

TERMS AND CONDITIONS OF BUSINESS - FIVEWAYS EXPRESS LIMITED

DEFINITIONS

1. In these terms and conditions, unless the context otherwise permits or requires the following expressions shall have the following meanings:-

- (a) "The Carriers" means Fiveways Express Limited.
- (b) "The Client" means any person, firm or company requesting the Carrier to transport a Consignment and includes:-
 - (i) the person who signs the order form on the reverse of these Terms or any person, firm or company on whose behalf it has been signed; and
 - (ii) any servant, agent or sub-contractor of the Client.
- (c) "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;
- (d) "Collection Point" means the address at which any Consignment is to be collected or received by the Carrier;
- (e) "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 7(1) below;
- (f) "Dangerous Goods" means any goods which are specified in the special classification of dangerous goods issued by the British Railways Board or goods of a similar nature or which present a comparable hazard.

ACCEPTANCE OF TERMS AND CONDITIONS

2. (1) Any consignment or other business undertaken by the Carrier or any information advice or service supplied by the Carrier, (whether charged for or not) is undertaken or provided subject to these Terms and Conditions which shall be the terms at any contract for delivery of Consignments between Carrier and 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 supersede 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 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 at 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 and conditions. The Carrier reserves the right at its absolute discretion to:
 - (i) subcontract part or any parts of a delivery;
 - (ii) refuse to accept any Consignment or part thereof of 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 for 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 the warranty 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 the time specified by the Client, but time of delivery shall not be of the essence unless agreed by the Carrier prior to the placing of the order.
- (2) **The Carrier shall take all reasonable steps to obtain a receipt from the consignee or his or her employee, agent or sub-contractor and such receipt shall be conclusive evidence of the date, time and place of delivery.**
6. (1) The Carrier shall make one attempt to deliver a Consignment to the Delivery Point within the time specified by the Client. If the Consignment cannot be delivered the Carrier will have the option to either 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 sale 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 7 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. The Carrier shall not be under any obligations 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 vehicles 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, costs or demands (including without limitations 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 the Carrier shall not be liable for any loss, mis-delivery or damage to any Consignment unless such loss, mis-delivery or damage has arisen from any wilful default or negligent act or omission of the Carrier, its employees, sub-contractors or agents.
- (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 be 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 whether such loss or damage, non-delivery or mis-delivery arises by reason of breach of contract or negligence on the part of the Carrier or its employees, agents or sub-contractors or otherwise howsoever. Provided that:-
 - (i) (a) the liability of the Carrier shall be limited to £20,000 per vehicle load where a delivery is made on a Same Day service or:-
£10,000 per 1,000 kilos or part thereof where delivery is requested on a UK overnight service or £5,000 per 1000 kilos or part thereof on a Next Day or Economy UK Pallet service.
 - (b) On payment of an additional premium (by quotation) extra cover may be obtained by completing the relevant section of the consignment note.
 - (c) **The Carrier shall not be liable for the first £50.00 of any single claim.**
 - (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 of 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 the Terms, the Carrier shall not be liable for loss of or damage to, non-delivery or mis-delivery of any Bullion, Antiques, Cashiers or Travellers Cheques, Currency, Stamps, Firearms including but not limited to replicas, imitations and blank firing pistols, Explosives, Money Orders, Tobacco and Tobacco products, Precious Stones or Metals, Negotiable instruments in bearer form **Our transit system is not suitable for carrying consignments containing:**
Glass, China, Ceramics, Pottery, Stoneware, Fossils, Works of Art or similar materials
We accept no liability for damage caused to the same
Unless agreed in writing before transit commences we will not cover consignments containing:
Perishable goods, Food, Liquids, Paints, Inks, Plants, Drugs (prescription and medicines), Alcoholic Beverages, Animals or animal parts, Insects
We accept no liability for loss, damage, mis-delivery, non-delivery or late delivery of the same
 - (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 her employee, sub-contractor or agent; or
 - (c) any breach of the warranty given by the Client in Clause 4 above;
 - (d) the inability of the Carrier to perform its obligations due to any circumstances beyond the reasonable control of the Carrier including (without prejudice to the generality of the foregoing) any strike, lock-out, state of hostilities or climatic conditions;
 - (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 3 working days after completion of the delivery if the consignment or part of is damaged; or
 - (b) within 7 working days of the date of delivery (or the due date for delivery if the whole consignment has been lost) in all other cases you must make a written claim within 14 days of the date of delivery (or the due date for delivery) of the Consignment concerned;
 - (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, sub-contractors or agents (and subject always to the provisions of Clauses 5 and 11 (1) (ii) or for the reasonable wear and tear incurred during transit or storage;
 - (ix) the limit referred to in Clause 11 (1) (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 outside these areas, liability shall be restricted to the amount recoverable by the Carrier and actually recovered (whether under any convention relating to international carriage of goods from time to time in force or otherwise) from the international agent or carrier, chosen by the Carrier at its absolute discretion to deliver the Consignment.
 - (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 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 shall be deemed to be excluded from these terms.
 - (3) The Client shall (or the Carrier shall at the Client's written request and at the Client's expense) insure the Consignment against all risks (or such risks for which insurance is readily available on ordinary terms and at notable rates) for a sum equal to the amount by which the Consignment's replacement value exceeds the limit of the Carrier's liability pursuant to Clause 11(1).

CHARGES

12. (1) The client shall in respect of any Consignment pay the Carrier's charges in accordance with the Carrier's current tariff of charges within thirty days from the date of the Carrier's invoice thereof. The Carrier reserves the right to increase its charges at any time. The tariff of charges is available for inspection by the Client at the Carrier's office(s) (and a copy will be provided on request) and the tariff shall be deemed to have been inspected by the Client whether or not actually inspected.
- (2) The Carrier may at its absolute discretion withdraw credit facilities at any time.
- (3) No quotation or estimate of charges given by the Carrier shall bind the Carrier, unless expressed in writing to be a fixed quotation with a date to which such fixed quotation shall be valid, in which case the quotation or estimate must be accepted by the Client and delivery must take place prior to that date.
13. The Client shall pay the carrier VAT on all monies due to the Carrier at the appropriate rate in force from time to time.
14. 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 cent per month computed from the date of any such unpaid invoice or invoices until the payment of such and computed on daily basis both before and after judgement.
15. For the purpose of the Terms the price stated in the current tariff of charges of the Carrier shall be deemed to be a basic price and any other expenses incurred by the Carrier on the Client's behalf (such as tolls or gratuities) shall be added to such price with VAT (where applicable) at the appropriate rate.
16. All monies due to the Carrier shall be paid to the Carrier in sterling.
17. The Carrier shall have a lien over any or all Consignments in respect of any unpaid invoices whether relating to a particular Consignment or otherwise and the Client appoints the Carrier, its attorney or agent to sell or otherwise dispose of the same and to apply the net sale proceeds in reduction or extinguishment of the Client's liability to the Carrier.
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. The Terms and Conditions shall be subject to the laws of England and the parties hereby submit to the non-exclusive jurisdiction of the courts of England and Wales.

VOLUMETRIC CHARGES

21. Except where the quotation states otherwise all quotations based on weight shall apply to the gross weight unless the Consignment(s) exceeds 6 cubic metres in measurement per 1000 kilos which case the rate shall be computed upon, and apply to each measurement of 6 cubic metres or any part thereof unless otherwise agreed by the Carrier.