

LTS DISTRIBUTION LTD STANDARD TERMS AND CONDITIONS OF DELIVERY

1. INTERPRETATION

- 1.1 In these Terms, the following words and expressions shall have the following meanings (unless the context requires otherwise)
- "Cancellation Charge"** means a charge made by the Distributor in respect of the costs incurred by the Distributor in relation to a collection or delivery cancelled by the Customer, which shall include the costs of the vehicle, driver and insurance;
- "Collection Date"** means the date on which the Distributor collects the Goods from the Collection Point as set out in the Order Acknowledgement;
- "Collection Point"** means the location from where the Goods are to be collected, as set out in the Order Acknowledgement;
- "Contract"** means any contract between the Customer and the Distributor for the Services incorporating these Terms;
- "Customer"** means the person, firm or company requiring Services to be provided by the Distributor;
- "Delivery Date"** means the date on which the Goods are to be delivered as set out in the Order Acknowledgement;
- "Delivery Point"** means the location to where the Goods are to be delivered, as set out in the Order Acknowledgement;
- "Distributor"** means LTS Distribution Limited, incorporated in England and Wales with company number 04441395 whose registered office is at Wellington House, Starley Way, Birmingham International Park, Solihull B37 7HB;
- "Goods"** means the Goods to be collected and delivered, details of which (including the nature of the goods and their weight) are set out in the Order;
- "Order"** means the Customer's verbal or written order for the Services;
- "Order Acknowledgement"** means the Distributor's written or oral acknowledgement and an acceptance of the Customer's order for the Services;
- "Charges"** means the charges for the Services to be performed in accordance with the Contract;
- "Recipient"** means the person, firm or company to whom the Goods are to be delivered (which may or may not be the Customer);
- "Sender"** means the person, firm or company from whom the Goods are to be collected (which may or may not be the Customer); and
- "Services"** means the collection, carriage and delivery of the Goods.
- 1.2 In these Terms, unless otherwise specified:
- 1.2.1 references to the Distributor and the Customer include their permitted successors and assigns;
- 1.2.2 references to clauses, sub-clauses and schedules are to clauses and sub-clauses of and schedules to these Terms;
- 1.2.3 references to these Terms shall include the Terms as they are amended from time to time in accordance with these Terms;
- 1.2.4 headings to clauses are for convenience only and do not affect the interpretation of Terms;
- 1.2.5 any reference in these Terms to any statute or statutory provision shall be construed as referring to that statute or statutory provision as it may from time to time be amended, modified, extended, re-enacted or replaced and including all subordinate legislation from time to time made under it;
- 1.2.6 words indicating the singular include the plural, words importing any particular gender shall include all other genders and references to persons shall include companies and other unincorporated associations or bodies and (in each case) vice versa; and
- 1.2.7 any reference to "including" shall mean "including without limitation".
- 1.3 In the event of any conflict between the terms and conditions of these Terms and the provisions of any Order Acknowledgement, the terms and conditions of the Order Acknowledgement shall prevail.

2. APPLICATION OF TERMS

- 2.1 Subject to any variation under clause 2.3 and the terms of the Order Acknowledgement the Contract shall be on these Terms to the exclusion of any other terms and conditions (including any terms and conditions which the Customer purports to apply under any delivery order, confirmation or delivery order, specification or other documents).
- 2.2 Any Order from the Customer shall be deemed to be an offer for the Services subject to these Terms.
- 2.3 No terms or conditions endorsed upon, delivered with or contained in any delivery order, confirmation of delivery order or other document shall form part of the Contract simply as a result of such document being referred to in the Contract. The Terms shall not be varied unless any agreement to vary is recorded in writing and signed by an authorised representative of the Customer and Distributor.
- 2.4 No Order placed by the Customer will be deemed to be accepted by the Distributor until the Distributor has given to the Customer an Order Acknowledgement or (if earlier) the Distributor provides the Services.
- 2.5 Any quotation is given on the basis that no Contract shall come into existence until the Order is accepted in accordance with clause 2.4. Any quotation is valid for a period of 30 days unless the Distributor has withdrawn it.
- 2.6 In consideration of payment of the Charges by the Customer, the Distributor agrees to provide the Services on the terms and conditions of the Contract.

3. COLLECTION

- 3.1 The Distributor shall use its reasonable endeavours to collect the Goods from the Collection Point on the Collection Date.
- 3.2 If the collection of the Goods by the Distributor is delayed by reason of any act or omission of the Customer its employees or authorised agents, or the Sender its employees or authorised agents the Distributor shall be entitled to a reasonable extension of time.
- 3.3 If for any reason the Sender fails to have the Goods available for collection on the Collection Date, or the Distributor is unable to collect the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations or if the Customer cancels the collection and the Distributor is unable to redeploy its resources:
- 3.3.1 The Distributor shall be deemed to have complied with its obligations to collect the Goods and shall not be liable for any direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the collection or delivery of the Goods; and
- 3.3.2 The Customer shall pay the Cancellation Charge; and
- 3.3.3 The Customer may arrange a revised collection date and pay any applicable Charges.

4. DELIVERY

- 4.1 The Distributor shall use reasonable endeavours to deliver the Goods to the Delivery Point on the Delivery Date.
- 4.2 If the delivery of the Goods by the Distributor is delayed by reason of any act or omission of the Customer its employees or authorised agents, or the Recipient its employees or authorised agents, the Distributor shall be entitled to a reasonable extension of time.
- 4.3 If for any reason the Recipient fails to accept delivery of any of the Goods when they are delivered, or the Distributor is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations or if the Customer cancels the delivery and the Distributor is unable to redeploy its resources:
- 4.3.1 The Distributor shall be deemed to have complied with its obligation to deliver the Goods on the Delivery Date and shall not be liable for any direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods; and
- 4.3.2 The Customer shall pay the Cancellation Charge; and

- 4.3.3 the Distributor shall seek instructions from the Customer and shall at the option and expense (including storage charges) of the Customer either redeliver the Goods to the Customer at the Collection Point or deliver the Goods to such other address, warehouse or storage facility as the Customer shall specify, or store the Goods until delivery to the Delivery Point, and the Customer shall pay any applicable Charges.
- 4.4 If required the Customer shall provide or procure that the Recipient provides at the specified delivery point and at its expense, adequate and appropriate equipment and manual labour for unloading the Goods.
- 4.5 The Distributor may deliver the Goods in separate consignments. Each separate consignment shall be invoiced and paid for in accordance with the provisions of the Contract.

5. ADDITIONAL PROVISIONS

- 5.1 The Distributor may carry the Goods by any route and may at the Distributor's discretion employ a mode of transport other than a motor vehicle for the whole or any part of the carriage.
- 5.2 The Distributor may arrange for any part of the Services to be carried out by a subcontractor.
- 5.3 The Customer shall ensure that the Goods are securely and appropriately packed and labelled and marked, and that the Customer or the Sender (as applicable) provides a schedule listing the nature and weight of the Goods.
- 5.4 The Customer shall bring to the attention of the Distributor (or shall procure that the Sender brings to the attention of the Distributor) at the time of collection any characteristics of the Goods (for example fragile or perishable items) or other matters (for example where the Goods are to be delivered to two or more Recipients, which Goods are intended for which Recipients) of which the Distributor needs to be aware when planning and effecting the loading of the Goods.
- 5.5 The Customer shall ensure that the Goods are on pallets prior to collection by the Distributor. If the Goods are not on pallets, the Customer shall notify the Distributor in advance of the Collection Date and Distributor may make additional charges in respect of any additional labour and time required in order to load and/or unload the Goods. The Customer may request that the Distributor provides pallets at charges to be agreed between the parties prior to the provision of such pallets.
- 5.6 The Distributor may refuse to carry any Goods which, in the reasonable opinion of the driver are unsafe or unsuitably packaged or would otherwise contravene safety standards. The Distributor and shall not be liable to the Customer for any direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly including any third party delivery costs in the event that it refuses to carry any Goods under this clause 5.6.
- 5.7 In the event that collection or delivery is delayed due to events outside the Distributor's control, including traffic jams, breakdown or road closures the Distributor shall, the Distributor shall use its reasonable endeavours to notify the Customer as soon as reasonably possible of a revised arrival time at the Collection Point or Delivery Point (as applicable) and, where appropriate, the Customer shall advise the Sender or Recipient of the delay. The Distributor shall not be liable to the Customer for any direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any such delay.
- 5.8 The Customer shall procure that the Sender or Recipient (to the extent applicable) complies with the provisions of these Terms as though it were the Customer.

6. RISK AND INSURANCE

- 6.1 The Goods are at the risk of the Distributor from the time of collection until the time of delivery.
- 6.2 The Distributor shall maintain insurance in accordance with reasonable industry practice in relation to the Goods and shall maintain such insurance in full force and effect throughout the period when the Goods are (or would but for the occurrence of one or more of the insured risks be) in the care, custody or control of the Distributor. The Distributor shall provide a copy of the insurance policy to the Customer on request. It is the Customer's responsibility to ensure that the insurance policy is suitable for its requirements, and to obtain additional insurance in the event that it is needed. The Customer acknowledges that the Charges are based on the Distributor's standard insurance, and that any additional insurance must therefore be obtained by the Customer, or by the Distributor at an additional charge to the Customer.

7. CHARGES & PAYMENT

- 7.1 The Charges for the Services shall be the Charges agreed in the Contract and confirmed in the Order Acknowledgement together with any Cancellation Charges or other charges set out in these Terms.
- 7.2 All payments to be made pursuant to the Contract shall be exclusive of VAT (if applicable) at the rate required by law. Any VAT chargeable in respect of the matters giving rise to such payments shall be added to the amount of, and paid in addition to, them.
- 7.4 Subject to clause 7.5, payment of the Charges is due within 30 days of the last day of the month in which the Distributor invoices the Customer.
- 7.5 If the Distributor has notified the Customer that the Contract must be paid for in advance then payment of the Charges must be made before collection and delivery of the Goods.
- 7.6 No payment shall be deemed to have been received until the Distributor has received cleared funds.
- 7.7 All payments payable to the Distributor under the Contract shall become due immediately on its termination despite any other provision.
- 7.8 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Distributor to the Customer.
- 7.9 If the Customer does not pay the Distributor in accordance with this clause 7 any sum due under the Contract:
- 7.9.1 The Customer shall be liable to pay interest to the Distributor on such sum under the Late Payment of Commercial Debts (Interest) Act 1998; and
- 7.9.2 The Distributor reserves the right to suspend the performance of its obligations under the Contract or any other Contract between the parties until the payment is made in full.

8. LIMITATION OF LIABILITY

- 8.1 This clause 8 sets out the entire liability of the Distributor to the Customer (including any liability for the acts and omissions of employees) in respect of:
- 8.1.1 The Services;
- 8.1.2 Any breach of the Distributor's contractual obligations arising under the Contract; and
- 8.1.3 any representation, statement (other than fraudulent misrepresentation) or tortious act or omission including any negligence arising under or in connection with the Contract or breach of statutory duty ("an Event of Default").
- 8.2 Subject to clause 8.3, the Distributor shall not be liable to the Customer for any loss or damage where the liability arises:
- 8.2.1 from the manner in which the goods have been packaged by the Customer;
- 8.2.2 from any special requirements related to the Goods which have not been notified to the Distributor in accordance with clause 5.4; or
- 8.2.3 from a risk which is not insured under the Distributor's standard insurance policy which will be provided to the Customer upon request in accordance with clause 6.2;
- 8.3 Notwithstanding any other provision of these Terms, the Distributor does not seek to limit or exclude its liability to the Customer:
- 8.3.1 for death or personal injury resulting from its own or its employees' negligent act or omission or wilful misconduct;

8.3.2 for fraudulent misrepresentation;

- 8.3.3 For any matter which it would be illegal for the Distributor to exclude or attempt to exclude its liability.
- 8.4 Subject to clauses 8.2, and 8.3 the Distributor's maximum total liability to the Customer in respect of all claims, losses, damages, costs, charges, expenses, liabilities, demands, proceedings and actions (whether arising in contract, tort, negligence, breach of statutory duty or otherwise) in respect of all Events of Default shall not exceed the amount which the Distributor is entitled to recover under the insurance policy referred to in clause 6.2. Details of the relevant limits are available from the Distributor upon request.
- 8.5 The Distributor shall under no circumstances be liable to the Customer for pure economic loss, loss of profits, loss of contracts, loss of opportunity, loss of business, loss or depletion of goodwill, increased overheads or administration expenses, management time loss of savings, loss of data, or any type of special, indirect or consequential loss of any nature whatsoever (including without limitation loss or damage suffered by the Customer as a result of an action brought by any third party) even if such loss was reasonably foreseeable or the Distributor had been advised of the possibility of the Customer incurring that same loss.
- 8.6 All terms, conditions, warranties and other matters which may be implied by statute or common law (except for the conditions implied by section 12 of the Sale of Goods Act 1979) including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose and the use of reasonable skill and care are excluded to the fullest extent permitted by law. Accordingly, except as expressly set out in these Terms, the Distributor shall have no liability of any nature whatsoever to the Customer.
- 8.7 The Customer acknowledges that the exclusions and limitations of liability reflect the level of the Charges and that the Distributor will provide the Services for a higher fee on terms which contain fewer limitations of the Distributor's liability to the Customer. The exclusions and limitations on liability in these Terms are based on the Distributor's standard insurance, and if they are not suitable for the Customer's requirements the Customer is responsible for ensuring that it obtains additional insurance.
- 8.8 Neither party shall be entitled to recover damages in respect of any claim under these Terms, any Contract or any other agreement between the parties or otherwise obtain reimbursement or restitution more than once in respect of the same subject matter.

9. DURATION AND TERMINATION

- 9.1 The Contract shall come into effect on the date of the Order Acknowledgement and, unless terminated earlier in accordance with these Terms, shall continue in force until the Goods have been delivered.
- 9.2 Either party may terminate the Contract by written notice to the other effective immediately in the following circumstances:
- 9.2.1 any breach by the other party of the Contract, provided that (where the breach is capable of remedy) the other party has failed to remedy the breach within 30 days of being given notice to do so by the party wishing to terminate;
- 9.2.2 the other party makes any voluntary arrangement or composition with its creditors;
- 9.2.3 the other party (being an individual or firm) becomes bankrupt;
- 9.2.4 an order is made for the appointment of an administrator to manage the affairs, business and property of the other party or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986);
- 9.2.5 a resolution is passed or a petition is presented or an order is made for the winding up of the other party (otherwise than for the purpose of amalgamation or reconstruction) or circumstances arise which entitle a court of competent jurisdiction to make a winding up order of the other party;
- 9.2.6 an encumbrancer takes possession of or a receiver or administrative receiver is appointed over any of the property, assets or undertaking of the other party or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party or if any other person takes possession of or sells the other party's assets;
- 9.2.7 the other party ceases or threatens to cease to carry on business; or
- 9.2.8 The other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.
- 9.3 If the Customer cancels any Contract other than as set out in clause 9.2, Cancellation Charges may apply in accordance with clauses 3.3 and 4.3.

10. TERMINATION CONSEQUENCES

- 10.1 On the termination of the Contract and subject to payment of any outstanding Charges by the Customer, the Distributor shall deliver to the Recipient any undelivered Goods (or at the Customer's option return them to the Customer).
- 10.2 On termination of the Contract the Customer shall make payment of any sums outstanding due to the Distributor.
- 10.3 On termination (including expiry) of the Contract all rights and obligations of the Parties under the Contract shall automatically terminate except for such rights of action as shall have accrued prior to termination and any obligations which expressly or by implication are intended to come into or continue in force on or after termination.

11. FORCE MAJEURE

- 11.1 Neither party shall be liable for any delay in performing or failure to perform any of its obligations under these Terms (other than an obligation to make payment) if such delay or failure results from events or circumstances outside its reasonable control. Such event or circumstance will only be considered to be an event of force majeure under this clause 11 if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the party who delays or fails to perform, its servants, agents or employees. Such delay or failure shall not constitute a breach of these Terms and the time for performance shall be extended by a period equivalent to that during which performance is so prevented.

12. MISCELLANEOUS

- 12.1 No waiver of either party's obligations under the Contract shall be deemed effective unless made in writing nor shall any waiver in respect of any breach be deemed to constitute a waiver of or a consent to any subsequent breach of a party's obligations.
- 12.2 Each provision of the Contract shall be construed separately. If the whole or any part of any such provision may prove to be illegal or unenforceable, the parties shall try to agree substitute provision for that which is invalid or unenforceable.
- 12.3 The parties are not partners or joint venturers nor is either party entitled to act as the other's agent nor shall the Distributor be liable in respect of any representation act or omission of the Customer of whatever nature.
- 12.4 Both parties shall perform all acts and execute all documents which are necessary to give full force and effect to any provision of the Contract.
- 12.5 The Contract constitutes the entire understanding between the parties concerning the subject matter of the Contract. The parties confirm that they have not entered into the Contract on the basis of any representations that are not expressly incorporated into the Contract. Nothing in the Contract purports to limit the liability of either party for fraudulent misrepresentation.
- 12.6 No waiver or amendment of any provision of the Contract shall be effective unless made in writing signed by both parties.
- 12.7 Unless expressly stated to the contrary, no provision of the Contract is intended to or creates any right or benefit enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 12.8 The Contract shall be governed by English law and the parties irrevocably submit to the exclusive jurisdiction of the English Courts.