

ABLE COURIERS LIMITED

CONDITIONS OF BUSINESS (2011)

Please note that Customers will not in all circumstances be entitled to compensation, or to full compensation, for any loss. Customers are recommended to obtain appropriate insurance cover for their consignments while in transit.

1. Definitions

1.1 In these conditions:

'Carrier' means Able Couriers Limited (company number 05391500) of Unit 3, 25 Camwal Road, Starbeck, Harrogate, North Yorkshire, HG1 4PT;

'Conditions' means these conditions of business;

'Consignee' means the person, firm or company to whom the Carrier agrees to deliver the Consignment;

'Consignment' means goods, whether a single item or in bulk or contained in one parcel, package or container, as the case may be, or any number of separate items, parcels, packages or containers sent at one time in one load by or for the Customer from one address to one address;

'Contract' means a contract of carriage between the Customer and the Carrier incorporating the Conditions;

'Customer' means a person, firm or company who contracts for the services of the Carrier (including any other carrier who gives a Consignment to the Carrier for carriage);

'Dangerous Goods' means those substances and articles the carriage of which is prohibited by the provisions of the European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR) as applied in the United Kingdom;

'in writing' includes the transmission of information by electronic or similar means of communication, including, but not limited to, facsimile, electronic mail or electronic data interchange (EDI), provided the information is readily accessible so as to be usable for subsequent reference;

'Trader' means the owner of the Consignment, any other person having an interest therein and anyone acting on behalf of such owner or other person, including, as the case may be, the Customer, sender and Consignee.

2. Basis of the Contract

2.1 If the Carrier accepts a Customer's request to transport a Consignment to a Consignee then the Carrier will transport the goods in any reasonable way subject to and in accordance with the terms of the Contract.

2.2 The Carrier is not a common carrier and accepts goods for carriage only upon that basis and the Conditions.

2.3 The Contract constitutes the entire agreement between the Carrier and the Customer. An employee or agent of the Carrier is not permitted to alter or vary the Conditions in any way unless expressly authorised in writing to do so by a director of the Carrier.

2.3 If any provision of these Conditions or of the Contract becomes invalid, illegal, unenforceable or void in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

3. Parties and Sub-Contracting

3.1 The Customer warrants that he is either the owner of the Consignment or is authorised by such owner to accept these 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 purpose of fulfilling the Contract in whole or in part.

3.3 The Carrier contracts for itself and as agent of and trustee for its employees and agents and all other carriers referred to in condition 3.2 above and such other carriers' employees and agents and every reference in these conditions to 'the Carrier' shall be deemed to include every other such carrier, employee 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.

3.4 Notwithstanding condition 3.3 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 whatsoever 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.

4. Customer's Obligations

4.1 The Customer will give the Carrier such details of the Consignment and such other information as the Carrier may request and co-operate with the Carrier in all matters relating to the transport and delivery of the Consignment.

4.2 Dangerous Goods are not acceptable for carriage by the Carrier except when agreed by the Carrier after disclosure of full details of the Consignment by the Customer.

5. Loading and Unloading

5.1 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 for loading or unloading the Consignment other than that carried by the Carrier's vehicle;
- (b) the Customer undertakes that any plant, power or labour required for loading or unloading the Consignment, which is 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 whatsoever to the Customer for any damage whatsoever, howsoever caused, if the Carrier is instructed to load or unload any Consignment requiring plant, power or labour which, in breach of Condition 5.1(b), has 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.

5.2 The Customer shall indemnify the Carrier against all claims and demands whatsoever which could not have been made if such instructions as are referred to in condition 5.1(c) and such service is referred to in condition 5.1(d) had not been given.

6. Signed Receipts

6.1 The Carrier shall, if so required, sign a document or electronic record prepared by the Customer acknowledging the receipt of the Consignment but the burden of proving the condition of the Consignment and

its nature, quantity or weight declared in the relevant document shall rest with the Customer.

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 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;
- (b) when for any other reason whatsoever 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.

8. Undelivered or Unclaimed Consignments

8.1 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 7.2 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:

- (a) the Carrier shall do what is reasonable to obtain the value of the Consignment; and
- (b) 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.

9. Carrier's Charges

9.1 The Carrier's charges as specified in the Contract or if none at the Carrier's standard rate for the Contract (plus VAT) 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.

9.2 The Carrier shall invoice the Customer for the Carrier's charges on delivery of the Consignment.

9.3 The Customer shall pay the Carrier's invoices within 30 days of the date of the invoice.

9.4 Charges shall be payable when due without reduction or deferment on account of any claim, counterclaim or set-off.

9.5 If the Customer becomes insolvent or any sums owed by the Customer on any invoice or account with the Carrier become overdue for payment, any credit terms shall be cancelled with immediate effect and all invoices or accounts issued by the Carrier shall immediately be deemed due for payment and thereupon become payable.

9.6 The Late Payment of Commercial Debts (Interest) Act 1998, as amended, shall apply to all sums due from the Customer.

10. Liability for Loss or Damage

10.1 The Customer shall be deemed to have elected to accept the terms set out in condition 10.2 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 howsoever 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 employees, agents or sub-contractors.

10.2 The Carrier shall not be liable for the physical loss, mis-delivery of or damage to living creatures, perishables, goods liable to spoil, bullion, money, cheques, money orders, securities, tickets, vouchers, stamps, precious metals or precious stones, jewellery, works of art, antiques, watches, wines and spirits, furs, tobacco, firearms, glass, ceramics, pottery, porcelain, china, perspex, acrylics, fibre glass, plasma screens; paint, vehicle parts that are not boxed, bicycles that are not boxed, gearboxes, or any other mechanical part containing oil or invasive liquid, furniture unless in flat pack form, mattresses in plastic covers comprising the Consignment unless:

- (a) the Carrier has specifically agreed in writing to carry any such items; and
- (b) 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
- (c) the loss, mis-delivery or damage is occasioned during transit and is proved to be due to the negligence of the Carrier, its employees, agents or sub-contractors.

10.3 The Carrier shall not be liable for the physical loss, mis-delivery of or damage to any goods included in an Consignment arising from:

- (i) an act of God;
- (ii) force majeure including 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;
- (iv) error, act, omission, mis-statement or misrepresentation by the Customer or other owner of the Consignment or by employees 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 howsoever caused;
- (ix) the Consignee not taking or accepting delivery within a reasonable time after the Consignment has been tendered.
- 10.4 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 7.2 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 employees, agents or sub-contractors.
- 11. Fraud**
- 11.1 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 employees 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 employee of the Carrier acting in the course of his employment.
- 12. Limitation of liability**
- 12.1 The Carrier shall not be liable for any losses arising as a result of a delay in the delivery of a Consignment.
- 12.2 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 £13 per kilogram on the gross weight of the goods actually lost, mis-delivered or damaged.
- 12.3 The value of any 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 duties or taxes payable in respect of those goods, provided that:
- (a) 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;
- (b) 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;
- (c) the Customer shall be entitled to give the Carrier written notice prior to commencement of transit requesting that the £13 per kilogram limit in condition 12.2(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 may be offered Increased Liability Cover (ILC) at revised carriage charges in consideration of the increased limit, but if the offer is not acceptable to the Customer, then the aforementioned £13 per kilogram limit shall continue to apply;
- (d) in attempting to reach an agreement pursuant to condition 12.3(c) above the Customer shall provide the Carrier with all such information regarding the
- Consignment as the Carrier shall need to assess any suggested new limit and charge.
- 12.4 The liability of the Carrier in respect of claims for any other loss whatsoever (including indirect, economic 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.
- 12.5 Nothing in these conditions shall make the Carrier responsible for the first £50 of each and every claim.
- 12.6 In no circumstances shall the Carrier's liability be greater than the value declared by the Customer for that Consignment or £15,000 whichever is the lesser, but in the case of computer equipment, peripherals, software, mobile telephones and accessories, or other audio-visual equipment, the Carrier's liability shall not be greater than £3,000 per Consignment.
- 13. Indemnity to the Carrier**
- 13.1 The Customer shall indemnify the Carrier against:
- (a) 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 employee or agent of either of them, insufficient or improper packing, labelling or addressing of the Consignment;
- (b) 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 Revenue and Customs 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 employees, agents or sub-contractors.
- 14. Time Limits for Claims**
- 14.1 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 three days, and the claim is made in writing within fourteen 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
- (ii) 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.

14.2 The Carrier shall in any event be discharged from all liability whatsoever and howsoever arising in respect of the Consignment unless suit is brought and notice in writing thereof given to the Carrier within one year of the date when transit commenced.

14.3 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.

15. Lien

15.1 The Carrier shall have:

- (a) a particular lien on the Consignment; and
- (b) a general lien against the Trader for sums unpaid on any invoice, account or Contract whatsoever.

15.2 If such lien, whether particular or general, is not satisfied within a reasonable time, the Carrier may sell the Consignment, or part thereof, as agent for the owner and apply the proceeds towards any sums unpaid 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 whatsoever in respect of the Consignment.

15.3 The Carrier may exercise its lien on its own behalf or as agent for any assignee of its invoices at any time and at any place at its sole discretion whether or not sums have become payable in accordance with condition 9.2 and whether or not the contractual carriage has been completed and these conditions shall continue to apply during the period of exercise of such lien.

16. Unreasonable Detention

16.1 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.

17. Law and Jurisdiction

17.1 Unless otherwise agreed in writing, the Contract and any dispute arising thereunder shall be governed by English law and shall be subject to the jurisdiction of the English courts alone.