

## **1. Definitions**

'The carrier' means ASAP Express Ltd, Unit 11, Cheston Industrial Estate, Cheston Road, Aston, Birmingham B7 5EE (or such other address as it may notify customer from time to time) which expression shall unless the context requires otherwise, include any sub-contractor appointed by the carrier pursuant to Clause 3 below.

'The 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.

'The Contract' means the contract of carriage between the customer and the carrier which shall be subject to these Terms & Conditions.

'The Consignee' means the person or company to whom the carrier contracts to deliver the consignment.

'The Consignment' means goods in bulk or contained in one parcel, package, container or envelope, as the case may be, or any separate number of parcels, packages, containers or envelopes sent at one time, load by or for the customer from one address to another address. For the avoidance of doubt, the expression "goods" shall include paper(s) and documents other than those expressly excluded in these Terms & Conditions.

'Dangerous Goods' means dangerous substances as defined in the Road Traffic (Carriage of Dangerous Substances in Packages etc) Regulations 1992 (and any amendment or replacement thereof), explosives, radioactive substances and any other substances presenting a similar hazard.

## **2. General**

The Carrier is not a common carrier and accepts at its sole discretion consignments for carriage only upon that condition and the Terms & Conditions contained herein. Save as may be agreed in writing by a Director / a Partner / The Proprietor (as the case may be) of the carrier no servant or agent of the carrier is permitted to alter or vary these Terms & Conditions in any way.

### **3. Authority and Sub-Contracting**

3.1 The customer warrants that he is either the owner of the goods in any consignment or is authorised by such owner to accept these Terms & Conditions on such owner's behalf.

3.2 The carrier and any other carrier employed by the carrier may employ the services of any other carrier for the purposes of fulfilling the contract in whole or in part and the name of every such other carrier shall be provided to the customer upon request.

3.3 The carrier contracts for itself and (subject to paragraph 3.4) as agent of and trustee for its servants and agents and all other carriers referred to in paragraph 3.2 above and such other carriers' servants and agents.

3.4 Notwithstanding paragraph 3.3 the carriage of goods in 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 Terms & Conditions of the rail, shipping, inland waterway or carrier contracted to carry the consignment.

### **4. Dangerous Goods**

Dangerous Goods must be disclosed by the customer in advance 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(s) declared. Transport Emergency Cards (Tremcards) or information in writing in the manner required by the relevant statutory provisions or by the relevant body authorised by statute to make regulations must be provided by the customer in respect of each substance and must accompany the consignment.

### **5. Delivery**

5.1 Unless the carrier has agreed in writing to the contrary with the customer:

5.1.1 The carrier shall not be under any obligation to provide any plant, power or labour required for loading or unloading the consignment other than that carried by the vehicle used by the carrier.

5.1.2 The customer warrants that any special equipment required for loading or unloading the consignment which is not carried by the carrier's vehicle will be provided or procured by the customer.

5.1.3 The carrier shall be under no liability whatsoever to the customer and the customer shall indemnify and hold harmless the carrier for any damage, however caused, if the carrier is instructed to load or unload any goods requiring special equipment has not been provided or procured by the customer.

### **6. Consignment Notes**

The carrier if so required sign a document prepared by the customer acknowledging 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.

### **7. Transit**

7.1 Transit shall commence when the carrier takes possession of the consignment, whether at the point of collection or at the carrier's premises.

7.2 Transit shall (unless otherwise previously determined) end when the consignment is tendered at the usual place of delivery at the consignee's address PROVIDED THAT

7.2.1 If no safe and adequate access or, if applicable, no adequate unloading facilities there exist, then transit shall be deemed to end at the expiry of one hour after notice by telephone of the arrival of the consignment at the carrier's premises has been given to the customer or

7.2.2 When for any other reason whatever a consignment cannot be delivered or when a consignment is held by the carrier to "await order" or upon any like instructions and such instructions are not given or the consignment is not called for and removed within a reasonable time by the carrier, then transit shall be deemed to end at the expiry of such reasonable time.

### **8. Undelivered or Unclaimed Goods**

8.1 Where the carrier is unable for any reason to deliver a consignment to the consignee or as he may order, or, when by paragraph 7.2 above transit is deemed to be at an end, the carrier may sell the goods comprising the consignment. 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 these conditions) discharge the carrier from all liability in respect of the consignment.

8.2 Notwithstanding the generality of paragraph 8.1 above, the carrier shall use his reasonable endeavours to obtain a reasonable price for the consignment and the carriers power of sale shall not exercise where the name and address of the customer or of the consignee is known unless the carrier shall use his reasonable endeavours to give notice to the customer and to the consignee that the goods 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 goods are taken away or instructions are given for their disposal.

### **9. Carrier's Charges**

9.1 The carrier's charges shall be made in accordance with its tariff current at the time of performance of the contract. Invoices will be prepared by the carrier at least once a month. Credit facilities may be withdrawn by the carrier at its absolute discretion at any time and the balance outstanding shall become due immediately on demand.

9.2 The carrier's charges shall be payable by the customer without prejudice to the carrier's rights against the consignee or any other person. Without prejudice to the generality of the foregoing, when the goods are consigned "Third Party", the customer shall not be required to pay such charges unless the consignee fails to pay after demand has been made by the carrier for the payment thereof and such demand has not been paid within the time stipulated by the carrier to the consignee.

9.3 Charges shall be payable on the expiry of any time limit notified to the customer (whether on any invoice or otherwise) or failing such notification 30 days after the relevant invoice and the carrier shall be entitled to interest at 8% above the base rate of HSBC Plc for the time being calculated on a daily basis on all amounts overdue to the carrier. Any queries as to the correctness of the invoice must be made in writing within fourteen days of issue of the invoice otherwise it will be payable in full.

9.4 Except where any quotation states otherwise, all quotations given on a weight charge shall apply to the gross weight of the consignment.

9.5 Unless stated otherwise, all charges quoted are exclusive of Value Added Tax.

9.6 All sums due to the carrier shall be paid without deduction, set-off or abatement and the customer shall not withhold or defer any payment on account of any claim or counterclaim and acknowledges that any such claim or counterclaim whatsoever by the customer against the carrier must be subject to separate proceedings.

### **10. Liability for Loss and Damage**

10.1 The customer shall be deemed to have elected to accept the terms set out in paragraphs 10.2 and 10.3 below unless, before the transit commences, the customer has agreed in writing that the carrier shall not be liable for any loss or misdelivery or damage to 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.

10.2 Save where the customer has made specific arrangements for insurance with the carrier prior to commencement of transit of the consignment (as determined in accordance with clause 7.1), the carrier shall not be liable for any loss or misdelivery or damage to bullion, money, securities, deeds bills of exchange, promissory notes, stamps, photographs, documents of title of property, jewellery, precious stones, gold, silver, platinum and other precious metals, non-ferrous metals other than in component form, antiques, watches fur, drugs, human remains, nuclear fuel or nuclear waste, cassettes, video, spirits, tobacco (other than raw leaf tobacco) and cigarettes, brittle / fragile / breakable articles or livestock and the customer shall indemnify and hold harmless the carrier in respect of any loss or damage caused in respect thereof to any person whatsoever. In addition, the carrier shall not carry passengers under any circumstances.

10.3 The carrier shall not be liable in respect of any loss or misdelivery of or damage to any consignment if the same has arisen from and the carrier has used reasonable care to minimise the affects of:

10.3.1 Act of God.

10.3.2 Any consequences of war, invasion, act of foreign enemy, hostilities (whether war or not), civil war, rebellion, insurrection, military or usurped power of confiscation, requisition or destruction of or damage to property by or under the order of any government or public or local authority.

10.3.3 Seizure or forfeiture under legal process.

10.3.4 Act, omission, misstatement or misrepresentation by the customer or other owner of the consignment or by servants or agents of either of them.

10.3.5 Inherent liability to wastage in bulk or weight, defect or inherent defect, natural deterioration or fragility of the consignment (notwithstanding that it may be marked "Fragile").

10.3.6 Insufficient or improper packing.

10.3.7 Insufficient labelling or addressing.

10.3.8 Riot, civil commotion, strike, lockout, general or partial stoppage or restraining of labour from whatever cause.

10.3.9 The consignee not taking or accepting delivery within a reasonable time after the consignment has been tendered.

10.3.10 Failure or delay in delivery for any reason whatsoever beyond the control of the carrier.

10.4 The Carrier shall not in any circumstances be liable for loss or damage to the consignment after transit of such goods is deemed to have ended within clause 7 above, 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.

### **11. 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 of the consignment to any part thereof or the servants or agents or either of them 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.

### **12. Limitation of Liability**

12.1 The liability of the carrier for loss of or damage to any consignment shall be limited to a sum calculated at the rate of £1,300 Sterling per tonne on the gross weight whether such loss or damage was due to the fault or negligence of the carrier or its servants, agents or employees or otherwise. If the customer wishes to arrange a higher level of liability in respect of any consignment, then it should apply to the carrier who may be able to arrange this at an additional charge to the customer.

12.2 Where the misdelivery, loss or damage howsoever sustained is in respect of a part only of the consignment, the carrier's liability shall be limited to the actual value of that part of the consignment or where such can not be readily ascertained a sum representing the proportion which the part of the consignment misdelivered, lost or damaged represents of the total consignment based on the open market value of the total consignment.

12.3 The carrier shall not in any circumstances be liable for any indirect or consequential loss or damage or for loss of a particular market whether held daily or at intervals.

12.4 The carrier shall be entitled to receive written proof of the value of the consignment damaged or lost and shall be afforded by the customer a reasonable opportunity to inspect the consignment when delivery has been effected to the consignee.

12.5 The carrier shall only be liable for loss and damage occurring within the geographical limits of Great Britain. For journeys outside these limits, liability shall be restricted to the amount of cover provided by the international agent or carrier chosen at the carrier's absolute discretion.

### **13. Time Limits for Claims**

13.1 The carrier shall not be liable for:

13.1.1 Loss of a parcel, package or container or from an unpacked consignment or for damage to a consignment or any part of a consignment unless it is advised thereof in writing otherwise that upon a consignment note or delivery document within 3 days and the claim giving details of quantum and the circumstances of any loss is made in writing 7 days after the termination of transit as determined above.

13.1.2 Loss or misdelivery or non-delivery of the whole of the consignment or any separate parcel, package or container forming part of a consignment unless the carrier is advised of the loss, misdelivery or non-delivery in writing, otherwise than upon a consignment note or a delivery document within 14 days and the claim giving details of quantum and the circumstances of any loss made in writing within 21 days after the commencement of transit as determined above.

### **14. Indemnity to the Carrier**

14.1 The customer shall indemnify the carrier against:

14.1.1 All consequences suffered by the carrier (including but not limited to claims, demands, fires, penalties, damages, costs, expenses and loss of or damage to the carrying vehicle and to other goods carried) of any error, omission, misstatement or misrepresentation by the customer or other owner of the consignment or by any servant or agent of either of them, insufficient or improper packaging, labelling or addressing of the consignment or fraud.

14.1.2 All claims and the demands whatsoever by whomsoever made in excess of the liability of the carrier under these terms & conditions.

14.1.3 All losses suffered by claims made against the carrier resulting from loss of or damage to property caused by or arising out of the carriage by the carrier of Dangerous Goods whether or not declared by the customer as such.

14.1.4 All claims made upon the carrier by HM Customs & Excise in respect of dutiable goods consigned in bond whether or not transit has ended or been suspended.

### **15. Lien**

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 be at its absolute discretion sell the consignment or part thereof, as agent for the customer and apply the proceeds towards monies due and the expenses of the retention, insurance and sale of the consignment and shall while accounting to the customer for any balance remaining, be discharged from all liability whatsoever in respect of the consignment. 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 dispose of the goods against monies due from the customer in respect of the consignment.

### **16. Unreasonable Detention**

The customer shall be liable for the cost of unreasonable detention of any vehicle, trailer or other item of the carrier, but the rights of the carrier against any other person shall remain unaffected.

### **17. Impossibility of Performance**

The carrier shall be relieved of its obligation to perform a contract to the extent that performance is prevented by the failure of the customer, fire weather conditions, industrial dispute, labour disturbance or a cause beyond the reasonable control of the carrier.

### **18. Computation of Time**

In the computation of time, where any period of days provided by these Terms & Conditions is 7 days or less, Saturdays, Sundays and all Bank / Public Holidays shall be excluded.

### **19. Governing Law and Jurisdiction**

These Terms & Conditions and all contracts shall be governed by and construed in accordance with the Laws in England and any proceedings in relation thereto shall be subject to the exclusive jurisdiction of the English Courts.