



## **GIST LIMITED**

### **GENERAL CONDITIONS (TRANSPORT AND WAREHOUSING)**

#### **1. DEFINITIONS AND APPLICATION**

- 1.1 In these Conditions:
- (a) "GIST " means Gist Limited, whose registered office is at Forge, 43 Church Street West, Woking, Surrey, GU21 6HT and with registered number 502669.-
  - (b) "CMR" means the Convention on the Contract for the International Carriage of Goods by Road as amended from time to time.
  - (c) "Conditions" means these General Conditions (Transport and Warehousing)
  - (d) "Consequences" means all consequences including but not limited to claims, demands, liabilities, proceedings, fines, penalties, damages, costs (including legal costs on a full indemnity basis), delays, loss of or damage to or loss of use of property, loss of revenue and loss of profit.
  - (e) "Contract" means the Proposal and these Conditions.
  - (f) "Customer" means the person or company to whom GIST has contracted to provide Services.
  - (g) "Goods" means all or any goods carried or stored by GIST for the Customer.
  - (h) "Manufactured Cost Price" means the cost of direct materials, direct labour and manufacturing overhead costs incurred in the production of the Goods.
  - (i) "Proposal" means the offer (if any) by GIST to provide Services.
  - (j) "Consignee" means the person or company to whom Goods are delivered.
  - (k) "Consignor" means the person or company from whom the Goods are collected
  - (l) "Services" means transport, warehousing and other similar or related services undertaken by GIST in accordance with the Contract.
  - (m) "Working Days" means days excluding Saturday, Sunday and public holidays in England and Wales.
- 1.2 These Conditions apply to the provision of Services by GIST and shall be read in conjunction with the Proposal (if any). If there is any conflict between any provision of these Conditions and any provision in the Proposal (including any documents attached thereto or incorporated therein), the Proposal shall prevail.
- 1.3 INTERNATIONAL TRANSPORT AND OTHER CARRIAGE - Any carriage of Goods by rail, sea, inland waterway or air shall be arranged by GIST as agent of the Customer subject to the conditions of the carrier. Accordingly, GIST shall have no liability in respect of such carriage except to the extent that the Goods are carried by road. In addition to the Contract the provisions of the CMR shall also apply to any international carriage of Goods, and if there is any conflict between these Conditions and the CMR, the CMR shall prevail.
- 1.4 No addition to, nor any variation or waiver of these Conditions, the Proposal, nor any terms or conditions proffered by the Customer or printed on the Customer's order shall have any legal effect unless expressly agreed in writing on behalf of GIST by a duly authorised employee of GIST. For this purpose drivers and warehouse personnel are not duly authorised employees of GIST.
- 1.5 The Customer shall be deemed to accept these Conditions unless it contacts GIST in writing before the relevant Services commence.

#### **2. PAYMENT, DEFAULT, ETC**

- 2.1 The charges for Services provided shall be as set out in the Proposal, or as otherwise agreed provided that GIST may revise its charges and these Conditions upon written notice to the Customer.
- 2.2 All charges are exclusive of VAT which shall be paid by the Customer in accordance with all applicable legislation, rules and procedures subject to the provision by GIST of VAT invoices.
- 2.3 Full payment of invoices by the Customer shall be made in accordance with the terms set out in the Proposal or, if no payment terms are set out in the Proposal, within thirty (30) days after the invoice date. All amounts due to GIST shall be paid in full without any deduction or withholding other than as required by law and the Customer shall not be entitled to assert any abatement, credit, set-off or counterclaim against GIST in order to justify deducting or withholding payment of any amount.
- 2.4 The Customer shall notify GIST immediately of any error in an invoice, and in any event before the due date for payment.
- 2.5 If any payment is overdue or GIST reasonably believes that the Customer is unable to make payment when due, or if the Customer is otherwise in breach of contract, GIST may terminate or suspend the provision of Services to the Customer and payment shall become immediately due for all Services supplied.
- 2.6 GIST reserves the right to charge interest and administration charges in accordance with the Late Payments of Commercial Debts (Interest) Act 1998 and the Late Payment of Commercial Debts Regulations 2002 (as amended or replaced from time to time) on all amounts not paid strictly in accordance with Condition 2.3. This shall include any amounts actually found to be due under disputed invoices whether by agreement, arbitration or otherwise.

#### **3. PARTIES AND SUB-CONTRACTING**

- 3.1 The Customer warrants that it is either the owner of the Goods or is authorised by the owner of the Goods to accept these Conditions as the owner's agent, in which event any obligation of the owner of the Goods stipulated in these Conditions and/or the Proposal or required by law, shall be assumed by the Customer and the Customer agrees to indemnify GIST for any Consequences arising from the acts or omissions of the owner of the Goods.
- 3.2 GIST may sub-contract any or all of the Services to any other person but otherwise neither party may assign, novate, charge or hold on trust all or any of its rights and/or obligations in relation to the Contract(s) to any other person without the written consent of the other party except GIST may do so to its lenders, any successor to its business or to any of its group undertakings, and "GIST" shall be construed accordingly.

#### **4. LOADING AND UNLOADING**

- 4.1 The Customer shall procure that suitable and adequate access and facilities are provided free of charge for GIST and its personnel and vehicles to enable GIST to collect and deliver Goods.
- 4.2 Unless otherwise agreed (in the Proposal or elsewhere in writing) the Consignor shall be responsible for loading the Goods, and the Consignor shall procure that Consignees of Goods correctly and properly delivered shall be responsible for unloading the Goods, and that such Consignees shall accept deliveries correctly and properly made to them by GIST.

- 4.3 If any special appliances are required to load and/or unload Goods, the Customer shall ensure that such special appliances are promptly made available at the point of collection and/or delivery, and the Customer is liable for and shall indemnify GIST against all Consequences arising from any breach of this obligation.
- 4.4 When GIST is, without prior arrangement in writing with the Customer, called upon to load or unload Goods requiring special appliances for loading or unloading, GIST shall be under no liability to the Customer for any damage however caused (to the extent permitted by law), arising out of such loading or unloading and the Customer shall indemnify GIST against all Consequences arising from failure to provide such special appliances.
- 4.5 Any document evidencing or acknowledging the receipt of the Goods by GIST shall not be evidence of the condition of the Goods or of the correctness of the declared nature, quantity, temperature or weight of the Goods at the time they are received by GIST. If so stated in the Proposal such document may be evidence of the number of pallets, cases, trays or dollies. In particular, where cardboard outers are delivered on pallets, GIST shall only be responsible for checking the numbers of pallets, dollies, Danish horticultural trolleys or Dolav pallet containers received and not the number of cardboard outers or trays, and shall have no liability if the number of cardboard outers or trays present does not match the numbers of outers or trays stated to be contained on each pallet or dolly. GIST shall have no liability to the Customer in the event that any items of Goods contained in any handling unit (eg a pallet) do not match the designated description and/or number of items of Goods stated to be contained in such handling unit.

## 5. UNDELIVERED OR UNCLAIMED GOODS

- 5.1 If delivery of Goods cannot be properly effected in a timely manner due to any failure of the Customer or the Consignees of Goods to comply with Condition 4 or any other obligations, the Customer shall be liable for and indemnify GIST against all Consequences arising from such failure, and the Customer shall pay for the Services as if those Goods had been delivered. The Customer shall pay for re-delivery, return to the Consignor (or another location) or destruction, as instructed by the Customer, or failing instructions within a reasonable time, as reasonably determined by GIST.
- 5.2 If GIST is unable for any reason to deliver any Goods, or if any Goods are stored by GIST after an agreed term for storage, or payment for storage of any Goods is overdue by thirty (30) days or more, GIST may sell such Goods as agent for the Customer and/or owner of the Goods subject to Conditions 5.3 and 5.4.
- 5.3 Before exercising the power of sale in Condition 5.2 GIST shall do what is reasonable in the circumstances to give notice to the Customer that the Goods will be sold unless within the time specified in such notice (being a reasonable time in the circumstances) the Goods are taken away or instructions are given for their disposal.
- 5.4 The proceeds of sale of such Goods shall, after deduction of all proper charges and expenses in relation thereto and of all outstanding amounts due to GIST from the Customer or owner of the Goods for Services or otherwise, be paid to the Customer, and this shall (without prejudice to any other claim or right which the Customer may have against GIST) discharge GIST from all liability in respect of such Goods, their carriage and storage.

## 6. TEMPERATURE CONTROL

- 6.1 If GIST has agreed to provide carriage or storage within a specified temperature range:
- the Consignor shall ensure that the Goods are within the specified temperature range up to loading onto GIST's vehicle or into GIST's warehouse;
  - GIST may check the temperature of any Goods before or immediately after loading onto GIST's vehicle or into

GIST's warehouse using a probe or in any other suitable manner.

- 6.2 If following such check or for any other reason GIST believes the Goods are not within the specified temperature range, GIST may refuse to accept the Goods for carriage or storage. Any check undertaken in accordance with this Condition does not absolve the Customer from its obligations pursuant to Condition 6.1(a).
- 6.3 GIST's acceptance of Goods for carriage or storage shall not prevent or prejudice any later claim by GIST under Condition 8.3.
- 6.4 If any Goods are rejected by the Consignee at the point of delivery on the ground that they are not delivered within the specified temperature range, GIST will investigate the occurrence including the functioning of any relevant fridge units, and (unless GIST accepts responsibility) will send a report of its findings to the Customer.
- 6.5 GIST will not be liable for the rejection of any Goods on the ground that they are not delivered within the specified temperature range unless it is established beyond reasonable doubt by GIST that either the relevant part of the vehicle or warehouse was not maintained within the specified temperature range when the Goods were in GIST's control or custody.

## 7. TITLE AND RISK

- 7.1 GIST shall not acquire title to or any rights into or over the Goods, except as provided in Conditions 5 and 7.4.
- 7.2 Risk in Goods shall pass to GIST on completion of loading and securing on to GIST's vehicle or completion of unloading into GIST's warehouse, whichever is earlier. Risk shall remain with GIST until the Goods are delivered to a Consignee, or loaded onto the Customer's or a third party carrier's vehicle in accordance with the instructions of the Customer or its agent. Signing by the Consignee shall be proof of loading or unloading. Subject to Condition 7.3 below, risk in the Goods shall remain with the Customer at all times other than as stated in this Condition 7.2.
- 7.3 Risk in Goods in transit shall not pass to GIST if the trailer is pre-loaded by the Consignor, or if drivers do not have access to the Consignor's loading facilities and are therefore not able to confirm that the Goods have been secured correctly throughout the trailer.
- 7.4 GIST shall have a general lien over the Goods against the Customer and the Customer shall, where necessary, procure such a general lien from the owner of the Goods, for any monies whatever due to GIST from the Customer and/or the owner of the Goods. If such a lien is not satisfied by payment to GIST of all amounts due within a reasonable time, GIST may, at its absolute discretion sell all or any of the Goods as agent for the Customer and/or owner of the Goods. The provisions of Conditions 5.3 and 5.4 shall apply.
- 7.5 If for any reason the above general lien is not applicable nor enforceable, GIST shall have a particular lien against the owner of the Goods allowing GIST to retain possession (but not dispose of) the Goods against monies due to GIST in respect of the Goods.
- 7.6 Property in pallets or any equipment provided by GIST to undertake the Services shall not pass to the Customer or owner of the Goods.

## 8. LIABILITY

- 8.1 GIST shall only be liable for loss of or damage to Goods if it has arisen due to the wrongful act, neglect or default of GIST, its employees or agents. Unless otherwise stated in the Proposal or increased in accordance with Condition 8.2, GIST's liability shall not exceed £1.30 for each kilogram of Goods in respect of which such liability arises. Any salvage value obtained from either re-using the Goods or selling them on is to be offset against the claim value and is not in addition to it.

- 8.2 At the request of the Customer, GIST will accept greater liability than that set out in Condition 8.1, and this shall take effect when it has been agreed in writing by GIST and the Customer, setting out the nature and the maximum replacement cost of the Goods to be at risk, the limit of liability required, and the period that it is to cover, and GIST's additional charges to cover GIST's additional risk incurred in increasing the liability limit.
- 8.3 The Customer shall be liable for, and indemnify GIST against all Consequences arising from any loss of or damage to the Goods to the extent that it is caused or contributed to by the state of the Goods on presentation to GIST being in breach of these Conditions, or in violation of any applicable laws or regulations where such state is incapable of detection by inspection of the outer covering of the Goods.
- 8.4 GIST shall only be liable for physical loss of or damage to the Goods and shall in no circumstances be liable howsoever caused for any indirect or consequential loss, damage or costs of any kind whatsoever or for loss of goodwill, business, contract, use, sale, savings, revenue, profit, or any loss arising from any contract between the Customer and any third party.
- 8.5 GIST's liability for non-delivery, late delivery or mis-delivery shall be limited to an obligation to collect wrongly or late delivered Goods and make correct delivery, re-delivery or return of Goods within a reasonable period, having due regard to the nature and volume of the delivery, the delivery location, and GIST's other commitments for delivery of Goods. If physical damage to the Goods results from the non-delivery, late delivery or mis-delivery, the other provisions of this Condition 8 shall apply.
- 8.6 Where a Consignee claims that delivered Goods have not been delivered as ordered, GIST shall have no liability in relation to any such alleged non-delivery unless the Consignee produces a dolly / pallet level proof of delivery document completed at the time when the delivery vehicle was unloaded.
- 8.7 Subject to Condition 9.4 below, GIST will make signed proof of delivery documents ('POD') available for Customers and/or Consignors to view, or by exception, send hard copies to them on request. Should the Consignee not sign and return a POD, GIST cannot be held liable for any subsequent claim for loss or damage.
- 8.8 Except as set out in this Condition 8, GIST shall have no further or other liability to the Customer or any other person (whether or not claiming through the Customer) howsoever caused, and the Customer shall indemnify GIST against any such further or other liability.
- 8.9 GIST shall only be liable for a claim in respect of lost or damaged Goods if the Customer (i) provides satisfactory proof of the value and weight of the Goods lost or damaged (and if required by GIST, of the value and weight of the whole consignment), (ii) in the case of any damaged Goods, if packaging and wrapping are kept and made available for inspection by GIST or its agents and (iii) in the case of late or non-delivered Goods, provides copies of all paperwork relating to the Goods which is fully compliant with the Customer/Recipient's stated standards for such documents.
- 8.10 GIST will not insure the Goods beyond the value of £1,300 per tonne whilst under its control. The Customer shall make arrangements to cover the Goods against all risks to the fully insurable value (where this exceeds £1,300 per tonne) where the Goods are under the control of GIST.
- 8.11 Notwithstanding any other provision of the Contract(s) (but subject to Conditions 8.1, 8.2 and 8.14) the liability of GIST for any claims arising out of or in connection with each Contract howsoever caused, shall: (a) not exceed £1,000,000 (one million pounds sterling) per event or series of connected events in respect of physical loss or damage to tangible property (excluding the Goods) arising from GIST's negligent act or omission or (b) in respect of all other claims in the aggregate made in any calendar year (1 January to 31 December) and in respect of any claim or series of claims arising out of the same event or circumstances, not exceed an amount equal to the charges (excluding VAT) paid and payable to GIST in respect of that year under that Contract.
- 8.12 GIST shall not be liable for any claim for loss or damage to Goods which does not exceed £100. GIST will only be liable for the physical loss of a whole pallet or dolly (or multiples thereof), and the total quantity of items, packs, cases, boxes or trays transported on the lost pallet or dolly; and shall not be liable for the loss of part of the total quantity items, packs, cases, boxes or trays transported on the pallet or dolly.
- 8.13 GIST shall only be responsible for lost or damaged Goods at a bulk quantity level and not by unit description
- 8.14 In this Condition 8 "howsoever caused" means caused by misrepresentation made at any time(s), negligence, other tort, breach of contract, of statutory duty or howsoever else caused or arising to the extent permitted by law.
- 8.15 Nothing shall limit or exclude GIST's liability for fraud, fraudulent misrepresentation or for death or personal injury caused by negligence or to the extent otherwise not permitted by law.
- 8.16 The Customer acknowledges that it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of itself or any person other than as expressly set out in the Contract. The only remedy available to it for breach of any statements, representations warranty or understanding in the Contract(s) shall be for breach of contract under the relevant Contract.
- 8.17 Nothing in the Contract shall create any rights for third parties under the Contracts (Rights of Third Parties) Act 1999. No variation to the Contract shall create any such rights unless expressly so stated in any such agreement by the parties. This does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 9. CLAIMS AND TIME LIMITS**
- 9.1 GIST shall not be liable for any claim for late or non-delivered Goods or damaged Goods unless such claim has been notified in writing to GIST within five (5) Working Days of the scheduled time and date for delivery (in the case of late or non-delivered Goods) or the actual date of delivery (in the case of damaged Goods). The Customer must contact GIST's help desk and obtain a log number for each claim in order to verify that it has registered the claim in accordance with this Condition 9.
- 9.2 This exclusion of liability in Condition 9.1 shall not apply if the Customer proves that it was not reasonably possible for him to notify GIST within this time period, and such notification was given as soon as was practicable and in any event within five (5) Working Days after the Customer became aware, or could reasonably be expected to become aware of the claim.
- 9.3 GIST shall not be liable for any claim for late or non-delivered Goods if the collection vehicle was dispatched after the agreed departure time from the Customer's premises save where such delay arises from the wrongful act, neglect or default of GIST, its employees or agents.
- 9.4 GIST cannot accept requests for POD's if made more than 90 days after the scheduled delivery date.
- 9.5 GIST shall in any event be discharged from all liability whatsoever arising in respect of the Goods or any other claim by the Customer arising under this Agreement unless legal proceedings are commenced within six months of the event (or series of events) giving rise to any liability or claim.
- 10. CUSTOMER'S WARRANTIES AND INDEMNITIES**
- 10.1 The Customer warrants that the Goods are as described to GIST with regard to their nature, quality, weight, quantity, condition and dimensions. If GIST accepts "Dangerous Goods" (i.e. dangerous substances as identified and listed

by Health and Safety Executive or any applicable legislation or regulation, explosives, radioactive substances, or any other substance presenting a similar hazard) the Customer must provide a fully written declaration of their nature and the Goods must be properly and safely packed and labelled in accordance with all laws and the Customer shall keep GIST informed of any modification of the law or recommendations made by any relevant authority including the action to be taken in an emergency. The Customer shall provide the necessary Transport Emergency Cards in respect of any Dangerous Goods.

10.2 The Customer shall indemnify GIST against:

- (a) all Consequences incurred by GIST as a result of any error, omission, mis-statement or misrepresentation by the Customer, Consignee, Consignor or owner of the Goods or by any employee or agent of any of them, insufficient or improper packing, labelling or addressing of the Goods, or fraud on the part of the Customer, the Consignee, Consignor or the owner of the Goods or any employee or agent of any of them;
- (b) all Consequences incurred by GIST caused by any defect in the Goods or arising out of the Goods being Dangerous Goods, whether or not declared by the Customer as such;
- (c) all Consequences arising from the Goods claimed by the owner of the Goods, the Consignee, Consignor or third parties, unless such Consequences arise from GIST's negligence, wrongful act or default;
- (d) all claims made upon GIST by H M Revenue and Customs in respect of dutiable Goods consigned in bond;
- (e) all Consequences incurred by GIST in excess of the liability expressly accepted by GIST under each Contract.

10.3 If a contract of employment between the Customer or any of its contractors and any person has effect as if originally made between GIST and such person as a result of the Transfer of Undertakings (Protection of Employment) Regulations 2006 or any other relevant law from time to time applicable ("the Regulations") or if any claim is made to such effect, the Customer shall indemnify GIST against all Consequences reasonably incurred by GIST in respect of the employment of and the termination of employment of any such person and in respect of any claim arising out of the actual or alleged application of the Regulations.

#### **11. UNREASONABLE DETENTION**

The Customer shall be liable for, and indemnify GIST against all Consequences arising from the unreasonable detention (whether in breach of these Conditions or not) of any vehicle, trailer or container by the Customer or the Consignee of the Goods at the point of delivery or collection.

#### **12. VALUE OF GOODS AND MITIGATION**

12.1 For the purpose of calculating Gist's liability under the Contract, the value of any Goods shall be taken as their Manufactured Cost Price of those Goods. The Customer shall provide a wholesale invoice showing the cost per carton or tray in support of all claims.

12.2 The Customer shall take all reasonable steps to mitigate any loss that it suffers for which GIST may have any liability. This shall include (but not be limited to) re-using and/or re-processing the Goods and/or selling the Goods for the best price reasonably obtainable. If the Customer fails or refuses to take all reasonable steps to mitigate the loss within a reasonable time GIST may (without prejudice to its liability) sell the Goods as its agent and on its behalf in accordance with Condition 5. The proceeds of sale of such Goods shall, after deduction of all proper charges and expenses in relation thereto be paid to the Customer. The provisions of Conditions 5.3 and 5.4 shall apply.

#### **13. FORCE MAJEURE**

Neither party shall be liable for any breach of its obligations nor for loss or damage to the Goods nor for any other claim

due to or arising from circumstances outside its reasonable control including without limitation act of God, war, threat to national security, embargo, riot, industrial action (other than that of either party's labour force), exceptional weather or traffic conditions, fire, explosion, or accidental damage to or destruction of assets, equipment or property.

#### **14. CONFIDENTIALITY**

Any information (including without limitation) know-how, technical information, delivery schedules, business plans and any documents supplied at any time by either party in connection with performance of Services shall be treated as confidential by the parties their employees and agents, and shall not be reproduced or disclosed to any third party or used for any purpose other than in connection with the Services without the other party's written consent, unless the same is or becomes public knowledge (other than due to breach of confidence by a party) or comes into the other's possession bona fide from a third party, or as required by law.

#### **15. JURISDICTION**

These Conditions will be governed by and construed in accordance with the laws of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

Gist Limited is a member of Linde P.L.C.