

# TERMS AND CONDITIONS (SIL)

## 1. DEFINITIONS AND INTERPRETATIONS

- 1.1 In these Conditions, the following words and expressions have the following meanings unless the context otherwise requires:
- "Ancillary Services"** includes services of arranging for the storage, warehousing, collection, delivery, local transportation, insurance, customs clearance, packing, unpacking and other handling of goods and other services relating or ancillary to the Principal Services.
  - "Company"** means F&S Company Limited.
  - "Conditions"** means the entire undertakings, terms, conditions and clauses embodied herein and includes the Company's terms and conditions printed on the front of the Shippers' Instructions and of the Company's form of transport document (including the Company's house air waybill or house bill of lading).
  - "Customer"** means any person at whose request or on whose behalf the Company undertakes any business, or provides advice, information or services, and includes the party named as 'shipper' or 'consignor' on the front of the Shippers' Instructions and of the Company's form of transport document (including the Company's house air waybill or house bill of lading).
  - "FIATA"** means the International Federation of Freight Forwarders Associations.
  - "FIATA Air Waybill"** means the form of neutral air waybill together with the conditions governing such air waybill (1996) published by FIATA and recommended by FIATA for use by forwarders who choose to use the capacity of a contracting carrier.
  - "Shippers' Instructions"** means any of the Company's form of forms of shipping instructions or orders containing the Customer's instructions to the Company.
  - "Hague Rules 1924"** means the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading signed at Brussels on 25th August 1924.
  - "Hague-Visby Rules"** means the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading signed at Brussels on 25th August 1924 (as amended by the Protocol signed at Brussels on 23rd February 1968).
  - "Instructions"** means statements of the Customer's specific requirements and includes the instructions specified on the front of the Shippers' Instructions and of the Company's form of transport document (including the Company's house air waybill or house bill of lading).
  - "Principal Services"** means the services of arranging for the transportation or carriage of goods by air and/or sea.
  - "Services"** means the services to be provided by the Company and includes the Principal Services and the Ancillary Services.
  - "The Owner"** means the owner of the goods (including any packings, containers or equipment other than those provided by the Company or otherwise) and includes the person to whom the goods are consigned and any other person who is or may become interested in them and including the consignee named on the front of the Shippers' Instructions and of the Company's form of transport document (including the Company's house air waybill or house bill of lading).
  - "Warsaw Convention"** means the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw on 12th October 1929 or that Convention as amended at The Hague, 28th September 1955, whichever may be applicable.
- 1.2 The Company is not bound by any references to these provisions as respectively amended or re-enacted or as their application is modified by other provisions from time to time and shall include any provisions of which they are re-enactments (whether with or without modification).
- 1.3 Unless the context requires otherwise, words importing the singular include the plural and vice versa, words importing a gender include every gender and references to persons include any body corporate or unincorporated and references to Clauses are to Clauses of these Conditions. The headings are inserted for convenience only and shall not affect the construction of these Conditions.
- 1.4 All representations, warranties, undertakings, agreements, covenants, obligations, liabilities, guarantees and indemnities expressed in these Conditions or otherwise implied to be made given or assumed by the Customer shall be deemed to be made, given or assumed by the Customer and the Owner jointly and severally.
- 1.5 No omission or delay on the part of the Company in exercising its rights shall operate as a waiver thereof, nor shall any single or partial exercise by the Company of any such right preclude the further or other exercises thereof or the exercise of any other right which it has. The rights and remedies of the Company provided in these Conditions shall be cumulative and not exclusive of any rights or remedies otherwise provided by law.
- 1.6 Except to the extent provided in writing and signed by an authorized officer of the Customer and by an authorized officer of the Company, all deeds and contracts are void and unenforceable, the validity, legality and enforceability of the remaining provisions of these Conditions shall not in any way be affected or impaired thereby.

## 2. APPLICATION OF THE CONDITIONS/LEGISLATION COMPULSORILY APPLICABLE

- 2.1 All and any business undertaken by the Company is transacted subject to these Conditions and each of these Conditions shall be deemed to be incorporated in and to be a condition of any agreement between the Company and the Customer. All other terms and conditions are hereby excluded. Should any Customer wish to contract with the Company otherwise than subject to these Conditions, special arrangements can be made subject to revised charges having been agreed and having been paid in advance by the Customer to the Company and subject to such arrangements having been reduced in writing and signed by an authorized officer of the Customer and by an authorized officer of the Company. Save as aforesaid, no agent or employee of the Company has the Company's authority to waive or vary any of these Conditions.
- 2.2 All and any advice information or services provided by the Company gratuitously is provided on the basis that the Company will not accept any liability whatsoever therefor, whether in tort or bailment or otherwise.
- 2.3 If any legislation is compulsory applicable to any business undertaken, these Conditions shall, as regards such business, be read as subject to such legislation and nothing in these Conditions shall be construed as a surrender by the Company of any of its rights or remedies or immunities or as an increase of any of its responsibilities or liabilities under such legislation, and, if any part of these Conditions be repugnant to such legislation to any extent, such part shall as regards such business be overridden to that extent and no further.

## 3. CONTRACTUAL STATUS OF CUSTOMER

- The Customer entering into any transaction or business with the Company hereby expressly warrants to the Company that the Customer is either the Owner or the authorized agent of the Owner and that it is authorized to accept and is accepting these Conditions not only for itself but also for the Owner. Where the Customer acts as the agent of the Owner, the Customer also accepts personal liability to the Company (but without prejudice to any of the remedies of the Company against the Owner) and on behalf of any such parent, subsidiary or associated company and any such company shall be entitled to the benefit of these Conditions.
- 4.3 It shall not be construed that any Services are provided by the Company other than as an agent of the Customer by reason only of any one or more of the following:
- the Company issuing its own transport document including its house air waybill or air consignment note or house bill of lading or freight forwarder cargo receipt;
  - the Company charges an inclusive price;
  - the Customer's goods are forwarded, carried, transported, stored or otherwise handled together or in consolidation with other goods.

## 4. CONTRACTUAL STATUS OF THE COMPANY

- 4.1 Save as provided in Clause 7, Services are provided by the Company as agents on behalf of its Customers, except that, subject to Clause 16.2, the Company itself may provide (instead of arranging to provide) the Ancillary Services.
- 4.2 The Company shall be entitled to perform any of its Services or exercise any of its powers or discretions hereunder by itself or its parent, subsidiary or associated companies. In the absence of agreement to the contrary any contract to which these Conditions apply is made by the Company on its own behalf and for and on behalf of any such parent, subsidiary or associated company and any such company shall be entitled to the benefit of these Conditions.
- 4.3 It shall not be construed that any Services are provided by the Company other than as an agent of the Customer by reason only of any one or more of the following:
- the Company issuing its own transport document including its house air waybill or air consignment note or house bill of lading or freight forwarder cargo receipt;
  - the Company charges an inclusive price;
  - the Customer's goods are forwarded, carried, transported, stored or otherwise handled together or in consolidation with other goods.

## 5. COMPANY'S AUTHORITY

- 5.1 The Company is hereby expressly authorized by the Customer as hereinafter provided.
- 5.2 The Company is authorized to act on behalf of the Customer to select, engage and enter into contract or arrangement (whether in the name of the Customer or otherwise) with any carriers, truckmen, forwarders, receiving or delivery agents, warehousemen, packers and other persons (together "3rd Parties") and to do so in respect of such transaction or business the Company is entitled to enforce its rights and remedies:
- for the carriage of the goods by any route or any carrier;
  - for the storage, packing, unpacking, (local) transportation, transshipment, loading, unloading or other handling of the goods by any person at any place or places and for any length of time;
  - AND to do other acts or enter into other contracts or arrangements for any other purposes pursuant or relating or incidental to the Customer's instructions.
- 5.3 The Company is authorized (but is not obliged) to depart or deviate from the Customer's instructions in any respect if in the opinion of the Company such departure or deviation is necessary or desirable in the Customer's interests or is otherwise expedient.
- 5.4 The Company is authorized to enter into contract as a principal with the Customer for the carriage, storage, packing, unpacking, (local) transportation, transshipment, loading, unloading or other handling of the goods. The Company's sole obligation is to procure contracts for the carriage, storage, packing, unpacking, (local) transportation, transshipment, loading, unloading or other handling of goods by other persons.
- 5.5 Without prejudice to the generality of the foregoing, the Company is authorized to agree with any 3rd Party the charges payable to such 3rd Party without reference to or further authorization from the Customer, it being agreed that the difference between the charges payable by the Company to the 3rd Parties and the charges payable by the Customer to the Company's commission or remuneration or profit. The Customer waives any and has no right of enquiry of the charges payable to the 3rd Party(ies) and the Company is not under any duty to account to the Customer for the Company's commissions, remunerations or profits.
- 5.6 The Company is authorized (but is not obliged) to inspect or arrange for the goods to be inspected.
- 5.7 The Company is not obliged to arrange for the Customer's goods to be carried, forwarded, packed, transported, stored or handled separately. The Company is authorized (but is not obliged) to consolidate or arrange to be consolidated the goods of the Customer with other goods.
- 5.8 The Customer expressly agrees to be bound in all respects by any act or contract or arrangement done or entered into by the Company pursuant to the aforesaid authorizations.

## 6. WHERE THE COMPANY CONTRACTS (ON BEHALF OF THE CUSTOMER) IN ITS OWN NAME

- 6.1 Where the Company enters into a contract on behalf of the Customer in its own name with any 3rd Party for any purposes, the Company is not itself a carrier for the purposes of the Carriage by Air Ordinance or the Carriage of Goods by Sea Ordinance or for any other purposes, nor does the Company make or enter into contract as a principal with the Customer for the carriage, storage, packing, unpacking, (local) transportation, transshipment, loading, unloading or other handling of the goods. The Company's sole obligation is to procure contracts for the carriage, storage, packing, unpacking, (local) transportation, transshipment, loading, unloading or other handling of goods by other persons.
- 6.2 In addition and without prejudice to the exceptions and limitations contained in these Conditions, the Company shall be entitled to the benefit of all exceptions and limitations in favour of any 3rd Party expressly contained or implied in the Company's contract with such 3rd Party. The Customer shall not seek to impose on such 3rd Party any liability greater than that accepted by such 3rd Party under such contract.

## 7. WHERE THE COMPANY CONTRACTS AS PRINCIPAL

- 7.1 The Company in its absolute discretion may, under certain circumstances notwithstanding the terms and conditions contained herein, issue a FIATA transport document (including a bill of lading or bill of lading receipt) when such a document is issued under the terms and conditions embodied in it shall be paramount in governing the relationship between the Customer and the Company in so far as those terms and conditions are inconsistent with or repugnant to these Conditions.
- 7.2 Where, in respect of a transaction, the Company is held by a court of competent jurisdiction to be a carrier, the Company shall be entitled to all the rights, immunities, limitations and defenses available to a carrier under any applicable law or legislation, and these Conditions shall be overridden to the extent that they are inconsistent with such rights, immunities, exceptions and limitations, but without prejudice to the operation of Clause 2.3.
- 7.3 If the Company is or is deemed to be a carrier in respect of a carriage of goods by air, the following notices are hereby given:
- "If the carriage involves an ultimate destination stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers in respect of loss of damage or delay to cargo."
- "The first carrier's name may be abbreviated on the face of the air waybill, the full name and its abbreviation being set forth in such carrier's tariffs, conditions of carriage, regulations and timetables. The first carrier's address is the airport of departure shown on the face of the air waybill. The agreed stopping places (which may be altered by carrier in case of necessity) are those places, except the place of departure and the place of destination, set forth on the face of the air waybill or shown in carrier's timetables as scheduled stopping places for the route. Carriage to be performed under the air waybill by several successive carriers is regarded as a single operation."
- 7.4 If the Company itself performs (instead of arranging for the performance of) any of the Ancillary Services, the Company is entitled:
- to perform any local transportation of the goods by any route or by any means;
  - to store, pack, unpack, load, unload or otherwise handle the goods at any place or places and for any length of time;
  - AND to do all such other acts as may be necessary or incidental thereto in the absolute discretion of the Company. The Company may (but is not obliged to) depart or deviate from the Customer's instructions if in the opinion of the Company such departure or deviation is necessary or desirable in the Customer's interests or is otherwise expedient.
- 7.5 Notwithstanding any other provisions of these Conditions, the Company is never a common carrier and may in its sole discretion refuse to offer its services to any person.

## 8. CUSTOMER'S FURTHER WARRANTIES

- All descriptions, values and other particulars of the goods furnished to the Company for customs, consular and other purposes are true, complete and accurate, it being the duty of the Customer to provide such information to the Company and to ensure that such information is true complete and accurate.
- (a) Proper packing etc.
- All the goods, the subject of any Service provided by the Company, have been properly and sufficiently packed or prepared, and that the Company has no liability for any loss of or damage to goods which are improperly or insufficiently packed or prepared, no matter how such loss or damage is caused.
- (b) Transport Unit
- Where the goods delivered by or on behalf of the Customer are already carried in or on containers, trailers, flats, lifts, railway wagons, tanks, igloos, or any other unit load device (each hereafter individually referred to as "transport unit") then, the transport unit is in good condition, is suitable to carry the goods loaded therein or thereon, and is suitable for the intended carriage and other handling; and the goods are suitable for carriage and other handling in or on the transport unit and has been properly and competently packed or loaded in or on the transport unit.
- (c) Description of Goods
- All descriptions, values and other particulars of the goods furnished to the Company for customs, consular and other purposes are true, complete and accurate, it being the duty of the Customer to provide such information to the Company and to ensure that such information is true complete and accurate.
- (d) Fitness of Goods
- In addition and without prejudice to any provisions of Clauses 10 and 11, the goods are fit and suitable for the carriage (international as well as local), storage, packing, unpacking and other handling in accordance with, pursuant or related or incidental to the Customer's instructions.
- (e) Delivery of Goods
- The consignee or other person entitled to the delivery of the goods shall take delivery of the goods upon their arrival at destination and shall pay all necessary charges, taxes and duties and shall comply with all necessary formalities and procedures.

## 9. INDEMNITIES

- 9.1 The Customer shall save harmless and indemnify and keep indemnified the Company from and against all claims, liabilities, losses, damages, costs and expenses (including without limitation all duties, taxes, imposts, levies, deposits, fines and outlays of whatsoever nature levied by any authority) arising out of the Company acting in accordance with the Customer's instructions, or arising from a breach of warranty or obligation by the Customer, or arising from the Customer's inaccurate or incomplete or ambiguous information or instructions, or arising from the negligence of the Customer or Owner.

- 9.2 Advice and information, in whatever form as may be given by the Company, are provided by the Company for the Customer only and the Customer shall save harmless and indemnify and keep indemnified the Company from and against all claims, liabilities, losses, damages, costs and expenses arising out of any other person relying on such advice or information. Except under special arrangements previously made in writing, advice or information which is not related to specific instructions accepted by the Company is provided gratuitously and without liability and Clause 2.2 is applicable.
- 9.3 The Customer undertakes that no claim shall be made against any officer, servant, agent or sub-contractor of the Company which imposes or attempts to impose upon them any liability in connection with any services provided or to be provided by the Company. If any such claim should nevertheless be made the Customer shall indemnify the Company against all consequences thereof. Without prejudice to the foregoing every such officer, servant, agent or sub-contractor shall have the benefit of all provisions herein benefiting the Company as if such provisions were expressly for his or its benefit. For the foregoing purposes, the Company contracts for itself as well as agents for all the aforesaid persons.
- 9.4 The Customer shall defend, indemnify and hold harmless the Company from and against all claims, costs and demands whatsoever and by whomsoever made or preferred in excess of the liability of the Company under the terms of these Conditions, and without prejudice to the generality of the foregoing this indemnity shall include (without limitation) all claims, costs and demands arising from or in connection with the negligence of the Company, its officers, servants, agents or sub-contractors.
- 9.5 The Customer shall defend, indemnify and hold harmless the Company in respect of any general average or any claims of a general average nature which may be made on the Company and the Customer shall provide such security as may be required by the Company in this connection.

## 10. DANGEROUS GOODS ETC.

Except under special arrangements previously made in writing, the Customer warrants that the goods are not goods (or consist of goods) included in the Dangerous Goods (Application and Exemption) Regulations of the Laws of Hong Kong Cap. 295 or any modification thereof or the IATA Dangerous Goods Regulations prevailing at the time the Company confirms acceptance of the Customer's instructions, nor are goods (or consist of goods) of comparable hazard, nor are goods (or consist of goods) otherwise likely to cause damage. Should the Customer nevertheless deliver any such goods to the Company or cause the Company to accept or handle or deal with any such goods otherwise than under special arrangements previously made in writing, then whether or not the Company is aware of the nature of such goods, the Customer shall be liable for all expenses losses or damages whatsoever caused in connection with the goods or any part thereof (including without limitation any loss or damage or non-delivery or mis-delivery of the Dangerous Goods (Application and Exemption) Regulations or any modification thereof, or are or become goods (or consist of goods which are or become goods) which are otherwise likely to cause damage. A copy of the prevailing IATA Dangerous Goods Regulations is available for inspection by the Customer upon request. If such goods are accepted under arrangements previously made in writing, they may nevertheless be destroyed, or otherwise dealt with in connection with the goods or any part thereof (including without limitation any loss or damage or non-delivery or mis-delivery of the Dangerous Goods (Application and Exemption) Regulations or any modification thereof, or are or become goods (or consist of goods which are or become goods) which are otherwise likely to cause damage. A copy of the prevailing IATA Dangerous Goods Regulations is available for inspection by the Customer upon request. 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