



**CONDITIONS  
OF  
CARRIAGE  
PROVIDED  
FOR THE  
FORTEC NETWORK**

FORTEC DISTRIBUTION NETWORK whose registered office is at Pall-Ex House, Victoria Road, Ellistown, Leicestershire, United Kingdom, LE67 1FH ("the Company") accepts goods for carriage and agrees to perform other services subject to the Conditions of Contract set out below.

## **1.0 Definitions**

In these conditions (the "Conditions"):

- 1.1 "Consignment" means goods on a Pallet or any number of Pallets sent at one time in one load by or for the same Customer from one address to one address.
- 1.2 "Contract" means the contract for the provision of the Services between the Company and the Customer incorporating these Conditions.
- 1.3 "Customer" means any person entering into a Contract with the Company for the carriage or storage of a Consignment or Consignments using the Company's Services.
- 1.4 "Dangerous Goods" means goods included in the list of Dangerous Goods as defined in the Classification, Packaging and Labelling of Dangerous Substances Regulations 1984, the Classification and Labelling of Explosives Regulations 1983, the Radioactive Substances (Carriage by Road) (Great Britain) Regulations 1974, the Packaging of Explosives for Carriage Regulations 1991, the Carriage and Explosives by Road Regulations 1996 including any other relevant legislation or regulations together with any amendments thereto, or means goods which present a comparable hazard.
- 1.5 "International Services" means Contracts falling within Article 1 of the Convention on the Contract for the International Carriage of Goods by Road ("CMR") May 1956 Geneva as set out in the Schedule to the Carriage of Goods by Road Act 1965.
- 1.6 "Pallet" means an item or items placed on a wooden or plastic board containing either goods in bulk or any number of small containers with a maximum weight of:
  - 1.6.1 300 kgs per Q type pallet
  - 1.6.2 500 kgs per A type pallet
  - 1.6.3 1250 kgs per B and all C type pallets
- 1.7 "Services" means the carriage of a Consignment or Consignments agreed upon by the Company and the Customer and/or the storage of goods by the Company or the provision of other services agreed upon by the Company and the Customer.
- 1.8 "Transit" means the time commencing when the Company takes possession of the Consignment at the point of collection or at the Company's premises and subject to Condition 8 terminating at the moment the Consignment is delivered or tendered at the usual place of delivery at the consignee's address within the customary delivery hours of the District.

## **2.0 Agreement**

The Company agrees, subject to the Customer's observance at all times of these Conditions, to provide the Services.

## **3.0 Parties and Sub-Contracting**

3.1 The Company shall be entitled to appoint agents or sub-contractors to perform all or any part of the Services and the Company enters into the Contract for itself and on behalf of such agents and/or sub-contractors.

3.2 If the Customer enters into the Contract in relation to any Consignment which is not the Customer's own unencumbered property the Customer shall be deemed for all purposes to be the agent of the owner or other interested party and to have the authority of the owner or other interested party to enter into the Contract.

3.3 The carriage of Consignments by rail, sea, inland waterway or air is arranged by the Company as a fully authorised agent of the Customer and shall be subject to the conditions of the rail, shipping, inland waterway or air carrier contracted to carry the Consignments for the Customer.

3.4 The delivery of Consignments by the Company to a freight forwarder to facilitate onward carriage by rail, sea, inland waterway or air is arranged by the Company as a fully authorised agent of the Customer and shall be subject to the conditions of the freight forwarder contracted to carry the Consignment for the Customer.

## **4.0 Despatch and Receipt of Consignments**

4.1 The Customer shall ensure that every Consignment and part of a Consignment shall be addressed and labelled in accordance with the Company's requirements.

4.2 The Company shall, if so required, sign a document prepared by the Consignor acknowledging receipt of the Consignment but no such document shall be evidence of the condition or correctness of the declared nature, quantity or weight of the Consignment at the time it is received by the Company.

## **5.0 Loading and Unloading**

5.1 Unless a Director of the Company agrees otherwise in writing:

5.1.1 On collection or delivery at a sender's or consignee's premises the Company shall be under no obligation to provide any plant, power or labour for loading or unloading;

5.1.2 The Company's servants and/or employees have no authority to give assistance other than under supervision in the loading and unloading at the usual place of collection or delivery;

5.1.3 Consignments requiring special appliances for unloading are accepted for carriage or storage only on the condition that the Customer has duly ascertained that such appliances are available at destination.

5.2 The Company shall be under no liability whatsoever to any Customer for any damage in relation to the loading and unloading of goods howsoever caused, save and insofar as that damage is caused by the negligence of the Company or its employees during transit.

## **6.0 Undelivered or Unclaimed Goods**

6.1 Where for any reason whatsoever the Company is unable to convey the Consignment to the address to which it is consigned, or to effect delivery at the said address:

6.1.1 The Company shall endeavour to communicate with the Customer and request a new address to which the Consignment can be delivered in the country in which the Consignment is then lying;

6.1.2 If the Company is unable to communicate with the Customer within a reasonable time, or if it is not provided with a new address for delivery by the Customer within a reasonable time, the Company may deal with the goods in the manner described in Condition 10.2. Prior to any disposal or destruction in accordance with Condition 10.2 the goods shall be held solely at the risk of the Customer.

## **7.0 Dangerous Goods**

7.1 The Company shall not accept Dangerous Goods for carriage or storage unless:

7.1.1 A Director of the Company agrees in writing to accept them; and

7.1.2 The goods are classified, packed and labelled in accordance with the statutory regulations for the carriage or storage of the goods.

7.2 The Customer shall indemnify the Company against all actions, claims, demands, losses, costs and expenses arising as a result of a breach of this Condition by the Customer; its servants or agents.

## **8.00 Transit**

8.1 Transit shall be deemed to end when:

8.1.1 The goods are held by the Company at some place other than the destination at the request of or for the convenience of the Customer; or

8.1.2 The Customer or Consignee refuses or is unable to take delivery at the destination, or

8.1.3 The goods are detained for Customs purposes; or

8.1.4 In the case of goods held by the Company awaiting order or collection, the goods are not called for or removed within a reasonable time.

## **9.0 Payment and Pricing**

- 9.1 Payment of the Company's charges for provisions of the Services is due 30 days from the date of the Company's invoice. The charges shall be paid without prior demand and no payment shall be considered made until it is received by the Company.
- 9.2 A claim, counterclaim or a set off shall not be the reason for deferring or withholding payment of monies otherwise due to the Company.
- 9.3 The Company's charges are exclusive of Value Added Tax, which will be paid by the Customer at the rate and in the manner for the time being prescribed by law.
- 9.4 If full payment is not made by the due date, the Company shall be entitled to charge interest on the outstanding amount at a rate of 4% above HSBC Plc's base rate accruing daily.
- 9.5 The Company shall be entitled at any time and from time to time to increase the Company's charges by giving to the Customer not less than fourteen days prior written notice.
- 9.6 Except when the quotation states otherwise, the Company shall be entitled to impose a surcharge when the height of the Pallet exceeds:
- 9.6.1 0.6m in the case of a Q type pallet
  - 9.6.2 1.0m in the case of an A type pallet
  - 9.6.3 2.2m in the case of a B or C type pallet
- 9.7 The Company reserves the right to charge the Customer £5 for supplying any document proving delivery of any Consignment.
- 9.8 Where a Consignment is not ready for collection at the place and time agreed, the Company shall be entitled to cancel the collection, but shall be entitled to make a charge as if the collection had in fact been made.
- 9.9 The Customer shall be liable for any costs incurred by the Company as a consequence of the Customer's unreasonable detention of vehicles, containers, sheets, pallets and similar equipment but the Company's rights against any other person shall remain unaffected.

## **10.0 Lien**

- 10.1 The Company shall have a lien on all goods carried for the Customer for any amount due to the Company whether pursuant to the Contract or otherwise and for the cost of recovering the same.
- 10.2 If the amounts owing to the Company in respect of which it has a lien are not satisfied within a reasonable time of the commencement of Transit, the Company shall be at full liberty to:
- 10.2.1 Sell the goods either privately or by auction and to apply the proceeds of any such sale in or towards any monies owing to the Company and the expense of the sale and shall account to the Customer for the balance remaining if any; or
  - 10.2.2 Destroy the goods if any sale under Condition 10.2.1 is impractical in the opinion of the Company due to the value or saleability of the goods in question, or otherwise, and such sale or destruction as the case may be shall be a full discharge of any liability of the Company in respect of the goods.

## **11.0 Liability**

- 11.1 Subject to these Conditions, the Company shall be liable for:

Loss of or physical damage to any part of a Consignment occurring during Transit unless the Company can prove that such loss or damage has arisen from:

- 11.1.1 Act of God;
- 11.1.2 Any consequence 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, destruction of or damage to property by or under the order of any Government or public or local authority, restraint of prices (including administrative or governmental action);
- 11.1.3 Lightning or explosion;
- 11.1.4 Seizure under legal process;
- 11.1.5 Act, default or omission of whatsoever nature of the Customer, his servants or agents or of any person having an interest in the goods;
- 11.1.6 Inherent liability due to wastage in bulk or weight, latent defect or inherent defect, vice or natural deterioration of the goods or the materials in which they are packed;
- 11.1.7 Insufficient or improper packing;
- 11.1.8 Insufficient or improper labelling or addressing;

- 11.1.9 Riot, civil commotion, strikes, lockouts, stoppages or restraint of trade or labour from whatsoever cause;
- 11.1.10 The failure of the consignee to take or accept delivery within two clear days of notice being given to the Customer or consignee of the availability of the goods for delivery.
- 11.2 For the avoidance of doubt the Company shall have no liability in respect of a Consignment:
  - 11.2.1 Where Transit has ended or has been deemed to have ended;
  - 11.2.2 Where there has been fraud on the part of the Customer.

## **12.0 Limits of Liability**

- 12.1 The Company has no knowledge of the value of the Consignment and will only make payment or proportionate payment in accordance with this Condition on satisfactory proof of value being provided.
- 12.2 Subject to 12.4, 12.5, 12.6 below, the liability of the Company in any event in respect of the loss of or physical damage to any one Consignment (howsoever caused) shall not exceed either:
  - 12.2.1 £5000 per tonne and pro rata for any part of a tonne; or
  - 12.2.2 The value of the Consignment at the time and place when accepted for carriage or storage; or
  - 12.2.3 Whichever shall be the lesser sum.
- 12.3 For all international services where carriage is by road, the liability of the Company shall be governed by CMR.
- 12.4 Save where the Company has agreed to undertake international services on behalf of the Customer, and CMR applies, the Company shall be under no liability wherever to whomsoever and howsoever arising:
  - 12.4.1 In respect of the carriage of goods by rail, sea, inland waterway or air which shall be subject to the conditions of the rail, sea, inland waterway or air carrier contracted to carry the goods;
  - 12.4.2 In respect of goods which have been delivered to a freight forwarder to facilitate onward carriage by rail, sea, inland waterway or air which shall be subject to the conditions of the freight forwarder contracted to carry the goods for the customer, provided that where goods are carried partly by land and partly by road and partly by such other means of transport, any loss or damage or delay shall be deemed to have occurred whilst the goods are being carried by road, unless the contrary is proved. No additional cover for Dangerous

Goods will be accepted except with the prior written agreement of a Director of the Company.

- 12.5 If only part of a Consignment suffers from loss or physical damage as aforesaid (howsoever caused), the liability of the Company shall be limited to that proportion of the sum calculated by reference to Condition 12.2, which the actual value of such part at the time and place of acceptance for carriage, bears to the value of the whole Consignment.
- 12.6 Notwithstanding anything else contained in the Contract or these Conditions (unless required under CMR) the Company shall not in any case be liable to the Customer for loss of profits or contracts or other indirect or consequential loss whether arising from negligence, breach of contract or howsoever.

### **13.0 Claims Notification**

- 13.1 The customer must notify the company of any damage to the whole or any part of a consignment, or physical loss, mis-delivery or non-delivery of part of a consignment within 7 days, with written confirmation of the claim within a further 14 days, after the date of delivery. Any claim in respect of the non-delivery of the whole of the consignment must be notified within 28 days of despatch.

Provided that 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.

- 13.2 The Company shall in any event have no liability whatsoever in respect of loss, damage, mis-delivery or non-delivery referred to in 13.1 unless proceedings are commenced by the customer within one year of the date of transit.

### **14.0 Extension of Protection to Sub-Contractors, Employees and Agents**

The Customer agrees that while the Company's sub-contractors, servants and agents perform the Services in the course of their appointment or employment, they will not incur any separate responsibility or liability whatsoever for any loss of or damage to goods or any other loss or damage suffered by the Customer or any third party howsoever such loss or damage shall have been occasioned and such persons performing the Services in the course of their appointment or employment shall be entitled to the protection of all the limitations, exclusions, qualifications and defences that are available to the Company under these Conditions.



## **15.0 Customer's Indemnity**

15.1 The Customer shall indemnify and keep the Company indemnified against:

- 15.1.1 All loss, damage, costs, expenses, claims or demands howsoever arising including the negligence of the Company in respect of any damage or loss of every nature beyond the liability of the Company under these Conditions.
- 15.1.2 Any duty, tax or levy paid by the Company on behalf of the Customer, the Consignee or the Consignor.
- 15.1.3 Any liability arising under Section 30(10) of the VAT Act 1994 (or any analogous provision in any other jurisdiction) or any statutory modification or re-enactment thereof in respect of a failure to export zero rated goods or to comply with any conditions in relation to zero rated goods intended to be exported.
- 15.1.4 All claims made upon the Company by HM Customs and Excise in respect of dutiable goods consigned in Bond, whether or not transit has ended or has been deemed to have ended.
- 15.1.5 All losses suffered by and claims made against the Company resulting from loss of or damage to property caused by or arising out of the carriage by the Company of Dangerous Goods whether or not declared by the Customer as such.
- 15.1.6 All loss, damage, costs, expenses, claims or demands arising as a result of insufficient or improper packing, labelling or addressing of the goods.

## **16.0 Force Majeure**

The Company shall not be liable for any delay in performing its obligations hereunder if such delay is caused by circumstances beyond its control, including without limitation any delay caused by any act or omission of the Customer. In such event the Company shall notify the Customer and shall be relieved of its obligations to perform the Services until such circumstances have ceased.

## **17.0 Severability**

If any of these Conditions or any part is held to be illegal or unenforceable for any purpose, the rest of the Conditions and the remainder of the provision in question shall remain in full force and effect.

## **18.0 General**

18.1 Any variation of the Contract and these Conditions shall only be effective and binding upon the Company if it is in writing and signed by a Director of the Company.

- 18.2 The Company is not a common carrier and will accept goods for carriage only on these Conditions.
- 18.3 The Company shall be entitled to select the manner and route of carriage.
- 18.4 The decision as to what constitutes a "reasonable time" under these Conditions is to be entirely at the discretion of the Company.
- 18.5 All notices relating to a Consignment or which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient set out in this Agreement or such other address in (Great Britain) (United Kingdom) as the recipient may designate by notice given in accordance with the provisions of this Condition. Any such notice may be delivered personally or sent by first class pre-paid letter or by facsimile transmission, and shall be deemed to have been served if by hand when delivered, if by first class post forty-eight hours after posting and if by facsimile transmission when despatched.
- 18.6 These Conditions shall apply to any agreement between the Company and the Customer relating to the carriage of Consignments or the provision of storage or other services. The terms (including these conditions) agreed between the Company and the Customer as set out in the Company's quotation constitute the entire contract between the Company and the Customer, so far as concerns the carriage of Consignments and the provision of storage and other services, and the Customer shall be deemed to have notice of these conditions if and as soon as he places an order with or accepts a tender from the Company for the carriage and storage of Consignments and other services.

**19.0 Interpretation and Jurisdiction**

The Contract and these Conditions shall in all respects be subject to and construed in accordance with English law and the parties to the Contract hereby submit to the exclusive jurisdiction of the Courts of England and Wales.

**I have read and agree to the Fortec Distribution Network Conditions of Carriage**

Signed: .....

Name (BLOCK CAPITALS): .....

Position: .....

Company: .....

Date: .....