

Conditions for the Storage of Goods in Ireland 2019



The Conditions set down the basis on which the Company will store Goods for the Customer (definitions of Company and Customer are given in Condition 1). The Conditions may not be altered or varied in any way except by express agreement in writing signed by a director or proprietor of the Company. The Conditions cannot and do not override any Statutory provisions imposed by Law or the application of any applicable international conventions.

It is expressly stated to be the Customer's responsibility to read and understand these Conditions which will form the basis of the Contract under which any claims or disputes are settled. Customers are recommended to take professional advice and to ensure they arrange adequate insurance to provide full cover when the Goods are in transit and in storage.

IMPORTANT NOTE

A set of explanatory notes is available from the Freight Transport Association.

Name _____ of
Storer _____

Address _____

1 Definitions

In the Conditions:

- 1.1 **Alternative Dispute Resolution** means any procedure agreed by the parties for the resolution of disputes other than those involving formal arbitration or litigation.
- 1.2 **Company** means the person (corporate or otherwise) who enters into a contract with the Customer to store Goods and includes, unless the meaning otherwise requires, its agents, servants and Sub-contractors.
- 1.3 **Customer** means the person (corporate or otherwise) who enters into a contract of warehousing or storage with the Company for the warehousing or storage of Goods at the premises controlled by the Company.
- 1.4 **Contract** means the Agreement between the Customer and the Company for the warehousing and/or storage of Goods.
- 1.5 **Dangerous Goods** means Goods of any nature as may be included in the Approved Carriage List prepared pursuant to the Carriage of Dangerous Goods by Road Act 1998 (as amended) and the Carriage of Dangerous Goods by Road Regulations (S.I No. 617 and 620 of 2010) as may be amended from time to time and Goods which represent a similar hazard, radioactive material and explosives of any nature.

- 1.6 Day** means any day Monday to Friday inclusive other than a Bank or Statutory Holiday, including the day upon the Goods are delivered for storage and the day on which any claim or notice is first made.
- 1.7 Goods** mean any article or articles or merchandise whatsoever deposited with the Company for storage including the packaging of such articles and/or merchandise and any equipment in which or upon which the Goods are stored or carried.
- 1.8 Loss** includes (without limitation) theft, destruction, damage, unavailability, contamination, deterioration, non/miss/unauthorised delivery, non-compliance with instructions/obligations or incorrect advice or information.
- 1.9 Sub-contractor** means any person (corporate or otherwise) engaged by the Company to carry out warehousing and/or storage of Goods on its behalf.
- 1.10** The expressions **Company** and **Customer** shall include those parties' principals, agents and servants.

2 The Company's Obligations and Responsibility

- 2.1** The Company's responsibility for the Goods under these conditions shall commence when the Company takes physical control of the Goods at the point when the Company commences the unloading of the Goods and where the Company has agreed to undertake such unloading.
- 2.2** The Company's responsibility for the Goods under these conditions shall end when the Customer takes physical control of the Goods or when the Goods are loaded onto any vehicle for delivery to the Customer or any third party nominated by the Customer and where the Company agrees to undertake such loading.
- 2.3** Where the Company has agreed to deliver the Goods such delivery shall be undertaken subject to the Company's Conditions of Carriage.
- 2.4** The Company's duty is to the Customer only and not to any third party. Any advice given is for the Customer only.
- 2.5** Unless written instructions to the contrary are received from the Customer, the Company may sub-contract part or the whole of the warehousing/storage of Goods provided that the name of every such Sub-contractor shall be provided to the Customer upon request. In any arrangement with a Sub-contractor the Company shall require that the Sub-contractor does not further delegate his contractual responsibilities without the prior written authority of the Company.
- 2.6** Notwithstanding the provisions in Condition 2.4, the Company may not sub-contract the storage of Dangerous Goods without the prior written consent of the Customer.
- 2.7** Where part or the whole of the storage has been sub-contracted as provided for in Condition 2.4, such Sub-contractors shall have the benefit of these Conditions of Storage and shall be under no greater liability to the Customer than or in addition to that of the Company under the Contract and the Customer agrees with the Company that no claim shall be made against a Sub-contractor in addition to or excess of the limitation and/or exclusions of liability as set out in these Conditions.
- 2.8** The carriage of any Goods from the premises of the Customer or from the premises of any third party to the Company's warehouse shall not be subject to the Conditions but will be subject to the Company's Conditions of Carriage.
- 2.9** Upon giving not less than 3 days' prior notice in writing to the Company, the Customer or any such persons authorised in writing by the Customer shall be permitted to enter the Company's premises solely for the purpose of inspecting the Customer's Goods. Such

inspection will only take place during normal working hours.

- 2.10** The Company shall make available to the Customer upon request details of any risk assessments which may have been carried out at the Company's premises.

3 Customer's Undertakings

- 3.1** It is a condition of the Contract, and the Customer warrants that it contracts as the legal owner of the Goods or as the authorised agent of such legal owner in which case the Customer warrants that he has the authority to accept these Conditions on behalf of the legal owner.
- 3.2** The Customer shall be responsible for providing and safely operating any equipment that may be required for loading the Goods on or unloading the Goods from the vehicle unless arrangements to the contrary are agreed in writing between the Company and the Customer prior to despatch and the Conditions shall apply during such loading and/or unloading.
- 3.3** The Customer must make the Goods readily accessible on its vehicle for the purpose of unloading the Goods into the Company's warehouse. The Company will not be liable for any Goods on the vehicles other than the Goods to be warehoused by the Company.
- 3.4** The Customer will make the Goods reasonably accessible on the vehicle at the place designated for delivery.
- 3.5** It shall be the Customer's responsibility to inform the Company of any special equipment that may be required for the loading/unloading of Goods into the warehouse and should that special equipment be provided by the Customer the Customer will indemnify the Company against any loss, claims or damages sustained by the Company or third party as a result of any defect in such special equipment. Where specialist equipment is required, such equipment must be 'fit for purpose' and any statutory test certificates must be made available for inspection upon request.
- 3.6** The Customer shall present the Goods for storage securely and properly packed in compliance with any statutory regulations or recognised standards and best practice and in such condition as to be safely handled, stored and/or carried so as not to cause damage, injury, contamination or deterioration to any person, premises, equipment or to the property of the Company or to any other goods howsoever.
- 3.7** Subject to, and in addition to the provisions of Condition 3 in relation to Dangerous Goods, before the Company assumes responsibility for the Goods pursuant to Condition 2 of the Conditions, the Customer must inform the Company in writing of any relevant matters; including any special precautions necessitated by the nature, weight or condition of the Goods and any statutory or other duties specific to the Goods with which the Company may need to comply.
- 3.8** The Customer will reimburse all duties and taxes that the Company may be required to pay in respect of the Goods, except to the extent that the Company accepts responsibility for them in accordance.
- 3.9** Unless prior to the Company assuming responsibility for the Goods pursuant to Condition 2 of the Conditions, the Company receives written notice containing all appropriate information, the Customer warrants that none of the Goods constitute "Waste" as defined in the Waste Management Acts 1996 to 2003 and the Protection of the Environment Act 2003.
- 3.10** Unless prior to the Company assuming responsibility for the Goods pursuant to Condition 2 of the Conditions, the Customer provides to the Company written notice containing all appropriate information, the Customer warrants that none of the Good are or contain

substances the storage of which would require the obtaining of any consent or licence or which, if they escaped from their packaging, would or may cause pollution to the environment or harm to human health.

- 3.11** The Customer will comply with any reasonable regulations of the Company relating to the handling, carriage, storage of the Goods (and any ancillary matters) which are notified in writing from time to time.
- 3.12** The Customer shall make available to the Company upon request details of any risk assessments which may have been carried out in relation to the Goods and their storage.
- 3.13** Information given by the Customer shall be accurate, correct and complete.
- 3.14** The Customer will indemnify the Company against any loss or damage it suffers as a result of carrying out the Customer's instructions or any loss or damage arising out of breach of Contract by the Customer and will pay the Company all costs and expenses (including professional fees) incurred in, and the Company's reasonable charge for dealing with the breach and its consequences. The Customer will pay extra storage fees to the Company equivalent to any fine or penalty imposed on or payable by the Company wholly or partly as a result of the breach by the Customer of the Contract.
- 3.15** The Company's responsibilities and liabilities are set out in these Conditions and the Customer agrees to indemnify the Company against all claims, costs and demands of whatsoever nature and by whoever made and however arising in excess of the liabilities set out in these Conditions.
- 3.16** The Customer warrants that he has made no under declaration as to the weight of the Goods or any incorrect description of all or any part of the Goods and agrees to indemnify the Company against all claims, demands, costs or expenses of whatsoever nature and by whoever made which may arise as a result of any breach of such warranty and agrees to pay all charges for the warehousing of the additional Goods which are subject of the under- declaration.
- 3.17** Should the Customer obtain the authority of the Company to inspect his Goods in the warehouse pursuant to the Condition 2.9, the Customer agrees that he will indemnify the Company against any loss or damage occasioned to the Goods and/or the Company and/or any third party or the Goods of any third party as a result of any action or inaction of the Customer or anyone authorised by him as a consequence or in the course of such inspection.
- 3.18** The Customer shall indemnify the Company in respect of any loss, damage or injury sustained by the Company arising directly or indirectly from the presence on the Company's premises of any vehicle/trailer/specialist equipment operated or directed by the Customer on the Company's premises

If the Company suspects a breach of the warranties contained within this Condition 3, the Company may refuse to accept the Goods, demand their immediate removal, or arrange the removal of the Goods without further notice at the Customer's expense.

4 Dangerous Goods

In addition to the provisions contained at Condition 3 of the Contract:

- 4.1** The Customer agrees that he will not submit to the Company for warehousing or storage any Dangerous Goods unless they first give to the Company, in writing, full details of the Dangerous Goods and obtains the written agreement of the Company to the storage of such Goods.
- 4.2** The Customer will retain responsibility for and will indemnify the Company against all loss,

damage and claims which may be sustained by the Company, made upon the Company or for which the Company may become liable as a result of injuries to third parties or loss of or damage to property attributable to the Dangerous Goods including any claims which may be made upon the Company by its own servants, agents or Sub-contractors.

- 4.3** The Customer agrees that when submitting such Goods for warehousing or storage, the Customer will:
- 4.3.1 In addition to the notice provided in sub Condition 4.1 hereof provide to the Company at the time of submitting the Goods for storage a written declaration stating the nature of any danger of the Dangerous Goods and;
 - 4.3.2 Ensure that the Goods have been packaged safely for warehousing or storage in accordance with any statutory regulations in force at the time when the Goods are submitted for warehousing or storage and any special packaging requirements stipulated by the Company or if no such regulations are in force or stipulations made, with the general regulations for packaging, labelling and loading of Dangerous Goods as defined in section 1.5 or any amendment or modification of such agreement.
- 4.4** Failure by the Customer to comply with the above provisions shall entitle the Company at its sole discretion to decline liability in the respect of all damage of whatsoever nature sustained to the Goods, however that damage may have been caused notwithstanding any other provision within these Conditions under which the Company might otherwise be liable.
- 4.5** The Customer shall be liable to the Company and indemnify the Company for and against any claims made against the Company by third parties and against any expenses which may be incurred by the Company in complying with any statutory or any other regulations, directions or notices made by a competent authority requiring the movement, treatment, removal or destruction of Dangerous Goods or the packaging in which they are contained and of the cost of any treatment of the Company's premises occasioned as a result of the presence of such Goods which expenses shall be paid by the Customer to the Company forthwith upon demand.
- 4.6** Should at any time the Company form the opinion that any Dangerous Goods become unsuitable for storage or warehousing the Customer agrees that the Company shall be entitled to require that the Customer removes the Goods immediately and in the event of the Goods not being removed to dispose of the Goods in such a manner as the Company shall at its sole discretion decide.

5 Consignment notes/receipts

- 5.1** The Company shall, if requested, sign a document acknowledging receipt for the Goods to be warehoused or stored, noting the quantity and description of the consignment, to the extent this can be determined, by visual inspection. Such receipt shall not be evidence as to accuracy of the condition, weight, quantity nor nature of the Goods said to comprise the consignment at the time the receipt document is signed by the Company. The burden of proof in the event of dispute is the responsibility of the Customer.
- 5.2** Should the Company agree to collect or deliver the Goods from or to the Customer's premises, or from and to any other premises which shall have been agreed between the Company and the Customer, then such collection and/or delivery shall be carried out by the Company under its Conditions of Carriage only and not subject to these conditions.
- 5.3** The Customer shall on upon delivery of Goods from the Company's warehouse or store, sign a receipt for all Goods in respect of which delivery is taken.

6 Company's charges

- 6.1** The Company's charges with regard to the storage of Goods shall be payable by the Customer provided always that such charges are agreed in writing between both parties and failing such agreement at the rate set out in any tariff of warehousing charges published by the Company at the time when the Goods are received for storage.
- 6.2** Notwithstanding any claim which the Customer may have against the Company, the Company's charges for storage and any other services incidental to the storage chargeable under the Contract (including, but not limited to, all and any duties, taxes and expenses the Company may be required to pay in respect of the Goods) shall be payable by the Customer within 28 days of the date of the invoice unless otherwise agreed in writing. Should the charges not be paid within such a period, then the Company shall be entitled to interest at the rate of 8 per cent above the base rate of the Bank of Ireland prevailing at the date of invoice, calculated on a daily basis.
- 6.3** Notwithstanding that the Customer may have appointed the Company for certain purposes and that the Company may have agreed to seek payment for all or some of its charges from any third party, the Customer shall remain liable to the Company for payment of such charges and the agreement of the Company to make application for payment to a third party shall not relieve the Customer of such liability in the event of non-payment by such third parties. The Company shall not be required to take any steps to obtain payment from a third party other than a written application for payment.
- 6.4** Any charges relating to the storage or warehousing of Goods shall if so required by the Company be paid prior to the removal of the Goods from the warehouse.

7 Insurance and the Company's Liability for Loss

- 7.1** Except as provided for in Condition 7.2, the Company does not insure the Goods and the Customer shall self-insure or make all necessary arrangements to provide sufficient cover for the Goods against all insurable risks to their full insurable value (including cover for all duties and taxes) with any right for an insurer to bring a subrogated claim against the Company being excluded.
- 7.2** The Company may provide insurance cover providing the Customer:
 - 7.2.1** Requests the Company to provide insurance cover and;
 - 7.2.2** Specifies the amount per tonne weight in writing, stating the limit and maximum value of the Goods including all taxes and duties. This limit shall apply in respect of any claim arising from the date of receipt of the Goods; and
 - 7.2.3** The Customer agrees to pay within 7 days upon receipt of the Company's invoice in respect of the insurance cover.
- 7.3** The Company excludes all liability for any loss or damage to the Goods howsoever arising including any claim relating to loss, damage, deterioration, delay, non-delivery, mis-delivery, unauthorised delivery or noncompliance with instructions in connection with the Goods unless such loss or damage arises directly as a result of the neglect or wilful act or default of the Company.
- 7.4** In no case shall the Company be liable for any indirect or consequential loss or damage including loss of a particular market being of whatever nature and howsoever caused including negligence or loss of profit, income or savings, wasted expenditure.
- 7.5** The Company has no knowledge of the value of any Goods stored and shall only be liable to make any settlement or payment or proportionate payment upon the Customer providing satisfactory proof of the value of the complete Goods or of any part claimed to

have been lost or damaged.

- 7.6** Where Goods are submitted for warehousing or storage as damaged Goods, not properly protected by packaging, the Company shall not be liable at all for loss or damage to the Goods under these conditions except upon proof by the Customer that such loss was caused by the wilful misconduct by the Company.
- 7.7** The liability, if any, of the Company in respect of loss, damage or total destruction of any Goods stored shall be limited to:
- 7.7.1 Where all of the Goods are lost or damaged, to the maximum rate of €1800.00 per tonne of the gross weight of the Goods as stated on the note as referred to in Condition 5 but not exceeding the actual value of the Goods; or
- 7.7.2 Where some or part of the Goods stored are lost or damaged to such actual proportion by weight that the lost or damaged Goods bear to the whole at the said maximum value of €1800.00 per tonne but not exceeding the actual value of the Goods or part of the Goods lost or damaged.
- 7.8** For the purpose of Condition 7.7 the value referred to is the valuation of the Goods at the time they are accepted for storage.
- 7.9** For the purpose of Condition 7.7 when calculating the value of the Goods in determining the liability of the Company, there shall be disregarded any special value attributed to the Goods by virtue of their being part of a larger consignment or part of a set or collection.
- 7.10** The Company shall not be liable for any loss or damage to the extent that it is caused or contributed to by a breach of any of the Customer's obligation at Condition 2 of the Conditions or by any of the circumstances by virtue of which the Company is relieved on its contractual obligations in accordance with Condition 9 of the Conditions.

8 Employees and Sub-Contractors

- 8.1** The Customer will not bring any claim or issue any proceedings against any employee or sub-contractor of the Company.
- 8.2** Without Prejudice to Condition 8.1, if an employee or sub-contractor pays or is liable to make any payment to the Customer in connection with the Goods, the Customer will fully indemnify the Company against any claim (including all costs and expenses) by the employee or sub-contractor against the Company for reimbursement of or indemnity against that payment to the extent that it exceeds €100 per tonne of the gross weight of the Goods the subject of such claim.

9 Frustration

- 9.1** The Company shall be relieved of its contractual obligations to the extent that its performance is prevented by, or its non-performance results wholly or partly, directly or indirectly from the act, neglect or default of the Customer, including any breach by the Customer of these Conditions or by any:
- 9.1.1 Storm, tempest, lightening, flood or any other acts of God;
- 9.1.2 Fire or explosion;
- 9.1.3 Any consequence of war, acts of foreign power or terrorism, requisition or destruction of or damage to property by or under the Order of any government, public or local authority;
- 9.1.4 Theft or any act done with malicious intent;
- 9.1.5 Seizure or forfeiture of the Goods under legal process;

- 9.1.6 Any error, act, omission, misstatement or mis- presentation by the Customer, its servants or agents or principals;
- 9.1.7 Latent or inherent defect vice or natural deterioration of the Goods or any loss due to wastage in bulk or weight;
- 9.1.8 Insufficient or improper packaging, unless the Company is contracted to carry out such service;
- 9.1.9 Insufficient or improper labelling or addressing unless the Company is contracted to carry out such service;
- 9.1.10 Any strike, lockout generally or partial stoppage or restraint of labour from whatsoever cause and whether or not the same shall have received official recognition from a trade union;
- 9.1.11 Defect of any equipment supplied by the Customer either for the unloading, loading of the Goods or for containing such Goods;
- 9.1.12 Any loss, damage or deterioration suffered by Goods kept in refrigerated facilities of whatsoever nature where such loss, damage or deterioration has resulted from the failure of refrigeration equipment or from the interruption of the flow of electricity currents of refrigeration equipment, howsoever such interruption shall have occurred;
- 9.1.13 Any other cause whatsoever beyond the reasonable control of the Company.

10 Notification of claims

- 10.1 The Company shall not be liable under any circumstances for any loss or damage of the whole or any part of the Goods unless a claim specifying the general nature thereof is submitted by the Customer to the Company in writing within 10 days from the Company's responsibility for the Goods having ended in accordance with Condition 1 above or from the date upon which it comes to the Customer's attention that loss or damage has occurred and unless a detailed claim giving weight and value and date of receipt are submitted by the Customer to the Company in writing within 14 days from the Company's responsibility for the Goods having ended or been deemed to have ended.
- 10.2 The Customer shall make the Goods available to the Company representative for inspection for a reasonable period following notification of any claim in accordance with Condition 10.1.
- 10.3 No legal proceedings may be brought against the Company unless they are issued, and served on the Customer, within nine months of the event giving rising to the Claim.

11 Lien – power of sale and termination

- 11.1 If the Goods are not the property of the Customer the Customer expressly warrants that he has the authority to grant to the Company this Right of Lien and Power of Sale in respect of the Goods and authorised the Company to exercise the Lien against the owner of the Goods in respect of any unpaid monies applicable to such Goods in respect of which the Customer is not the owner.
- 11.2 All Goods delivered to the Company for storage and/or warehousing are and will be received by the Company and held by it subject to a Lien for all charges due to the Company from the Customer for the carriage, storage, rent and/or warehousing charge in relation to the Goods and other proper charges or expenses incurred in respect of or in connection with the carriage of the particular consignment and all other Goods which may

have been carried and/or stored and/or warehoused by the Company for the Customer from time to time. If such a Lien is not satisfied by payment within 7 days of the Company's demand for payment and notification of the exercise of its Lien, then the Company shall be entitled to sell the Goods in accordance with its power of sale as set out below. The storage or warehousing charges and any other expenses incurred during all periods during which the Lien on the Goods or any part of the Goods is being asserted, shall continue to be payable and all these conditions shall continue to apply whilst the Lien is being exercised.

- 11.3** The Company shall be entitled to charge to the Customer the cost of loading and unloading and transporting the Goods whilst a lien is being exercised.
- 11.4** The Company shall without any further notice have full power to open and examine the Goods or any part of the Goods and at the Company's sole discretion to sell the Goods or part of the Goods and the Company may apply the proceeds of sale after deducting all expenses in payment of all or towards all sums due to or liabilities incurred by the Customer to the Company.
- 11.5** Any surplus will be paid over to the Customer without interest upon application. Upon expiration of the period of notice, the Company shall be released from all liability of whatever nature and however caused in relation to the Goods or any part of them. If the Company sells part only of the Goods, it shall be entitled to raise a warehousing charge in accordance with the rates agreed with the Customer or, failing agreement at the prevailing tariff, for the continuing storage or warehousing for the remaining Goods and without further notice shall be entitled from time to time to sell the remainder of the Goods in part or whole and apply the proceeds of sale in reduction of the charges and all these conditions shall continue to apply.

12 Dispute resolution

- 12.1** The parties will attempt, in good faith, to resolve any dispute or claim arising out of or relating to these Conditions promptly through negotiations between the respective representatives of the parties who have authority to settle the same.
- 12.2** If the matter is not resolved through negotiation the parties may attempt to resolve the dispute or claim through an Alternative Dispute Resolution (ADR) procedure as recommended to the parties by the Freight Transport Association.
- 12.3** If the matter is not resolved by an ADR procedure or if either party will not or ceases to participate in an ADR procedure, the dispute may be referred to the arbitration of a single arbitrator or to an arbitrator appointed at the request of the parties by the President for the time being of the Chartered Institute of Arbitrators Ireland. The apportionment of the cost of any such arbitration between the parties shall be in the discretion of the arbitrator. The arbitration shall, unless otherwise agreed, be held in the town wherein the Company has its main administrative office.

13 General

- 13.1** Any notice to be given by the Company to the Customer shall be given in writing and delivered or sent by first class post or by email transmission to the Customer at its last known address. Any such notice shall be deemed to have been delivered two days after the date of posting or in respect of email transmission upon the date when such notice was sent.
- 13.2** In proving service by post, it shall be sufficient proof that the envelope that contained the notice was properly addressed and posted as a pre-paid letter by first class postal service

and in respect of facsimile transmission, that a confirmation of receipt of the notice had been received by the Customer's facsimile machine.

13.3 Each exclusion or limitation in the Conditions exists separately and accumulatively.

13.4 Where reasonably necessary and at the discretion of the Company the Goods may be carried, stored and handled with other compatible goods or transferred between stores.

14 Variation

14.1 At any time during the term of the Contract the Customer may request or the Company may recommend variations to the service and/or variations to any other matters covered by the Contract. The Company shall investigate the likely impact of any such requested or recommended variations upon the service, the charge for the service and other aspects of the Contract and shall report promptly to the Customer. Neither party shall be obliged to agree to any requested or recommended variation but neither party shall withhold its agreement unreasonably. Until such time as any variation to the Contract resulting therefrom has been mutually agreed in writing, the parties shall continue to perform their respective obligations without taking account of the requested or recommended variation.

15 Governing law

15.1 The parties agree that the Conditions and any Contract to which they apply shall be governed by the laws of Ireland and the Customer hereby submits to the exclusive jurisdiction of the Courts of Ireland.