

## **Conditions of Business**

The Customer's attention is drawn specially to conditions 5, 7 and 11, which exclude or limit the Company's and the Company's, sub-contractors liability and require the Customer to indemnify the Company and/or its sub-contractors in certain circumstances.

To enable the Company to provide the services to the Customer for the charges quoted the Company excludes and/or its liability for certain types of loss and damage and places a limit on any liability to the Customer.

The Company **will not insure the goods** and the Customer and/or the Owner are advised to check their own insurance arrangements having regard to the limitations on the Company's liability and the indemnities being given by the Customer in the Conditions.

### **1. DEFINITIONS**

In these conditions:

The "Company" means A1 Coldstore (including its servants, employed and agents) undertaking the services to which these conditions apply;

The "conditions" means these terms and conditions together with any schedule attached to them;

The "Contract" means any contract between the Company and the Customer relating to the goods to which these Conditions and Regulations apply;

The "Customer" means the party contracting with the Company;

"Outside the Scope of the Services" includes but is not limited to, any treatment which is not capable of performance save with unreasonable inconvenience or extra cost to the Company;

The "Owner" means the person or persons who owns or own the goods;

The "Goods" means the goods which are the subject of the contract and includes pallets, palletainers, converters and all other equipment provided by the Customer;

The "Regulations" means the regulations (if any) published by the Company from time to time which regulate the Company's provisions of the services under the Contract and which are notified to the Customer from time to time in writing. Any changes in such Regulations will be a variation of the Contract and shall take effect as a variation of the Contract immediately upon receipt by the Customer;

The "Services" means the services set out in the schedule attached to these Conditions; and

The "Value" means the cost of the Goods to the Company or Owner at the time of receipt for the performance of the services.

### **2. APPLICATION**

2.1 These Conditions shall apply to every Contract for the provision of the services by the Company to the Customer to the exclusion of all other terms and conditions, including the Customer's own.

2.2 (a) The failure to delay by either party in exercising any right, power or remedy of that party under these Conditions shall not in any circumstances impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise by either party of any right, power or remedy under these Conditions shall not in any circumstances preclude any other or further exercise of it or the exercise of any other right power or remedy.

2.2 (b) Any waiver of a breach of, or default under, any of the terms of the Conditions shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of these Conditions.

2.3 The Company shall be entitled to reject goods, which are not in the condition set out in Condition 4.4. The Contract shall be made when the Company receives the Goods for the performance of Services.

### **3. THE SERVICES**

3.1 The Company shall provide the Services subject to these Conditions and the Regulations.

3.2 The Company shall perform the Services with a reasonable degree of care and skill.

- 3.3 The Company undertakes to perform and/or procure the performance of the services and subject to Conditions 11 and 13.2 the Company accepts liability for loss or for damage to Goods which have been received for the performance of the Services by the Company from the time that the Goods are unloaded by the Company from the delivery vehicle and such time as:
- (a) The Goods have been loaded on the collecting vehicle as directed by the Customer/Owner; or
  - (b) The Goods are required to be removed under Condition 6 or Condition 14;
- whichever is the earlier.

Without prejudice to Condition 7 below the company does not accept any liability unless and until the goods have been placed in the area of the Company's loading bay.

#### **4. CUSTOMER'S OBLIGATIONS**

- 4.1 The Customer warrants to the Company that it is the Owner or is authorised by the Owner to accept these Conditions and enter the Contract as agent for and on behalf of the Owner.
- 4.2 The Customer on its own account and as agent for and on behalf of the owner undertakes to comply with the Regulations.
- 4.3 The Customer warrants that the Goods are as described to the Company in the consignment note or equivalent document particularly as regards to their nature, weight, quantity, condition and dimensions.
- 4.4 Without prejudice to Condition 7 below, the Customer warrants that the Goods must:
- (a) Be in a wholesome condition;
  - (b) Have been properly packed for the performance of the services;
  - (c) Be in the form and be at, and have at all material times been maintained at the temperature as may be required by the minimum standards stipulated under the applicable statutory regime of goods of that type then in force: and
  - (d) Not require any special treatment Outside the ordinary Course of Business of the Company.

#### **5. SPECIAL TREATMENT**

If goods require special treatment outside the Scope of the Services of the Company then the Customer shall contact the Company and obtain the Company's agreement in writing prior to presentation of the Goods. If this is not done and the Company is not notified of the need for such special treatment then the Company shall not be liable for any loss or damage to the Goods.

#### **6. GOODS IN UNACCEPTABLE CONDITION**

- 6.1 If the Company determines that the Goods are not in a condition as required by Condition 4.4 or are likely not to be in such condition and such failure may, or is likely to cause damage to other goods or property then;
- (a) The Company shall be entitled to serve notice on the Customer and upon receipt of such notice the Customer shall remove the Goods forthwith: or
  - (b) If the Company is unable to give such a notice for any reason or if in the Company's reasonable opinion the Goods require speedy removal to avoid or mitigate damage or if the customer fails to remove the Goods as required under Conditions 6.1(a) the the Company may at the Customer's expense and risk arrange for alternative storage, disposal or destruction of the Goods.

#### **7. CUSTOMERS INDEMNITY**

- 7.1 The Customer shall indemnify and hold harmless the Company and the Company's sub-contractors against all claims and losses (and all costs and expenses reasonably incurred) in respect of which the Company, or its sub-contractors, are expressed to be liable under the Conditions and to the extent that any claim admissible under the Conditions shall exceed the limit of liability of the Company, its employee's, agents or sub contractors.
- 7.2 The Customer shall indemnify and hold harmless the Company, its employees, agents and sub-contractors against all claims and losses (and all costs and expenses) reasonably incurred relating thereto) occasioned by the nature or condition of the Goods gave to the extent that the Company, its employees, agents or sub-contractors may be liable under these Conditions.

#### **8. RIGHT OF EXAMINATION**

- 8.1 The Company may, but shall not be obliged to, break bulk and open packages and examine the Goods when Goods are presented and at any time thereafter for the purposes of determining whether or not the Goods are in the condition required under Condition 4.4.

#### **9. STORAGE**

In the absence of agreement by the Company for any special treatment of the goods pursuant to Condition 5 the Company:

- 9.1 May treat the Goods in such a way as in its opinion is best able to preserve them and the Company shall exercise reasonable skill and care in exercising its opinion but (save to the extent that Company may be liable under Condition 11) without responsibility for the suitability of the treatment selected; and
- 9.2 Shall be entitled to store in bulk all Goods of apparently similar nature received from the same Customer and shall not be required to identify individual consignments of Goods sorted. If the Customer requires the Company not to store the Goods in bulk then the Company shall (if prepared to comply) be entitled to a reasonable upward adjustment of its charges for complying with such requirement.

## **10. CHARGES**

- 10.1 The current charges are available from the Company's offices.
- 10.2 The Company may vary its charges at any time by giving a minimum of twenty one days written notice to the Customer.
- 10.3 Charges shall be payable on the expiry of any agreed credit period or, if so required by the Company before the removal of Goods. If no credit period has been agreed in writing by the Company than it shall be deemed to be 28 days from the date of the relevant invoices, or any shorter period that may be required by applicable statutory provisions.
- 10.4 Interest at 4% per annum over the base lending rate of Royal Bank of Scotland Bank PLC or such other bank as may be set out in the Regulations, from time to time calculated on a daily basis shall be payable on all overdue amounts both before and after judgement.
- 10.5 The Customer shall pay to the Company all sums immediately when due without reduction or deferment on account of any claim, counterclaim or set-off.
- 10.6 The Customer will be charged a reasonable proportion, calculated by the Company, of any expenses necessarily incurred by the Company in complying with the Prevention of Damage by Pests Act 1949 (as amended or re-enabled from time to time) or in complying with any other statutory duties imposed from time to time in relation to the Goods provided that if the Goods are the direct cause of introduction of pests into the store the whole of the expenses of complying with the said Act shall be reimbursed by the Customer.

## **11. LIMITATION OF LIABILITY**

- 11.1 The company shall not be liable for any loss or damage that occurs because of;
- (a) Actions or omissions by the Customer which directly or indirectly result in loss;
  - (b) Strike, lock out, industrial dispute or other labour disturbance;
  - (c) Storm, flood, fire (including arson) act of terrorism, act of war, riot, civil disturbance, explosion or mechanical breakdown including but not limited to electrical failures beyond the control of the Company provided that the company has exercised reasonable care and/or
  - (d) Any cause or event over which the company has to control and which the company is unable to prevent with the exercise of reasonable care and effort.
- 11.2 The Company shall not be liable for any loss or damage that occurs other than because of the Company's negligence, wilful misconduct or default or fraudulent acts or omission.
- 11.3 In no event shall the Company be liable or responsible for indirect, incidental, special or consequential loss, damage, loss of profit, revenue or goodwill or anticipate savings of the Customer or Owner or any other party howsoever caused, whether or not the Company was aware or should have been aware that such loss or damage may arise.
- 11.4 The Company shall have no liability for any claim made by the Customer unless such claim is presented in writing at the Company's offices within **7 days** of the date upon which the Customer became or should have become aware of the event giving rise to such claim.
- 11.5 The limitations set out in this Condition shall apply to death or personal injury caused by the negligence of the company or resulting from the wilful misconduct or default or fraudulent act or omission of the Company.
- 11.6 Except as expressly provided in these Conditions (and except where a person within the United Kingdom deals as a consumer within the meaning of the Unfair Contract Terms Act 1977) all other warranties, conditions and other terms implied by law are excluded.
- 11.7 In any event and subject to the rest of this Condition 11 and save where a higher limit is agreed in writing between the Company and the Customer, the Company liability to the Customer or the Owner arising out of or in connection with the services whether based in contract this (including negligence) arising from statute or otherwise shall never exceed in the case of claims for loss or damage to the Goods or any other Goods:
- (a) The value of the Goods or Goods lost or damaged; or
  - (b) £100 per metric tonne of gross weight of the Goods or Goods lost or damaged.
- whichever shall be the lesser.
- 11.8 The Company does not insure the Goods and the Customer shall be responsible for insuring;
- (a) The Goods against all risks to their full insurable value and
  - (b) Any liabilities to the Company arising out of the Conditions.

## **12. TRANSFER OF GOODS**

- 12.1 Subject to conditions 12.2 and 12.4 the Company will on the Owner's or the Customers behalf transfer the Goods to another party (\*Transferee\*) on receipt of written authorisation from the Owner or the Customer.
- 12.2 The Transfer of the Goods will only occur when the Company has received from the Transferee a written notification of the Transferee's acceptance of these Conditions and the regulations (together with any revised rate charging referred to in the note to this condition) stating that the transferee shall be bound as if he were the original Customer.
- 12.3 The Transferee/or the Owner/or the Customer shall pay to the Company the reasonable costs of transferring the Goods.
- 12.4 The Owner or Customer guarantees payment to the Company of any charges accruing in respect of the Goods during the period 14 days after the transfer and any lien against the Owner or Customer existing prior to the transfer shall remain exercisable.

(Note: Charges made to the Transferee will not necessarily be at the same rate as the charges to the original Customer)

### **13. SUB-CONTRACTORS**

13.1 The Company may engage the services of others within a reasonable distance of the Company's store for the purpose of fulfilling the Contract in whole or in part and may transfer at its own expense any goods between or within stores. The company contracts for itself and as agent of and trustee for its sub-contractors and any such sub-contractors shall be entitled to the benefit of these Conditions and the Regulations.

13.2 If the Customer requests that the Company arranges for another party to perform for the Customer any services other than the services it does so on the terms that the Company acts as the agent of the Customer for the provision of these services.

### **14. REMOVAL OF GOODS**

14.1 The Company may at any time give not less than 14 days written notice to the Customer requiring the Customer to remove the Goods.

14.2 If the Goods are not so removed then the Company shall be entitled after the expiration of such notice (or with immediate effect if the necessities of the case reasonably so require) to give less than 7 days written notice of the Company's intention to sell the Goods and deduct from the proceeds all outstanding charges, any interest due and the cost of disposal and upon the expiration of such further notice so to deal (accounting to the Customer for the net proceeds of sale, if any, after such deductions).

### **15. LIENS**

15.1 The Company shall have a general lien on the Goods whilst they are in the Company's possession for all sums due at any time from the Customer and shall be entitled to sell or dispose of the Goods as agent for and at the expense of the Customer and apply the proceeds in or towards payment of any such sums on 28 days notice in writing to the Customer.

15.2 When the Company accounts to the Customer for any balance remaining after payment of any sum due to the Company and the costs of sale or disposal the Company shall be discharged of any liability whatsoever in respect of the Goods.

### **16. NOTICES**

Notices pursuant to Conditions 14 or 15 will be in writing and will for all purposes be deemed to have been fully given and received three clear working days after posting (by pre paid letter by recorded delivery) and shall be sent to the registered office of the relevant party (in the case of a Company) or the last notified address (in any other instance).

### **17. DISPUTE**

Any dispute shall be referred to a single arbitrator to be agreed upon by the parties or in default of such agreement to be nominated by the president for the time being of the Institute of Arbitrators in accordance with the provisions of the Arbitration Act 1996 (as amended or re-enacted from time to time).

### **18. SEVERABILITY**

In any part of these conditions is judged by any competent court to be invalid or unenforceable the remaining part or parts shall continue in full force and effect.

### **19. ENTIRE AGREEMENT**

19.1 These Conditions and the Regulations set out the entire agreement between the Company and the Customer in relation to the matters to which they relate and the Customer hereby acknowledge that it has not relied upon any oral or written representations made to it by the Company any of its employees, representatives or agents.

19.2 The Customer irrevocably and unconditionally waives any right it may have to claim damages for any misrepresentation whether or not contained in these Conditions or for breach of any warranty not contained in these Conditions unless such misrepresentation or warranty was made fraudulently and/or to rescind any contract to which these Conditions apply.

### **20. GOVERNING LAW**

These Conditions and any Contract to which they apply shall be governed by and constructed in accordance with English Law.