

# Fortune Freight's Standard Trading Terms

## STANDARD TRADING CONDITIONS of [FORTUNE FREIGHT INTERNATIONAL COMPANY LIMITED](#)

(04/2017)

The Customer's attention is drawn to the conditions below which exclude or limit the Company's liability and those which require the Customer to indemnify the Company in certain circumstances.

### DEFINITIONS

1. In these Conditions

- (i) Company. [is Fortune Freight International Company Limited.](#)
- (ii) Conditions. means the entire undertakings, terms, conditions and Clauses herein.
- (iii) Consignee. means the person to whom the Goods are consigned.
- (iv) Customer. means any person at whose request or on whose behalf the Company undertakes any business or provides advice information or services.
- (v) Dangerous Goods. means goods, substances, materials or articles as statutorily defined in the laws of Hong Kong or in any applicable national laws or international conventions or regulations from time to time in force as dangerous goods and including goods of a dangerous, explosive, inflammable, radioactive or damaging nature.
- (vi) HBL. means a Bill of Lading or Waybill (air or sea or railway or road) covering the carriage of Goods, and includes a Combined Transport Bill of Lading.
- (vii) Goods. means the objects of the services provided hereunder.
- (viii) Owner. means the Owner of the Goods (including any packaging, containers or equipment) to which any business concluded under these conditions relates and any other person who is or may become interested in them.
- (ix) Person. includes natural person(s) or any body or bodies corporate.
- (x) Services. means the services provided by the Company either as principal or as agent, including undertaking and arranging carriage of goods by air, sea, railway and/or road.
- (xi) Special Arrangements. means arrangements made in accordance with express instructions, in writing, previously received and accepted in writing by the Company.
- (xii) Transport Units. means any container, trailer, flat, tanker, packing case, pallet and any other device used for and in connection with the carriage and/or consolidation of Goods by air, sea, railway or road, and any equipment ancillary thereto.

### APPLICATION

2. All and any activities of the Company undertaken in the course of business whether gratuitous or not are provided subject to these Conditions which are deemed to be incorporated in any agreement between Company and Customer.

### THE COMPANY'S DISCRETION

- (a) If at any stage in any transaction the Company should reasonably consider that there is good reason in the Customer's interests or for the public good to depart from any of the Customer's instructions, the Company shall be permitted to do so and shall not incur any additional liability in consequence of so doing.
- (b) When using its discretion as permitted in these Conditions, the Company shall do so with due regard to the interests of the Customer.
- (c) If after an agreement has been agreed events or circumstances come to the attention of the Company which in the opinion of the Company make it wholly or in part impossible for the Company to fulfil its duties it shall take reasonable steps based on contacting details provided by the Customer to inform the Customer of such events or circumstances.
- (d) Quotations are given on the basis of immediate acceptance and are subject to withdrawal or revision. Unless otherwise agreed in writing the Company shall be, after acceptance, at liberty to revise

quotations or charges with or without notice in the event of changes outside the Company's control occurring in currency exchange rates, rates of freight, insurance premiums or any charges applicable to the Goods.

(e) The Customer shall give sufficient and executable instructions, and the Company shall, within the limits of its duty of care and diligence, inform the Customer if it considers that the Customer's instructions are insufficient or inexecutable.

### **THE CUSTOMER'S UNDERTAKINGS**

(a) The Customer warrants that it is either the Owner or the authorized agent of the Owner of any Goods and also that it is accepting these Conditions not only for itself but also as agent for and on behalf of the Owner.

(b) The Customer warrants that the necessary or pertinent information, description and particulars of any Goods furnished by or on behalf of the Customer are comprehensive, full and accurate and include all data and information necessary for all purposes to accomplish the relevant instructions and the required Services effectively, lawfully and safely.

(c) When Goods are accepted or dealt with upon instructions to collect freight, duties, charges or other expenses from the Consignee or any other person the Customer shall remain responsible for the same if they are not paid by such Consignee or other person immediately when due.

3. The Customer shall indemnify the Company against all duties, taxes, levies, payments, fines, expenses, losses, damages (including physical damage) and liabilities in accordance with these Conditions, suffered or incurred by the Company in the performance of its obligations under any contract to which these Conditions apply, including any liability to indemnify any other person against claims made against such other person by the Customer or by the Owner.

(a) The Customer shall warn the Company if any Goods which are the subject of any transaction to which these Conditions apply are Dangerous Goods or Goods of damaging nature, or unlawful goods, or contain contraband or prohibited items or any item which infringes or may infringe intellectual property or other rights of any other person, or are liable to taint or affect other Goods, or are likely to harbour or encourage vermin or other pests, and the Customer shall indemnify the Company against any liability, penalty, loss, damage, cost or expense incurred by the Company as a consequence of the Customer's failure to do so or for failure to do so in good time.

(b) Except where the Company has accepted instructions in respect of the preparation, packing, stowage, labelling or marking of the Goods the Customer warrants that all Goods have been appropriately, properly and sufficiently prepared, packed, stowed, labelled and/or marked, and that the preparation, packing, stowage, labelling and marking are appropriate to any operations or transactions affecting the Goods and the characteristics of the Goods in compliance with any statutory regulation or official or recognized standards or requirements.

4. The Customer shall indemnify the Company in respect of any claims of a general average nature which may be made on it in connection with the Goods and shall provide such security as may be required by the Company in this connection.

5. The Customer shall indemnify the Company against all loss, damage or expense arising out of the Goods being tendered for transportation or handled or carried by the Company.

### **NOTICE OF CLAIM AND TIME BAR**

(a) Any claim by the Customer against the Company arising in respect of any Services provided for the Customer, or which the Company has undertaken to provide, shall be made in writing and notified to the Company within 7 days from the delivery of the Goods or when the Goods should have been delivered and any claim not made and notified as aforesaid shall be deemed to be waived and absolutely barred.

(b) Notwithstanding the provisions of sub-paragraph (a) above, the Company shall in any event be discharged of all liability whatsoever and howsoever arising in respect of any service provided for the Customer, or which the Company has undertaken to provide, unless suit be brought and written notice thereof given to the Company within nine months from the delivery of the Goods or the date when the Goods should have been delivered.

### **THE COMPANY'S ROLE**

(a) When acting as an agent, the Company does not make or purport to make any contract with the Customer for the carriage, storage, packing or handling of any Goods nor for any other physical service in relation to them and acts solely on behalf of the Customer in securing Services by establishing contracts with third parties so that direct contractual relationships are established between the Customer and such third parties. The Company shall have no liability or responsibility whatsoever in respect of any act, or omission, negligence, neglect or default of the third party (ies) or in respect of the Goods.

(b) Unless otherwise agreed in writing, the Company shall be deemed to be acting as agent in any case where the Company enters into a contract with any other person for the carriage, storage, packing or handling of the Goods or for any other Services in relation thereto and such contract is capable of being enforced by the Customer or Owner as principal whether or not the Customer or Owner is named or disclosed as principal by the Company.

(c) The charging or agreement to charge a fixed price for any service, or the supply by Company of its owned or leased equipment and/or facilities, or the arrangement by Company for Goods to be forwarded, carried, transported, stored or otherwise handled together or in consolidation with other goods shall not of itself determine whether the Company arranges such service as agent or provides the same as principal.

#### **COMPANY'S GENERAL CONDITIONS**

6. Except under Special Arrangements the Company shall in no circumstances be responsible for departure or arrival dates, delay in remittance, loss in exchange, loss during transmission, loss in the course of collection or any other loss howsoever caused in respect of Goods.

(a) If delivery of the Goods or any part thereof is not taken by the Customer, Consignee or Owner, at the time and place when and where the Company is entitled to call upon such person to take delivery thereof the Company shall be entitled to store the Goods or any part thereof at the sole risk of the Customer, whereupon the liability of the Company in respect of the Goods or that part thereof stored as aforesaid shall wholly cease and the cost of such storage if paid for or payable by the Company or any agent or sub-contractor of the Company shall forthwith upon demand be paid by the Customer to the Company.

(b) The Company shall be entitled at the expense of the Customer to dispose of (by sale or otherwise as may be reasonable in all the circumstances) without an order of the competent Court.

(i) On 14 days notice in writing to the Customer, or where the Customer cannot be traced and reasonable efforts have been made to contact any parties who may reasonably be supposed by the Company to have any interest in the Goods, any Goods which have been held by the Company for 21 days and which cannot be delivered as instructed; and

(ii) Without prior notice, Goods which have perished, deteriorated or altered or are in immediate prospect of doing so in a manner which has caused or may reasonably be expected to cause loss or damage to third parties or to contravene any applicable laws or regulations.

7. Except insofar as may be required to comply with the Customer's instructions as regards documentation, or except under Special Arrangements the Company shall not be obliged to arrange for the Goods to be carried stored or handled separately from other Goods.

8. Goods which in the opinion of the Company or the person who has custody or possession thereof are or at any time hereafter become dangerous and present a hazard may at any time or place be unloaded, destroyed, disposed of or rendered harmless without being liable for any compensation to the Customer or any other party.

9. Except under Special Arrangements the Company will not accept or deal with bank notes, bonds, negotiable instruments or securities of any kind, bullion, coin, precious stones, jewellery, valuables, antiques, valuable paintings, human remains, livestock or plants. Should any Customer nevertheless deliver any such Goods to the Company or cause the Company to handle or deal with any such Goods otherwise than under Special Arrangements the Company shall be under no liability whatsoever for or in connection with such Goods howsoever arising.

10. If in the opinion of Company it is at any stage necessary or desirable in the interest of Customer or Owner or Goods to depart from Customer's or Owner's instructions, Company shall be at liberty to do so. Any such departure and any action or omission taken or made pursuant thereto are hereby expressly authorized by Customer.

11. The Company shall have the right to enforce any liability of the Customer under these Conditions or to recover any sums to be paid by the Customer under these Conditions not only against or from the Customer but also if it thinks fit against or from the sender and/or Consignee and/or Owner jointly and severally.

#### **COMPANY AS AN AGENT**

12. The Company may in accordance with these conditions act as agent on behalf of the Customer.

13. The Company shall be entitled and the Customer hereby expressly authorizes the Company, except insofar as has been otherwise specifically agreed between the Company and the Customer, to enter into contracts and to accept such terms and rates on behalf of the Customer,

14. The Company shall be entitled in its sole discretion to delegate on any terms its authority in whole or in part.

- (i) for the carriage of Goods by any route or means or person;
- (ii) for the storage, packing, trans-shipment, loading, unloading or handling of the Goods by any person or at any place, and for any length of time,
- (iii) for the carriage or storage of Goods in or on Transport Units or with other Goods of whatever nature;
- (iv) to select, engage and contract with any carriers, forwarders, truckmen, receiving agents, delivery agents, warehousemen, packers and other service providers; and
- (v) to do such acts as may in the opinion of the Company be reasonably necessary in the performance of its obligations in the interests of the Customer.

#### **COMPANY CONTRACTING AS PRINCIPAL**

15. The Company where acting as principal is not a common carrier and deals on the basis of these Conditions alone. The Company reserves to itself absolute discretions to the means, routes, methods, manner and procedures to be followed in the handling, storage and transportation of Goods and performance of Services.

16. When the Company contracts as a principal for any Services, it shall have full liberty to perform such Services itself, or, to provide those Services as a principal.

(a) When and to the extent that the Company has contracted as principal for the performance of any Services, the Company undertakes to perform and/or in its own name to procure the performance of those Services, and subject always to the totality of these conditions accepts liability for loss of or damage to Goods taken into its charge occurring between the time when the Company takes the Goods into its charge and the time when the Company is entitled to call upon the Customer, Consignee or Owner to take delivery of the Goods.

(b) In relation to Company's responsibility, Goods shall not be treated as received by or for Company until and unless a written receipt thereof has been issued by Company or its authorized agent. Save for the quantity of the packages or units of goods delivered and received, receipt issued by or for Company shall not constitute any representation by or for Company of any condition, contents, order, quantity, quality or other matters of or relating to any of the Goods.

#### **LIMITATIONS OF LIABILITY**

17. The Company shall, however, be relieved of liability for any loss or damage if such loss or damage was caused by:

- (a) an act or omission of the Customer and/or Owner or any person acting on their behalf;
- (b) insufficiency or defective condition of the packaging, marking, labelling or numbering, save where the Company has undertaken to carry out the packing, application of marks or labelling or numbering of the Goods;
- (c) handling, loading, stowage or unloading of the Goods by the Customer, Owner or any person acting on their behalf;
- (d) inherent vice or defects of the Goods;
- (e) riots, civil commotions, strike, lockout, stoppage or restraint of labour, the consequences of which the Company could not avoid by the exercise of reasonable diligence;
- (f) fire, flood, storm, explosion or theft;
- (g) any cause or event which the Company could not avoid the consequences of which the Company could not prevent by the exercise of reasonable diligence;
- (h) any act or omission of Company the consequences of which it could not reasonably have foreseen; and
- (i) a nuclear incident if the operator of a nuclear installation or a person acting for him is liable for this damage under an applicable international convention or national law governing liability in respect of nuclear energy.
- (j) In no circumstances whatsoever shall the Company be liable to the Customer or Owner for indirect loss, consequential loss or loss of market howsoever caused.
- (k) Without prejudice to other conditions herein or other defences which may be open to the Company, in no circumstances whatsoever shall the Company be liable to the Customer or Owner for damages, losses, non-delivery or mis-delivery of Goods, delays or deviations howsoever caused.

(l) Without prejudice to any provisions herein, for those liability which cannot be exempted or excluded by any other provisions in these Conditions, the liability of the Company howsoever arising shall in no event exceed the lower of US\$100 per package or shipping unit; or a sum of US\$2 per kilogram of the weight of the Goods or any other properties lost, damaged, delayed, misdirected, mis-delivered or not delivered in respect of which a claim is made provided that the Company's liability whatsoever shall in no circumstance exceed a total sum of US\$10,000 per event or events from a common cause.

#### **MISCELLANEOUS**

18. The Customer shall pay to the Company in cash or as otherwise agreed upon presentation of account all sums due to the Company immediately when due without reduction or deferment on account of any claim, counterclaim or set off.

19. The Company shall have a particular and general lien and right of detention on all Goods (and documents relating to Goods) for monies due either in respect of such Goods or for any particular or general balance or other monies due from the Customer or the sender, Consignee or Owner to the Company. Storage charges shall continue to accrue on any Goods detained under lien. If any monies due the Company are not paid 14 days after notice has been given to the person from whom the monies are due that such Goods are being detained, they may be sold, disposed of or dealt with by auction or otherwise at the sole discretion of the Company without a court order and at the expense of such person, and the net proceeds applied in or towards satisfaction of such indebtedness and the Company will not be liable for any deficiencies or reduction in value received on the sale, disposal or other dealing of the Goods or documents, nor will the Customer be relieved from the liability merely because the Goods or documents have been sold or disposed of or otherwise dealt with.

20. The defences, exemptions and limitations of liability provided for in these Conditions shall apply in any action against the Company whether such action is founded in contract or in tort.

#### **JURISDICTION AND LAW**

21. These Conditions shall be governed and construed in accordance with the laws of Hong Kong and any dispute arising out of or in connection with these conditions shall be subject to the exclusive jurisdiction of the Hong Kong courts.