

## **Cargocare Limited – Conditions of Trading**

1. All or any business undertaken by Cargocare Limited (hereinafter called “the Company”) is transacted subject to the following Conditions each of which be deemed to be incorporated in and to be a condition of any agreement between the Company and its customers.
2. The Company is not a common carrier and deals with or handles goods subject ONLY to these conditions. No variation or waiver of any of these Conditions shall be of any effect unless it be evidenced in writing and signed by a director of the Company.
3. Any Instruction given to the Company may in the absolute discretion of the Company be followed by the Company itself by its own servants performing part or all of the relevant services or by the Company employing or instructing or entrusting the goods to others on such conditions as such others may stipulate to perform part or all of such services. The conditions of such others shall as between the Company and the customer apply so as to limit but not so as to extend the liability of the Company under these Conditions, subject to the foregoing these Conditions shall prevail in the event of any difference between them and the conditions of such others.
4. A customer entering into a transaction or agreement of any kind with the Company expressly warrants that he is either the owner or the authorised agent of the owner of the goods to which the transaction or agreement relates and further warrants that he is authorised to accept and does accept these Conditions not only for himself but also as agent for and on behalf of all other persons who are or may become interested in the goods.
5. Subject to express instructions in writing given by the Customer, the Company reserves to itself absolute discretion as to the means, route and procedure to be followed in the handling, storage and transportation of the goods and the provision of its services. If, in the opinion of the Company it shall at any time become necessary or desirable to depart from such instructions, the Company (in its absolute discretion) shall be free to do so.
6. The Company shall be entitled to retain and to be paid all brokerages, commission, allowance or any other remuneration customarily retained by or paid to carriers, shipping and forwarding agents, freight forwarders and insurance brokers.
7. All goods shall be properly and sufficiently packed and/or prepared by the Customer for carriage or forwarding. The Company shall not be liable for any damage to the goods attributable to or in any way connected with inadequate or insufficient packaging or the absence of packaging. The Customer shall indemnify the Company against all losses, or claims arising out of or in any way connected with any damage or injury caused by, resulting from or connected with the state of packing or the preparation of the goods. The Company does not provide a packing service on behalf of its customers unless such is expressly requested in writing by the customer AND agreed to and confirmed in writing by the Company.
8. Quotations are given subject to withdrawal or revision prior to acceptance. All quotations not accepted in writing within 30 days from the date issued will be deemed to have been withdrawn. After acceptance, all quotations and charges shall be subject to revision without notice and in accordance with any changes in the rates of freight, haulage, insurance premiums or any other charge at any time applicable to the goods.
9. The Customer shall be deemed to be bound by and to warrant the accuracy of all descriptions, weights, measurements, values or other particulars furnished to the Company for customs, consular, shipping or other purposes and he undertakes to indemnify the Company against all losses, damages, expenses and fines arising from any inaccuracy or omission even if such inaccuracy or omission is not due to negligence.
10. The Customer shall be liable for any duties, taxes, import levies, deposits, demurrage or outlays of any kind levied at any port or place in connection with the goods and shall indemnify the Company for any payments, fines, expenses, loss or damage incurred or sustained by the Company in connection therewith.
11. The Customer shall not exercise any claim to set-off any sum against any sum due to the Company, nor shall the Customer refuse or delay payment of any sum due to the Company on the ground of any counter claim or dispute.
12. When goods are accepted or dealt with upon instruction to collect freight, duties, charges other expenses from the consignee or any other person the Customer shall remain responsible for the payment of same in the event of non payment by such consignee or other person upon delivery or when requested.
13. No insurance will be effected by the Company except upon express written instructions by the Customer to the Company and written confirmation from the Company to the Customer that it is in a position to, and has effected the cover. All insurances effected by the Company are subject to the exceptions and conditions of the policies of the insurance company or underwriters taking the risk. The Company shall not be under any obligation to effect a separate insurance on any consignment but may declare each consignment on an open or general policy. Should the insurers or underwriters for any reason dispute their liability neither the insured nor the Customer shall have recourse against the Company but their recourse if any shall be against the insurers or underwriters only and the Company shall not be under any responsibility or liability in relation thereto notwithstanding that the premium upon the policy may not be at the same rate as that charged by the Company or paid to the Company by its Customer or other party.

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14. (i) The Company shall only be responsible for the goods while they are in its actual custody and under its actual control and the Company shall not be liable for loss of or damage to the goods or part thereof or failure to deliver the goods or part thereof unless it is proved that such loss or damage or failure to deliver was due to the wilful neglect or wilful default of the Company or its own servants done with intent to cause damage.
- (ii) The Company shall be liable for any non-compliance or mis-compliance with any instruction given to it only if it is proved that such non-compliance was caused by the wilful neglect or wilful default of the Company or its own servants done with intent to cause damage.
- (iii) Save as aforesaid the Company shall be under no liability in connection with the goods or with instructions given to it or services provided or to be provided by it notwithstanding that the Company or its servants or agents shall have been negligent or in breach of any statutory duty.
- (iv) Furthermore and without prejudice to the generality of the preceding sub-conditions the Company shall not in any event be liable for any delay or consequential loss or loss of market, however caused, nor for any loss, damage or expense arising from or in any way connected with the marks, weights, numbers, brands, contents, quality, quantity or description of any goods however caused.
- (v) If an action is brought against a servant or agent of the Company in respect of any loss or any damage to the goods or any part of the goods or in respect of any other matter connected with the goods such servant or agent shall be entitled to the defences, exceptions and limits of liability which the Company is entitled to invoke under these Conditions and for the purpose only of conferring the benefit of such defences, exceptions and limits of liability upon its servants and agents the Company enters into every agreement with the Customer on its own behalf and also as agent for all persons who are or may from time to time become its servants or agents.
15. In no case shall the liability of the Company howsoever arising in connection with the goods and notwithstanding that the circumstances or cause of the loss, damage or failure to deliver may be unexplained exceed the value of the goods or sum at the rate of **1,650 Euros** per 1000 kilos on the gross weight of the goods damaged, or not delivered, whichever shall be the smaller.
16. (i) In no event shall the Company be liable in respect of any claim whatsoever unless the same be made in writing and the Customer shall prove that the Company received the said written claim not later than 10 days after delivery of the goods or 10 days after the Customer became aware, or should have become aware that the goods had been lost, damaged or failed to be delivered.
- (ii) The Company shall be discharged from all liability in respect of loss of or damage to goods unless suit is brought within one year from the date of shipment.
17. (a) The Company shall not be obliged to make any declaration for the purpose of any statute or contract as to the nature or value of any goods or as to any special interest in the delivery unless required by law or unless the Company shall have accepted in writing express written instructions from the Customers to that effect.
- (b) Where there is a choice of rates in accordance with or related to the degree of the liability assumed by carriers, warehousemen or others, goods will be forwarded, carried, warehoused or otherwise dealt with only at the lowest of such rates and no declaration of value (where optional) will be made, unless the Company shall have accepted in writing express written instructions from the Customer to that effect.
18. Instructions to collect payment on delivery (C.O.D.) in cash or otherwise are accepted by the Company upon condition that the Company in the matter of such collection will not be liable for loss arising from the failure of the required party to supply the required C.O.D. or the failure or inability of the Company to secure same at the time of delivery. This condition applies whether the Company applies a fee for the collection of a C.O.D. or not.
19. Perishable goods which are not accepted or taken up immediately upon arrival or which the Company considers to be insufficiently addressed or marked or otherwise not readily identifiable may be sold or otherwise disposed of without notice to the senders, owners or consignees and payment or tender of the net proceeds of any sale after deduction of the charges shall be a complete discharge of all responsibility on the part of the Company and equivalent to delivery. The Customer shall pay all charges and expenses arising in connection with the sale or disposal of the goods. The Customer will indemnify the Company against all losses, costs and expenses incurred by the Company in respect of any claim by any Third Party (including its own servants or agents) in connection with such sale or disposal.
20. Non-Perishable goods which cannot be delivered either because in the opinion of the Company they are insufficiently or incorrectly addressed or because they are not collected or accepted by the Consignees may be sold, returned or otherwise disposed of at the Company's option at any time after expiration of 21 days from the date of a notice in writing sent to the last known address of the Customer. The Customer shall pay all charges and expenses arising in connection with the sale, return or disposal of the goods. A communication from any agent, servant or correspondent of the Company to the effect that the goods cannot be delivered for any reason shall be conclusive evidence of the fact. Return of the goods to the Customer or payment by the Company to the Customer of the net proceeds of any sale after deduction of the charges shall be a complete discharge of all responsibility on the part of the Company. If any claims are made by Third Parties (including its own servants or agents) by reason of such sale or return the Customer will indemnify the Company against same and against all losses, costs and expenses incurred by the Company in connection therewith.

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21. Except under special arrangements with the Customer previously agreed in writing the Company will not accept or deal with any goods which are in the opinion of the Company, noxious, dangerous, hazardous, inflammable or explosive or likely to cause damage. The expression, “[goods] likely to cause damage” includes goods likely to harbour vermin or other pests, but this shall in no way limit the generality of the said words. In the event of any person delivering such goods to the Company or causing the Company to handle or deal with any such goods (except under special arrangements previously agreed in writing with the Customer) the Customer shall be liable for all loss or damage caused thereby and shall indemnify the Company against all penalties, claims, damages, costs and expenses arising in connection therewith and the goods may be destroyed or otherwise dealt with at the sole discretion of the Company or any other person in whose custody they may be at the relevant time and the Customer shall indemnify the Company against all consequences of the exercise of this right. If such goods are accepted under an arrangement with the Customer previously agreed in writing they may nevertheless be so destroyed or otherwise dealt with if in the opinion of the Company they become dangerous to other goods, property or health and the Customer in that event shall indemnify the Company in the manner aforesaid. The customer will supply the Company with the correct accurate and relative hazardous documentation and declarations for goods being accepted under these arrangements and will indemnify the Company against all consequences associated with a failure to do so.
22. Except under special arrangements previously made in writing the Company will not accept or deal with bullion, coins, precious stones, jewellery, valuables, antiques, pictures or plants. Should any Customer nevertheless deliver 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 any loss or damage to or in connection with such goods howsoever caused.
23. All goods (and documents relating to goods) in the possession of the Company or any agent or subcontractor of the Company shall be subject to a particular and general lien for monies due to the Company or to any company controlling, controlled by or under common control with the Company (such company being hereinafter referred to as “an associate company”) 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. In the event that the Company for whatever reason withdraws credit facilities from the Customer or puts the Customer’s account on hold, all outstanding monies become immediately due and no further credit for past, current or future transactions can be availed of until full settlement of the account has been received by the Company and the Company agrees to reopen a credit account for the Customer. If any monies due to the Company or any associated company are not paid within one month after notice has been given to the person or company from whom the monies are due that such goods are being detained, the goods may be sold by auction or otherwise at the sole discretion of the Company and at the expense of such person or company, and proceeds applied in or towards satisfaction of such particular or general lien. If any claims are made against the Company or any associated company by Third Parties (including its own servants or agents) by reason of the exercise of its rights under this Condition the Customer will indemnify the Company or such associated company against the same and against all losses, costs, damages, and expenses incurred by the Company or such associated company in connection herein.
24. Pending forwarding and delivery goods may be warehoused or otherwise stored at any place or places at the sole discretion of the Company at the Customer’s expense. The Company shall not be liable for any loss of whatever nature arising from such warehousing or storing unless that loss is proven to have been caused by the wilful neglect or wilful default of the Company, its servants or agents done with intent to cause damage. The Customer shall indemnify the Company against any loss suffered by it as a result of any claims brought against it by Third Parties (including the Company’s own servants or agents) in connection with the warehousing or storing of goods except where any loss giving rise to any such claim is proved by the Customer to have been caused by the wilful neglect or wilful default of the Company, its servants or agents as aforesaid.
25. (i) The Customer shall indemnify the Company and save it harmless against all claims, demands or liabilities made against or suffered or incurred by the Company, in excess of the Company’s liability under these Conditions in connection with the goods or arising directly or indirectly from the Customer’s instructions or their execution or in connection with any services provided or to be provided by the Company under any agreement with the Customer, whether or not any such claim, demand or liability shall be due to or result from or connected with any negligence or other tort or breach of statutory duty on the part of the Company, its servants, agents, sub-contractors or any other person for whose acts of omission the Company shall or may be liable.
26. (ii) In particular and without limiting the generality of the immediately preceding sub-condition, the Customer shall indemnify and save the Company harmless against all such claims, demands or liabilities by, from or to any servant, agent or sub-contractor, or any haulier, carrier, warehouseman or other person whatsoever at any time involved with the goods or with the provision of any service to the Customer arising out of or in connection with any service to the Customer arising out of or in connection with any claim made directly or indirectly against any such person by the Customer or by any sender, consignee or owner of the goods or by any person interested in the goods or any other person.
27. No Document signed by or on behalf of the Company prepared by the Customer and acknowledging receipt of a consignment, shall be evidence of the condition or the correctness of the declared nature, quantity, quality or weight of the consignment at the time of receipt by the Company.
28. All agreements between the Company and its Customers shall be governed by Irish Law and be within the exclusive jurisdiction of the Irish Courts.