anyway whatsoever for any late data lodgement fees from the client's carriers. Any such fees are a commercial matter between the client and the carrier only.

Payment Terms

1. Licences and installation charges prior to installation.
2. Interface and modifications 50% deposit due prior to commencement of work and balance due after satisfactory testing.
3. SOG Subscription transaction fees are payable within 14 days of invoice or as directed in the Freight Controller proposal.

Change to Prices

Notwithstanding any other provision of this agreement, Freight Controller reserves the right to change the prices of providing any goods or services to the client under this agreement and to impose new charges relating to FMS Dispatcher with written notice to the client. Fees are subject to general rate increases on annual renewal date that are at a minimum of the CPI (Consumer Price Index) or 5%, whichever the greater. Failure to meet these terms will deem to be a request to cancel this agreement.

Assignment

Freight Controller may assign, whether in whole or in part, the benefit of this agreement or any rights or obligations under this agreement without reference to the client. The client shall not assign, whether in whole or in part, the benefit of this agreement or any rights or obligations under this agreement without the prior written consent of Freight Controller. Such consent is not to be unreasonably withheld.

Confidentiality

A party will not, without the prior written approval of the other party, disclose the other party's Confidential Information. A party will not be in breach of this provision in circumstances where it is legally compelled to disclose the other party's Confidential Information. Each party will take all reasonable steps to ensure that its employees and agents, and any subcontractors engaged for the purpose of this agreement, do not make public or disclose the other party's Confidential Information. Notwithstanding any other provision in this agreement, a party may disclose the terms of this agreement (other than Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers and accountants. This clause shall survive the termination of this agreement.

Resolution Clause

If a dispute arises out of or relates to this agreement a party may not commence any court proceedings relating to the dispute unless that party has complied with this clause except where the party seeks urgent interlocutory relief.

A party claiming that a dispute ("the dispute") has arisen under or in relation to this agreement must give written notice to the other party specifying the nature of the dispute. On receipt of that notice by the other party, the parties must endeavour to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or determination or similar techniques agreed by them.

If the parties do not agree within seven (7) days of receipt of the notice referred to in this clause (or such further period as agreed in writing by them) as to:

1. The dispute resolution technique and procedures to be adopted;
2. The timetable of all steps in the proceedings; and
3. The selection and compensation of the independent person required for such techniques, the parties must mediate the dispute in accordance with mediation rules relevant at the time in the State of NSW.

If the dispute is not resolved by mediation as set out above, the dispute shall be submitted to arbitration in accordance with, and subject to, the rules for the conduct of commercial arbitrations of the Institute of Arbitrators and Mediators, Australia. During such arbitration, both parties may be represented by a duly qualified legal practitioner.

Variation

No variation of this agreement will be effective unless in writing and signed by the parties to this agreement.

Entire Agreement

This agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to FMS Dispatcher. No addition to or modification of any provision of this agreement shall be binding upon the parties unless made by written instrument signed by a duly authorised representative of a party.

Transmission of data to carriers

Freight Controllers agent FMSTS sends manifest data to carriers shortly after the data is manifested by you, the client. They also provide a service whereby data is backed up for a limited time, typically three months and can re send this data to the carrier upon request. Freight Controller nor its agent does not check the files or the data in the files and provides no warranty that the file has been sent or received by the carrier or that the data in the file is accurate or complete. Freight Controller nor its agents will not be held responsible in anyway for the transmission of this data or any economic cost or loss associated with the transmission of this data in anyway whatsoever. Any charges by the carrier for missing or unformatted data are a commercial matter between you and your carrier.

Carrier Rates

All rates in the application, and therefore all price estimates for consignments are estimates only and the shipper is responsible for the ongoing management and accuracy of the rates and fuel levies. Freight Controller will not be held responsible for operator's decisions made on carriers selected based on the rates and surcharges in the system. The Freight Selector and Freight Estimator functions are estimates only and act as guides to assist the operator and may vary from the invoiced amounts for many reasons including but not limited to carrier zone file changes or errors, surcharges, operator errors when entering key data as well as the re weight re cube process completed by the carrier. Freight Controller does not warrant the accuracy of the freight cost estimates in the system as they may vary from the carrier invoice and therefore Freight Controller or its agent will not be responsible in anyway whatsoever for any consequential or economic loss the customer may incur as a result of the carrier rates and rate zones loaded into the application.

Carrier Surcharges

Please note some carriers have surcharges such as manual handling fees, remote surcharges, hand unload surcharges and fuel levies etc and it is not always possible for some of these surcharges to be identified at the time of dispatch and therefore these surcharges may not be included in the estimate feature of the software or Freight Selector. Freight Controller does not warrant the accuracy of the freight cost estimates in the system as they may vary from the carrier invoice and therefore Freight Controller or its agent will not be responsible in anyway whatsoever for any consequential or economic loss the customer may incur as a result of the carrier rates and rate zones loaded into the application.

Estimated Delivery Date

The Estimated Delivery Dates are based on Industry Guidelines only and are not carrier specific. Freight Controller does not guarantee their accuracy for the individual carrier the client uses and will not be held responsible in any way whatsoever with deliveries made before or after the Estimated Delivery Date.

Carrier API module

In some versions of FMS Dispatcher there is a module that imports carrier consignment status that may include data such as estimated delivery date, actual delivery date and time, current status and proof of delivery confirmation. This data is provided by the carrier and not Freight Controller and is downloaded into the program.

Freight Controller or its agents does not offer any warranty whatsoever as to the accuracy of this data nor any reports that are created using this data. This data is provided by the customers carriers and Freight Controller accepts no liability or consequential damages whatsoever for resulting for any inaccuracy or consequences of this data not being available and the client indemnifies Freight Controller and its agents against any damage or loss associated with this consignment status data.

Sign on Glass module (SOG) and API

In some versions of FMS Dispatcher there is a module that imports SOG data from your carrier or driver that may include data such as delivery date and time, current status and proof of delivery confirmation. This data is provided by the carrier and not Freight Controller and is simply downloaded into the program from the SOG Android App/server used by the driver. Freight Controller or its agents does not offer any warranty whatsoever as to the accuracy or timeliness of this data nor any reports that are created using this data. This data is provided by the customers carriers and Freight Controller accepts no liability or consequential damages whatsoever for any possible inaccuracy or consequences of this data not being available. The client indemnifies Freight Controller and its agents against any damage or loss associated with this SOG data.

Google Geo location services

The FMS Android APP uses Googles service including geo location data to identify the location and time of the delivery as well as various mapping and navigation services. Freight Controller or its commercial partners in no way whatsoever warranty the timeliness or accuracy of this data and therefore will not be responsible for any consequential or any other type of loss suffered by the client from any inaccuracy or unavailability of this information when using the app or downloading the data into various software systems including FMS Dispatcher or Delivery Manager. The client agrees to indemnify Freight Controller and or its commercial partners FMSTS or Comformark Pty Ltd. from any loss suffered as a result of performance failure of google services used by the FMS Android APP.

Wi-Fi or Mobile data access

The FMS Android APP service is accessed over the client's phone or tablet device which typically accesses the internet via Wi-Fi or a mobile data network determined by the operator. Freight Controller or its commercial partners in no way whatsoever warranty the availability or timely performance of this data network in sending and receiving data throughout the various software systems and therefore will not be responsible for any consequential or any other type of loss suffered by the client from any inaccuracy or unavailability of this information when using the app or downloading the data into various software systems including FMS Dispatcher or Delivery Manager. The client agrees to indemnify Freight Controller and or its commercial partners FMSTS or Comformark Pty Ltd. from any loss suffered as a result of limited access to a mobile or Wi-Fi network

MYDELMAN server and API

The FMS Android App and FMS Delivery Manager and Dispatcher relies on data uploaded and downloaded from the mydelman server and API which in turns relies on internet access. Freight Controller or its commercial partners in no way warranty the performance or availability of the internet connection to the server and therefore will not be responsible for any consequential or any other type of loss suffered by the client from unavailability of the internet connection to the server or the performance of the upload and download rates from and to the server when using the FMS App FMS Dispatcher or Delivery Manager. The client agrees to indemnify Freight Controller and or its commercial partners FMSTS or Comformark Pty Ltd. from any loss suffered as a result of the server or API performance.

GST

Expressions used in this clause and in the GST Act have the same meanings as when used in the GST Act. In addition to paying the Licence Fee and any other amount payable or in connection with this agreement (which is exclusive of GST), the client will pay to Freight Controller an amount equal to any GST payable for any supply by Freight Controller in respect of which the Licence Fee or any other amount is payable under this agreement. The client will make such payment either on the date when the Licence Fee or any other amount payable by the client under this agreement is due or within 7 days after the client is issued with a tax invoice, whichever is the later.

Governing Law

This agreement shall be governed by and construed in accordance with the laws for the time being in force in the State of NSW Australia and the parties agree to submit to the jurisdiction of the courts and tribunals of that State.

Definitions

'Australian Dangerous Goods Code (Road and Rail)' means the code prescribed by the Department of Infrastructure, Transport, Regional Development and Local Government (Cth) as amended from time to time.

'Confidential Information' means information that is by nature confidential but does not include information already known to the receiving party at the time of disclosure by the other party; or information in the public domain other than as a result of disclosure by a party in breach of its obligations of confidentiality under this agreement.

'GST' means GST within the meaning of the GST Act.

'GST ACT' means *A New Tax System (Goods and Services Tax) Act 1999 (Cwlth)*

'Licence Period' means the term of the licence referred to in this agreement.

'Media' means the media in which the FMS Dispatcher is recorded and printed.

'Moral Rights' mean a right of attribution of authorship; or a right not to have authorship falsely attributed; or a right of integrity of authorship; or a right of a similar nature which is conferred by statute, and which exists or comes to exist anywhere in the world in a deliverable form comprised within the agreement.

'Operating Manual' means the content as set out in the Help File of FMS Dispatcher.

'Schedule' means schedule attached to this agreement and which forms part of this agreement.