

# Transtore Terms of Trade

## 1. DEFINITIONS

- 1.1 "Transtore Ltd" shall mean Transtore Limited, or any agents or employees thereof.
- 1.2 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing products and services from Transtore Ltd.
- 1.3 "Services" shall mean all services provided by Transtore Ltd to the Customer and shall include without limitation all shipping, freight forwarding, cartage, distribution and customs services arranged and undertaken by Transtore Ltd and all charges for time and attendances, hire charges, insurance charges, or any fee or charge associated with the supply of Services by Transtore Ltd to the Customer.
- 1.4 "Price" shall mean the cost of the Services as agreed between Transtore Ltd and the Customer and includes all disbursements eg charges Transtore Ltd pay to others on the Customer's behalf subject to clause 4 of this contract.

## 2. ACCEPTANCE

- 2.1 Any instructions received by Transtore Ltd from the Customer for the supply of Services shall constitute a binding contract and acceptance of the terms and conditions contained herein.

## 3. COLLECTION AND USE OF INFORMATION

- 3.1 The Customer authorises Transtore Ltd to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any Services provided by Transtore Ltd to any other party.
- 3.2 The Customer authorises Transtore Ltd to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the Customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

## 4. PRICE

- 4.1 Where no price is stated in writing or agreed to orally the Services shall be deemed to be sold at the current amount as such Services are sold by Transtore Ltd at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Services that is beyond the control of Transtore Ltd between the date of the contract and delivery of the Services.

## 5. PAYMENT

- 5.1 Payment for Services shall be made in full on or before the 20<sup>th</sup> day of the month following the date of the invoice ("the due date").
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.3 Any expenses, disbursements and legal costs incurred by Transtore Ltd in the enforcement of any rights contained in this contract shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.

## 6. QUOTATION

- 6.1 Where a quotation is given by Transtore Ltd for Services:
  - 6.1.1 Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue; and
  - 6.1.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;
  - 6.1.3 Transtore Ltd reserve the right to alter the quotation because of circumstances beyond its control.
- 6.2 Where Services are required in addition to the quotation the Customer agrees to pay for the additional cost of such Services.

## 7. AGENCY

- 7.1 The Customer authorises Transtore Ltd to contract either as principal or agent for the provision of Services that are the matter of this contract.
- 7.2 Where Transtore Ltd enters into a contract of the type referred to in clause 7.1 it shall be read with and form part of this agreement and the Customer agrees to pay any amounts due under that contract.

## 8. GENERAL LIEN

- 8.1 The Customer agrees that Transtore Ltd may exercise a general lien against any property belonging to the Customer that is in the possession of Transtore Ltd for all sums outstanding under this contract and any other contract to which the Customer and Transtore Ltd are parties.
- 8.2 If the lien is not satisfied within seven (7) days of the due date Transtore Ltd may, having given notice of the lien at its option either:
  - 8.2.1 Remove such Services and store it in such a place and in such a manner as Transtore Ltd shall think fit and proper and at the risk and expense of the Customer; or
  - 8.2.2 Sell such property or part thereof upon such terms as it shall think fit and apply the proceeds in or towards discharge of the lien and costs of sale without being liable to any person for damage caused.

## 9. DISPUTES

- 9.1 No claim relating to Services will be considered unless made within seven (7) days of delivery.

## 10. LIABILITY

- 10.1 The Carriage of Goods Act 1979, the Consumers Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Transtore Ltd which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on Transtore Ltd, Transtore Ltd's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.

10.2 Except as otherwise provided by clause 10.1 Transtore Ltd shall not be liable for:

10.2.1 Any loss or damage of any kind whatsoever, arising from the supply of Services by Transtore Ltd to the Customer, including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Services provided by Transtore Ltd to the Customer; and

10.2.2 The Customer shall indemnify Transtore Ltd against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Transtore Ltd or otherwise, brought by any person in connection with any matter, act, omission, or error by Transtore Ltd its agents or employees in connection with the Services.

10.3 If, contrary to the disclaimer of liability contained in these terms and conditions of trade, Transtore Ltd is deemed to be liable to the Customer, following and arising from the supply of Services by it to the Customer, then it is agreed between Transtore Ltd and the Customer that such liability is limited in its aggregate to \$500.00.

#### **11. LIABILITY FOR DAMAGE AND LOSS**

11.1 For the purpose of determining liability for loss or damage to any freight or property which is the subject of any services provided by Transtore Ltd to the Customer, it is agreed that every contract of carriage shall be deemed to be "at limited carriers risk" as defined by the Carriage of Goods Act 1979.

11.2 Subject to 11.1 above the Customer is responsible for keeping goods and property which is the subject of any services provided by Transtore Ltd insured to its full value at all times. Any claim must be notified within seven (7) days of delivery.

#### **12. CONSUMER GUARANTEES ACT**

12.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Services from Transtore Ltd for the purposes of a business in terms of section 2 and 43 of that Act.

#### **13. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES**

13.1 If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for Transtore Ltd agreeing to supply Services and grant credit to the Customer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to Transtore Ltd the payment of any and all monies now or hereafter owed by the Customer to Transtore Ltd and indemnify Transtore Ltd against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

#### **14. MISCELLANEOUS**

14.1 Transtore Ltd shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.

14.2 Failure by Transtore Ltd to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations Transtore Ltd has under this contract.

14.3 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.