

# The Carriage of Goods Act: Customers' rights



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My 22-year-old son is a seriously keen weightlifter who trains most days. Recently he bought some specialist footwear from a US supplier. However they disappeared in transit and for a while it seemed my son's footwear was lost for good, but after many phone calls and much angst he finally received his gear.

That got me thinking about the Carriage of Goods Act, and customers' rights. Under the Act a carrier is an entity that carries goods owned by another.

A carrier can be a transport operator, courier, bus operator, freight forwarder, forwarding agent, airline, shipping company, rail operator, stevedore, warehouse operator, or anyone who handles the goods in transit by road, rail, sea or air within New Zealand. It does not cover any International portion of the goods journey – this risk needs to be insured separately.

The definition of goods includes all items of value including general freight, perishables, animals, furniture, containers and bulk commodities.

Under the Consumer Guarantees Act, some customers can seek redress for lost or damaged goods from the carrier if a lack of reasonable care and skill can be proven, or if the service provided was not fit for purpose (e.g. carrying frozen goods in a non-refrigerated vehicle). With major faults the customer may have the right to cancel the carriage contract and obtain a full refund of the carriage costs.

Most problems concern liability for loss or damage to goods. If there is no written contract the Act specifies that the goods are automatically carried at 'limited carriers' risk', and the carrier is liable for any unintentional loss or damage up to a maximum of \$2000 per item. If the damage or loss is intentional, the carrier is liable for the full value of the goods. An item of goods is defined as each separate item, usually defined by how the goods were consigned (e.g. 6 cartons consigned individually has a liability up to \$2000 per carton, but if the 6 cartons were consigned as one pallet or one container then the total liability is \$2000). The Carriage of Goods Act allows for three types of written contracts:

- **Declared Value Risk.** The carrier is liable for any loss or damage up to the agreed amount stated in the contract.
- **Owners Risk.** The carrier is not liable for any unintentional loss or damage to the goods. Both parties must agree to this contract. The carrier cannot insist on carrying the goods at 'Owner's Risk'. There must be either a contract signed by both parties that includes the words 'at owners risk', or a statement signed by both parties agreeing that the goods will be carried 'at owners risk'.
- **Declared Terms.** The carrier and the customer negotiate all the terms that are agreed on. The Carriage of Goods Act allows claims within 30 days. The carrier can contract for a different period of time, usually shorter, but both parties will need to sign a contract to this

effect for it to be valid; otherwise the period allowed in the Act prevails.

It is recommended that carriers discuss insurance with customers before contracting to carry the goods, so they are aware of the options available to them.



The carrier has no liability if it was not at fault, and the loss or damage resulted from one of the following

1. Goods had an existing defect
2. Goods were not properly prepared or packed.
3. A legal requirement was not met e.g. inappropriate packaging for dangerous goods.
4. Goods were taken from the carrier by legal process e.g. a bailiff or court order.
5. The carrier was saving, or trying to save, life or property.

If the carrier or its employee intentionally damages or loses goods, then the entity/person at fault is liable for loss or damage to the full value of the goods.

If there is more than one carrier involved, the carrier that the customer made the contract with is liable for the goods, whether or not they had the goods in their possession at the time they were lost or damaged. Each carrier needs to make its own liability arrangements with any other carriers involved in the delivery of the goods. If the contracted carrier has disappeared or gone bankrupt, then the customer may be able to make recovery from the carrier who had the goods in their possession when they were lost or damaged.

If the goods deteriorate while being carried the carrier may sell them, or if that is not practical, then the carrier may destroy them. If the goods become dangerous, the carrier may destroy them. The customer is still liable for the freight costs, and may also be liable for any disposal costs. However the carrier is liable for any loss or damage which occurred before the goods deteriorated or became dangerous.

This article is intended as a guide only. If you have any issues involving liability under the Carriage of Goods Act, or require further information, then please contact NZ Trucking Association on 0800 338 338 or [info@nztruckingassn.co.nz](mailto:info@nztruckingassn.co.nz)  

Each carrier needs to make its own liability arrangements

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