

CIRCLE EXPRESS : CONDITIONS OF BUSINESS

Circle Express Limited ("the Carrier") is not a common carrier and accepts goods for carriage, storage or the performance of any other services subject to the Conditions of Business ("the Conditions") set out below which may only be varied in writing signed by a Director of the Carrier.

1. Definitions

In these Conditions :

- 1.1 - "Trader" means the customer who contracts for the services of the Carrier;
- 1.2 - "Contract" means any contract for the carriage and/or Storage of a Consignment or the performance of any other services agreed between the Trader and the Carrier;
- 1.3 - "Consignment" means goods (including any packing material and equipment associated therewith) in bulk or contained in one or more parcel, package or container, as the case may be, sent at one time in one load by or for the Trader from one address to another address and/or put into Storage with the Carrier;
- 1.4 - "Storage" means the temporary storage of any Consignment by the Carrier at the Carrier's premises;
- 1.5 - "Container loading" and "Container unloading" means all operations carried out by the Carrier in loading any Consignment into a shipping container or, as the case may be, unloading any Consignment from a shipping container, at the request of the Trader;
- 1.6 - "Cargo screening" means the checking by the Carrier of any Consignment prior to carriage or storage, using visual and/or electronic methods, at the request of the Trader;
- 1.7 - "Labelling" means the application of any labels or other markings to any Consignment by the Carrier, at the request of the Trader
- 1.8 - "Consignment Note" means a document, whether in paper or electronic form, prepared by the Trader or the Carrier setting out details of the Consignment and its intended carriage

2. Customers Obligations

- 2.1 - The Trader warrants that he is either the owner of the goods in any Consignment or is authorised by such owner to accept these Conditions on behalf of such owner;
- 2.2 - The Trader warrants that each article comprised in the Consignment has been properly described to the Carrier and that the Consignment has been properly marked, addressed and packaged so as to ensure at all times safe storage and transportation and sufficient to safeguard each article against all the risks of normal handling in the course of such storage and transportation.

3. Routes, Sub Contractors and Employees

- 3.1 - Unless otherwise agreed in writing, the method and route of the carriage shall be at the absolute and sole discretion of the Carrier;
- 3.2 - The Carrier may, unless otherwise instructed by the Trader before commencement of the carriage, sub-contract all or any part of performance of the Contract;
- 3.3 - The Carrier contracts for itself and as agent of and trustee for its employees, agents and sub-contractors and their employees and agents and every reference to "the Carrier" shall be deemed to include every such employee and agent and sub-contractor with the intention that they shall have the benefit of these Conditions.

4. Dangerous Goods

- 4.1 - If the Carrier agrees to accept dangerous goods for carriage and/or Storage and/or the performance of any other services, such goods must be accompanied by a full declaration of their nature and contents and be properly and safely packaged and labelled in accordance with any statutory regulations for the time being in force for carriage by road or, as the case may be, for Storage.
- 4.2 - Goods shall be construed as dangerous goods if either alone or in conjunction with any other goods of any description danger arises or there is a risk it may arise during the carriage or Storage of such goods or during their collection or delivery.

5. Loading, Unloading and Transit

- 5.1 - The Carrier shall be under no obligation to provide appliances, plant, power or labour which in addition to the Carrier's driver may be required to load or unload the Consignment;
- 5.2 - The transit shall commence when the Carrier takes possession of the Consignment whether at the point of collection or at the Carrier's premises;
- 5.3 - The transit shall be completed when the Carrier tenders the Consignment on the carrying vehicle at the address specified for delivery in the Contract;
- 5.4 - Once the transit is complete the Consignment shall be and remain at the sole risk of the Trader;
- 5.5 - Should the Trader or consignee ask the driver to take the Consignment into their premises, they do so at their own risk and the Trader shall indemnify the Carrier against all claims and demands whatsoever arising by reason of the Carrier's compliance with the Trader's or consignee's request;
- 5.6 - The Trader or consignee shall not give any instructions to the driver requiring delivery of the Consignment or part of it to an address other than that specified in the Contract. Should such instructions nevertheless be given and followed the Trader shall indemnify the Carrier against all claims, demands and expenses which arise by reason of the Carrier's compliance with the Trader's or consignee's instructions;
- 5.7 - The Trader shall be liable for the cost (calculated at the Carrier's hourly rate) to the Carrier of unreasonable detention of vehicles and drivers at the Trader's or consignee's premises. The Carrier's decision as to when detention becomes unreasonable shall be final.

6. Consignment Notes

- 6.1 - The Carrier shall, if so required, sign a Consignment Note prepared by the Trader acknowledging the receipt of the Consignment but such document shall not 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;
- 6.2 - Unless otherwise agreed by the Carrier, any Consignment handed to the Carrier without the gross weight being stated on the Consignment Note shall be charged at an estimated or actual weight at the Carrier's discretion;
- 6.3 - The endorsement of the words "not checked" or "unexamined" (or different words to the same effect) on a Consignment Note shall not render the Carrier liable for any shortage or damage subsequently discovered. The proof of delivery (POD) shall remain the property of the Carrier at all times and will only be disclosed upon specific request;
- 6.4 - Twelve months after delivery the Carrier may destroy the Consignment Note and thereafter its absence shall not be held against the Carrier;
- 6.5 - The Trader warrants that any description of weight shall be deemed to be the gross weight of the Consignment for any purpose for which the Carrier may rely on such description;
- 6.6 - Any costs, fines or expenses resulting from any misdescription of the Consignment by or on behalf of the Trader shall be reimbursed to the Carrier by the Trader on demand.

7. Carriers Charges

- 7.1 - The Trader will be liable for all charges as set out in the Carrier's current Rates and Information sheet unless variations are agreed in writing by a Director of the Carrier before commencement of the carriage or Storage or any other services to be performed by the Carrier.
- 7.2 - Consignments will be charged at a rate of 6 cubic metres equals 1000 kilos or the actual gross weight (whichever is the greater) unless some other charging basis is agreed in writing by a Director of the Carrier before commencement of the carriage or Storage;
- 7.3 - Deliveries to docks, wharfs and container bases are only accepted by prior agreement and may be subject to surcharge;
- 7.4 - The charges rendered by the Carrier (including VAT) shall be paid by the Trader in full when due in accordance with clause 7.7 below, without any deductions or deferment in respect of any claim, counterclaim, set-off or otherwise;
- 7.5 - In the event that any of the Carrier's charges remain outstanding after the due date for payment the Carrier shall be entitled to charge the Trader interest calculated in accordance with the Late Payment of Commercial Debts (Interest Act 1998);
- 7.6 - Value Added Tax shall, where required, be added to all the Carrier's charges;
- 7.7 - Payment is due from the Trader within 20 days of the end of the month of the date of the Carrier's invoice.

8. Cash on Delivery

- Instructions to collect Cash on Delivery (COD) from a consignee as payment for any Consignment, goods or charges, are only accepted by the Carrier subject to the following provisions :-
- a) Cheques only will be accepted unless agreed by the Carrier.
 - b) Cheques must only be made out to the Trader or consignor (or any other party if previously specified by the Trader).
 - c) The consignment note or any other written delivery instructions must be clearly marked to show the value of the COD to be collected and the name of the payee.
 - d) The Carrier shall not be responsible for ensuring the validity of any cheque or other instrument by which payment is purported to be made by a consignee and accepts no liability arising from any such purported payment being invalid.
 - e) In any event and notwithstanding the provisions of paragraph 8 (d) above the Carrier will only accept liability for failure to collect COD in accordance with the limits of liability set out in these Conditions.
 - f) Where a COD collection is, wholly or in part, in respect of the Carrier's charges the Trader shall pay the Carrier's charges if the consignee fails to pay the Carrier after a reasonable time.

9. Liability for Loss and Damage

- 9.1 - The Trader shall be deemed to have elected to accept the terms set out in this Condition unless, before the commencement of carriage or Storage or any other services performed by the Carrier, the Trader has agreed in writing that the Carrier shall not be liable for any loss or misdelivery of 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;
- 9.2 - The Carrier will not be liable for loss, misdelivery of or damage to livestock, bullion, money, securities, stamps, precious metals or precious stones;
- 9.3 - Subject to these Conditions the Carrier shall be liable for any loss or misdelivery of or damage to the Consignment occasioned during carriage or Storage or the performance of any other services by the Carrier unless the same has arisen from, and the Carrier has used reasonable care to minimise the effect of:
 - (a) act of God;
 - (b) any consequences of war, invasion, act of foreign enemy, hostilities, (whether war be declared or not), civil war, rebellion, insurrection, military or usurped power or confiscation, requisition, or destruction or damage to property by or under the order of any government or public or local authority;
 - (c) seizure or forfeiture under legal process;
 - (d) error, act, omission, mis-statement or misrepresentation by the Trader or other owner of the goods or by servants or agents of either of them;
 - (e) inherent liability to wastage in bulk or weight, latent or inherent defect or vice or natural deterioration of the goods;
 - (f) insufficient or improper packing;
 - (g) insufficient or improper labelling or addressing;
 - (h) riot, civil commotion, strike, lockout, general or partial stoppage or restraint of labour from whatever cause;
 - (i) the consignee not taking or accepting delivery within a reasonable time after the Consignment has been tendered.

10. Liability and Limitation

- 10.1 - In the event of the Carrier being liable for any loss of or damage to a Consignment or part of it, or a failure to collect COD, the liability of the Carrier shall not exceed a sum calculated at the rate of two Special Drawing Rights (as defined by the International Monetary Fund) per kilogramme of the gross weight of the Consignment lost or damaged or in respect of which there has been a failure to collect COD or the actual value of the Consignment lost or damaged or COD amount, whichever shall be the lower;
- 10.2 - The Carrier shall be entitled to require proof of the weight and value of the Consignment or any part thereof in respect of which the Carrier is alleged to be liable;
- 10.3 - The Carrier shall not be liable for any claim less than the sum of £10.00;
- 10.4 - The Carrier shall not be liable for any loss or damage to glass products or products of a brittle or fragile nature unless the Carrier has specifically agreed with the Trader in writing before the transit commences to accept such liability;
- 10.5 - The Carrier shall not be liable for any indirect or consequential loss or damage however arising and including loss of market in any amount exceeding the Carrier's charges in respect of the Consignment or the amount of the Trader's proven loss whichever is the lower;
- 10.6 - In respect of any claim against the Carrier arising in connection with Container loading or Container unloading, Cargo screening or Labelling, the Carrier will be liable only to the extent of the Trader's proven loss or to a maximum of 20,000 Special Drawing Rights (as defined by the International Monetary Fund) whichever is the lower
- 10.7 - The Carrier will accept liability in excess of that provided for in this Condition 10 subject to a prior written agreement with the Trader which will provide for payment by the Trader of the increased charges of the Carrier applicable.

11. Insurance

These Conditions identify the maximum liability accepted by the Carrier, and insurance for the full value of the Consignment should be taken out by the Trader.

12. Indemnity to the Carrier

The Trader shall indemnify the Carrier against:

- (a) all consequences suffered by the Carrier (including but not limited to claims, demands, proceedings, fines, penalties, damages, costs, 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 Trader or other owner of the Consignment or by any servant or agent of either of them, or due to insufficient or improper packing, labelling or addressing of the Consignment or fraud as referred to in Condition 16;
- (b) all claims and demands whatever by whoever made in excess of the liability of the Carrier under these Conditions;
- (c) all losses suffered by and claims made against the Carrier in consequence of 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 Trader as such;
- (d) all claims made upon the Carrier by HM Revenue and Customs in respect of dutiable goods consigned in bond whether or not transit has ended or been suspended.

13. Time Limits for Claims

- 13.1 - In the event of damage to the whole or any part of the Consignment the Trader must give notice to the Carrier within three days other than on the consignment note and claim in writing within seven days of the delivery of the Consignment or (as the case may be) the end of any period of storage or the completion of any other services performed by the Carrier;
- 13.2 - In the event of loss of the whole Consignment or part thereof the Trader must claim in writing other than on a consignment note within twenty eight days of the commencement of the carriage or (as the case may be) the end of any period of storage or the completion of any other services performed by the Carrier;
- 13.2 - 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 of commencement of the carriage or (as the case may be) the end of any period of storage or the completion of any other services performed by the Carrier.

14. General Lien

- 14.1 - The Carrier shall have a general lien against the Trader and the owner on any Consignment and/or the documents that relate to it, or any part thereof, for the Carrier's charges in respect of that Consignment or any other Consignment and for any monies due to the Carrier from the Trader however arising;
- 14.2 - If the monies due are not paid within 14 days of the Carrier having served notice of its intention, the Carrier may sell the Consignment or any part thereof and apply the proceeds towards the monies due and the expenses of the sale, without being liable for loss.

15. Computation of Time

- 15.1 - In the computation of any period of time provided by these Conditions or the Carrier's current Rates and Information sheet Saturdays, Sundays and all statutory Public Holidays are excluded save in respect of the one year suit time specified in Condition 13 above;
- 15.2 - Time will not be of the essence of the Contract unless specifically agreed by a Director of the Carrier in writing.

16. 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 Trader or the owner of the Consignment 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, but in any event any liability of the Carrier shall be determined in accordance with Conditions 9 and 10 above.

17. Impossibility of Performance

The Carrier shall be relieved of its obligation to perform the Contract to the extent that the performance thereof is prevented by the default of the Trader, fire, weather conditions, industrial dispute, labour disturbance or other cause beyond the reasonable control of the Carrier.

18. Governing law and jurisdiction

- 18.1 - these Conditions, and all contracts to which they apply, shall be governed by English law;
- 18.2 - any dispute arising in relation to these conditions, or in relation to any contract to which these conditions apply, shall be subject to the exclusive jurisdiction of the English Courts.

