

Cold Move Galway Limited

Conditions of Business

1. General

1.1. In these conditions:

"The Company" means Cold Move Galway Limited

"The Customer" means the person contracting with the Company; "Goods" includes pallets, palletainers, and all other equipment associated therewith as well as their contents and provided by or under the arrangements with the Customer for placing in cold storage; and "The Maximum Temperature" means minus 18 degrees centigrade or such colder temperature as :

(i) the Company may specify from time to time or

(ii) may be required by law in relation to the cold storage and distribution of goods in the nature of the Goods.

"The Regulations" means any statute, instrument, directive, by-law, regulation or other stipulation having the force of law relating to the supply or handling of food and any act, regulation or directive replacing, modifying or amending the same.

1.2. These conditions and any other terms stated in writing are the sole terms and conditions of the contract to the exclusion of any other terms or conditions put forward by the Customer and shall exclude any representation or collateral contract outside these conditions.

1.3. These conditions can only be varied by agreement in writing signed by a director of the Company.

1.4. The Company may at its sole discretion engage the services of a third party to fulfil the contract in whole or in part and may transfer at its own expense any Goods between or within cold stores.

1.5. The construction, interpretation and validity of this contract shall be governed by the Irish Law.

1.6. Any notice or other communication to be given or sent by the Company to the Customer may be given or sent, if posted by pre-paid first class letter to the last known address of the Company or if sent by facsimile to a published facsimile number for the Customer. If sent by post the notice or other communication shall be deemed to have been received on the second business day following posting and in the case of facsimile at the time of transmission.

2. Delivery into and removal from Storage

2.1. On delivery to the custody of the Company the Customer warrants that it is either the owner of the Goods or is authorised by the owner of the Goods to accept these conditions on behalf of the owner.

2.2. Goods shall be presented by the Customer in good and wholesome condition and in the form and at such temperature as to comply with the terms and conditions of this contract and the Regulations. The Goods shall be accompanied by written information concerning any special treatment necessitated by the nature or condition of the Goods and/or any statutory duties specific to the Goods with which the Company may need to comply and/or as may otherwise be required by the Customer provided that the Company shall only be obliged to comply with such requirement if the Company expressly agreed to adopt such special treatment in writing before delivery of the Goods to the custody of the Company.

2.3. Goods presented for storage shall be:

2.3.1. on four way entry pallets (1000mm x 1200mm) in good condition ("Standard Pallets") and complying with any applicable British Standards from time to time;

2.3.2. (subject always to the Company's prior written agreement) on standard European pallets (1000mm x 800mm) in good condition ("European pallets");

2.3.3. at a temperature of no warmer than the Maximum Temperature;

2.3.4. packed and labelled in a way which enables them to be easily separated from other similar goods if the Customer so requires;

2.3.5. packed in a way which enables most economic use to be made of storage space and marked clearly as to pack size, product description, name of customer, brand and best before date;

2.3.6. of a height including pallet not exceeding 2,000mm; and

2.3.7 securely and properly packed and in such condition as not to cause damage or injury or the likelihood of damage or injury to any person, to the property of the Company or to any other goods by whatever reason.

In the event that the Customer shall fail to comply with any of the requirements of this condition 2.3 the Company shall be entitled at its discretion to (i) refuse to accept the Goods for storage or (ii) accept the Goods for storage and make an additional charge to the Customer in accordance with the Company's standard charging structure from time to time.

2.4. When Goods are presented for storage on pallets or converter sets the Company if requested will issue an equal number of similar pallets or converter sets in exchange. Goods will only be redelivered on presentation of pallets or converter sets in equal number to those redelivered by the Company. If at the Company's discretion, it agrees to redeliver without presentation of the necessary pallets or converter sets the Company will make a charge equal to the replacement costs to it of the deficiency or, in the case of converter sets, may remove the converter sets. The Company retains the right to refuse to accept returned pallets or converter sets unless they are in good condition.

2.5. Although undertaking no duty to do so, the Company may examine Goods when they are presented and at any other time and for this purpose may break bulk and open packages.

2.6. All weights are given without warranty or obligation as to correctness.

2.7. Save as may be separately agreed by the Company in writing, stock record details will not be given by the Company in writing other than those issued on the Company's receipt note, despatch note and invoice and the Company does not maintain stock records for the benefit of Customers. The Customer is accordingly strongly recommended to keep up-to-date records of his own stock. Upon request the Company will use its reasonable endeavours to provide information on pallet numbers in storage from its own computer data free of charge and without liability on its part. If the Customer requires a physical check of pallets this will be subject to the specific agreement of the Company and a separate charge will be made.

2.8. The Company shall store the Goods at a temperature of no warmer than the Maximum Temperature.

3. Charges

3.1. All prices and other terms quoted are on the basis that the Goods are as described by the Customer, in particular as to their nature, weight, quantity, condition and dimension and are presented in accordance with these conditions. If Goods do not comply with these requirements the Company may either reject them or retain them subject to an additional charge. The Company also reserves the right to refuse to accept Goods for any other reason.

3.2. Charges are for handling Goods only between 8.00 a.m. and 5.00 p.m. Monday to Friday inclusive. If the Company agrees to handle Goods outside these hours the full additional cost of the labour incurred may be charged.

3.3. Storage charges unless otherwise agreed are per pallet. These are incurred on a weekly basis and are payable both for the day of receipt and the day of removal of the Goods. Part weeks are charged at the full weekly rate. A charging week commences at 0.01 a.m. Sunday and ends at midnight the following Saturday. Subject always to the provisions of condition 3.9 payment of all charges incurred must be made in accordance with the credit terms agreed in writing by the Company provided that if no such terms have been agreed in writing such payment must be made within 30 days of the Company's invoice therefor and always provided that the Company shall not release any Goods from storage unless and until all storage charges accrued in respect of such Goods up to the date of release have been paid in full. Credit terms may be varied at any time by the Company provided that if a credit period has been agreed in writing by the Company, the time in which the Customer is to pay the Company's invoices is of the essence of the contract. Value Added Tax will be charged as an addition to all invoices at the prevailing rate.

3.4. The Company may vary its charges at any time by giving seven days' written notice to the Customer. If the Customer is in arrears with payment of charges, the Company may change any agreed rate for storage which is below its standard rate to its standard rate with effect from notice being given to the Customer accordingly.

3.5. Interest at five per cent above the base rate of Bank of Ireland plc from time to time calculated on a daily basis shall be payable on all overdue accounts until payment in full is made.

3.6. All charges shall be paid in full without any set-off and notwithstanding any claim or counterclaim by the Customer against the Company whether arising under contract or otherwise.

3.7. The Customer will be charged with any expenses incurred by the Company in complying with the Regulations or in complying with any other statutory or regulatory duties imposed upon it from time to time in relation to the Goods.

3.8. The Company will subject as provided below, transfer the Goods from the account of the Customer to the account of any other person ("the transferee") on receipt of a written request authorising the transfer and a written acknowledgement by the transferee accepting that he is bound by these Conditions as if he were the Customer subject to the Company reserving the right to request payment of all charges accrued or accruing on the Goods up to the requested transfer date and subject further to the Company being satisfied with the status of the transferee. The charges to the transferee will not necessarily be at the same rate as the charges to the transferor.

3.9. The Company shall have a general lien on all Goods under its control for the payment of all debts accrued or accruing on any account from the Customer to the Company. If such lien is not satisfied after seven days' written notice has been given to the Customer in accordance with condition 1.6 the Goods or any part of them may be sold to defray the lien and all expenses incurred by the Company in retaining the Goods and enforcing or attempting to enforce the lien.

4. Obligations and liability in respect of Goods

4.1. Goods which in the opinion of the Company are not in a good and wholesome condition or which are unsaleable or might cause damage to or affect the saleability of other Goods may be removed at any time by the Company at the Customer's expense without notice. The Company may at its option and at the Customer's expense, and without liability on the Company arrange for destruction, storage or other disposal of such Goods or procure their delivery to the Customer on giving 24 hours' notice.

4.2. The Company's liability in respect of claims for physical loss, misdelivery, damage or deterioration of or to or in connection with the Goods, however arising, shall in all circumstances be limited to the lesser of:

4.2.1. the value of the goods actually lost, misdelivered, damaged or deteriorated; or

4.2.2. the cost of repairing or restoring any damage to or deterioration of the Goods; or

4.2.3. a sum calculated at the rate of €100 per tonne on the gross weight of the goods actually lost, misdelivered, damaged or deteriorated; and the value of the goods actually lost, misdelivered, damaged or deteriorated shall be taken to be their invoice value if they have been sold and shall otherwise be taken to be the replacement cost thereof to the Customer at the date of delivery to the custody of the Company, and in all cases shall be taken to include any customs and excise duties or taxes payable in respect of those goods **PROVIDED THAT**:

4.2.3.1 in the case of loss, misdelivery, damage or deterioration of or to a part only of the Goods the weight to be taken into consideration in determining the amount to which the Company's liability is limited shall be only the gross weight of that part regardless of whether the loss, misdelivery damage or deterioration affects the value of other parts of the Goods;

4.2.3.2 nothing in this Condition shall limit the liability of the Company to less than the sum of €10;

4.2.3.3 the Company shall be entitled to proof of weight and value of the whole of the Goods and of any part thereof lost, misdelivered, damaged or deteriorated; and

4.2.3.4 the Customer shall be entitled to give to the Company written notice to be delivered at least 7 days prior to delivery of the Goods to the custody of the Company requiring that the €100 per tonne limit in 4.2.3 be increased, but not so as to exceed the value of the Goods and in the event of such notice being given the Customer shall be required to agree with the Company an increase in the Company's storage charges in consideration of the increased limit, but if no such agreement can be reached the aforementioned €100 per tonne limit shall continue to apply.

4.3. The Company's liability in respect of claims for any loss whatsoever (including indirect special or consequential loss or damage) whether for loss of profit or otherwise and loss of market, and howsoever arising in connection with the Goods, shall not exceed the amount of any storage charges and any related transport charges in respect of the Goods or the amount of the Customer's proved loss, whichever is the lesser unless:-

1. (i) At the time of entering into the contract with the Company in relation to the Goods the Customer declares to the Company in writing a special interest in the storage (and if applicable the related transport) in the case of loss or damage and agrees in writing to pay a surcharge calculated on the amount of that interest; and
2. (ii) Prior to the commencement of storage the Customer has delivered to the Company specific written confirmation of the special interest and amount of the interest.

4.4.1 All claims for damage to or loss or failure to produce any Goods shall be made in writing to the Company within 7 days after release of the Goods alleged to be damaged or in the case of Goods alleged to be lost or which the Company fails to produce, within 7 days after the time when the Goods should in the ordinary course of events have been released and the Company shall be under no such liability unless such claim is made within the time stipulated **PROVIDED THAT** if the Customer proves that:-

1. (i) it was not reasonably possible for the Customer to advise the Company or make a claim in writing within the time limit applicable; and
2. (ii) such advice or claim was given or made within a reasonable time;

the Company shall not have the benefit of the exclusion of liability afforded by this Condition.

4.4.2 The Company shall in any event be discharged from all liability whatsoever and howsoever arising in respect of the Goods unless suit is brought within one year of the date when the Goods were released or should in the ordinary course of events have been released.

4.5 Receiving and despatching of Goods are subject to prior notification in accordance with the Company's booking procedures. The Company shall use its reasonable endeavours to comply with the Customer's requirements for receipt and despatch of Goods but shall not be liable for any delay in receipt or despatch of Goods.

4.6 Save as provided in Conditions 4.2 and 4.3 all other liability of the Company to the Customer whether in contract, tort or otherwise and whether express or implied shall be expressly excluded.

4.7 The Customer shall indemnify the Company against all claims, costs, damages and expenses caused by or arising from the condition of the Goods or any breach of any of the provisions of Condition 2.3.1 to 2.3.7 or the Goods failing to comply with the Regulations caused otherwise than by the negligence of the Company, its servants or agents acting in the course of their employment.

4.8 If the Company agrees to arrange for other persons to perform the Customer ancillary services which have not been agreed to be provided by the Company, it will do so without becoming in any way responsible to the Customer.

4.9 The Company shall not be liable for the value of the goods stored or any failure to comply with the terms of its contract with the Customer caused by any event beyond its reasonable control including, but without limitation, fire, floods, power failure, Acts of God, strike, lock-out and inclement weather.

4.10 The Company may at any time give 7 days' notice to the Customer requiring him to remove the Goods. If the Goods are not so removed the Company shall be entitled at its option to (i) sell the Goods and deduct from the proceeds all outstanding charges, interest thereon and the costs of disposal; (ii) deliver the Goods to the Customer and charge the Customer therefor in accordance with the Company's standard charging structure from time to time; or (iii) arrange for the destruction storage or other disposal of the Goods.

4.11 The customer shall indemnify the Company against all actions, costs, claims and demands arising out of or on account of negligence of the customer its servants or agents or any of them.

5. Transport

5.1. If the Company agrees to manage the delivery of the Goods from storage or to collect Goods for storage, the Conditions of Carriage 1998 of the Road Haulage Association Limited or the Convention on the Contract for the International Carriage of Goods by Road shall apply (whichever shall be appropriate) and shall be deemed to be incorporated herein to the extent not inconsistent herewith. A copy of such conditions/convention is available for inspection upon request at the Company's offices.

5.2. The Company reserves the right to search the vehicles and drivers delivering and uplifting Goods and to take any steps that are necessary in the interests of security.

6. Law and jurisdiction

This Contract shall be governed by Irish law and the Irish Courts shall have exclusive jurisdiction in any dispute between the Company and the Customer.