

Smart Logistics

Trading Conditions

22 Definitions and Application

In these Conditions the following words shall have the following meanings:-

- 1.1 **"Company"** means Smart Logistics Limited.
- 1.2 **["the Owner"** means the Owner of the Goods (including any packaging, containers or equipment) the subject of any contract to which these conditions apply].
- 1.3 **"Goods"** means all goods and merchandise (including liquids, gases, solids and powders) of all descriptions whatsoever, Transport Units and passenger's unaccompanied luggage, animals and personal property of all descriptions whatsoever.
- 1.4 **"Transport Unit"** means any device used for carriage, transportation or storage of Goods (whether loaded or unloaded) including any container, tanker, tank, vehicle, trailer, vessel, aircraft or equipment.
- 1.5 **"Carrier"** means the person, firm, company or other organisation employed by the Company to effect delivery of the Goods.
- 1.6 **"Consignee"** means the person or company to whom the Company contracts to deliver the Goods.
2. **Basis of Contract**
 - 2.1 Subject to sub-clause 2.2 any business undertaken by the Company is undertaken subject to these conditions.
 - 2.2 These conditions shall be read as being subject to and governed by the following:-
 - 2.2.1 any legislation that is compulsorily applicable to any business undertaken and nothing in these conditions shall be construed as a surrender by the Company of its rights or immunities or as an increase of any of its responsibilities or liabilities thereunder and if any part of these conditions is inconsistent to such legislation that part shall be overridden to that extent and no further.
 - 2.2.2 the terms and conditions of the Carrier as if the Customer had contracted directly with the Carrier or as if such terms and conditions had been contained in these conditions but in relation to any inconsistency between the terms and conditions of the Carrier and these conditions the terms and conditions of the Carrier shall prevail.
- 2.3 [Any conditions of purchase or other terms provided by the Customer shall be of no effect whatsoever nor shall any variation or alteration to these conditions be of any effect unless specifically negotiated and made in writing and signed by a duly authorised signatory of the Company.]
- 2.4 No binding contract shall be created by the placing of an order by the Customer unless and until the Company's written acknowledgement of the order shall have been posted or delivered, which acknowledgement will be deemed to repeat these conditions. Alternatively, in the event that no such acknowledgement is sent, at the time of acceptance of any order by the Company a binding contract will be created subject to these conditions.]
3. **Parties**
 - 3.1 The Customer warrants that he is either the Owner or the authorised agent of the Owner and also that he is accepting these conditions not only for himself but also as agent for and on behalf of the Owner.
 - 3.2 In authorising the Customer to enter into any contract with the Company the Owner and the Consignee accept these conditions for themselves and their agents and the Owner and the Consignee accept that the Company shall have the right to enforce against them jointly and severally any liability of the Customer under these conditions or to recover from them, any sums to be paid by the Customer which have not been paid.
 - 3.3 Subject to clause 15, the Company shall be entitled to procure the services under any contract as an agent or provide those services as principal.
 - 3.4 The offer and acceptance of an all inclusive price for the accomplishment of any services shall not itself determine whether the Company arranges the services as agent or provides the same as principal contractor.
 - 3.5 When acting as an agent the Company does not make or purport to make any contract with the Customer for the carriage, storage, packing or handling of Goods nor for any other physical service in relation to them and acts solely on behalf of the Customer in securing services by establishing contracts with third parties so that direct contractual relationships are established between the Customer and such third parties.
4. **Quotations**

Any quotation in whatever form provided by the Company is given subject to these conditions as an invitation to treat and does not constitute an offer to sell. The validity of any such quotation shall expire 30 days after the date of its issue.
5. **Prices**
 - 5.1 Subject to anything to the contrary contained in any quotation issued by the Company, prices are, unless otherwise stated, exclusive of Value Added Tax and any other similar tax, packaging and any insurance charges.
 - 5.2 The Company reserves the right, by giving notice to the Customer at any time before delivery, to increase the price to reflect any increase in the cost to the Company which is due to any actions or instructions on the part of the Customer or any other factor beyond the Company's control.
 - 5.3 Unless otherwise expressly stated in writing by the Company, all prices payable must be settled in pounds sterling but if the Company agrees to accept foreign currency and does not specify an exchange rate the exchange rate will be that of the Bank of England at the close of business on the day preceding the day on which the Company accepts the Customer's order.
6. **Variation and Cancellation**
 - 6.1 The Company accepts orders subject to the absolute right to cancel and rescind contracts in cases where the Customer or the terms stated are not acceptable to the Company's insurers.
 - 6.2 The Company shall be under no obligation whatsoever to accept any variation or cancellation of an order once accepted. However, if the Company at its complete discretion agrees to accept any such variation or cancellation it may levy such charges as it, in its absolute discretion, sees fit.
7. **Payment and default by Customer**

- 7.1 The Company reserves the right at any time at its discretion to demand security for payment before commencing and/or continuing with the contract or delivering the Goods.
- 7.2 Subject to clauses 7.3 and 7.4 and unless otherwise agreed in writing by the Company the Customer shall pay the Company [in cash] in full within 30 days from the date of invoice without reduction or deferment on account of any claim counterclaim or set-off. Time for payment shall be of the essence of the contract.
- 7.3 In the event that the Customer fails to make payment by the due date or otherwise commits a breach of these conditions, the Company may in its absolute discretion and without prejudice to any other rights which it may have:-
- 7.3.1 suspend all future deliveries or supplies to the Customer under the contract in question or under any other contracts and/or terminate all or any part of such contract(s) without liability upon its part;
- 7.3.2 require payment in advance for any future deliveries;
- 7.3.3 in the case of non-payment on or before the due date or on demand (as mentioned in paragraph 7.4 below) charge interest calculated at [4%] above the base rate for the time being of [Lloyds Bank plc] from the time of delivery or date of invoice whichever is the earlier until the date of actual payment, whether before or after judgment.
- 7.4 Without prejudice to any other rights the Company may have by virtue of paragraph 7.3 the Seller may demand immediate payment of all sums whether or not due in the event that:
- 7.4.1 the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 7.4.2 an encumbrancer takes possession of, or a receiver is appointed over, any of the properties or assets of the Customer; or
- 7.4.3 the Customer ceases, or threatens to cease, to carry on business; or
- 7.4.4 the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
8. **Performance of Contract**
- 8.1 When the Company has reached an agreement with a Customer for the performance or procurement of any of its services as principal the Company subject to these conditions accepts liability for loss of or damage to Goods taken into its charge occurring between the time when it takes the Goods into its charge and the time when the Company is entitled to call upon the Customer, Consignee or Owner to take delivery of the Goods.
- 8.2 When the Company agrees to act as agent on behalf of the Customer the Customer expressly authorises the Company to do such acts and enter into such contracts on behalf of the Customer so as to bind the Customer by such acts and contracts in all respects and to do such acts as may in the opinion of the Company be reasonably necessary in the performance of its obligations in the interests of the Customer.
- 8.3 Subject to any specific instructions received from the Customer the Company will be entitled to use its reasonable discretion as to the procedure for the handling, storage and route for transportation of the Goods.
- 8.4 [The Company shall be entitled to perform any of its obligations herein by itself or by its parent or subsidiary or associated company and in the absence of agreement to the contrary any contract to which these conditions apply is made by the Company on its own behalf and also as agent for and on behalf of such parent, subsidiary or associated company and such company shall be entitled to the benefit of those conditions.]
9. **Lien**
- 9.1 Subject to sub-clause 9.2 hereof, the Company shall have a general lien on all Goods and documents relating to Goods in its possession, custody or control for all sums due at any time from the Customer or Owner, and shall be entitled to sell or dispose of such Goods or documents as agent for and at the expense of the Customer and apply the proceeds in/or towards the payment of such expenses on [28] days notice in writing to the Customer. Upon accounting to the Customer for any balance remaining after payment of any sum due to the Company and the costs of sale or disposal the Company shall be discharged of any liability whatsoever in respect of the Goods or documents.
- 9.2 If Goods are perishable or liable to deteriorate the Company's right to sell or dispose of the Goods shall arise immediately upon any sum becoming due to the Company subject only to the Company taking reasonable steps to bring the Customer's attention to its intention of selling or disposing of the Goods before doing so.
10. **Commissions Etc**
- The Company shall be entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by or paid to Freight Forwarders.
11. **Loading and Unloading**
- 11.1 Unless the Company has agreed in writing to the contrary with the Customer:-
- 11.1.1 the Company shall not be under any obligation to provide any plant, power or labour, other than that carried by the vehicle, required for loading or unloading the Goods;
- 11.1.2 the Customer warrants that any special appliances required for loading or unloading the Goods which are not carried by the vehicle will be provided by the Customer or on the Customer's behalf;
- 11.1.3 the Company shall be under no liability whatever to the Customer for any damage whatever, however caused, if the Company is instructed to load or unload Goods requiring special appliances which, in breach of the warranty in 11.1.2 above, have not been provided by the Customer or on the Customer's behalf.
- 11.1.4 the Company shall not be required to provide service beyond the usual place of collection or delivery but if any such service is given by the Company it shall be at the sole risk of the Customer.
- 11.1.5 the Customer shall indemnify the Company against all claims and demands whatever which could not have been made if such instructions as are referred to in 11.1.3 of this condition and such service as is referred to in 11.1.4 of this condition had not been given.]
12. **[Consignment Notes**
- The Company shall, if so required, sign a document prepared by the sender acknowledging the receipt of the Goods but no such document shall be evidence of the Condition or of the correctness of the declared nature, quantity, or weight of the Goods at the time it is received by the Company.]
13. **Verification of Goods**

- 13.1 In relation to any Goods the Customer shall take all reasonable steps, or shall procure that the Consignee if not the Customer shall take all reasonable steps, following the arrival of the Transport Unit at the Consignee's premises but prior to discharge of such Goods from the Transport Unit to verify where appropriate;
- 13.1.1 that such Goods are the goods which the Company contracted to carry and are in good condition and uncontaminated; and
- 13.1.2 that the storage tank, silo or other receptacle into which the Goods are to be discharged is clear, safe, in good condition and suitable for the storage of the Goods having regard to the characteristics of the Goods; and
- 13.1.3 that the Goods are properly discharged into the correct tank, silo or other receptacle for the discharge of such Goods.
- 13.2 The Customer shall or shall procure that the Consignee shall require a suitable person to carry out the verification referred to in condition 13.1 and to sign and deliver to the driver of each Transport Unit a form of receipt in respect of the Goods containing a statement that such verification has been duly carried out.
- 13.3 The Customer shall indemnify the Company against all claims and demand whatever and by whosoever made arising out of or consequent upon the failure of the Customer and/ or the Consignor or the Consignee or their or their servants or agents to observe perform or comply with all or any part of conditions 13.1 and 13.2.]
14. **Undelivered or Unclaimed Goods**
- 14.1 If delivery of the Goods or any part thereof is not taken by the Customer, consignee or Owner, at the designated time and place the Company shall be entitled to store the Goods or any part thereof at the sole risk of the Customer whereupon the liability of the Company in respect of the Goods or that part thereof which has been stored shall cease and the cost of such storage shall be paid forthwith upon demand by the Customer to the Company.
- 14.2 the Company shall be entitled at the expense of the Customer to dispose of (by sale or otherwise as may be reasonable in all the circumstances);
- 14.2.1 by giving [21] days notice in writing to the Customer or where despite reasonable efforts the Customer or Consignee cannot be traced or after the Goods have been held by the Company for [90] days all Goods which in the opinion of the Company cannot be delivered as instructed: and
- 14.2.2 without prior notice Goods which have perished deteriorated or altered in any way or are in immediate prospect of doing so.
15. **Insurance**
- 15.1 The Company will not effect any insurance except upon express instructions given in writing by the Customer and all insurances effected by the Company are subject to the usual exceptions and conditions of the policies of the insurance company or underwriters taking the risk. Unless otherwise agreed in writing the Company shall not be under any obligation to effect a separate insurance on each consignment but may declare it on any open or general policy held by the Company.
- 15.2 Insofar as the Company agrees to arrange insurance, the Company acts solely as agent for the Customer using its reasonable endeavors to arrange such insurance and does so subject to the limits on liability contained in clause 21 hereof.
16. **Advice**
- Any advice or information in whatever form which is provided by the Company to the Customer is intended for the Customer only and the Customer shall indemnify the Company against any liability claims loss damage costs or expenses arising out of any other persons relying upon such advice or information.
17. **Prohibited Goods**
- 17.1 [Except under special arrangement previously made in writing the Company will not accept or deal with bullion coin precious stones jewellery valuables antiques pictures human remains livestock or plants. Should any Customer nevertheless deliver any such Goods to the Company or cause the Company to handle or deal with any such Goods otherwise than under special arrangements previously made in writing the Company shall be under no liability whatsoever for or in connection with such Goods howsoever arising.]
- 17.2 [The Company may at any time waive its rights and exemptions from liability under sub-clause 17.1 above in respect of any one or more of the categories of Goods mentioned herein or of any part of any category. If such waiver is not in writing the onus of proving such waiver shall be on the Customer.]
18. **Dangerous Goods**
- 18.1 Unless the Company has specifically agreed in advance in writing the Company will not accept or deal with Goods of a dangerous or damaging nature nor with Goods likely to harbour or encourage vermin or other pests nor with Goods liable to taint or affect other Goods. If such Goods are accepted pursuant to a special arrangement and subsequently in the opinion of the Company they constitute a risk to other Goods property life or health the Company shall where reasonably practicable contact the Customer to make alternative arrangements but reserves the right at the expense of the Customer to remove or otherwise deal with the goods.]
- 18.2 [Should the customer deliver to the Company or cause to be delivered to the Company Goods of the kind referred to in clause 18.1 other than under special arrangements previously made in writing as set out in clause 18.1, then that Customer shall be liable for all loss or damage howsoever arising in connection with such Goods and shall indemnify the Company against all penalties claims damages costs and expenses whatsoever arising in connection therewith and the Goods may be dealt with in such manner as the Company or any other person in whose custody they may be at any relevant time shall think fit.]
19. **Customer's Warranty**
- The Customer warrants that:-
- 19.1 The description and particulars of any Goods given by or on behalf of the Customer are complete full and accurate;
- 19.2 All Goods have been properly and sufficiently prepared packed, labelled and stowed and or/marked;
- 19.3 Where the Company receives the Goods from the Customer already stowed in or on a Transport Unit such Transport Unit is in good condition and is suitable for the carriage to the intended destination of the Goods loaded therein or thereon.
20. **Indemnity**
- The Customer shall keep the Company indemnified from and against the following:-
- 20.1 All liability loss damage costs and expense whatsoever (including without prejudice to the generality of the foregoing all duties taxes levies deposits and outlays of whatsoever nature levied by any authority in relation to the Goods) incurred by the Company in pursuance of any contract with the Customer or arising from any breach by the Customer of any of its obligations contained in these conditions or from the negligence of the Customer, and

- 20.2 Without derogation from sub-clause 20.1 above any liability assumed or incurred by the Company or in respect of which the Company has reasonably become liable or may become liable to any other party in pursuance of any contract with the Customer.
- 20.3 All claims costs and demands whatsoever and by whomsoever made in excess of the liability of the Company under the terms of these conditions regardless of whether such claims costs and demands arise from or in connection with the negligence or breach of duty of the Company its employees, sub-contractors or agents.
21. **Liability and Limitation**
- 21.1 The Company shall perform its duties with a reasonable degree of care diligence skill and judgement.
- 21.2 The Company shall be relieved of liability for any loss or damage if and to the extent that such loss or damage is caused by:-
- 21.2.1 strike lock-out stoppage or restraint of labour the consequences of which the Company is unable to avoid by the exercise of reasonable diligence;
- 21.2.2 any other event which the Company is unable to avoid by the exercise of reasonable diligence;
- 21.3 Except under special arrangement made in writing the Company accepts no responsibility for departure or arrival dates of Goods.
- 21.4 Subject to clause 2.2 above and sub-clause 21.7 below the Company's liability howsoever arising and notwithstanding that the cause of loss or damage be unexplained shall not exceed
- 21.4.1 the value of any Goods lost or damaged, or
- 21.4.2 [a sum at the rate of [two] Special Drawing Rights as defined by the International Monetary Fund (hereinafter referred to as SDR's), per kilo of gross weight of any Goods lost or damaged whichever shall be the least].
- For the purposes of this clause the value of the Goods shall be their value when they were or should have been transported. The value of SDR's shall be calculated as at the date when the claim is received by the Company in writing.
- 21.5 Subject to clause 2.2 above and sub-clause 21.7 below, the Company's liability for loss or damage as a result of failure to deliver or arrange delivery of Goods in a reasonable time or (where a special arrangement exists under clause 21.3) to adhere to agreed departure or arrival dates shall not in any circumstances whatsoever exceed a sum equal to [twice the amount of the Company's charges in respect of the relevant transactions.]
- 21.6 Save in respect of such loss or damage as is referred to at sub-clause 21.5 and subject to clause 2.2 above and sub-clause 21.7 below, the Company shall not in any circumstances whatsoever be liable for indirect or consequential, loss such as (but not limited to) loss of profits or loss of market.
- 21.7 By special arrangement agreed in writing, the Company may accept liability in excess of the limits set out in sub-clauses 21.1 to 21.6 above upon the Customer agreeing to pay the Company's additional charges for accepting such increased liability. Details of the Company's additional charges will be provided upon request.
22. **Time Limits for Claims**
- 22.1 Any claim by the Customer against the Company arising in respect of any service provided for the Customer or which the Company has undertaken to provide shall be made in writing and notified to the Company:-
- 22.1.1 in the case of damage to Goods, within [7] days after the date of delivery;
- 22.1.2 in the case of delay in delivery or non-delivery within 14 days of the date when the Goods should have been delivered;
- 22.1.3 in any other case within 14 days of the event giving rise to the claim.
- 22.2 Notwithstanding the provisions of sub-paragraph 22.1 above, the company shall in any event be discharged of all liability whatsoever and howsoever arising in respect of any service provided for the customer, or which the company has undertaken to provide, unless suit be brought and written notice thereof given to the company within nine months from the date of the event or occurrence alleged to give rise to a cause of action against the company.
23. **General**
- 23.1 Any notice required or permitted to be given by either party to the other under these conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving notice.
- 23.2 No waiver by the Company of any breach of contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 23.3 If any provision of these conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these conditions and the remainder of the provision shall not be affected.
- 23.4 Any dispute arising under or in connection with these conditions shall be referred to arbitration by a single arbitrator appointed by agreement or (if not agreed within fourteen days) by [] whose decision (including as to costs) shall be final and binding upon both parties.
- 23.5 The construction, validity and performance of the contract shall be governed by and be interpreted in accordance with English law. The parties hereto agree to submit themselves to the non-exclusive jurisdiction of the English courts for the purposes of these terms and conditions.]