

CONDITIONS OF CARRIAGE

PLEASE NOTE THAT THE CUSTOMER WILL NOT IN ALL CIRCUMSTANCES BE ENTITLED TO COMPENSATION, OR TO FULL COMPENSATION, FOR ANY LOSS AND IS THEREFORE RECOMMENDED TO SEEK PROFESSIONAL ADVICE AS TO APPROPRIATE INSURANCE COVER TO BE MAINTAINED WHILE CONSIGNMENTS ARE IN TRANSIT.

ETS Distribution Services (hereinafter referred to as "the Carrier") is not a common Carrier and accepts goods for carriage only upon that condition and the Conditions set out below. No servant or agent of the Carrier is permitted to alter or vary these Conditions in any way unless expressly authorised in writing to do so by a Director, Principal, Partner or other authorised person. If any legislation is compulsorily applicable to the Contract and any part of these Conditions is incompatible with such legislation, such part shall, as regards the Contract, be overridden to that extent and no further.

1. Definitions

In these Conditions:

"Customer" means the person or company who contracts for the services of the Carrier including any other carrier who gives a Consignment to the Carrier for carriage.

"Contract" means the contract of carriage between the Customer and the Carrier.

"Consignee" means the person or company to whom the Carrier contracts to deliver the Consignment.

"Consignment" means goods, whether a single item or items packaged on to a wooden or plastic boarded pallet or pallets suitably constructed for transshipping during transit by a fork lift truck sent at one time in one load by or for the Customer from one address to one address each pallet will not exceed the respective maximum weight and dimensions of:-

Small Pallet 240kgs foot print 120cms x 100cms and height 45 cms

Medium Pallet 450kgs foot print 120cms x 100cms and height 90 cms

Medium Large Pallet 450kgs foot print 120cms x 100cms and height 90 cms

Large Pallet 950kgs foot print 120cms x 100cms and height 190 cms

Giant Pallet 950kgs foot print 120cms x 220cms and height 190 cms

"Dangerous Goods" means goods named individually in the Approved Carriage List issued from time to time by the Health and Safety Commission, explosives, radioactive material, and any other goods presenting a similar hazard.

2. Parties and Sub-Contracting

(1) The Customer warrants that he is either *he owner of the Consignment or is authorised by such owner to accept these Conditions on such owner's behalf,

(2) The Carrier and any other carrier employed by the Carrier may employ the services of any other carrier for the purpose of fulfilling the Contract in whole or in part and the name of every other such carrier shall be provided to the Customer upon request.

(3) The Carrier contracts for itself and as agent of and trustee for its servants and agents and all other carriers referred to in (2) above and such other carriers' servants and agents and every reference in these Conditions to "the Carrier" shall be deemed to include every other such carrier, servant and agent with the intention that they shall have the benefit of the Contract and collectively and together with the Carrier be under no greater liability to the Customer or any other party than is the Carrier hereunder.

(4) Notwithstanding Condition 2(3) the carriage of any Consignment by rail, sea, inland waterway or air is arranged by the Carrier as agent of the Customer and shall be subject to the Conditions of the rail, shipping, inland waterway or air carrier contracted to carry the Consignment. The Carrier shall be under no liability whatever to whomsoever and howsoever arising in respect of such carriage: Provided that where the Consignment is carried partly by road and partly by such other means of transport any loss, damage or delay shall be deemed to have occurred while the Consignment was being carried by road unless the contrary is proved by the Carrier.

3. Dangerous Goods

Dangerous Goods must be disclosed by the Customer and if the Carrier agrees to accept them for carriage they must be classified, packed and labelled in accordance with the statutory regulations for the carriage by road of the substance declared. Transport Emergency Cards (Tremcards) or information in writing in the manner required by the relevant statutory provisions must be provided by the Customer in respect of each substance and must accompany the Consignment.

4. Loading and Unloading

(1) Unless the Carrier has agreed in writing to the contrary with the Customer:

(a) The Carrier shall not be under any obligation to provide any plant, power or labour, other than that carried by the vehicle, required for loading or unloading the Consignment.

(b) The Customer warrants that any special appliances required for loading or unloading the Consignment which are not carried by the vehicle will be provided by the Customer or on the Customer's behalf.

(c) The Carrier shall be under no liability whatever to the Customer for any damage whatever, however caused, if the Carrier is instructed to load or unload any Consignment requiring special appliances which, in breach of the warranty in (b) above, have not been provided by the Customer or on the Customer's behalf.

(d) The Carrier shall not be required to provide service beyond the usual place of collection or delivery but if any such service is given by the Carrier it shall be at the sole risk of the Customer.

(2) The Customer shall indemnify the Carrier against all claims and demands whatever which could not have been made if such instructions as are referred to in (1)(c) of this Condition and such service as is referred to in (1)(d) of this Condition had not been given.

5. Signed Receipts

- (1) The customer shall ensure that the every consignment shall bear two labels with the consignee's full name, address, postal code and telephone number in bold characters at least 75mm high.
- (2) The Carrier shall, if so required, sign a document prepared by the sender acknowledging the receipt of the Consignment but no such document shall be evidence of the condition or of the correctness of the declared nature, quantity, or weight of the Consignment at the time it is received by the Carrier and the burden of proving the condition of the Consignment on receipt by the Carrier and that the Consignment was of the nature, quantity or weight declared in the relevant document shall rest with the Customer.

6. Transit

- (1) Transit shall commence when the Carrier takes possession of the Consignment whether at the point of collection or at the Carrier's premises.
- (2) Transit shall (unless otherwise previously determined) end when the Consignment is tendered at the usual place of delivery at the Consignee's address within the customary cartage hours of the district: Provided that;
 - (a) if no safe and adequate access or no adequate unloading facilities there exist then transit shall be deemed to end at the expiry of one clear day after notice in writing (or by telephone if so previously agreed in writing) of the arrival of the Consignment at the Carrier's premises has been sent to the Consignee; and
 - (b) when for any other reason whatever a Consignment cannot be delivered or when a Consignment is held by the Carrier 'to await order' or 'to be kept till called for' or upon any like instructions and such instructions are not given or the Consignment is not called for and removed within a reasonable time, then transit shall be deemed to end.

7. Undelivered or Unclaimed Consignments

Where the Carrier is unable for any reason to deliver a Consignment to the Consignee or as he may order, or where by virtue of the proviso to Condition 6(2) hereof transit is deemed to be at an end, the Carrier may sell the Consignment, and payment or tender of the proceeds after deduction of all proper charges and expenses in relation thereto and of all outstanding charges in relation to the carriage and storage of the Consignment shall (without prejudice to any claim or right which the Customer may have against the Carrier otherwise arising under these Conditions) discharge the Carrier from all liability in respect of such Consignment, its carriage and storage.

Provided that:

- (1) the Carrier shall do what is reasonable to obtain the value of the Consignment; and
- (2) the power of sale shall not be exercised where the name and address of the sender or of the Consignee is known unless the Carrier shall have done what is reasonable in the circumstances to give notice to the sender or, if the name and address of the sender is not known, to the Consignee that the Consignment will be sold unless within the time specified in such notice, being a reasonable time in the circumstances from the giving of such notice, the Consignment is taken away or instructions are given for its disposal.

8. Carrier's Charges

- (1) The Carrier's charges shall be payable by the Customer without prejudice to the Carrier's rights against the Consignee or any other person: Provided that when any Consignment is consigned 'carriage forward' the Customer shall not be required to pay such charges unless the Consignee fails to pay after a reasonable demand has been made by the Carrier for payment thereof.
- (2) Charges shall be payable when due without reduction or deferment on account of any claim, counterclaim or set-off. The Carrier shall be entitled to interest at 8 per cent above the Bank of England Base Rate prevailing at the date of the Carrier's invoice or account, calculated on a daily basis on all amounts overdue to the Carrier.
- (3) If at any stage the Consignment is found to exceed the individual or gross weight or dimensions originally booked and paid for by the customer, then the Carrier will charge the Customer for the excess by way of a surcharge
- (4) The Carrier reserve the right to charge the Customer £5 for supplying each document proving delivery of a consignment.
- (5) Where a Consignment is not ready for collection at the place and time agreed the Carrier shall be entitled to cancel the collection, but shall be entitled to make a charge for as if the collection had in fact been made.
- (6) Where the Consignee is not ready to receive the delivery at the place and time agreed the Carrier shall be entitled not to cancel the delivery, but shall be entitled to make a charge for as if the delivery had in fact been made, the Carrier will also be entitled to surcharge the customer for any subsequent delivery or attempted delivery.
- (7) Cancellation and Refund Policy: All orders placed can be cancelled at any time until the consignment has been collected. Any costs incurred as a result of a cancelled order will be passed on to the customer and deducted from the refund amount. Refunds are at the sole discretion of the Carrier.
- (8) The Carrier's charges are exclusive of Value Added Tax, which will be paid by the Customer at the rate and in the manner for the time being prescribed by law.

9. Liability for Loss and Damage

- (1) The Customer shall be deemed to have elected to accept the terms set out in (2) of this Condition unless, before the transit commences, the Customer has agreed in writing that the Carrier shall not be liable for any loss or mis-delivery of or damage to or in connection with the Consignment however or whenever caused and whether or not caused or contributed to directly or indirectly by any act, omission, neglect, default or other wrongdoing on the part of the Carrier, its servants, agents or sub-contractors.
- (2) Subject to these Conditions the Carrier shall be liable for:
 - (a) physical loss, mis-delivery of or damage to living creatures, bullion, money, securities, stamps, precious metals or precious stones comprising the Consignment only if:
 - (i) the Carrier has specifically agreed in writing to carry any such items; and

- (ii) the Customer has agreed in writing to reimburse the Carrier in respect of all additional costs which result from the carriage of the said items; and
- (iii) the loss, mis-delivery or damage is occasioned during transit and is proved to be due to the negligence of the Carrier, its servants, agents or sub-contractors;
- (b) physical loss, mis-delivery of or damage to any other goods comprising the Consignment unless the same has arisen from, and the Carrier has used reasonable care to minimise the effects of:
 - (i) Act of God;
 - (ii) any consequences of war, invasion, act of foreign enemy, hostilities (whether war 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;
 - (iii) seizure or forfeiture under legal process;
 - (i v) error, act, omission, mis-statement or misrepresentation by the Customer or other owner of the Consignment or by servants or agents of either of them;
 - (v) inherent liability to wastage in bulk or weight, faulty design, latent defect or inherent defect, vice or natural deterioration of the Consignment;
 - (vi) insufficient or improper packing;
 - (vii) insufficient or improper labelling or addressing;
 - (viii) riot, civil commotion, strike, lockout, general or partial stoppage or restraint of labour from whatever cause;
 - (ix) Consignee not taking or accepting delivery within a reasonable time after the Consignment has been tendered.
- (3) The Carrier shall not in any circumstances be liable for loss or damage arising after transit is deemed to have ended within the meaning of Condition 6(2) hereof, whether or not caused or contributed to directly or indirectly by any act, omission, neglect, default or other wrongdoing on the part of the Carrier, its servants, agents or sub-contractors.

10. Fraud

The Carrier shall not in any circumstances be liable in respect of a Consignment where there has been fraud on the part of the Customer or the owner, or the servants or agents of either, in respect of that Consignment, unless the fraud has been contributed to by the complicity of the Carrier or of any servant of the Carrier acting in the course of his employment.

11. Limitation of Liability

- (1) Except as otherwise provided in these Conditions, the liability of the Carrier in respect of claims for physical loss, mis-delivery of or damage to goods comprising the Consignment, howsoever arising, shall in all circumstances be limited to the lesser of
 - (a) the value of the goods actually lost, mis-delivered or damaged; or
 - (b) the cost of repairing any damage or of reconditioning the goods, or
 - (c) a sum calculated at the rate of £1,300 Sterling per tonne on the gross weight of the goods actually lost, mis-delivered or damaged; and the value of the goods actually lost, mis-delivered or damaged shall be taken to be their invoice value if they have been sold and shall otherwise be taken to be the replacement cost thereof to the owner at the commencement of transit, and in all cases shall be taken to include any Customs and Excise duties or taxes payable in respect of those goods:

Provided that:

- (i) in the case of loss, mis-delivery of or damage to a part of the Consignment the weight to be taken into consideration in determining the amount to which the Carrier's liability is limited shall be only the gross weight of that part regardless of whether the loss, mis-delivery or damage affects the value of other parts of the Consignment;
- (ii) nothing in this Condition shall limit the liability of the Carrier to less than the sum of £10;
- (iii) the Carrier shall be entitled to proof of the weight and value of the whole of the Consignment and of any part thereof lost, mis-delivered or damaged;
- (iv) the Customer shall be entitled to give to the Carrier written notice to be delivered at least 7 days, or in the case of a prepaid online carriage order the Customer will register and prepay the carrier for the respective increase liability fee, prior to commencement of transit requiring that the £1,300 per tonne limit in 11 (1)(c) above be increased, but not so as to exceed the value of the Consignment, and in the event of such notice being given the Customer shall be required to agree with the Carrier an increase in the carriage charges in consideration of the increased limit, but if no such agreement can be reached the aforementioned £1,300 per tonne limit shall continue to apply.
- (2) The liability of the Carrier in respect of claims for any other loss whatsoever (including indirect or consequential loss or damage and loss of market), and howsoever arising in connection with the Consignment, shall not exceed the amount of the carriage charges in respect of the Consignment or the amount of the claimant's proved loss, whichever is the lesser, unless:
 - (a) at the time of entering into the Contract with the Carrier the Customer declares to the Carrier a special interest in delivery in the event of physical loss mis-delivery or damage or of an agreed time limit being exceeded and agrees to pay a surcharge calculated on the amount of that interest, and
 - (b) at least 7 days prior to the commencement of transit the Customer has delivered to the Carrier written confirmation of the special interest, agreed time limit and amount of the interest.

12. Indemnity to the Carrier

The Customer shall indemnify the Carrier against:

- (1) all liabilities and costs incurred by the Carrier (including but not limited to claims, demands, proceedings, fines, penalties, damages, expenses and loss of or damage to the carrying vehicle and to other goods carried) by reason of any error, omission, mis-statement or misrepresentation by the Customer or other owner of the Consignment or by any servant or agent of either of them, insufficient or improper packing, labelling or addressing of the Consignment or fraud as in Condition 10;
- (2) all claims and demands whatsoever (including for the avoidance of doubt claims alleging negligence), by whomsoever made and howsoever arising (including but not limited to claims caused by or arising out of the carriage of Dangerous Goods and

claims made upon the Carrier by HM Customs and Excise in respect of dutiable goods consigned in bond) in excess of the liability of the Carrier under these Conditions in respect of any loss or damage whatsoever to, or in connection with, the Consignment whether or not caused or contributed to directly or indirectly by any act, omission, neglect, default or other wrongdoing on the part of the Carrier, its servants, agents or sub-contractors.

13. Time Limits for Claims

(1) The Carrier shall not be liable for:

- (a) damage to the whole or any part of the Consignment, or physical loss, mis-delivery or non-delivery of part of the Consignment unless advised thereof in writing within seven days, and the claim is made in writing within four-teen days, after the termination of transit;
 - (b) any other loss unless advised thereof in writing within twenty-eight days, and the claim is made in writing within forty-two days, after the commencement of transit. Provided that if the Customer proves that,
 - (i) it was not reasonably possible for the Customer to advise the Carrier or make a claim in writing within the time limit applicable, and
 - (i i) such advice or claim was given or made within a reasonable time, the Carrier shall not have the benefit of the exclusion of liability afforded by this Condition.
 - (c) damage to the whole or any part of the consignment unless the Carrier receives photographic evidence within 7 days after termination of transit and the consignment is made available for inspection by the carrier or its agents until a resolution has been reached.
- (2) The Carrier shall in any event be discharged from all liability whatsoever and howsoever arising in respect of the Consignment unless suit is brought within one year of the date when transit commenced.
- (3) In the computation of time where any period provided by these Conditions is seven days or less, Saturdays, Sundays and all statutory public holidays shall be excluded.

14. Lien

- (1) The Carrier shall have a general lien against the Customer, where the Customer is the owner of the Consignment, for any monies whatever due from the Customer to the Carrier. If such a lien is not satisfied within a reasonable time, the Carrier may, at its absolute discretion sell the Consignment, or part thereof, as agent for the Customer and apply the proceeds towards the monies due and the expenses of the retention, insurance and sale of the Consignment and shall, upon accounting to the Customer for any balance remaining, be discharged from all liability whatever in respect of the Consignment.
- (2) Where the Customer is not the owner of the Consignment, the Carrier shall have a particular lien against the said owner, allowing the Carrier to retain possession, but not to dispose of, the Consignment against monies due from the Customer in respect of the Consignment.

15. Unreasonable Detention

The Customer shall be liable to pay demurrage for unreasonable detention of any vehicle, trailer, container or other equipment but the rights of the Carrier against any other person in respect thereof shall remain unaffected.

16.0 Force Majeure

The Carrier shall not be liable for any delay in performing its obligations hereunder if such delay is caused by circumstances beyond its control including without limitation any delay caused by any act or omission of the Customer. In such event, the Carrier shall notify the Customer and shall be relieved of its obligations to perform the Services until such circumstances have ceased.

17.0 General

17.1 The decision as to what constitutes a "reasonable time" under these Conditions is to be entirely at the discretion of the Carrier.

17.2 All notices relating to a Consignment or which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient set out in this Agreement or such other address in [Great Britain] [United Kingdom] as the recipient may designate by notice given in accordance with the provisions of this Condition. Any such notice may be delivered personally or sent by first class pre-paid letter or by facsimile transmission and shall be deemed to have been served if by hand when delivered, if sent by post then the day of service shall be deemed to be 2 days after posting excluding weekends. and if by facsimile transmission when despatched

17.3 These Conditions shall apply to any agreement between the Carrier and the Customer relating to the carriage of Consignments or the provision of storage or other services. The terms (including these conditions) agreed between the Carrier and the Customer as set out in the Carrier's quotation constitute the entire contract between the Carrier and the Customer so far as concerns the carriage of Consignments and the provision of storage and other services and the Customer shall be deemed to have notice of these conditions if and as soon as he places an order with or accepts a tender from the Carrier for the carriage and storage of Consignments and other services.

17.4 The Customer agrees not to copy, duplicate, transmit electronically any part of the ETS web pages, this includes conditions of carriage, graphics, text copy etc.

18 Rights cumulative

All rights granted to either of the parties shall be cumulative and no exercise by either of the parties of any right under this agreement shall restrict or prejudice the exercise of any other right granted by this agreement or otherwise available to it.

19 Waiver

The failure by either party to enforce at any time or for any period any one or more of the terms or conditions of this agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this agreement.

20 Arbitration

All disputes or differences which at any time arise between the parties whether during the Term or afterwards touching or concerning this agreement or its construction or effect or the rights duties or liabilities of the parties under or by virtue of it or otherwise or any other matter in any way connected with or arising out of the subject matter of this agreement shall be referred to a single arbitrator to be agreed upon by the parties or in default of agreement to be nominated by the President for the time being of the Chartered Institution of Arbitrators in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment of it for the time being in force.

21 Third party rights

A person who is not a party to this agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this agreement.

22 Severance

If any provision of this agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable the remaining provisions of this agreement shall remain in full force and effect.

23 Jurisdiction

The construction, forms and validity of this Agreement shall in all respects be governed by the laws of England and the parties shall hereby submit to the exclusive jurisdiction of the English courts.