

# BIG APPLE Logistics

Specialised Heavy Machinery Movers  
12 POLDEN STREET, BRIDGWATER, SOMERSET TA6 5EN

## **BIG APPLE LOGISTICS (UK) LIMITED STANDARD TERMS AND CONDITIONS OF SERVICE(2015)**

### **1 Application**

1.1 These terms and conditions apply to the Services we perform for you. They also apply to any work we have to do, or reasonably do, in addition to the work we quote for.

1.2 These terms and conditions may be appended to a Quotation issued by us and in addition we may also issue you with a Transport Document in connection with the Services. These terms and conditions together with the relevant Quotation and the terms and conditions contained in any Transport Document form a legally binding contract between you and us in relation to the provision by us of the relevant Services. If there is any inconsistency between these terms and conditions, our Quotation, and the terms and conditions contained in any Transport Document, such documents shall apply in following order of precedence: Quotation, these terms and conditions, Transport Document.

1.3 These Conditions continue to apply despite any breach by us or a Carrier, even if the breach is of a fundamental term.

1.4 You cannot vary or waive these terms and conditions without our prior written consent.

### **2 Definitions:**

In these terms and conditions the following words and phrases shall have the following meanings:

**"Agreement"** means these terms and conditions together with the relevant Quotation and the terms and conditions contained in any Transport Document.

**"Carrier"** means any person (including a person operating a railway) we use to perform all or part of the Services instead of us, and any person who is an employee, agent or subcontractor of such a person.

**"Big Apple Logistics"** means any body corporate controlling, controlled by or under common control with the Company and for this purpose "control" in relation to a body corporate means the ability, directly or indirectly, to direct the affairs of that body corporate, whether through holding a majority of the shares or voting rights in that body corporate, having the right to appoint a majority of the board of directors of that body corporate, by contract, or otherwise.

**"Company"** means Big Apple Logistics (UK) Ltd (a company registered in England and Wales under company number 09605803 ) and any of our servants, agents or subcontractors.

**"Customer"** means the person with whom we contract, whether a natural person, company, trust, partnership, joint venture, association or other corporate form. Any reference to the Customer includes its employees, agents, contractors, sub-contractors, assignees or representatives.

**"Dangerous Goods"** means cargo which is volatile or explosive or which is or may become dangerous, inflammable or offensive (including radioactive materials) or which may become liable to damage any person or property whatsoever.

**"Invoice"** means a validly issued VAT invoice for the purposes of VAT legislation.

**"Goods"** means the cargo accepted by us together with any container, packaging or pallet(s) supplied by you or on your behalf, as specified on the Quotation.

**"VAT"** means value added tax imposed by the Value Added Tax Act 1994 and legislation and regulations supplemental thereto and includes any other tax of a similar fiscal nature whether imposed in the United Kingdom (instead of or in addition to value added tax) or elsewhere from time to time.

**"Parties"** means the Company and the Customer.

**"Quotation"** means a quotation under which the Company offers to provide the Services to the Customer subject to these terms.

**"SDR"** means special drawing rights, as defined by the International Monetary Fund

**"Services"** means services of any kind relating to the carriage, consolidation, storage, cleaning, handling, packing or distribution of the Goods as well as ancillary and advisory services in connection therewith, including but not limited to customs and fiscal matters, declaring the Goods for official purposes, procuring insurance of the Goods and collecting or procuring payment or documents relating to the Goods and the provision of credit services.

**"Transport Document"** means any bill of lading, waybill, consignment note or other transport document issued by us in connection with the provision of the Services.

**"Us"** or **"we"** or **"our"** means the Company.

**"You"** or **"your"** means the Customer.

### **3 Our services and rights**

3.1 We are not a common carrier. We do not accept liability as a common carrier. We reserve the right to accept or refuse the provision of Services in respect of the Goods at our sole discretion

3.2 We shall be entitled to procure any or all of the Services as an agent, or, to provide those Services as a principal. We will use reasonable endeavours to perform, or procure the performance of, the Services promptly and carefully and to follow any instructions you have given us in relation to the Services. However, we are entitled to depart from those instructions (including deviating from the usual method of service or route of carriage or changing the place of storage) if we think it necessary in the circumstances or to comply with any directive or instruction given to us by a relevant government authority.

3.3 When we contract as principal, we are entitled to use subcontractors to perform all or part of the Services instead of us.

3.4 When we contract as agent we shall be entitled to, and you hereby authorise us to, enter into all and any contracts on your behalf as may be necessary or desirable to fulfil your instructions, and to enter into such contracts on such terms as we think fit. We shall, on demand, provide evidence of any contract entered into as agent for you. We shall be entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by, or paid to, freight forwarders.

3.5 If we are engaged to store or arrange storage of Goods, we do not have to make the Goods available for collection or removal from the place of storage unless all charges have been paid and unless you have completed and provided all documents that we reasonably require you to complete or provide.

3.6 Insurance will not be arranged by us except with the express written instructions of you and then only at your expense and on lodgement of a declaration as to value prior to our acceptance of the Goods. Should an insurer dispute its liability for any reason, the insured shall have recourse against the insurer only.

### **4 Your warranties**

4.1 You warrant that, when you engage us to provide Services or give us or a Carrier Goods for carriage or storage, you are acting as agent for each person who has an interest in the Goods, each of them is a party to the contract and is bound by these conditions in the same way as you are. You also warrant that, when you give us or a Carrier Goods for carriage or engage us to provide any other Services, the person who signs any document containing these conditions has authority to accept the terms of this Agreement on your behalf.

4.2 Where you have packed the Goods, you warrant that those Goods are packed in a manner adequate to withstand carriage, having regard to their nature, and in compliance with all applicable laws or regulations and you indemnify the Company for all liability and for all costs incurred as a result of or arising out of a breach of this warranty. Further you shall provide us with all such assistance, information and documentation that may be necessary to enable us to comply with such laws and regulations.

4.3 You warrant that the description and particulars of any Goods or information furnished or services required by you or on your behalf is full and accurate.

## **5 Dangerous goods**

5.1 You shall not tender for the provision of Services by the Company any Dangerous Goods without presenting to us a full description disclosing their nature and in any event you shall be liable for all death, bodily injury, loss and/or damage thereby caused and shall indemnify us for such liability.

5.2 If, in our opinion, the Goods are or are liable to become of a dangerous, inflammable, explosive, volatile, offensive or a damaging nature, they may at any time be destroyed, disposed of or abandoned or rendered harmless by us without compensation to you and at your cost.

## **6 Your payments**

6.1 Every special instruction to the effect that charges shall be paid by a person other than by you shall be deemed to include a stipulation that if that nominated person does not pay those charges within seven (7) days of delivery or attempted delivery of the Goods, then the Customer shall pay those charges to the Company within seven (7) days of being notified of that person's failure to pay. You must pay us whatever happens to the Goods - even if they are lost, damaged or destroyed.

6.2 You must pay us an additional reasonable charge in each of the following cases:

6.2.1 we have to, or a Carrier with whom we have contracted as agent on your behalf has to, perform Services, or reasonably perform Services, in addition to the Services we quote for.

6.2.2 the carriage is delayed for a reason that is not our fault or the fault of the relevant Carrier.

6.3 All customs and/or excise duties, costs, fines or penalties which the Company becomes liable to pay for any reason whatsoever in respect of the Goods and any documentation relating to the Goods pursuant to any applicable laws or regulations (whether or not resulting from or arising out of the negligence of the Company) shall be paid by you.

## **7 Our liability**

7.1 We provide the Services on a best efforts basis. We are not liable for delay in delivery of the Goods, misdelivery of them, or a total failure to deliver them; or for loss of the Goods or damage to them unless caused by a failure on our part to use our best endeavours to perform the Services to a competent standard. We shall not be liable for any delay in delivery of the Goods, misdelivery of them, or a total failure to deliver them; or for loss of the Goods or damage to them caused by factors outside our control.

7.2 We shall not be liable to you whether in tort (including negligence), contract or otherwise for:

7.2.1 any loss of profits or revenue suffered by you as a result of defective or non-performance by us; or

7.2.2 any indirect or consequential loss or damage.

7.3 Where we have not packed Goods or supplied the container in which Goods are packed, we are not liable for any loss or damage caused by the manner in which Goods have been packed, the unsuitability of the Goods for carriage in the container supplied or the unsuitability or defective condition of a container.

7.5 If we are required to carry out any activities that are not included within the scope of our Quotation you shall indemnify us in respect of any liability which we incur, whether to you or a third party, which arises, whether in tort (including negligence), contract or otherwise as a result of our performance or non-performance of such activities.

7.6 Our liability to you, howsoever arising, and whether or not the cause of loss or damage be unexplained, shall not exceed:

7.6.1 in the case of claims for loss or damage to Goods:

(a) the value of any loss or damage, or

(b) a sum at the rate of 2 SDR per kilo of the gross weight of any Goods lost or damaged

whichever shall be the lower.

7.6.2 subject to 7.6.3 below, in the case of all other claims:

(a) the value of the Goods which are the subject of this Agreement;

(b) where the weight can be defined, a sum calculated at the rate of 2 SDR per kilo of such Goods; or

(c) 75,000 SDR in respect of any one transaction whichever shall be the least.

7.6.3 in the case of an error and/or omission, or a series of errors and/or omissions which are repetitions of or represent the continuation of an original error, and/or omission,

(a) the loss incurred or

(b) 75,000 SDR in the aggregate of any one trading year commencing from the time of the making of the original error and/or omission, which ever shall be the lower.

For the purposes of this clause 7.6, the value of the goods shall be their value when they were, or should have been, shipped. The value of SDR shall be calculated as at the date when the claim is received by us in writing.

7.7 You agree that our employees, agents and Carriers and their employees, agents and subcontractors:

7.7.1 have the benefit of these conditions; and

7.7.2 we hold that benefit on trust for them and can, if requested by them, enforce it on their behalf.

7.8 Where we contract with Carriers as agent on your behalf, we shall not be liable for any loss or damage to the Goods caused by the Carrier.

7.9 On express instructions in writing declaring the value of the Goods received from you and accepted by us, we may accept liability in excess of the limits set out in clauses 7.1 to 7.8 above upon you agreeing to pay our additional charges for accepting such increased liability. Details of our additional charges will be provided on request.

## **8 Claims**

8.1 Any claim against us must be notified to us in writing within 90 days after the provision of the Services or delivery of the Goods or, in the case of non-performance, when the Services should have been provided or the Goods should have been delivered failing which such claim shall become barred.

8.2 We will be discharged from all liability whatsoever in connection with the provision of the Services and/or the Goods unless suit is brought in the proper forum within twelve (12) months of the provision of the Services or delivery of the Goods or when the Services should have been provided or the Goods should have been delivered.

## **9 Your indemnity to us**

9.1 You must continually indemnify us against any liability or expense we incur as a result of:

9.1.1 a breach of these conditions by you;

9.1.2 any breach or failure by you of an applicable road or transport or other law;

9.1.3 our acceptance of Goods for carriage or storage that are, or may become, dangerous or offensive;

9.1.4 any loss or damage another person incurs which arises out of the performance the Services by us.

## **10 Inspection by authorities**

10.1 If by order of the authorities at any place, a container has to be opened for the Goods to be inspected, we will not be liable for any loss, damage or delay incurred as a result of any opening, unpacking inspection or repackaging. We will be entitled to recover the cost of such opening, unpacking, inspection and repackaging from you.

## **11 Lien**

11.1 We have a lien over the Goods and any related documents, and over any other Goods and related documents of yours in our possession, as security for payment of any money you owe us.

11.2 We may charge for storage and/or remove to a warehouse or bond store any Goods subject to a lien, at your risk and expense.

11.3 We may sell the Goods or documents without giving you notice. If we do, we are entitled to offset the amount we receive against the money you owe us. This does not affect any other rights we may have.

## **12 VAT**

12.1 This Clause 12 applies if the Company is or may become liable to pay VAT in relation to any Services under these Conditions:

12.1.1 Unless otherwise stated, all charges quoted are exclusive of VAT. In addition to such charges, you must pay VAT on the taxable supply to the Company of an amount equal to the VAT exclusive consideration multiplied by the VAT Rate. VAT shall be payable by you without any deduction or set off for any other amount at the same time as the VAT exclusive consideration is payable. In all other respects, VAT shall be payable by the Customer to the Company upon the same basis as the VAT exclusive consideration is payable by the Customer under these Conditions.

12.1.2 The Company must issue an Invoice or Invoices to the Customer for the amount of VAT referable to the taxable supply. The Company must include in any such Invoice such particulars as are required by VAT legislation in order that the Customer may obtain an input tax credit for the amount of VAT payable on the taxable supply.

12.1.3 If any part of the consideration is referable to both a taxable supply and anything that is not a taxable supply, the amount of VAT payable by the Customer shall be determined by the Company and shall be the same amount of VAT that would be payable if the Taxable Supply were the only Supply made to the Customer.

12.1.4 If the Customer makes default in the payment on the due date of any amount payable pursuant to Clause 12.1.1 then without prejudice to any other remedies of the Company, the Customer shall pay to the Company upon demand an amount equal to the amount of any damages or interest or additional VAT that may become payable by the Company arising out of the default of the Customer.

## **13 International Carriage**

13.1 The Parties acknowledge that Goods moving by ocean freight are subject to the applicable international treaties including the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on August 25, 1924 (the Hague Rules), or those rules as amended by the Protocol signed at Brussels on February 23, 1968 (the Hague Visby Rules) and the SDR Protocol (1979) and including any applicable amendments as from time to time may be made. Your recovery of any loss or damage is against the ocean freight carrier and is limited in accordance with these or any other conventions that may be applicable.

13.2 The Parties acknowledge that Goods moving by ocean freight may necessarily involve a part of transportation undertaken by other means in order to comply with the terms of carriage under this or any contract between the parties. Where this is so, and no international treaty is applicable which covers the additional transport, your recovery of any loss or damage is against the carrier and is limited in accordance with the convention applicable for the majority of the transport, even where that convention does not envisage liability for the kind of transport concerned.

## **14 Governing law and Jurisdiction**

14.1 These terms and conditions and any Agreement to which they apply are governed by English law regardless where the Agreement was entered into and the parties hereby submit to the non-exclusive jurisdiction of the English Courts in respect of any dispute arising out of or in connection with this Agreement.

## **15 Miscellaneous**

15.1 These conditions have effect, whether or not you have signed an acknowledgment of their application.

15.2 If you commence or continue to engage in any dealings with us, these conditions will be deemed to apply to our dealings, whether or not you have signed an acknowledgment of their application.

15.3 If a clause or part of a clause of these conditions or an Agreement to which they apply can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from these conditions, but the rest of the Agreement is not affected.

15.4 In these conditions, a reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision

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