

NOS General Terms and Conditions



General Terms and Conditions

The Company, by virtue of its membership of The Bonded Warehousekeepers Association (“BWA”), provides all items and services on these General Terms and Conditions. These General Terms and Conditions can be varied only in writing by an Officer of the Company.

In the absence of specific terms and conditions that may be issued by the Company, the present General Terms and Conditions are the governing terms and conditions upon which the Company provides all items and services. In such an absence, these General Terms and Conditions constitute the entire agreement between the Company and the Customer.

Should the Company already have their own terms and conditions in place they will take precedence over these General Terms and Conditions. Further, if a document of the Customer pertaining to the Goods contains terms relevant to the Goods, whether or not they are at variance with these General Terms and Conditions (where applicable), those terms shall be of no effect. The Customer’s attention is drawn specifically to Condition 7 which limits the Company’s liability.

DEFINITIONS AND INTERPRETATION

1. In these General Terms and Conditions the following terms shall have the following meanings:

“Additional Party” means any employee, agent or sub-contractor of the Company, or anyone entitled to an indemnity, reimbursement or contribution from the Company in respect of a claim by an Interested Party; “Company” means the BWA member agreeing to provide the services and/or items under the contract;

“Customer” means the party requesting the services and/or items under the contract (and if different, also the person to whom these services

NOS General Terms and Conditions

and/or items are supplied);

“Force Majeure” means events or circumstances such as an act or omission of the Customer or its agent or an Interested Party (including but not limited to a breach of these General Terms and Conditions), Act of God, war, fire, explosion, uprising, insurrection, strikes or other labour/industrial disputes, unavailability of premises, equipment or labour, riot, change of law, orders by a public authority, or other cause independent of the Company’s will and/or beyond the Company’s reasonable control and/or unavoidable and insuperable by reasonable means;

“Goods” means goods (including any associated documents, packaging and equipment) that are in the possession of the Company and to which the contract between the Company and the Customer relates;

“Interested Party” means anyone with an interest in the Goods, including the Customer. Any obligation of the Interested Party is borne jointly and severally;

“Limit” means as defined in Condition 7.3;

“Loss” includes, but is not limited to, loss (including theft), destruction, damage, unavailability, contamination, deterioration, delay, non-delivery, mis-delivery, unauthorised delivery, non-compliance with instructions or obligations, incorrect advice or information, loss or corruption of data, interference with or disruption of computer systems, breach of duty, and any event giving rise to any liability of an Interested Party to any other natural or legal person or LLP;

“Officer” includes a Director, Company Secretary, Partner, or member of an LLP;

“Relevant or Material Factors” include, but are not limited to, any special precautions necessitated by the condition, weight, type or nature of the Goods, and of any statutory or other requirements specific to the Goods with which the Company may need to comply;

“Subcontractor” means a party engaged by the Company to perform part or all of the Company’s obligations;

“Waste” employs the general meaning of the word in addition to the meanings of “Waste” and “Directive Waste” as is defined in legislation.

THE COMPANY’S OBLIGATIONS

2.1 The Company will provide its services with reasonable care, diligence and skill.

NOS General Terms and Conditions

2.2 Unless the Company is provided with prior written instructions by the Customer, no special precautions need be taken, no specific treatment need be arranged and no individual specialist facilities need be provided by the Company in relation to the Goods. Any prior written instructions by the Customer are to contain sufficient detail and are to be provided to the Company in advance of the Company accepting the Goods.

2.3 Unless requested by the Customer in writing and confirmed to the Customer in writing, time shall not be of the essence for performance by the Company.

2.4 Unless by the Customer and Company have expressly agreed otherwise in writing, the Company may deal with and/or mix what it considers to be similar goods consigned by or for the Customer without distinguishing between consignments.

2.5 The Company reserves the right to make any changes to the items and services which are necessary to comply with any applicable law or safety requirement or which do not materially affect the nature or quality of the items or service and will notify the Customer of any such change.

2.6 The Company's duty is to the Customer only. The Company owes no duty to any third party. Any advice or information, in whatever form it is given, is provided by the Company for the Customer only. 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. Except under special arrangements made previously in writing, advice and information which is not related to specific instructions accepted by the Company is provided gratuitously and without liability.

2.7 In relation to the following stages, the Company's responsibility for the Goods commences and ends as follows:

2.7.1 Storage/Processing: Responsibility commences when the Goods are accepted into storage, and ends when the Goods are tendered for collection, or when the Company becomes aware of the grounds for the removal of the Goods under Condition 5.5, or upon the expiry of notice under Condition 10.2 or 12.1.

2.7.2 Carriage: Responsibility commences when loading on the vehicle has been completed, and ends when the Goods are tendered for unloading.

2.7.3 Storage and Carriage: Where the Company provides both storage and carriage, it shall be responsible for the Goods while they are being transferred from the Company's vehicle into its store, and vice versa.

NOS General Terms and Conditions

2.8 Except pursuant to instructions previously received in writing from the Customer and accepted in writing by the Company, the Company will not accept or deal with Goods that are or contain substances that are: of a dangerous or damaging nature; require any official consent or license to handle, possess, deal with or carry; liable to affect or taint other Goods; may cause pollution of the environment or harm to human health; will at any time whilst in the care or control of the Company constitute Waste; or cannot for any legal reason be accepted or dealt with by the Company. If such Goods are accepted pursuant to accepted written instructions, but thereafter, in the reasonable opinion of the Company, cannot be accepted or dealt with for the reasons noted in this Condition (or in any way constitute a real risk to other goods, property, life or health), the Company shall, where reasonably practicable, contact the Customer in order to require him to remove or otherwise deal with the goods. In respect of such Goods, 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.

COMPANY AS AGENT

3.1 Unless otherwise stated in writing by the Company, where the Company provides forwarding services it operates as the Customer's agent in engaging contractors to deal with the Goods.

3.2. In respect of forwarding services, the Company's responsibility is only to engage contractors of the Company's choice and to give them adequate instructions in relation to the Goods, on the basis of the matters known and made aware to the Company. If the Customer has a preferred contractor they can write to the Company confirming such, and the Company will consider any requests of this nature. The Company is not, however, obliged to agree to such requests. In the case of forwarding, or where the contract is for advice, the Company shall adopt no responsibility for the Goods themselves (whether under Condition 2.7 or in any other way).

CUSTOMER WARRANTY OF OWNERSHIP OR AGENCY

4. The Customer warrants that it is either the owner of the Goods, or is authorised by the owner to deal with the Goods, including to accept these General Terms and Conditions on the owner's behalf.

CUSTOMER WARRANTIES

5.1. The Customer warrants that:

5.1.1 Before providing the Company with the Goods, the Customer will inform the Company in writing of any Relevant or Material Factors. The Customer will pay the Company's reasonable extra charges for complying with these Relevant or Material Factors.

5.1.2 The Goods provided to the Company have been properly and securely packed, stowed and labelled in a manner appropriate to the characteristics of the Goods and their transport, and in compliance with any applicable statutory regulations, recognised standards and good practice. The Customer will reimburse all duties, taxes and expenses that the Company may be required to pay in respect of the Goods.

5.1.3 Unless otherwise previously agreed the Customer will provide suitable facilities and equipment for, and will facilitate, the safe and prompt loading and unloading of the Goods.

5.1.4 It will comply with any reasonable regulations put in place by the Company relating to handling, packaging, carriage, storage or forwarding of Goods.

5.1.5 Information given by or on its behalf will be accurate, complete and sufficient.

5.1.6 It will maintain and update all certificates of compliance with regulations, and will provide documentary evidence showing compliance upon the reasonable request of the Company. Should the Customer not have or lose its certificates or not be in compliance with regulations at any point during the time at which these General Terms and Conditions apply to the Goods, the Customer will inform the Company of this in writing forthwith.

5.1.7 Nothing in the Customer's instructions will, or may reasonably be expected to, result in the Company being exposed, directly or indirectly, to criminal or civil liability or to regulatory complaint as a result of carrying out these instructions.

5.1.8 There is no legal reason why the Goods cannot be accepted or dealt with by the Company.

5.2 The Customer will indemnify the Company from all loss, cost, penalty and expense which the Company pays or incurs as a result of the Customer failing to fully discharge its warranties in Condition 5.1.

5.3 The Customer undertakes that it shall make no claim against any

NOS General Terms and Conditions

director or employee of the Company which imposes, or attempts to impose, upon them any liability in connection with any items or services which are the subject of these General Terms and Conditions. If any such claim is made by another Interested Party or any other natural or legal person, the Customer undertakes to indemnify the Company against all consequences thereof.

5.4 The Customer will indemnify the Company against any loss or damage it suffers as a result of carrying out the Customer's instructions or which is related to any breach of the Customer's obligations, and will pay all costs and expenses (including professional fees) and reasonable charges of the Company's incurred in dealing with the breach and its consequences. The Customer will additionally pay any fine or penalty that the Company is made liable for wholly or partly as a result of a breach by the Customer.

5.5 If the Company suspects or is made aware of a breach of Condition 5, it may refuse to accept the Goods, demand their immediate removal, or itself arrange their removal without notice and at the Customer's expense.

INSURANCE

6. Unless requested to do so in writing and confirmed to the Customer in writing, the Company is under no obligation to procure, facilitate or arrange for any insurance in relation to the Goods. The Customer shall insure or make arrangements to cover the Goods against all insurable risks to their full insurable value (including all duties and taxes), and shall pay all premiums and costs in connection with procuring, facilitating or arranging the insurance. Any right for the insurer to bring a subrogated claim against the Company is hereby excluded, and in any event the Customer will indemnify the Company from all loss, cost, penalty and expense that may arise in connection with any such subrogation (even if done in breach of these General Terms and Conditions).

THE COMPANY'S LIABILITY

7.1 In no circumstance shall the Company be liable for any loss of profit, income or savings, loss of markets, damage to reputation, wasted expenditure, liquidated damages payable by or on behalf of the Customer, loss of use, loss of opportunity or any indirect, incidental or consequential loss of any kind.

7.2 The Company excludes all liability for Loss, howsoever arising.

NOS General Terms and Conditions

Notwithstanding the limitations and exclusions of liability set out in these General Terms and Conditions, the Company does not exclude liability for Loss to the extent that Loss is directly caused by negligence, wilful default, or breach of the obligation in Condition 2 by the Company. Loss is to be assessed in accordance with accepted and standard legal principles but is not, in any event, to exceed the Limit fixed by Condition 7.3. Any quantification of amount includes duties and taxes.

7.3 In all circumstances, any and all liability of the Company, howsoever arising, shall not exceed the Limit, fixed shall be the lowest of the following:

7.3.1 The value of the Goods;

7.3.2 Where the weight of the Goods can be ascertained, £1000 sterling per tonne of the Gross weight of the Goods which have suffered Loss or damage;

7.4 For the purposes of Condition 7.3.1, the value of the Goods shall be taken to be their value upon the date that they are received by the Company.

7.5 Without prejudice to the Company's rights under Condition 13 to be paid free from any deduction or set-off, any limitation of liability by the Company shall be applied to any claim by the Customer prior to any set off or counterclaim being asserted against money due to the Company.

7.6 Any claim against the Company must be notified in writing to the Company within 14 days of the date upon which the Customer became, or ought reasonably to have become, aware of any event or occurrence alleged to give rise to the claim. The notice must identify the Goods the subject of the claim, the date on which the alleged events giving rise to the claim occurred, a summary of those alleged events, and an estimate of the Loss suffered by the Customer.

7.7 If any claim is not notified to the Company in accordance with Condition 7.6 above, such claim shall be waived and absolutely barred unless the Customer can prove it was impossible for the Customer to comply with the time limit in Condition 7.6 and that the Customer made the claim as soon as it was reasonably possible for it to do so.

7.8 The Company shall, in any event, be discharged from all liability whatsoever, and howsoever arising, unless legal proceedings against the Company are issued and served within 10 months from:

7.8.1 The date of the event or occurrence alleged to give rise to the breach of duty or cause of action; or

7.8.2 Where the date of the aforementioned event or occurrence in Condition 7.8.1 cannot be ascertained, the date of delivery or intended

NOS General Terms and Conditions

delivery of the Goods.

7.9 The Company shall not be liable for any Loss to the extent that it is caused or contributed to (in any portion) by a breach of any of the Customer's obligations, or by a person for whom the Company is not responsible, or by any of the circumstances by virtue of which the Company is relieved of its obligations under Condition 16.

EMPLOYEES, SUB-CONTRACTORS AND OTHERS

8.1 The Company is entitled to sub-contract all or part of its obligations to an entity of its choice. Should the Company elect to sub-contract all or part of its obligations, these General Terms and Conditions shall continue to apply as between the Company and the Customer.

8.2 In the case of storage, the Company will obtain the Customer's consent, not to be unreasonably withheld, before storage is sub-contracted, except in the case of an emergency. It is a matter of the Company's discretion as to what constitutes a case of emergency.

8.3 No Interested Party may make a claim or issue proceedings in respect of Loss against any Additional Party. If an Additional Party pays or is liable to make a payment to an Interested Party in connection with a claim for Loss, the Interested Party will fully indemnify the Company against any claim (including all costs and expenses) by the Additional Party against the Company for reimbursement of, contribution to or indemnity against that payment to the extent that it exceeds the Limit applicable at the time of the event giving rise to the claim.

CHANGE OF CUSTOMER

9. The Customer may give written authority for all or any part of the Goods to be transferred to the account of another entity on the condition that prior to the effective date of the transfer, the other entity notifies the Company in writing that it is to become the Customer, and confirms that it is to be bound by these General Terms and Conditions and by any notice given under Condition 7. The other entity must also state, when notifying the Company that it is to become the Customer, that it will pay the Company's charges for the period after the effective date of the transfer. The Customer will pay the charges for the period until either the effective date of the transfer or until receipt and acceptance by the Company of the

NOS General Terms and Conditions

other entity's written notification, whichever is later. The Goods remain subject to any lien which applies at the time of transfer.

REMOVAL OF GOODS

10.1 The Goods shall be removed by the Customer at the time and date agreed between the Customer and the Company.

10.2 The Company may at any time by notice in writing to the Customer require the removal of the Goods within 14 days from the date of such notice or, in the case of perishable goods, within 3 days from the date of such notice.

LIEN

11.1 The Company shall have a general and continuing lien on any and all property, including the Goods (and any documentation or records relating thereto), of the Customer's in its possession, custody, control, or coming into the Company's actual or constructive possession, as security for monies owed to, or prospectively payable to, the Company (whether due or not) by the Customer or another Interested Party on any account (relating to the Goods or not), or otherwise claimed in respect of the Goods or other property of an Interested Party.

11.2 Where a lien secures sums payable to or claimed by the Company, it shall continue to cover those sums notwithstanding any transfer of ownership of Goods, or change of customer pursuant to Condition 9.

11.3 Storage charges shall continue to accrue on any Goods or property detained under lien or in circumstances where the Company is required by any competent authority to retain them.

11.4 The Company shall provide written notice to the Customer of its intention to exercise such lien, the exact amount of monies due and owing, as well as any ongoing or other charges.

NOTICE, RIGHT TO SELL AND DISPOSAL OF GOODS

12.1 In the event that the Customer fails to comply with Condition 10, or should any payment from the Customer be overdue and outstanding, the Company may notify the Customer in writing that the Goods may be sold or otherwise disposed of if such Goods are not removed within the time stipulated by the Company or if such payment is not made within 14 days from the date of such notice, as applicable. This is without prejudice to the

NOS General Terms and Conditions

Company's other rights and remedies against the Customer.

12.2 On expiry of the 14 day period, if the Goods have not been so removed or if such payment has not been made, as applicable, the Company may surrender, sell or otherwise dispose of the Goods (in whole or in part) by any method and at such price as it considers in its sole discretion appropriate. This is to be done entirely at the Customer's risk and expense and the Company shall not be liable for any alleged failure to achieve any particular sale price for the Goods. Any surplus proceeds of sale or disposal shall be remitted to the Customer after deduction of all expenses and all amounts claimed by the Company and any assignee of its invoices.

12.3 When the Goods are liable to perish or deteriorate, the Company's right to surrender, sell or otherwise 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 to the Customer's attention its intention to sell or dispose of the Goods before doing so.

12.4 The time periods in this Condition 12 may be extended by the Company at its sole discretion.

12.5 Reliance upon Condition 12 by the Company shall not in itself terminate the contract between the Company and the Customer unless the Company expressly states to the contrary in writing.

CHARGES AND PAYMENTS

13.1 The Company's charges shall be paid when due, as agreed between the parties immediately and without reduction or set-off.

13.2 The charges may be increased from time to time by prior notice to the Customer. The notice shall be at least 7 days for increases reflecting any rise in fuel costs and at least 21 days in respect of any other event. If the Customer does not agree to the increase it shall notify the Company in writing and will remove the Goods within 21 days after receiving the Company's notice. Storage charges shall continue to accrue on the Goods during this period prior to removal. If the Goods are not so removed then the increased charges will apply from expiry of the Company's notice. The Company has the right to charge for storage of the Goods for the duration that it has custody of or is responsible for the Goods.

13.3 The Customer will pay demurrage at the Company's standard rate (or a reasonable rate set by the Company if there is no standard rate) if the vehicle used by or on behalf of the Company to deliver the Goods is

NOS General Terms and Conditions

delayed for more than 60 minutes beyond the time reasonably needed for loading or unloading; and demurrage and storage charges if delivery is refused.

INTEREST ON MONEY OVERDUE

14 Interest shall be paid cumulatively on any and all money overdue to the Company by the Customer at the rate of 5% per annum. The customer will pay the Company's reasonable and proper costs of collection of all money overdue to the Company.

DATA AND CONFIDENTIALITY

15.1 Neither the Company nor the Customer shall use any confidential information or data of the other for any purpose other than to exercise its rights and perform its obligations under or in connection with the contract between them, other than where the Company (i) uses that information or data for business planning purposes, (ii) shares it with another entity that provides services to the Company that are relevant to the provision of services to the Customer (whether in connection with Condition 8 or otherwise), or (iii) shares it with any government authority, where appropriate.

15.2 Subject to Condition 15.1 above, both the Company and the Customer shall keep confidential all information or data supplied by or on behalf of the other which is expressed to be confidential or which is of such a nature that it should clearly be regarded as confidential by a reasonable person.

FORCE MAJEURE

16. The Company will not be in breach of any contract entered into with the Customer, and shall be relieved of its obligations, to the extent that its performance is prevented or hindered due to an event of Force Majeure.

SEVERABILITY

17.1 If any provision of these General Terms and Conditions is found to be invalid, illegal and/or unenforceable for any reason whatsoever, the remaining provisions of these General Terms and Conditions shall not be affected thereby but shall remain in full force and effect.

NOS General Terms and Conditions

17.2 The Company's failure to insist upon the strict compliance with any condition hereof shall not constitute a waiver of its right to later demand strict compliance.

NOTICES

18. Any notices rendered pursuant to these General Terms and Conditions shall be made in a form and to an address (postal, email, or as otherwise stipulated) nominated by the Company or Customer respectively. In the absence of such nomination, notices shall be made in a form and to an address reasonably to be identified by the course of dealing between the Company and Customer.

JURISDICTION AND LAW

19. These General Terms and Conditions, any act or contract to which they apply, and any claims relating to the Goods, shall be governed by the law of Scotland and any disputes shall be subject to the exclusive jurisdiction of the Scottish Courts.