

Kuwait Transcontinental Shipping Co. Kuwait W.L.L.

Terms and Conditions for the Supply of Freight Services

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE CLAUSES HEREOF WHICH EXCLUDE OR LIMIT THE COMPANY'S LIABILITY (INCLUDING BUT NOT LIMITED TO CLAUSES 26 – 29 OF THESE CONDITIONS) AND WHICH REQUIRE THE CUSTOMER TO INDEMNIFY THE COMPANY IN CERTAIN CIRCUMSTANCES

1. Definitions

In these Conditions, the following definitions and rules of interpretation apply:

"Affiliate" means:

- (i) in the case of the Company, any company owned or controlled by the Company or any company managed by the Company pursuant to a management agreement irrespective of whether such company is owned or controlled by the Company; and
- (ii) in the case of the Customer, any company owned or controlled by the Customer or its ultimate parent,

"Carrier" means any person who is the carrier under a bill of lading, waybill or air waybill issued in connection with the Services.

"Company" means KTS, trading under these conditions, and this expression includes any departments of the company.

"Customer" means any Person at whose request or on whose behalf the Company undertakes any business or provides advice, information or services.

"Freight Services" includes the services listed in clause 6.

"KTS" means Kuwait Transcontinental Shipping Co. Kuwait W.L.L.

"Goods" means any product, merchandise, cargo or article of any kind whatsoever, including containers or other cargo carriage related equipment.

"Person" includes any natural person or body corporate.

"Owner" means the Owner of the goods (including any packaging, containers or equipment) to which any business concluded under these Conditions relates and the consignee or any other Person who is or may become interested in or in possession or entitled to possession of them.

"Servants" means the Company's directors, officers, employees, shareholders, servants, agents or subcontractors.

2. Application

- 2.1 Subject to clause 2.2 below, all and any Services provided by the Company in the course of business whether gratuitous or not are undertaken subject to these Conditions.
- 2.2 If any legislation is compulsorily 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 immunities or as an increase of any of its responsibilities or liabilities under such legislation to any extent and such part shall as regards such business be overridden to that extent and no further.
- 3. The Customer warrants that he is either the Owner or the authorised agent of the Owner and also that he has authority to accept these Conditions not only for himself but also as agent for and on behalf of the Owner.
- 4. In authorising the Customer to enter into any contract with the Company and/or in accepting any document issued by the Company in connection with such contract, the Owner irrevocably accepts these Conditions for themselves and their agents and for any parties on whose behalf they or their agents may act, and in particular but without prejudice to the generality of this Clause, they accept that the Company shall have the right to enforce against them jointly and severally any liability of the Customer under these Conditions or to recover from them any sums to be paid to the Company by the Customer which upon proper demand have not been paid.

5. The Company

- 5.1 Subject to clauses 13 and 14 below, the Company shall be entitled to procure any or all of its services as an agent of the Customer or to provide these services as a principal.
- 5.2 The offer and acceptance of an inclusive price for the accomplishment of any service or services shall not itself determine whether any such service is or services are to be arranged by the Company acting as agent or to be provided by the Company acting as a contracting principal.
- 5.3 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.
- 5.4 The Company shall on demand by the Customer provide evidence of any contract entered into by the Company as an agent of the Customer. Insofar as the Company may be in default of this obligation, it shall be deemed to have contracted with the Customer as a principal for the performance of the Customer's instructions.

6. Services

- 6.1 When and to the extent that the Company in accordance with these Conditions is acting as an agent on behalf of the Customer, it is acting in a customary manner. The Company shall be entitled, and the Customer hereby expressly authorizes the Company such entitlement, to enter into contracts on behalf of the Customer and the Owner:
- (a) for the carriage of goods by any route or means or Person;
 - (b) for the storage, packing, transshipment, loading, unloading or handling of the goods by any Person at any place and for any length of time;
 - (c) for the carriage or storage of goods in or on transport units as defined in clause 19.3 and with other goods of whatever nature; and
 - (d) 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 and the Owner.
7. When and to the extent that the Company has contracted as principal for the performance of any of its services, it 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 and in particular to clauses 26 - 29 hereof accepts liability for loss of or damage to goods taken into its custody occurring between the time when it takes the goods into its custody and the time when the Company is entitled to call upon the Customer or Owner to take delivery of the goods.
8. The Company reserves to itself a reasonable liberty as to the means, route and procedure to be followed in the handling, storage and transportation of goods. In any case where no particular route is agreed between the Company and the Customer, the Customer agrees that the agreed route is that which the Company reserves to itself a reasonable liberty to follow.
9. The Company is permitted to perform any of its obligations herein by itself or by a sub-contractor. For the purpose of allowing any such sub-contractor to take the benefit of these Conditions, the Company acts as agent and trustee for such sub-contractor in entering into a contract governed by these Conditions with the Customer and Owner.
10. The Company shall have a general lien on all goods and documents relating to goods in its possession, custody or control for all sums due at any time from the Customer or Owner, and shall be entitled to retain such goods and documents against payment of freight and all other sums due to the Company for the transportation.
11. The Company shall be entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by or paid to freight forwarders.

12. Storage and disposal

- 12.1 If delivery of the goods or any part thereof is not taken by the Customer 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.
- 12.2 The Company shall be entitled at the expense of the Customer to obtain an order by the competent Kuwaiti court or arbitral tribunal to dispose of perishable goods or non-delivered goods as defined by clause 12.1 herein as the court or tribunal deems fit.

13. Insurance

- 13.1 Customer or Owners confirm that they have valid insurance cover in place for the cargoes/items assigned to Company in order to cover their insurable risks and to mitigate their losses as appropriate as and when applicable.
- 13.2 No insurance will be effected except upon express instructions given in writing by the Customer and all insurances so effected by the Company are subject to the usual exceptions and conditions of the policies of the insurance company or underwriters taking the risk. Unless otherwise agreed in writing the Company shall not be under any obligation to affect a separate insurance on each consignment but may declare it on any open or general policy held by the Company.
- 13.3 Insofar as the Company agrees with the Customer to arrange insurance, the Company acts solely as agent for the Customer using its best endeavours to arrange such insurance and does so subject to the limits of liability contained in Clause 28 hereof.

14. Special instructions

- 14.1 Except under special arrangements previously made in writing or under the form of a printed document signed by the Company, any instructions relating to the delivery or release of goods in specified circumstances only, such as (but without prejudice to the generality of this Clause) against payment or against surrender of a particular document, are accepted by the Company only as agents for the Customer where third parties are engaged to effect compliance with the instructions.
- 14.2 The Company shall not be under any liability in respect of such arrangements as are referred to under clause 14.1 hereof except where such arrangements are made in writing and make specific provision for the Company's liability.

14.3 In any event, the Company's liability in respect of the performance or arranging the performance of such instructions shall not exceed that provided for in these Conditions in respect of loss of or damage to goods.

15. Advice and information in whatever form it may be given is provided by the Company for the Customer only and the Customer shall indemnify the Company against any liability, claims, loss, damage, costs or expenses arising out of any other persons relying upon such advice or information. Except under special arrangements previously made in writing, advice and information which is not related to specific instructions accepted by the Company is provided gratuitously and without liability.

16. Goods requiring special arrangements

16.1 Except under special arrangements previously made in writing the Company will not accept or deal with bullion, coin, precious stones, jewellery, valuables, antiques, pictures, 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 previously made in writing the Company shall be under no liability whatsoever for or in connection with such goods howsoever arising.

16.2 The Company may at any time waive its rights and exemptions from liability under clause 16.1 above in respect of any one or more of the categories of goods mentioned herein or any part of any category. If such waiver is not in writing, the burden of proving such waiver shall be on the Customer.

17. Except following instructions previously received in writing and accepted by the Company, the Company will not accept or deal with goods of a dangerous or damaging nature nor with goods likely to harbour or encourage vermin or other pests, nor goods liable to taint or affect other goods. If such goods are accepted pursuant to a special arrangement and then in the opinion of the Company they constitute a risk to other goods, property, life or health, the Company shall where reasonably practicable contact the Customer, but reserve the right at the expense of the Customer to remove or otherwise deal with the goods.

18. Where there is a choice of rates according to the extent or degree of liability assumed by carriers, warehousemen or others, the Company will make no declaration of value where optional except under special arrangements previously made in writing.

19. The Customer

The Customer warrants:

19.1 that the description and particulars of any goods furnished by or on behalf of the Customer are full and accurate;

- 19.2 that all goods have been 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; and
- 19.3 that where the Company receives the goods from the Customer already stowed in or on a container, trailer, tanker, or any other device specifically constructed for the carriage of goods by land, sea or air (each hereafter individually referred to as the "transport unit"), the transport unit is in good condition, and is suitable for the carriage to the intended destination of the goods loaded therein or thereon.

20. Should the Customer otherwise than under special arrangements previously made in writing as set out in clause 17 above deliver to the Company or cause the Company to deal with or handle goods of a dangerous or damaging nature, or goods likely to harbour or encourage vermin or other pests, or goods liable to taint or affect other goods, he shall be liable for all loss or damage arising in connection with such goods and shall indemnify the Company against all penalties, claims, damages, costs and expenses whatsoever arising in connection therewith, and the goods may be dealt with in such a manner as the Company or any other Person in whose custody they may be at any relevant time shall think fit.

21. Indemnities

21.1 The Customer or Owners shall hold harmless and keep the Company, its servants and agents indemnified from and against:

- (a) all liability arising out of the Company's acts or omissions in accordance with the Customer's or Owners' instructions, including but not limited to any cause, consequences, payments, loss, damage, costs and expenses whatsoever (including without prejudice to the generality of the foregoing, all duties, taxes, imposts, levies, deposits and outlays of whatsoever nature levied by any authority in relation to the goods); or
- (b) any cost, damages, fines, penalties etc sustained by Company arising out of the non-contractual obligations by the Customer and Owners including, uncollected and abandoned cargoes, third party claims, wrongful cargo declaration, forgery and other fraudulent acts, non-payment of freight and other associated charges, non-compliance of applicable local laws and regulations etc. by the Customers and/or Owners; or
- (c) all liability, loss or charges arising from any breach by the Customer of any warranty contained in these Conditions; or from the negligence of the Customer; or
- (d) any liability, loss or charges that are meant to be borne by and accounted to the Customer or Owner, as applicable; including that which are operationally required of the Company as part of their routine services to incur or those resulting/arising from any form of ocean freight, air freight, transport fees, customs duty, equipment hire charges, port / airport charges and/or any other third-party charges.

21.2 without derogation from clause 21.1 above, any liability assumed or incurred by the Company when by reason of carrying out the Customer's instructions the Company has reasonably become liable or may become liable to any other party;

21.3 all claims, costs and demands whatsoever and by whomsoever made in excess of the liability of the Company under the terms of these Conditions regardless of whether such claims, costs and demands arise from or in connection with the negligence or breach of duty of the Company its servants, sub-contractors or agents; and

21.4 any claims of a General Average nature which may be made on the Company.

22. The Customer undertakes that no claim shall be made against any director, servant, or employee of the Company which imposes or attempts to impose upon them any liability in connection with any services which are the subject of these Conditions and if any such claim should nevertheless be made, to indemnify the Company, its directors, servants, and employees against all consequences thereof.

23. Payment

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

23.2 In respect of all amounts which are overdue, the Customer or Owners shall be liable to pay to the Company interest calculated at 2% above the 1 year Kuwait Inter Bank Offered Rate (KIBOR) on the due date of the relevant amount.

24. Despite any acceptance by the Company of instructions to collect freight, duties, charges or other expenses from the Owner or any other Person the Customer shall remain responsible for such freight, duties, charges or expenses on receipt of evidence of proper demand and in the absence of evidence of payment (for whatever reason) by the Owner or such other Person when due.

25. Where liability for General Average arises in connection with the goods, the Customer shall promptly provide security to the Company or to any other party designated by the Company in a form acceptable to the Company.

26. Liability

26.1 The Company shall perform its duties with a reasonable degree of care, diligence, skill and judgment.

27. Exclusion of liability

The Company shall be relieved of liability for any loss, delays or damage:

- 27.1 if and to the extent that such loss or damage is caused directly or indirectly or is attributable to acts or instances, the consequences of which the Company is unable to avoid by the exercise of reasonable diligence including but not limited to acts of war, danger of war, acts of terrorism, civil war, Decrees or restraints by Government Authorities, entry and exit restrictions, restraint of princes, rulers or people, acts of civil or military authority, governmental orders, quarantine, strike, lock-out, stoppage or restraint of labor, riots, slowdowns, boycotts, sabotage, labor unrest (except if limited to the Party affected), overburdening of any port, fire, explosion, cyclone, flood, drought, or any Acts of God, casualty or accident, disease, epidemic, pandemic, or any irresistible act of nature;
- 27.2 if the Company is found to have been unable to avoid such circumstances, having demonstrated reasonable diligence;
- 27.3 unless the cause or event is found to have been caused due to the proven negligence of the Company
- 28.** Except under special arrangements previously made in writing the Company accepts no responsibility for departure or arrival dates of goods.
- 29. Liability limits**
- 29.1 Subject to clause 2.2 above and clause 29.4 below the Company's liability howsoever arising and notwithstanding that the cause of loss or damage be unexplained shall not exceed:
- (a) In the case of claims for loss or damage to goods, the lower of:
 - (i) the value of any goods lost or damaged; or
 - (ii) a sum at the rate of Kuwaiti Dinars 0.75 per kilo of gross weight of any goods lost or damaged, subject to a limit of Kuwaiti Dinars 250 (two hundred and fifty) per package or unit
 - (b) In case of all other claims, the lower of:
 - (i) the value of the goods that are the subject of the relevant transaction between the Company and its Customer; or
 - (ii) a sum at the rate of Kuwaiti Dinars 0.75 per kilo of the gross weight of the goods the subject of the said transaction, subject to a limit of Kuwaiti Dinars 250 (two hundred and fifty) per package or unit.
- 29.2 For the purposes of clause 29.1 the value of the goods shall be the lower of their value when they were or should have been shipped.

- 29.3 Subject to clause 2.2 above, and clause 29.5 below, the Company's liability for loss or damage as a result of failure to deliver or arrange delivery of goods in a reasonable time or (where there is a special arrangement under Clause 28) to adhere to agreed departure or arrival dates shall not in any circumstances whatsoever exceed a sum equal to twice the amount of the Company's charges in respect of the relevant transaction.
- 29.4 Except in respect of such loss or damage as is referred to at clause 29.3 and subject to clause 2.2 above and clause 29.5 below, the Company shall not in any circumstances whatsoever be liable for any indirect or consequential loss whatsoever including (but not limited to) loss of profits, loss of market or the consequences of delay or deviation however caused.
- 29.5 By special arrangement agreed in writing, the Company may accept liability in excess of the limits set out in Sub-Clauses a. to c. above upon the Customer agreeing to pay the Company's additional charges for accepting such increased liability. Details of the Company's additional charges will be provided upon request.

30. Application of international conventions

- 30.1 These Conditions are without prejudice to the terms of any mandatory international convention which is applicable by law to any dispute which may arise in relation to the carriage of the goods.
- 30.2 If the Company acts as a principal in making an agreement for the carriage of goods by air, the following notice is hereby given:

If the carriage involves an ultimate destination to or stop in a country other than the country of departure, the Warsaw Convention may be applicable and the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to cargo. Agreed stopping places are those places (other than the places of departure and destination) shown under requested routing and/or those places shown in the carriers' timetables as scheduled stopping places for the route. The address of the first carrier is the airport of departure.

- 31.** Receipt by the Customer or Owner of visibly damaged goods without complaint shall invalidate any claim against the Company. Any claim against the Company arising from loss of or damage to the goods not visible at the time of receipt by the Customer or Owner must be made within seven (7) days after the date of delivery of the goods in relation to any loss or damage which could have been ascertained from a visual inspection of the goods on delivery; within one month after the delivery of the goods where the loss or damage could not have been ascertained from a visual inspection of the goods on delivery; and in relation any other claim, within fourteen (14) days of the date of the event giving rise to the claim; otherwise, any claim shall be deemed to be waived by the Customer and/or Owner and be barred absolutely.

32. Governing law and dispute resolution

- 32.1 These Conditions and any act or contract to which they apply shall be governed by the substantive law of Kuwait.
- 32.2 In the event of any dispute, controversy, or claim arising out of or relating to these Conditions, or the breach, termination, or invalidity thereof, the parties agree that any such dispute shall be submitted to the non-exclusive jurisdiction of courts of Kuwait.
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- 32.3 The Customers or Owners confirm they have read, understood and shall comply with Company's policies related to Health, Safety, Security & Environment (HSSE), Sanctions, Anti-Bribery and Corruption, General Data Protection Regulation at all times. Copies of the said policies will be provided upon requests by the Company.