



# **CONDITIONS OF CONTRACT**

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## CONDITIONS OF CONTRACT

### SOLE CONDITIONS

..... (“the Company”) is a member of the United Kingdom Warehousing Association (formerly the National Association of Warehouse Keepers), is not a common carrier, and undertakes all services subject solely to the following Conditions which can be varied only in writing by a Director, Company Secretary or Partner of the Company.

If a Customer’s acceptance document, purchase order or other documentation, received by the Company before or after notification of these Conditions, contains terms or conditions additional to, or at variance with these Conditions, then every such additional or varying term or condition shall be of no effect.

### IMPORTANT NOTE

**THE CUSTOMER’S ATTENTION IS DRAWN SPECIFICALLY TO CONDITION 3. Condition 3 has been included herein solely to relieve the owner of the goods (including any associated packing and equipment) the subject of this contract (“the Goods”), or the owner’s agent, of the additional costs that the Company would need to include to recover insurance charges were its liability not limited as provided for in Condition 3. Condition 3(v)(b) will become operative at the option of the Customer on the terms provided therein.**

### WARRANTY OF AGENCY

1. The Customer warrants that it is either the owner of the Goods or is authorised by such owner to accept these Conditions on the owner’s behalf.

### CUSTOMER’S UNDERTAKINGS

2. (i) The Customer undertakes that:-
- (a) When presented for warehousing, the Goods shall be securely and properly packed in compliance with any statutory regulations or official or recognised standards and in such condition as not to cause damage or injury or the likelihood of damage or injury to the property of the Company or to any other goods, whether by spreading of damp, infestation, leakage or the escape of fumes or substances or otherwise howsoever.
  - (b) Before presentation of the Goods for warehousing, the Customer will inform the Company in writing of any special precautions necessitated by the nature, weight or condition of the Goods and of any statutory duties specific to the Goods with which the Company may need to comply.
  - (c) It will reimburse all duties and taxes that the Company may be required to pay in respect of the Goods including situations where the liability to pay them arises due to the fault of the Company or its employees or sub-contractors.
  - (d) Unless prior to acceptance of the Goods by the Company, the Company receives written notice containing all appropriate information, none of the Goods constitute “Waste” as defined in the Environmental Protection Act 1990.
  - (e) Unless prior to acceptance of the Goods by the Company, the Company receives written notice containing all appropriate information, none of the Goods are or contain substances the storage of which would require the obtaining of any consent or licence or which, if they escaped from their packaging, would or may cause pollution of the environment or harm to human health.
  - (f) It will be liable for any breach of HM Customs & Excise Regulations relating to goods warehoused and undertakes to indemnify and keep indemnified the Company against all actions, proceedings, costs, claims and demands arising out of any further breach, non-observance or non-performance of the same.
2. (ii) Notwithstanding any notice under Condition 3(v)(b), if there is a breach of contract by the Customer, the Customer will indemnify the Company against any loss or damage it suffers which is related to the breach, and will pay all costs and expenses (including professional fees) incurred in, and the Company’s reasonable charges for, dealing with the breach and its consequences. The Customer will pay an extra storage charge equal to the amount of any fine or penalty payable by the Company wholly or partly as a result of a breach by the Customer of this contract. If the Company suspects a breach of warranty in Condition 1 or of any undertaking in Condition 2(i), it may demand the immediate removal of any goods held for the Customer, or itself arrange their removal without notice, at the Customer’s expense.

### COMPANY’S LIABILITY FOR GOODS AND OTHER LOSSES

3. (i) Except as provided in Condition 3(iii) below, the Company does not insure the Goods and the Customer shall make arrangements to cover the Goods against all risks to the full insurable value thereof (including all duties and taxes).
3. (ii) Subject only to sub-clause 3(iii) below, the Company excludes all liability whatsoever and howsoever arising in respect of the Goods including (without limitation) all liability for loss, damage, duties and taxes, deterioration, delay, non-delivery, mis-delivery, unauthorised delivery or non-compliance with instructions (“Loss”).
3. (iii) If and to the extent that Loss is directly caused by neglect or wilful act or default of the Company, its employees (acting in furtherance of their duties as employees) or sub-contractors (acting in furtherance of their duties as sub-contractors) and subject to sub-clause 3(iv) below, the Company will accept liability for Loss up to the Limit fixed by sub-clause 3(v) below.
3. (iv) In no case whatsoever (including without limitation a case within sub-clause 3(iii) above) shall the Company be liable for any loss of profit or income or indirect or consequential Loss of any kind.
3. (v) In no case whatsoever (including inter alia a case within sub-clause 3(iii) above) shall any liability of the Company (including inter alia any liability in respect of duties and taxes) exceed a limit per tonne weight of that part of the Goods in respect of which a claim arises (“the Limit”) fixed as follows:-
- (a) If a higher Limit has not been implemented under (b) below, the Limit shall be a total of £100 per tonne.
  - (b) The Customer may require an increase in the per tonne limit under (a) by notice in writing to be received by the Company at least 7 days before the date (“the Date”) on which the increased Limit is required to be operative. The notice shall state the increased Limit and the nature and maximum value of the Goods, including duty and taxes. The increased Limit shall apply in respect of any cause of action arising after the Date. The Company shall accept such increase subject to payment by the Customer within 7 days of invoice of the Company’s costs in insuring against its increased liability under the increased Limit.
3. (vi) Without prejudice to the Company’s rights under clause 6 to be paid free from deductions, any limitation of liability on the part of the Company shall be applied to any claim by the Customer before any set off or counterclaim is asserted against money due to the Company.
3. (vii) (a) The Company shall not be liable for any Claim unless it has received written notice of the Claim from the Customer within 21 days (7 days in the case of sub-contract carriage) of the cause of the Claim coming to the Customer’s knowledge or of the Goods being delivered by the Company to or to the use of the Customer, whichever is the later.
- (b) No legal proceedings may be brought against the Company unless they are issued and served, and no counterclaim may be raised unless full written details are received by the Company, within 9 months of the event giving rise to the Claim.

- 3.(viii) The Company shall not be liable hereunder for any loss or damage to the extent that the same is caused or contributed to by a breach of any of the Customer's warranties and undertakings (or by any of the circumstances by virtue of which the Company is relieved of its contractual obligations in accordance with Condition 8).

#### **EMPLOYEES AND SUB-CONTRACTORS**

4. (i) The Customer and the Owner of the Goods will not take any proceedings against any employee or sub-contractor of the Company for a Claim.
4. (ii) Without prejudice to Condition 4(i), if an employee or sub-contractor pays or is liable to make a payment to the Customer or Owner of the Goods in connection with a Claim, the Customer and the Owner of the Goods will each fully indemnify the Company against any claim (including all costs and expenses) by the employee or sub-contractor against the Company for reimbursement of or indemnity against that payment to the extent that it exceeds £100 per tonne weight of that part of the Goods the subject of a Claim or any higher figure agreed under Condition 3(v)(b).
4. (iii) In any of the circumstances referred to in Condition 4(iv) hereof, and otherwise with the written consent of the Customer, the Company shall be entitled to sub-contract all or any part of its business and in this event these Conditions shall apply to such services. The Company shall be entitled to sub-contract with others for the security, cleaning, maintenance, repair and other services and works at the premises where the Goods are located.
4. (iv) The circumstances referred to in Condition 4(iii) hereof are actual or anticipated storm, flood, fire, explosion, breakdown or failure of plant and/or machinery, riot, civil disturbance, industrial dispute, labour disturbance, requirement of a responsible Authority or any emergency reasonably requiring such action by the Company.

#### **CHANGE OF CUSTOMER**

5. The Customer may give written authority for the Goods or any part thereof to be transferred by the Company to the account of another party but subject to the Customer ensuring before the effective date of the transfer that such other party notifies the Company in writing that it is to become the Customer and is to be bound by these Conditions and by any notice given under Condition 3. Further, the Customer agrees to continue to pay the Company's charges until receipt and acceptance by the Company of the other party's written notification.

#### **CHARGES, PAYMENTS AND LIEN**

6. The Company's charges, which may be increased from time to time by at least 21 days' prior notice to the Customer, shall be payable free of any deductions at such periodic intervals as may have been agreed between the parties and in any event on the earlier of (a) the expiry of any agreed period of credit and (b) the time immediately before the removal of the Goods from the Company's custody or control. Interest on amounts due and unpaid shall be payable from the date when payment of such amounts fell due and shall be calculated at the rate of 2 per cent for each calendar month during all or part of which a payment is overdue. Further, the Company shall have on the Goods a particular lien, as well as a general lien entitling it to retain the Goods as security for payment of all sums claimed by the Company from the Customer or the Owner of the Goods on any account (relating to the Goods or not). Storage charges shall continue to accrue on any goods detained under lien.

#### **TERMINATION**

7. (i) The Goods shall be removed by the Customer from the custody or control of the Company at such date as may have been agreed between the parties. In the absence of such agreement, and otherwise where reasonably necessary, the Company may at any time by notice in writing to the Customer require the removal of the Goods within 28 days from the date of such notice or, in the case of perishable goods, within 3 days.
7. (ii) In the event of failure by the Customer by the due time to remove any of the Goods from the custody or control of the Company (notice in accordance with Condition 7(i) having been given) or to pay any amount claimed by the Company, the Company may, without prejudice to its other rights and remedies against the Customer, give notice in writing to the Customer of the Company's intention to sell or otherwise dispose of the Goods at the Customer's entire risk and expense if such amount is not paid and/or such Goods are not removed within 28 days, or in the case of perishable goods within 3 days from the date of such notice. On the expiry of such period, if such payment has not been made and/or the Goods have not been so removed the Company shall be entitled to sell or otherwise dispose of all or any part of the Goods at the Customer's entire risk and expense and the proceeds of any sale or disposal shall be remitted to the Customer after deduction therefrom of all expenses and all amounts claimed by the Company from the Customer or the Goods owner on any account. The Company will use a reasonably appropriate method of sale but will not be liable for any inadequacy in the price achieved.
7. (iii) In the case of perishable goods, notice under Condition 7(ii) may be combined with a notice under Condition 7(i).

#### **FRUSTRATION OF CONTRACT**

8. The Company shall be relieved of its contractual obligations to the extent that their performance is prevented by, or their non-performance results wholly or partly, directly or indirectly from the act, neglect, or default of the Customer, including any breach by the Customer of these Conditions, or by storm, flood, fire, explosion, breakdown or unavailability of plant and/or machinery, riot, civil disturbance, industrial dispute, labour disturbance or cause beyond the reasonable control of the Company.

#### **GENERAL**

9. (i) Each exclusion or limitation in these Conditions exists separately and cumulatively.
9. (ii) When reasonably necessary and at the discretion of the Company the Goods may be carried, stored or handled with other compatible goods or transferred between stores.
9. (iii) Any notice or statement of account given by the Company to the Customer shall be duly given if left at or sent by first class post to the last known address of the Customer or by facsimile to the last notified number or by e-mail to the last notified e-mail address and such notice or account shall if posted be deemed to have been given 2 working days after posting and, if by facsimile or e-mail (in the case of e-mail, with delivery reported), the next working day.

#### **GOVERNING LAW**

10. All contracts between the Company and the Customer shall be governed in all respects by the law of England (unless the goods are stored in Scotland in which case Scottish law applies) and the Customer hereby submits to the exclusive jurisdiction of the English (or Scottish if appropriate) courts.

#### **OTHER CONDITIONS OF BUSINESS**

11. If the business undertaken comprises or includes any of the following activities, then these Conditions shall still apply to the activity except to the extent that they are inconsistent with the Company's own standard terms (if any) for such activity in which case those standard terms shall apply (but these Conditions will always apply in connection with the loading or unloading of the Goods, or the transfer of the Goods as referred to in Condition 9(ii)).
- (a) Carriage of goods
  - (b) Vehicle repair and maintenance
  - (c) Freight Forwarding.