



## CONTRACT CONDITIONS FOR STORAGE AND LOGISTICS

Space Contained Limited provides all items and services on the following Conditions which can be varied only in writing by an Officer of the Company.

If a Customer's acceptance document, purchase order or other communication, received by Space Contained before or after notification of these Conditions, contains terms at variance with these Conditions, then every such term shall be of no effect.

### SPACE CONTAINED'S OBLIGATIONS

**1.1** Space Contained will provide its services with reasonable skill and care. In the absence of written instruction to Space Contained given a reasonable time in advance with sufficient warning and detail, no particular precautions nor any special treatment need be taken or provided for the Goods by Space Contained or its subcontractors, nor shall time be of the essence for performance by Space Contained.

**1.2** In the case of bulk Goods, unless the parties have agreed otherwise Space Contained may deal with and/or mix apparently similar goods consigned by or for the Customer without distinguishing between consignments.

**1.3** In the case of carriage Space Contained's responsibility for the Goods starts when loading on the vehicle is complete and ends when the Goods are tendered for unloading. In the case of storage and/or processing it starts when they are accepted into store and ends when they are tendered by Space Contained or its subcontractors for collection, or Space Contained becomes aware of the grounds for their removal under Condition 2.2 or on the expiry of notice under Condition 7.1 or 7.2. Where Space Contained provides storage and carriage it shall also be responsible for the Goods while they are transferred from its vehicle into its store and vice versa. In the case of forwarding, Space Contained's responsibility is only to engage or propose apparently competent contractors and to give them adequate instructions (on the basis of matters known to Space Contained) in relation to the Goods; and in this case, or where the contract is for advice, it is not responsible for the Goods themselves.

**1.4** Space Contained's duty is to the Customer only and not to any third party. Any advice given is for the Customer only and cannot be relied on by any other party.

**1.5** Unless it states otherwise in writing, where Space Contained provides forwarding services it operates as the Customer's agent in dealing, or engaging others to deal, with the Goods.

**1.6** For the purposes of the Fulfilment House Due Diligence Scheme and other matters relating to tax, excise, customs or duties, Space Contained acts as the direct representative of the Customer unless otherwise agreed in writing.

### CUSTOMER'S UNDERTAKINGS

**2.1** It is a condition of the contract, and the Customer represents, warrants and undertakes, that:

**2.1.1** It is either the owner of the Goods, or is authorised by the owner to accept these Conditions on the owner's behalf.

**2.1.2** The Goods shall be presented to Space Contained (and/or anyone else dealing with them) securely and properly packed in compliance with any applicable statutory regulations, recognised standards and good practice; and that they and any Goods Transport Unit are and will remain in a condition to be safely handled, stored and/or carried and so as not to cause injury, damage, contamination or deterioration (or the possibility of them) to any person, premises, property, the environment, drains or watercourses, equipment or to any other items in any way. Where Space Contained is performing an operation or process on the Goods, they will be delivered to Space Contained in a condition where that operation or process can be done without further work (other than unpacking).

**2.1.3** Before Space Contained assumes any responsibility for or by reference to the Goods, the Customer will inform Space Contained of any relevant matters; including any special precautions necessitated by the nature, size or shape, weight, condition or potential for deterioration of the Goods and any statutory or other requirements relevant to the Goods with which Space Contained or others may need to comply; and will promptly after invoicing pay Space Contained's reasonable extra charges for complying.

**2.1.4** It will promptly after invoicing indemnify Space Contained against all duties, taxes and expenses that Space Contained has paid or may be required to pay in respect of the Goods; including where the liability to pay them is triggered by the fault, act or omission of Space Contained or its employees or sub-contractors.

**2.1.5** Except to the extent previously notified in detail to, and accepted by, Space Contained in writing none of the Goods: are or may become hazardous or contaminated; may cause pollution of the environment or harm to human health if they escape from their packaging; require any official consent or licence (or would be illegal for Space Contained) to handle, possess, deal with or carry; or will at any time whilst in the care or control of Space Contained constitute Waste.

**2.1.6** The Customer will provide a risk assessment and/or method statement appropriate for handling the Goods. Where Space Contained is carrying the Goods, then unless otherwise previously agreed in writing the Customer will provide suitable facilities, equipment and methods for, and will procure, safe and prompt loading and unloading of the Goods at, any location not occupied by Space Contained in which they are being handled.

**2.1.7** It will comply with any reasonable requirements of Space Contained relating to handling, packing, carriage, storage or forwarding of Goods (and ancillary matters) which are notified in writing.

**2.1.8** Information given by or on its behalf shall be correct and complete. The Customer will provide promptly when, and in a format, reasonably requested by or on behalf of Space Contained, any documentation, instructions or information which is relevant to the Goods, to any interest in them, to any services to be provided for the Customer, or to any actual or anticipated obligation of Space Contained related to either the Goods or the Customer.

**2.1.9** Unless otherwise agreed the Customer will be responsible for instructing Space Contained on the order of stock removals.

**2.2** The Customer will indemnify Space Contained against any expense, loss or damage it suffers as a result of the Customer's instructions (or failure to give instructions or information), or which is related to any breach of the Customer's obligations or the Customer's insolvency, or complying with the instructions of a competent authority in respect of the Goods, and will pay all costs and expenses (including professional fees) incurred in, and Space Contained's reasonable charges for, dealing with such matters and their consequences. The Customer will pay an extra charge equal to the amount of any fine or penalty payable by Space Contained wholly or partly as a consequence of compliance with the instructions, or of acts or omissions of the Customer. If Space Contained suspects a breach of Condition 2, it may refuse to accept the Goods, demand their immediate removal, or itself arrange their removal without notice, at the Customer's expense.

## **INSURANCE AND THE COMPANY'S LIABILITY**

**3.1** Unless expressly agreed, Space Contained does not insure the Goods and the Customer shall self-insure or make arrangements to cover the Goods against all insurable risks to their full insurable value (including all duties and taxes). The insurance referred to in Condition 3.5 is insurance against Space Contained's potential liability for breach of its obligations and not to cover the Goods themselves against loss, damage, etc .

**3.2** Subject to Condition 3.3, Space Contained shall have no liability for Loss however arising.

**3.3** If and to the extent that Loss is directly caused by negligence or wilful act or default of, or breach of duty owed to the Customer by Space Contained, its employees (acting in furtherance of their duties as employees) or sub-contractors or agents (acting in furtherance of their duties as sub-contractors or agents) and subject to Conditions 3.4, 3.7 and 3.8, Space Contained will accept liability for Loss assessed on normal legal principles but not exceeding the Limit fixed by Condition 3.5. Any quantification of amount or value includes duties and taxes.

**3.4** In no case shall Space Contained be liable for any lost profit, income or savings, wasted expenditure, liquidated

damages, or indirect or consequential loss suffered by anyone.

**3.5** In no case shall any liability of Space Contained (including inter alia any liability in respect of duties and taxes) exceed the Limit, fixed as follows:-

**3.5.1** Where potential Loss relates to Goods, the Customer may specify the Limit as an amount (in Sterling, US Dollars or Euros) per tonne weight of the Goods by notice in writing stating the Limit and the nature and maximum value of the Goods, including duty and taxes. The Limit so nominated by the Customer shall apply in respect of any cause of action arising after the Date and in the period in which the nomination remains in effect. It is a condition of the contract that the Customer pays within 7 days of receipt Space Contained's invoices for its costs in insuring against its potential liability up to the Limit, and/or to the extent that Space Contained elects to carry the risk itself, its extra charge equivalent to the estimated or likely cost of such insurance.

**3.5.2** If Space Contained having made reasonable efforts is unable to obtain insurance on reasonable terms to cover its liability up to the Limit nominated by the Customer, or if the Customer has not yet paid any invoice issued under Condition 3.5.1, Space Contained may give 3 working days written notice, and the Limit for causes of action arising after the giving of the Customer's notice under 3.5.1 shall be £100 sterling per tonne weight of the Goods.

**3.5.3** Unless and until a higher Limit has been fixed under Condition 3.5.1 and continues in effect, the Limit shall be £100 sterling per tonne.

**3.5.4** Where Loss does not relate directly to Goods (for example alleged negligent advice or data irregularities) the Limit applicable shall be £1000 per incident or series of connected incidents.

**3.6** Without prejudice to Space Contained's rights under Condition 6 to be paid free from deduction or set-off, any limitation of liability on the part of Space Contained shall be applied to any claim by the Customer before any set off or counterclaim is asserted against money payable to Space Contained.

**3.7.1** Space Contained shall not be liable for any claim unless:

- it has received written notice of it within 10 days of the event giving rise to the claim coming to the knowledge of the Customer or consignee; and
- it has received, within 21 days of the event giving rise to the claim coming to the knowledge of the Customer or consignee, sufficient detail in writing to enable investigation. In the case of failure to deliver, time shall run from the second working day after the expected date of delivery.

**3.7.2** No legal proceedings (including any counterclaim) may be brought against Space Contained unless they are issued and served within 9 months of the event giving rise to the claim.

**3.8** Space Contained shall not be liable for any Loss to the extent that it is caused or contributed to by a breach of any of the Customer's obligations, or by a person for whom Space Contained is not responsible, or by any of the circumstances by virtue of which Space Contained is relieved of its obligations under Condition 8.

## **EMPLOYEES, SUB-CONTRACTORS AND OTHERS**

**4.1** Space Contained shall be entitled to sub-contract on reasonable or industry standard terms all or any part of its obligations and in this event these Conditions shall continue to apply as between Space Contained and the Customer. However, except where urgent Space Contained will obtain the Customer's consent (not to be unreasonably withheld or delayed) before storage is subcontracted and will on request notify the Customer of the location of the Goods.

**4.2** No Interested Party will make a claim or issue proceedings in respect of Loss against any Additional Party.

**4.3** Without prejudice to Condition 4.2, if an Additional Party pays or is liable to make a payment to an Interested Party in connection with a claim for Loss, the Interested Party will fully indemnify Space Contained against any claim (including all costs and expenses) by the Additional Party against Space Contained for reimbursement of, contribution to or indemnity against that payment to the extent that the claim added to any direct liability of Space Contained, and payments made by it, to all Interested Parties exceeds the Limit applicable to the Loss giving rise to the claim.

## **CHANGE OF CUSTOMER**

**5.** If the Customer wishes to transfer the Goods or any part to the account of another person it shall give prior written notice to Space Contained. The notice shall not be effective unless before the effective date of the transfer the proposed transferee notifies Space Contained in writing that it wishes to become a customer, is to be bound by these Conditions and by any notice given under Condition 3, endorses any information provided by the Customer and will pay Space Contained's charges for the period after the effective date. The Customer will pay the charges for the period until the later of the effective date, or acceptance by Space Contained of the notice and of the proposed transferee as a customer. In any event the Customer will remain jointly liable for charges and indemnities relating to Goods consigned by it to Space Contained. The Goods remain subject to any lien which applies at the time of transfer.

## **CHARGES, PAYMENTS AND LIEN**

**6.1** Space Contained's charges are subject to VAT and may be increased by prior notice to the Customer. The notice shall be at least 7 days for increases reflecting any rise in fuel costs and at least 21 days otherwise. If the Customer does not agree to the increase it shall notify Space Contained in writing and will remove the Goods within 21 days after receipt of Space Contained's notice. If the Goods are not so removed then the increased charges will apply from expiry of Space Contained's notice. Space Contained has the right to charge for storage of the Goods for so long as it has custody of or is responsible for them.

**6.2** The Customer will pay demurrage at Space Contained's standard rate of £88 per hour plus VAT if the vehicle used by or on behalf of Space Contained to deliver the Goods is delayed for more than 60 minutes beyond the time reasonably needed for loading or unloading; and demurrage and storage charges if delivery is refused.

**6.3** Space Contained's charges shall be paid without deduction or set-off at such periodic intervals as may have been agreed between the parties and in any event on the earliest of (a) the expiry of any agreed period of credit (b) when any amount payable to Space Contained by the Customer becomes overdue and (c) the time immediately before any of the Goods cease to be in Space Contained's care or control. Space Contained shall be entitled to payment for carriage at the time the Goods are loaded onto the vehicle. Absence of a delivery note shall not justify a refusal by the Customer to pay.

**6.4** Interest shall be paid on money overdue to Space Contained at the rate of 1.5% for each calendar month during all or part of which it is overdue.

**6.5** Space Contained shall (on its own behalf and as agent for any assignee of its invoices) have a general and particular lien on the Goods (and any associated documentation or records) as security for payment of all sums (whether due or not) claimed by Space Contained from, or actually or prospectively payable to Space Contained by, the Customer or another Interested Party on any account (relating to the Goods or not), or otherwise claimed in respect of the Goods or other property of an Interested Party. Where a lien secures sums payable to or claimed by Space Contained, it shall continue to apply to Goods to cover those sums notwithstanding any transfer of ownership of Goods, or change of customer. Storage shall be charged for any goods detained under lien or where Space Contained is required by any competent authority to retain them.

## **REMOVAL AND DISPOSAL OF GOODS**

**7.1** The Goods shall be removed by the Customer at the time agreed between the parties. However, Space Contained may at any time by notice in writing to the Customer require the removal of the Goods within 14 days from the date of such notice or, in the case of perishable goods, 3 days; or immediately in case of urgency.

**7.2** Where the Customer fails to comply with Condition 7.1, or any payment from the Customer is overdue, Space Contained may, without prejudice to its other rights and remedies against the Customer, suspend activity and/ or notify the Customer in writing that the Goods may be or are being sold or otherwise disposed of. If the notice is solely because of a failure to pay, Space Contained will allow 14 days for payment from the date of such notice before it effects sale or disposal. If the notice is for any other reason there is no minimum period of notice. On expiry of the period, if such payment has not been made (or if applicable the Goods have not been so removed) Space Contained may sell or otherwise dispose of the Goods or any part at the Customer's entire risk and expense by such method and at such price (if any) as it considers appropriate. Space Contained will account to the Customer for any proceeds of sale or disposal after deduction of all expenses and amounts claimed by Space Contained and any assignee of its invoices.

Space Contained shall not be liable for any alleged failure to achieve a sufficient sale price for the Goods. Space Contained (and any person deriving title to Goods through it) shall be entitled to use under licence in connection with the disposal of Goods any copyright material or trade marks, and pass on any manufacturer's standard warranty, relating to them which would be available to an authorised retailer of the Goods.

**7.3** Notice or action by Space Contained under this condition shall not in itself terminate the contract between the parties unless Space Contained expressly states so.

**7.4** The time periods in this Condition may be extended by Space Contained in its discretion.

## **FORCE MAJEURE**

**8** Space Contained shall be relieved of its obligations to the extent that their performance is prevented or delayed by, or their non-performance results wholly or partly from, the act or omission of the Customer or anyone acting on its behalf or with its authority or an Interested Party or by storm, flood, fire, explosion, civil disturbance, governmental, regulatory or quasi-governmental action, breakdown or unavailability of premises, equipment or labour, or other cause beyond the reasonable control of Space Contained.

## **DATA AND CONFIDENTIALITY**

**9.1** Each party will observe its obligations under the General Data Protection Regulation and other applicable data protection legislation including the Data Protection Act 2018.

**9.2** Unless otherwise agreed in writing Space Contained will be a data processor and the Customer will be the data controller of personal data relating to or supplied by the Customer or consignees of the Goods.

**9.3** Space Contained will process personal data in accordance with the Customer's instructions. Space Contained may use data supplied by or on behalf of the Customer for purposes appropriate to the performance of Space Contained's obligations, the exercise of Space Contained's rights or for business planning by Space Contained. Space Contained may share data with a Subcontractor for the provision of Space Contained's services to the Customer, and with any government authority where appropriate.

**9.4** Subject to the provisions of this clause and applicable legislation, Space Contained and the Customer shall each keep confidential information or data supplied by or on behalf of the other which is expressed to be confidential or which is of such a nature that it should clearly be regarded as confidential by a reasonable person.

## **TUPE AND SERVICE PROVISION CHANGE**

**10.1** Where there is an Inward TUPE Transfer, the Customer will indemnify Space Contained against all liability and expense which Space Contained may incur in connection with:

**10.1.1** the employment or the termination of employment, before the Effective Time, of any Employee;

**10.1.2** any failure by the Transferor to comply with its legal obligations in respect of any of the Employees;

**10.1.3** the transfer to Space Contained, by virtue of TUPE or otherwise, of the employment of any person or the applicability of terms of employment, other than those previously notified to, and previously accepted by, Space Contained in writing;

**10.1.4** any act or omission of the Transferor, on or before the Effective Time, for which Space Contained becomes liable by virtue of TUPE or otherwise; or

**10.1.5** the Transferor's failure to comply with its obligations under regulation 13 of TUPE.

**10.2** Where there is an Outward TUPE Transfer, the Customer will indemnify Space Contained against all liability and expense which Space Contained may incur in connection with the Transferee's failure to comply with its legal obligations, including without limitation those under regulation 13 of TUPE.

## GENERAL

**11.1** Each exclusion or limitation of liability in these Conditions exists separately and cumulatively.

**11.2** Signature on behalf of a Customer or its consignee on a delivery note is evidence that the Goods have been received in apparently good order save as noted.

**11.3** Space Contained may open packaging or Goods Transport Units to inspect them or Goods they contain.

**11.4** Any notice shall be duly given if left at or sent by first class prepaid post to the last known address of the other party or by facsimile to the last notified number evidenced by a successful transmission record, or by email to the last address notified for the purpose of service. It shall be deemed to have been received: if posted 2 working days after posting (4 working days if sent abroad), and if sent by facsimile or email, one working day after sending subject to confirmation of successful transmission (fax) or delivery (email).

**11.5** "Writing" includes email.

**11.6** Delay or failure by either party to enforce its rights shall not be a waiver of them.

## GOVERNING LAW

**12** All contracts between Space Contained and the Customer and any claims relating to the Goods shall be governed by the law of England and disputes dealt with exclusively by the English courts.

## DEFINITIONS

**13** Terms used in these Conditions have the following meanings:

"Additional Party" means any employee, worker, agent or sub-contractor of Space Contained, or anyone entitled to an indemnity, reimbursement or contribution from Space Contained in respect of a claim by an Interested Party.

"Company" means the party agreeing to provide the services and/or items under the contract "Customer" means the party requesting the services and/or items under the contract (and if different, also the person to whom they are supplied).

"Date" means the 10th working day after the relevant notice is actually received by the Space Contained.

"Effective Time" means the time at which the employment of any person (or liabilities relating to that person) are transferred to Space Contained under TUPE.

"Employee" means a person employed or previously employed by the Transferor and who is, or whose rights are, affected by the TUPE Transfer.

"Goods" means goods (including any associated documents, packaging, Goods Transport Unit(s) and equipment) to which the contract relates or which are in the possession of Space Contained.

"Goods Transport Unit" means any container, packaging, pallet or other platform used in connection with the transport of Goods.

"Interested Party" means Space Contained and/or anyone with an interest in the Goods; any obligation of the Interested Party is borne jointly and severally.

"Inward TUPE Transfer" means a situation where Space Contained is (or is expected to be) a transferee for the purposes of TUPE as a result of providing services to or for the benefit of the Customer (or intending to do so)

"Limit" means a limit per tonne gross weight of that part of the Goods in respect of which a claim arises.

"Loss" includes (without limitation) loss (including theft), destruction, damage, unavailability, contamination, deterioration, delay, non-delivery, mis-delivery, unauthorised delivery, non-compliance with instructions or obligations, incorrect advice or information, loss or corruption of data, breach of data protection or processing obligations, interference with or disruption of information technology systems, breach of duty; and any event giving rise to any liability of an Interested Party to any other person or authority.

"Officer" includes a Director or Company Secretary; General Manager; Partner; or member of a Limited Liability Partnership.

"Outward TUPE Transfer" means a situation where Space Contained is (or is expected to be) a transferor for the purposes of TUPE as a result of the transfer of operations carried out for the Customer .

"Subcontractor" means a party engaged at the behest of Space Contained to perform some or all of Space Contained's obligations.

"Transferee" means a transferee as defined by TUPE.

"Transferor" means a transferor as defined by TUPE .

"TUPE" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (and any successor legislation) and also includes any other legislation under which employment or liabilities arising from employment transfer by operation of law.

"Waste" bears its general meaning and also includes "Waste" and "Directive Waste" as defined legislatively.