

Sameday Freight Limited

TERMS & CONDITIONS OF BUSINESS

Definitions

- 1 In these Terms and Conditions, unless the context otherwise permits or requires the following expressions shall have the following meanings:
- (a) "Terms" means these Terms and Conditions of Business
 - (b) "Carrier" means Sameday Freight Limited
 - (c) "Client" means any person, firm or company requesting the Carrier to transport a Consignment and includes any servant, agent or sub-contractor of the Client
 - (d) "Consignment" means any communication, parcel, package, envelope, letter or other items contained in one parcel, envelope or package or any number of separate parcels, envelopes or packages sent at one time, in one load, at the request of the Client from any one Collection Point to any one Delivery Point;
 - (e) "Collection point" means the address at which any Consignment is to be collected or received by the Carrier;
 - (f) "Delivery Point" means the address to which any Consignment is to be delivered by the Carrier including any alternative Delivery Point specified by the Client under Clause 6(1) below;
 - (g) "Dangerous Goods" means those substances and articles the carriage of which is prohibited or regulated by the provisions of the European Agreement Concerning the international Carriage of Dangerous Goods by Road (ADR) as applied in the United Kingdom.

Acceptance of Terms and Conditions

- 2 (1) Any Consignment carried by or other business undertaken by the Carrier or any information advice or service provided by the Carrier, (whether charged for or not) is carried, undertaken or provided subject to these Terms which shall be the terms of any contract for delivery of Consignments between the Carrier and the Client.
- (2) These Terms subject to and together with any variation agreed in writing between the Carrier and the Client shall constitute the entire contract between the Carrier and the Client and shall override or supercede any previous agreement or arrangement between the Carrier and the Client and in particular shall operate to the exclusion of any terms and conditions at any time referred to or purportedly imposed by the Client. On acceptance by the Carrier of any Consignment the Client shall be deemed to have accepted these Terms.
- (3) These Terms shall alone govern the Contract to the exclusion of any other conditions of the Client notwithstanding that they may be set out in any order, invoice, acceptance or other document used by the Client in dealing with the Carrier. The Client acknowledges that the presence or continued presence of its own standard terms and conditions on its documents any time during its dealings with the Carrier under this Contract is only a matter of administrative convenience to the Client and is not intended by the Client to qualify or amend these Terms in any way.
- (4) The Client acknowledges that it has not entered into this Agreement relying upon any representation made by or on behalf of the Carrier and in particular the Client has not relied upon any correspondence, statement or sales literature issued by or on behalf of the Carrier.

- 3 The Carrier is not a common Carrier and will only carry Consignments subject to these Terms. The Carrier reserves the right at its absolute discretion to:

- (i) subcontract any part or parts of a delivery
- (ii) refuse to accept any Consignment or part thereof for delivery;
- (iii) deliver the Consignment by any available route;
- (iv) refuse to accept Dangerous Goods or any Consignment containing Dangerous Goods for delivery.

- 4 (1) The Client hereby warrants that:

- (a) The Consignment does not constitute or contain Dangerous Goods or any substance the possession, storage or delivery of which is a criminal offence or a breach of the provisions of any relevant statute regulation or bye-law under the laws of any part of the United Kingdom or of any jurisdiction to or through which the Consignment is to be delivered or in which it may be stored;
- (b) The Client has authority in respect of the Consignment to authorise collection and delivery by the Carrier from the Collection Point to the Delivery Point;

- (2) The Client hereby agrees to indemnify the Carrier against and hold the Carrier harmless from any loss, damage, claim, cost or expense which the Carrier its employees, sub-contractors or agents may incur directly or indirectly as a result of any breach of any of the warranties given in Clause 4 (1) above.

Deliveries

- 5 (1) The Carrier shall use its reasonable endeavours to deliver the Consignment to the Delivery Point within any time specified by the Client, but time of delivery shall not be of the essence unless agreed by the Carrier in writing prior to the placing of the order.
- (2) The Carrier shall take all reasonable steps to obtain a receipt from the consignee or its employee, agent or sub-contractor at the Delivery Point and any such receipt shall be conclusive evidence of the date, time and place of delivery. However if a receipt is not given to the Carrier at the Delivery Point is shall not in itself be conclusive evidence that the Consignment has not been delivered.
- 6 (1) The Carrier shall make one attempt to deliver a Consignment to the Delivery Point specified by the Client and within any time specified by the Client. If the Consignment cannot be so delivered the Carrier will have the option to either make a further attempt to deliver the Consignment to the Delivery Point or to deliver the Consignment to any other Delivery Point specified by the Client - in either event at the Client's cost.
- (2) If delivery does not take place under the provisions of Clause 6 (1) other than by reason of any failure or default of the Carrier its employees, sub-contractors or agents or if the Client does not specify an alternative Delivery Point within 24 hours of

being requested to do so by the Carrier, the Client shall be liable to the Carrier for all storage charges incurred by the Carrier between the date on which delivery was first attempted and the date on which delivery is made under the provisions of Clause 6 (1) above or the date of disposal of the Consignment under the provisions of Clause 6 (3) below.

- (3) If delivery does not take place under the provisions of Clause 6 (1) the Carrier shall be entitled to dispose of the Consignment or any part thereof at any time after giving the Client 28 days written notice of its intention to do so.
- (4) The Carrier shall be under no obligation to deliver a Consignment or Consignments as a whole at any one time and shall be free in its absolute discretion to make more than one delivery or to deliver in parts.

Additional Services

- 7 Carrier shall not be under any obligation to provide any plant, equipment, machinery, power or labour which may be required for loading or unloading the Consignment at the Collection Point or the Delivery Point.
- 8 Any Consignment or part thereof requiring any special appliance or equipment for loading on to and/or unloading from any vehicle is accepted for carriage only on the condition that the Client has duly ascertained that such appliances are available at the Collection and Delivery Points and the Client shall be responsible for the provision and cost of such appliances or equipment.

- 9 Any assistance given by the Carrier beyond the usual act of collection or delivery - including without prejudice to the generality of the foregoing - the provision of plant, machinery, equipment, power or labour for loading or unloading at the Collection or Delivery Points shall be at the sole risk of the Client who will save harmless and keep the Carrier indemnified against any damage, expense, loss, cost, claims or demands (including without limitation claims, cost and expenses arising from any personal injury or any damage to the Consignment or to any property of the Client, the Carrier, the consignee or any third party whether or not arising out of the negligence of the Carrier its employees, sub-contractors or agents) arising directly or indirectly from the provision of such assistance.

Liability For Loss And Damage

- 10 (1) Subject to the provisions of Clauses 5, 9 and 11 of these Terms the Carrier shall be liable for any loss, mis-delivery or non-delivery of or damage to any Consignment unless the same has arisen from:-
- act or consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, insurrection, terrorist act, military or usurped power or confiscation, requisition, or destruction or damage by or under the order of any government or public or local authority;
 - seizure or forfeiture under legal process;
 - act, error, omission, mis-statement or misrepresentation by the Client or other owner of the Consignment or by the employees, sub-contractors or agents of either of them;
 - faulty design, latent or inherent defect or vice, natural deterioration, or natural loss in weight or volume of the Consignment;
 - mechanical or electrical derangement, oxidation, discolouration or rust unless caused by fire, collision or overturning of the carrying vehicle;
 - inadequate, insufficient or improper packing of the Consignment;
 - riot, civil commotion, strike, lockout, general or partial stoppage or restraint of labour

- (2) The Carrier shall not be liable for damage to or loss of a Consignment unless and until it has collected the Consignment from the Collection Point and its liability for loss of or damage to the Consignment shall cease on which ever of the following events first occurs:

- (a) delivery of the Consignment to the Delivery Point as first advised to the Carrier by the Client;
- (b) the tendering by the Carrier or the Carrier offering to and being ready, willing and able to tender delivery of the Consignment to the Delivery Point as first advised to the Carrier by the Client;
- (c) delivery of the Consignment to any alternative Delivery Point as specified by the Client under clause 6 (1) above
- (d) the tendering of delivery by the Carrier or the Carrier offering to and being ready, willing and able to tender delivery to an alternative Delivery Point as specified by the Client under Clause 6 (1) above.

Limitation Of Liability

- 11 (1) Subject to Clauses 5, 9 and to Clause 10 hereof the liability of the Carrier to the Client arising from any loss of or damage to any Consignment or for non-delivery or mis-delivery thereof shall be limited to the reasonable market value of the Consignment, at the time it is collected by the Carrier, provided that:
- (i) the liability of the Carrier shall in any case be limited to £40,000 in respect of any one Consignment,;
 - (ii) the Carrier shall not in any case be liable for any indirect, consequential or economic loss or damage incurred by the Client or any third party;
 - (iii) the Carrier shall not be liable in respect of any loss or damage to any Consignment that cannot be carried within lockable equipment normally provided by any vehicle requested by the Client from the Carrier for delivery of such Consignments or if the Consignment is not properly packed or prepared for transit in parcels, envelopes or packages suitable for transit of goods, items or matters of a nature comprising the Consignment or any part thereof;
 - (iv) the Carrier shall be entitled to receive written evidence to its reasonable satisfaction of the value of the Consignment damaged or lost;
 - (v) notwithstanding any provision to the contrary in these Terms,

the Carrier shall not be liable for loss of or damage to, non-delivery or mis-delivery of any cash, notes, stamps, deeds, tickets, cheques, bankers or drafts, travellers cheques, jewellery, watches, precious metals, works of art or similar valuable articles;

- (vi) the Carrier shall not be liable for any loss or damage suffered by reason of:

- (a) the failure of the Client to address the Consignment correctly or at all;
- (b) delivery of the Consignment in good faith at the Delivery Point to a person claiming to be the consignee or his or its employee, sub-contractor or agent; or
- (c) any breach of the warranties given by the Client in Clause 4 above;

- (vii) the Carrier shall not be liable for any loss of or damage to a Consignment unless a claim is made upon the Carrier in writing:

- (a) within seven days after completion of the delivery; or
- (b) in the case of loss, mis-delivery or non-delivery within twenty eight days of acceptance by the Carrier of the Consignment;

- (viii) the Carrier shall not be liable for any damage to or deterioration or perishing of goods of a fragile or perishable nature except where such damage, deterioration or perishing occurs by reason of any default or neglect on the part of the Carrier its employees, subcontractors or agents or for reasonable wear and tear incurred during transit or storage;
- (ix) the limit referred to in Clause 11 (i) shall only apply to loss or damage occurring within the geographical limits of Great Britain, Ireland, the Channel Islands and the Isle of Man, including journeys within these areas. For deliveries or collections outside of these areas, the provisions of the Convention On The Contract For The International Carriage Of Goods By Road (the CMR) shall apply.

- (2) The Carrier and the Client have freely and openly negotiated this contract in the knowledge that the liability of the Carrier is to be limited in accordance with these Terms and the price charged by the Carrier has been calculated accordingly. The Client acknowledges that a greater price would be payable but for such limitation. It is intended that the terms and conditions of these Terms should be reasonable as between the Carrier and the Client having regard to the nature of the contract, but if at any time any of them is either unenforceable or void at law it shall not adversely affect or prejudice the remainder of them or the contract and it shall be deemed to be excluded from these Terms.

Insurance

- 12 For the avoidance of doubt the Carrier will not normally arrange insurance on any Consignment in its care, custody or control and the Carrier's expectation is that the Client will arrange such insurance to protect its interests. However should the Client so request in writing, the Carrier will endeavour to arrange insurance for "all risks" of physical loss or damage (or for such risks for which insurance is readily available on ordinary terms and at normal premium rates) for a value as specified by the Client. Any failure of the Carrier to arrange such insurance - or any failure of such insurance to respond to claims - shall not prejudice the right of the Carrier to limit its liability in accordance with the provisions of these Terms.

Charges

- 13 (1) The Client shall in respect of the delivery of any Consignment pay the Carrier's agreed charges for such delivery within thirty days from the date of the Carrier's invoice for the delivery.
- (2) The Carrier may at its absolute discretion withdraw credit facilities at any time.

- 14 The Client shall pay to the Carrier VAT on all monies due to the Carrier at the appropriate rate in force from time to time.

- 15 Unless paid within thirty days of the date of invoice from the Carrier, the Carrier shall be entitled to interest on any unpaid sum at the rate of two per centum per month computed on a daily basis from the date of any such unpaid invoices until the payment of such sum.

- 16 All monies due to the Carrier shall be payable to the Carrier in pounds sterling.

- 17 The Carrier shall have a general lien over any and all of the Client's Consignments in its care, custody or control in respect of any unpaid invoices whether relating to a particular Consignment or otherwise and the Client appoints the Carrier as its attorney or agent to sell the same and to apply the net sale proceeds in reduction or extinguishment of the Client's liability to the Carrier. If the net proceeds of any such sale exceed the total of all monies owed by the Client to the Carrier the Carrier will pay any such excess to the Client within a reasonable time. If the net proceeds of such sale are insufficient to extinguish the Client's liability to the Carrier, the Client shall remain liable to the Carrier for the remaining balance.

- 18 No payments due to the Carrier from the Client shall be withheld by the Client in respect of any claim or alleged claim by the Client or the consignee against the Carrier howsoever arising and whether by way of set-off, counterclaim or otherwise.

- 19 The Client agrees to indemnify the Carrier for all costs and expenses including legal fees and expenses on a Solicitor and own client basis in respect of the recovery of any outstanding amounts due under this contract.

Law And Jurisdiction

- 20 These Terms shall be subject to the laws of England and Wales and the parties hereby submit to the exclusive jurisdiction of the courts of England and Wales.