



TERMS AND CONDITIONS

1 **Definitions**

Booking: means a booking for the carriage of a Consignment placed by a Customer with the Company by telephone, email, by facsimile or online.

Company: means Mission Express Limited a company incorporated in England and Wales with registered number 03672615.

Customer: means the person who contracts for the services of the Company.

Conditions: means these conditions of carriage, which shall apply to the contract of carriage between the Customer and the Company.

Consignee: means the person to whom the Company delivers the Consignment.

Consignment: means goods or property, whether or not contained in separate parcels, packages, containers or envelopes including any paper and documents, to be delivered by the Company for the Customer to the Consignee.

Dangerous Goods: means dangerous goods as defined in the Carriage of Dangerous Goods by Road Regulations 1996 (as amended, re-enacted or extended from time to time).

Discretionary Goods: those goods set out in the Schedule which pursuant to clause 7.2 the Company may elect to carry.

Duties: any import taxes, customs duties or any other payment levied on a Consignment.

Force Majeure Event: any event which is outside the control of either party as specified in clause 9.5.3.

Waybill: the Company's non-negotiable document incorporating these Conditions which evidences the contract of carriage made between the Company and the Customer.

2 **The Conditions**

- 2.1 The Company reserves the right to subcontract its obligations in these Conditions to third parties without reference to the Customer.

- 2.2 The Company is not a common carrier and accepts at its sole discretion the carriage of Consignments subject only to these Conditions. These Conditions shall apply to the exclusion of any other terms and conditions (including those of the Customer)
- 2.3 These Conditions do not affect any statutory consumer rights.
- 2.4 If the Customer is a consumer who accepts a Booking online then the Customer has rights under the Consumers Protection (Distance Selling) Regulations 2000.
- 2.5 In the event of cancellation of any Booking for a Consignment by the Customer, the Customer shall be liable to the Company for the Company's charges in full for the carriage of the Consignment. This clause shall apply only to cancelled Bookings where the Company has departed to collect (or deliver) the Consignment in question.
- 2.6 The Customer recognises that no employee, agent or subcontractor of the Company is authorised to alter or vary these Conditions.
- 2.7 The Company shall provide the Customer with a quotation for the carriage of the Consignment in question and such quotation shall be valid for a period of 7 days or such other period as the Company may specify. The Company shall provide written quotations to the Customer upon request. All Bookings are subject to acceptance by the Company and the Company reserves the right to refuse to accept any Bookings. All Bookings are subject to the terms and conditions of these Conditions, shall be deemed to be a separate and independent contract and the Company reserves the right to amend any Booking at any time upon notice to the Customer.
- 2.8 Unless agreed otherwise by the Company, the Consignment shall only be delivered to the address specified by the Customer at the time of Booking and the Company reserves its right to vary its charges in respect of any variation to the delivery address by the Customer.
- 2.9 All quotations for the Company's charges are calculated in accordance with the length of the journey for the shipment, the dimensions and gross weight of the Consignment and the type of Consignment service specified in the Booking. The Company offers a range of Consignment services including, without limitation, same day, overnight and international deliveries. Further details of the Company's charges and Consignment services are available upon request.

- 2.10 The Customer shall notify the Company at the time of Booking of the value of the Consignment in accordance with the notification requirements set out in the Waybill.

3 Customer's Warranties

- 3.1 If the Company is prevented from performing its obligations under these Conditions except to the extent that the Company's failure to perform is caused solely by a Force Majeure Event then the Customer will meet any associated additional charges which may include, without limitation, time charges for waiting and/or loading, or returning or warehousing any Consignment.
- 3.2 The Customer acknowledges and agrees that the Conditions excluding or restricting any liability of the Company are reasonable having regard to the existence of alternatives and other carriers available to it.
- 3.3 The Customer warrants that it has full power and authority to enter into and perform its obligations under these Conditions.
- 3.4 The Customer will indemnify the Company from and against:
- 3.4.1 all losses suffered by and claims made against the Company resulting from loss of or damage to property caused by or arising out of the carriage of Dangerous Goods, Discretionary Goods; and
- 3.4.2 all claims made upon the Company by HM Customs & Excise in respect of dutiable goods consigned in bond whether or not transit has ended or been suspended.
- 3.5 Where the Company is unable to effect delivery as requested by the Customer when making a Booking, or where transit has come to an end, the Company shall use its reasonable endeavours to notify the Customer and the Consignee of any undelivered or unclaimed Consignment. Unless the Consignment is collected or instructions are given for its disposal within 7 days of notice being given, title to the Consignment shall transfer to the Company and the Company may destroy or sell the goods as if it were the absolute owner.
- 3.6 The Company shall use its reasonable endeavours to obtain a reasonable price for the goods and shall apply the proceeds of sale to the payment of all its proper expenses and charges suffered or incurred in relation to the carriage, storage and sale or disposal of the goods. Any proceeds left over shall be paid to the Customer

upon which the Company shall be discharged from all liability in respect of the Consignment.

4 Collection and Delivery

- 4.1 Any collection date specified on the Waybill is not guaranteed.
- 4.2 The Customer shall ensure that the Consignment is secure, properly packed and labelled in accordance with good practice and any applicable statutory requirements and is fit and safe to be carried, stored and transported by road, air, rail or sea as may be appropriate.
- 4.3 The Company will use all reasonable efforts to deliver within the time specified for delivery but unless otherwise agreed these are estimates only and time is not of the essence.
- 4.4 Unless the Company has otherwise agreed in writing with the Customer:
 - 4.4.1 the Company shall not be required to provide any labour or special equipment for loading or unloading the Consignment, other than that carried by the vehicle used by the Company; and
 - 4.4.2 the Customer warrants that it will provide or procure any special equipment required for loading or unloading the Consignment and shall indemnify and hold harmless the Company for any damage to the Consignment or the Company, however caused, if the Company is instructed to load or unload any Consignment requiring special equipment where such equipment has not been provided or procured by the Customer.
- 4.5 The Company shall deliver Consignments according to such route as it in its absolute discretion thinks fit.
- 4.6 If required, the Company shall sign a document prepared by the Customer acknowledging receipt of the Consignment but such document shall not be evidence of the condition, declared nature, quantity or weight of the Consignment at the time it is received by the Company.
- 4.7 The Company may require acknowledgment at the point of delivery of the Consignment and any such receipt given shall be conclusive evidence of proper delivery.

5 Transit - General

- 5.1 Consignments are stored at the Company's premises and in transit to the Consignee at the Customer's risk and the Customer is responsible for arranging the necessary insurances.
- 5.2 Transit commences when the Company takes possession of the Consignment, whether at the Company's premises or at some other point of collection.
- 5.3 Subject to clause 5.4, transit shall (unless otherwise agreed) end when the Consignment is tendered at the Consignee's address provided at the time of Booking by the Customer.
- 5.4 Where a Consignment cannot be delivered (for whatever reason) or is held by the Company to await order or further instructions and such instructions are not given or the Consignment is not collected within 24 hours of notice being given to the Customer or such other time as the Company may nominate, then transit shall be deemed to end at the expiry of such time.
- 5.5 The Customer understands and accepts that the Company shall be entitled to open and examine any Consignment that the Company considers to be a security or health and safety risk to the Company and to take, at its sole discretion, such appropriate action thereafter.

6 Transit - International Carriage

- 6.1 In the case of services where the Company is required to collect from or deliver a Consignment to a country outside the United Kingdom the Company's liability (subject to clause 9), is governed by the relevant provisions of the Convention on the Contract for International Carriage of Goods by Road as set out in the Schedule to the Carriage of Goods by Road Act 1965 and in particular Article 17 and onwards, which provisions will be incorporated herein and will apply in place of any inconsistent terms written herein. A copy of such provisions will be supplied if required.
- 6.2 If the transportation of any Consignment involves carriage by air to an ultimate destination or stop in a country other than the country of departure, the Warsaw or the Montreal Conventions may be applicable and those Conventions govern and in most cases limit the liability of the Company in respect of loss or damage to such goods.

6.3 The Customer authorises the Company and its duly authorised servants and or agents to sign any and or all transit and or customs documentation for and on behalf of the Customer.

6.4 It is the Customer's responsibility to inform the Company if it wishes the Consignment to be delivered with the Duties duty paid by the Customer i.e. *Delivered Duty Paid* (DDP) and the Company will adjust the charges accordingly. If the Customer fails to inform the Company of its requirements the Consignment will be delivered, *Delivered Duty Unpaid* (DDU) and the Company will proceed on the basis that the Duties will be paid by the Consignee.

7 Transit - Goods we will not carry

7.1 All Dangerous Goods must be disclosed by the Customer in advance and unless otherwise agreed, the Company will not accept or carry Dangerous Goods. Where the Company accepts Dangerous Goods for carriage they must be classified, packed and labelled in accordance with any applicable statutory regulation for the carriage of such Dangerous Goods and with any specific instructions of the Company which shall be set out in a separate written agreement entered into between the Company and the Customer. The Customer shall further provide such information, document or declaration as may be necessary to enable the carriage of such Dangerous Goods by the Company under that separate written agreement.

7.2 If the proposed Consignment contains Discretionary Goods, the Customer must notify the Company at the time of Booking as to the content and value of such Consignment of Discretionary Goods and the Company may (in its sole discretion) elect to carry such Discretionary Goods. Except as set out in clause 9.1, the Company shall not be liable to the Customer for any loss, however caused, unless the Company has agreed in writing to the Customer to accept such liability. The Company reserves the right to charge the Customer (and the Customer shall pay) an additional sum for the carriage of the Consignment of Discretionary Goods and will inform the Customer of such sum prior to accepting the Booking. If the Customer fails to so inform the Company in accordance with this clause 7.2, such Consignment will be delivered solely at the Customer's risk and the Customer shall indemnify and keep the Company indemnified against any and all losses, damages, claims, liabilities, costs and expenses (including, without limitation, legal costs and expenses) suffered or incurred by the Company arising out of, or in connection with,

the delivery of the Consignment comprising such Discretionary Goods in whole or in part.

- 7.3 The Company will not be liable to the Customer for the carriage of Discretionary Goods unless: (i) the Customer notifies the Company in advance that the Consignment contains in whole or in part Discretionary Goods pursuant to clause 7.2; and (ii) the Company decides (at its sole discretion) to accept the carriage of such Discretionary Goods. If the Company agrees to accept the carriage of the Discretionary Goods (at such additional fee as the Company may determine (which the Customer shall pay)), the Company's liability in respect of the same day delivery of the Discretionary Goods shall be as set out in clause 7.2 above and shall be as set out in clause 9.4 for any overnight deliveries (whether within Great Britain or otherwise) or for any international deliveries of the Discretionary Goods.

8 Company's Charges

- 8.1 The Customer shall pay the Company's charges in accordance with these Conditions. The charges payable in respect of the Carriage of any Consignment shall be specified by the Company to the Customer at the time of Booking.
- 8.2 Payment terms are 14 days from date of invoice and payment will be made in full without any set off. The charges will exclude VAT.
- 8.3 If at the time of Booking the Customer pays for a Consignment by credit card, the amount quoted by the Company to the Customer at the time of Booking will be charged to the Customer's credit card wherever reasonably practicable within 24 hours (or such other period as the Company may reasonably determine) of the Company's acceptance of the Booking. In the event that any additional charges are imposed by the Company pursuant to these Conditions, the Customer hereby authorises the Company to charge such additional charges to the Customer's credit card wherever reasonably practicable within 24 hours (or such other period as the Company may reasonably determine) of the Company incurring such charges.
- 8.4 The Company shall be entitled to charge interest (both before and after judgment) on the amount unpaid at the rate of 4% above the base rate of the Bank of England from time to time until payment is made in full. When payment is not made by the due date, the Customer shall indemnify the Company for any costs and/or expenses it may suffer or incur in recovering the sum due, including reasonable legal fees and costs of collection.

- 8.5 Any queries in respect of an invoice must be made in writing within 7 days of the date of the invoice otherwise it will be deemed to have been accepted and will be payable in full by the Customer.
- 8.6 All charges quoted are exclusive of value added tax and all other duties or taxes which may become due or payable from time to time and shall be added to invoices at the rate applicable at the date of invoice.
- 8.7 The Company shall be entitled to recover its charges in full for any delivery, which is unsuccessful due to incorrect or inadequate information provided by the Customer and in addition recover any expenses or losses it suffered or incurred in attempting to effect delivery.

9 Limitation of Liability

- 9.1 Notwithstanding any other clause of these Conditions, neither party excludes or limits liability for personal injury or death arising from the negligence or wilful default of either party, its servants, dealers or sub-contractors; or for any fraudulent misrepresentation.
- 9.2 Except as expressly provided in these Conditions, the total liability of the Company which arises out of or under these Conditions (whether in contract, tort, statute or otherwise) in respect of any contract arising from a Booking is specified in this clause 9.
- 9.3 The Company shall not be liable to the Customer, whether in contract, tort or by statute, or otherwise in respect of any loss of profits and/or for any special, indirect, incidental or consequential loss or damage suffered by the Customer howsoever caused including, without limitation:
- 9.3.1 loss due to delay in delivery; and/or
 - 9.3.2 loss of anticipated savings; and/or
 - 9.3.3 loss of business and/or goods; and/or
 - 9.3.4 loss of goodwill; and/or
 - 9.3.5 loss of use; and/or
 - 9.3.6 loss of data or other information; and/or

- 9.3.7 loss relating to the procurement by the Customer of any substitution of goods or services.

For the avoidance of doubt, the types of loss and/or damage specified in clauses 9.3.1 to 9.3.7 above shall not constitute direct loss for the purpose of these Conditions.

- 9.4 The total liability of the Company with regard to any Express Courier and or Freight Consignment only, shall be £100 and this shall also apply to any Express Courier or Freight Consignment stored at the Company's premises.

- 9.5 The Company shall not be held responsible for any event beyond the reasonable control of the Company, which prevents it from performing its obligations under the relevant contract including, but not limited to:

- 9.5.1 acts, omissions or misrepresentations by the Customer, owner of the Consignment, Consignee or independent contractor or any failure of the foregoing to package and/or label the Consignment correctly pursuant to clause 4.1;

- 9.5.2 natural deterioration or fragility of the Consignment (notwithstanding that it may be marked "**Fragile**"); and/or

- 9.5.3 any unforeseen circumstances or causes beyond the Company's reasonable control, including but not limited to, act of God, war, riot, malicious damage, compliance with any law or government emergency procedure, accident, fire, flood, storm or industrial dispute, insufficient or improper packing, labelling or addressing, unless it is previously agreed in writing that the Company shall perform such task; or

- 9.5.4 Marine risk.

- 9.6 The Customer shall provide to the Company written proof of the value of the Consignment damaged or lost and the Company shall be entitled to inspect the damaged Consignment.

- 9.7 The Company shall not be liable for loss of, mis-delivery or damage to any Consignment unless it is notified by the Customer of such loss or damage in writing within 7 days of the end of the transit and the claim giving details of the value and the circumstances of any loss is made in writing within 14 days after the end of transit. A claim for loss or damage will not be accepted on the consignment note.

10 **Miscellaneous**

- 10.1 A person who is not a party to these Conditions has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Conditions, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 10.2 If any provision of these Conditions is held by any court or competent authority to be invalid or unenforceable in whole or in part, the validity of the remainder of these Conditions and of such provision shall continue in full force and effect.
- 10.3 The Company undertakes to comply with any and all provisions of the Data Protection Act 1998 as applicable.
- 10.4 Any notice or other communication to be given under or in connection with this Agreement, shall be given in writing and sent by first-class post, email or facsimile to the registered address of each party, or such other address as either party may substitute by written notice to the other. A notice shall be deemed delivered within two working days of posting, in the case of first-class post.
- 10.5 The Company shall be entitled to subcontract in whole or in part the performance of any or all of its obligations under these Conditions.
- 10.6 The waiver of either party of any breach of these Conditions will not prevent the subsequent enforcement of that term and will not be deemed a waiver of any subsequent breach.
- 10.7 These Conditions constitute the entire agreement between the parties and supersedes all prior agreements, representations and understandings relating to the subject matter of the contract. Nothing in these Conditions shall limit either party's liability in respect of fraudulent misrepresentation.
- 10.8 These Conditions (and any non-contractual claims) shall be subject to and construed in accordance with English law, and the parties submit to the exclusive jurisdiction of the English courts.

SCHEDULE

The Company may elect to carry but only on terms which are set out in writing. This list is non-exhaustive and it includes any other goods which the Company may at its sole discretion decline to deliver:

- a. items of value (including glass, furs, china, art, antiques, precious stones, precious metals, watches; jewellery);
- b. prescription drugs;
- c. Alcohol and tobacco;
- d. fragile and perishable goods;
- e. any financial or legal document (travellers cheques, money, bearer bonds, bills of exchange, promissory notes, photographs, documents of title to property, bank, credit, pre-pay or other store cards with a cash equivalent value);
- f. firearms, munitions, inflammable items or other explosives;
- g. livestock or other animal or human remains;
- h. any obscene, defamatory, blasphemous, scandalous or other indecent material, any item (including, without limitation, drugs or other illegal substances);
- i. any product which is prohibited or illegal to possess or import into any country through or into which the carriage of the Consignment is to take place.