

First Distribution Terms of Business



1 Introduction

1.1 First Distribution Limited, a company registered in England and Wales under number **12046020**. Our registered address is Unit 7 Harlow Mill Business Centre, River Way, Harlow, England, CM20 2FD (**First Distribution, Our, Us, We**).

1.2 These are the terms and conditions upon which We do business (**Terms**).

1.3 We may revise or update these Terms at any time without notice. The current version of these Terms can be found on Our Website.

1.4 These are the Terms (as revised or updated from time to time in accordance with Condition 1.3) upon which We are willing to supply the Services to You. The Terms will apply to all dealings between You and Us to the exclusion of all other terms and conditions (including any terms and conditions which You may purport to apply under any purchase order, confirmation of order or similar document).

1.5 No variation to these Terms will be binding unless in writing and signed in accordance with Condition 19.2.

1.6 We are not a common carrier and reserve the right in Our absolute discretion to refuse to perform any Services (including the transportation or storage of any Goods) until We enter into a Contract with You and issue You with an order confirmation and consignment number.

2 Definitions

2.1 In these Terms the following definitions apply:

Carrier means any third party carrier engaged by Us to perform the Services;

Claim means any claim, action, suit, loss, damage, costs (including, legal and other professional fees), interest, expenses and any other liabilities;

Consignee means the person to whom any Goods are to be delivered as specified by You in the Order;

Consignment means the Goods that are either: (i) sent at one time in one load by or for the Customer from one address to another address; or (ii) stored by Us on behalf of the Customer at Our premises;

Consumer means an individual requiring the Services for personal use and not in relation to any commercial activity;

Contract means the contract for Services made between the Customer and First Distribution which shall be made subject to and include these Terms and the Order;

Customer or You means the person who contracts with Us for the provision of Services including any other carrier who gives Goods to Us for carriage or storage;

Dangerous Goods means dangerous substances as defined in the The Carriage of Dangerous Goods by Road Regulations 1996, explosives, radioactive substances and any other substance presenting a similar hazard;

Goods means goods of any nature in bulk or contained in one parcel, package, container or envelope, as the case may be, or any separate number of parcels, packages, containers or envelopes;

Order means an order placed by You including placed by your representative on your behalf, for Our Services in accordance with the ordering process detailed on Our Website and accepted by Us in accordance with Condition 3.1;

Services means the services We offer as detailed on Our Website from time to time;

Storage means the period of time during which the Consignment is being stored by Us on behalf of the Customer as set out further in Condition 8;

Transit means the period of time during which the Consignment is being carried by Us as set out further in Condition 7;

Transport Emergency Card means an industry standard document which gives detailed written instructions to the driver when transporting Dangerous Goods or hazardous goods in quantities; and

Website means: www.firstdistribution.co.uk

▪ In these Terms:

- (a) words importing the singular shall include the plural and vice versa, words importing a gender shall include all genders and words importing persons shall include bodies corporate, unincorporated associations and partnerships;
- (b) any reference to a statute, statutory provision or subordinate legislation is a reference to such legislation as amended and in force from time to time and to any legislation which re-enacts or consolidates (with or without modification) any such legislation;
- (c) references to Conditions are references to the terms and conditions of these Terms;
- (d) headings are included for ease of reference only and shall not affect the interpretation or construction of these terms and conditions; and
- (e) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

3 Ordering

3.1 We are not obliged to accept any orders from You. A Contract will only be formed at the time We accept your Order or 6 hours after you place the Order unless We notify You that your order is not accepted, whichever is earlier.

3.2 The Customer warrants that he is either the owner of the Goods or is authorised by the owner to accept these Terms on the owner's behalf.

3.3 The Customer acknowledges and agrees that We may sub-contract provision of the Services to a Carrier or third party storage provider. Subject to Condition 3.4 and the provisions of these Terms, We will be responsible and liable for the acts and omissions of any Carrier or storage provider that We engage to perform the Services.

3.4 Notwithstanding Condition 3.3, the carriage of any Goods by rail, sea, inland waterway or air is arranged by Us acting as agent of the Customer and shall, in addition to these Terms be subject to the terms and conditions of the relevant Carrier. A list of the Carriers We use is available on the Website at www.firstdistribution.co.uk and may be updated from time to time by Us without notice.

3.5 Where You are a Consumer, You may cancel an Order for carriage at any time subject to the provisions of this Condition.

3.6 In the event of any conflict between the terms and conditions of these Terms and an Order, the terms and conditions of these Terms shall prevail.

3.7 The Customer acknowledges and agrees that where an Order is made by one of its representatives that any such representative is an authorised representative of the Customer and is authorised by the Customer to bind the Customer to these Terms.

4 Dangerous Goods

4.1 Dangerous Goods must be disclosed to Us by the Customer when the Order is placed. If We accept an Order for Services in relation to Dangerous Goods they must be classified, packed and labelled in accordance with all applicable statutory regulations and guidelines including, for the carriage by road or long term Storage of the substance(s) declared.

4.2 If the Order requires carriage of Dangerous Goods, You shall ensure that the applicable Transport Emergency Card and/or any other information required by law or any relevant authority for each substance is provided to the First Distribution representative who collects the Dangerous Goods.

4.3 If the Order requires storage of Dangerous Goods, You shall provide Us with all documents and information necessary for Us to provide safe and legal storage of the Dangerous Goods.

5 Loading/Unloading/Storage Equipment

5.1 You acknowledge and agree that We have no obligation to provide any power, equipment (including hoisting apparatus) or labour to load or unload the Consignment from Our vehicle.

5.2 At the time You make an Order You or your representative ordering on your behalf, must specify any special equipment that is required for loading, unloading and/or storing the Consignment. We will inform You if We are able to provide the specialist equipment for the loading and/or unloading of the Consignment at the times and locations specified in the Order or for storing the Consignment at Our premises. If We are unable to provide You with the specialist equipment required You will be responsible for procuring that such equipment is available for use at the relevant times and locations specified in the Order for collection, delivery and/or Storage (as appropriate).

5.3 If We are instructed to load, unload or store any Consignment using special equipment provided or procured by the Customer, the Customer shall indemnify Us and hold Us harmless against any Claims in respect of:

(a) any loss of or damage to property or equipment of the Customer and/or any third party; and/or

(b) any personal injury or death arising out of the operation and/or use of the equipment by Our representatives,

unless Our representatives operate and/or use the specialist equipment negligently or maliciously.

6 Consignment Notes

6.1 Subject to Condition 6.2 and at the Customer's request Our representative will sign a document prepared by the Customer acknowledging that We have taken possession of the Consignment.

6.2 If We sign a document in accordance with Condition 6.1, You acknowledge and agree that such document will not be evidence of the condition or the correctness of the declared nature, quantity or weight of the Consignment at the time it they are received by Us.

7 Transit

7.1 Transit commences when We take possession of the Consignment, whether at the collection address set out in the Order or at Our premises.

7.2 Transit shall (unless otherwise previously determined) end when the Consignment is delivered to the delivery address set out in the Order and signed for by the Consignee except that:

(a) if no safe and adequate access or, if applicable, no adequate unloading facility exists at the delivery address, Transit shall end at the expiry of one hour after We have given notice to You by telephone of the arrival of the Consignment at Our premises; or

(b) when for any other reason whatsoever the Consignment cannot be delivered or when Consignment is held by Us "to be kept until called for" or upon any similar instructions and the Consignment is not called for and/or removed within a reasonable time determined by Us, then Transit shall end at the expiry of the reasonable time as determined by Us.

8 Storage

8.1 Storage commences when the Consignment has been delivered to Our address as set out in the Order.

8.2 Storage shall end when the Consignment is collected from Our premises, except that when a Consignment is held by Us “to be kept until called for” or upon any similar instructions and the Consignment is not called for and/or is not collected within a reasonable time (as determined by Us), then Storage shall end at the expiry of the reasonable time as determined by Us.

9 Lien

9.1 We shall have a general lien over the Consignment against the Customer or the owner of the Consignment (as applicable). This means that We will be entitled to retain possession over the Consignment until all monies due from the Customer to Us are paid.

9.2 Where such lien is not satisfied within a reasonable time, We may, in Our absolute discretion, sell the Consignment or any part of it as agent for the Customer. We will pay the proceeds to the Customer after deducting all proper charges and expenses in relation to the Consignment and of all outstanding charges in relation to the Services and the expenses incurred by Us in relation to the storage, insurance and sale of the Consignment. You acknowledge and agree that We shall have no further liability or responsibility to You whatsoever in connection with the Consignment.

10 Undelivered or Unclaimed Goods

10.1 Where We are unable for any reason to deliver a Consignment to the Consignee, or when in accordance with Condition 7.2 above Transit is deemed to be at an end, or when in accordance with Condition 8.2 above Storage is deemed to be at an end, We will use reasonable endeavours to give notice to the Customer and to the Consignee that the Consignment will be sold unless within the time specified in the notice, being a reasonable time in the circumstances, the Consignment is collected from Us. After the expiry of the time specified in the notice, We may sell the Consignment or any part of it.

10.2 Where We sell the Consignment in accordance with Condition 10.1, We will pay the proceeds to the Customer after deducting all proper charges and expenses in relation to the Consignment and of all outstanding charges in relation to the Services and the expenses incurred by Us in relation to the Storage, insurance and sale of the Consignment. You acknowledge and agree that We shall have no further liability or responsibility to You whatsoever in connection with the Consignment.

10.3 We shall use reasonable endeavours to obtain a reasonable price for the Consignment.

11 Our Charges

11.1 Our charges will be made in accordance with Our current tariffs when the Contract is made or as otherwise agreed between the Customer and First Distribution in writing. Where First Distribution and the Customer agree a tariff which differs from Our current standard tariff, the tariff agreed will be reviewed by the parties as a minimum on an annual basis. Where First Distribution and the Customer are unable to agree on a new tariff during the review, the tariff to be applied will default to First Distribution's current standard tariff in place at the time of the review.

11.2 When You engage Us for any Services We may conduct a credit check upon You. If you request, We may, at Our discretion, set up a trading account for You with a credit limit, which We may increase or decrease from time to time.

11.3 If You have a trading account with Us then You must keep within your credit limit and credit payment terms at all times. If You reach the credit limit then You must pay the outstanding balance (or a lesser amount as specified by Us in our absolute discretion) before receiving any further Services. Your credit amount and limit may be regularly reviewed and We may change, withdraw or request immediate full payment of the balance at any time.

11.4 Invoices will be prepared by Us at least once a month.

11.5 Each of Our invoices must be paid within 7 days of the date of the invoice by direct debit unless You notify Us of any bona fide dispute in relation to an invoice within 7 days of the date of that invoice. You shall pay any undisputed amount of the disputed invoice in accordance with this Condition 10.3 but may withhold the disputed amount until the amount due has been agreed or otherwise determined. BACS options may be available at an additional charge, pending sign off from our Board of Directors.

11.6 We shall be entitled to charge interest on the outstanding amount from the due date until payment is made in full at the rate of 8% per annum over Barclays Bank Plc's base rate from time to time, which interest shall accrue on a daily basis from the date payment becomes overdue until the date payment of the overdue amount together with all interest that has accrued is received by Us in cleared funds.

11.7 Where the Consignment is "carriage forward", the Customer shall procure that the Consignee pays our invoice within 14 days of the date of the invoice. Should the Consignee fail to make payment within this period We shall notify the Customer of the non-payment and invoice the customer for the amount due from the Consignee.

11.8 Except where any quotation states otherwise, all quotations given which are based on a weight charge, will be calculated according to the gross weight or the volumetric weight of all the

Consignment and their packaging making up the Consignment, whichever is greater. Consignments may not be invoiced at quotation price provided

11.9 Unless stated otherwise, all charges quoted are exclusive of Value Added Tax or any other sales, use, import or export, value added or similar tax which, if applicable, shall be payable by the Customer in addition.

11.10 Unless stated otherwise, all charges quoted are exclusive of any fuel surcharge which may be claimed by Us.

11.11 All amounts due to Us by You shall be paid by You in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

12 Liability for Loss and Damage

12.1 Unless the Customer has made specific arrangements for insurance with Us prior to commencement of Transit of the Consignment (as determined in accordance with Condition 7.1), We shall not be liable to the Customer for any loss, mis-delivery of and/or damage to the Consignment or any part of them arising out of or in connection with any reason or event whatsoever outside of our reasonable control.

12.2 We shall not be liable to the Customer in respect of any loss, mis-delivery of and/or damage to any Consignment or any part of a Consignment as a result of:

- (a) any seizure or forfeiture under legal process;
- (b) any act, omission, misstatement or misrepresentation by the Customer, the owner of the Consignment, the Consignee or the servants or agents of each of them;
- (c) any inherent vulnerability to wastage in bulk or weight, defect or inherent defect, natural deterioration or fragility of the Consignment (even if marked "Fragile");
- (d) insufficient or improper packing;
- (e) insufficient labelling or addressing; or
- (f) the Consignee not taking or accepting delivery within a reasonable time after the Consignment has been tendered.

12.3 We shall not in any circumstances be liable for any loss or damage to the Consignment after Transit or Storage of such Consignment is deemed to have ended in accordance with Conditions 7 and 8 above, whether or not caused or contributed to directly or indirectly by any act, omission, neglect, default, or other wrongdoing on Our or Our representative's part.

12.4 We shall not in any circumstances be liable for perishable and temperature sensitive Goods. Perishable and temperature sensitive Goods will be transported or stored provided that the Customer accepts that this is at its risk. We do not provide special handling or storage for such shipments.

12.5 In relation to any Claim made by You in relation to loss or theft of or damage to of any Goods, You shall provide written proof of the value of the Goods damaged, stolen or lost and shall allow us (or our representatives) reasonable access to inspect the damaged Goods.

12.6 We shall not in any circumstances be liable to You in relation to any late delivery of a Consignment as a result of any reason or event beyond our reasonable control.

12.7 When a Consignment is carried by a Carrier (other than for a same day collection and delivery Service) You acknowledge that the Consignment will be subject to the Carrier's insurance (if any).

13 Fraud

The Customer shall indemnify Us and hold Us harmless from any liability in connection with a Consignment arising out of or connected to any act of fraud on the part of the Customer or the owner of the Consignment or any part thereof or the servants or agents of either of them in respect of that Consignment, unless the fraud has been contributed to by Our complicity.

14 Limitation of Liability

14.1 Nothing in this Agreement shall exclude or limit either party's Liability for:

- (a) death or personal injury caused by its negligence;
- (b) fraud or fraudulent misrepresentation; or
- (c) any liability which cannot be excluded or limited by English law.

14.2 Subject to Condition 14.1, Our total aggregate liability arising out of or in connection with the provision of same-day collection and delivery Services under any Contract shall not exceed the lesser of:

- (a) the replacement value of the cost price of the Goods that are actually lost or damaged; or

- (b) the cost of repairing any damage or reconditioning the Goods that are damaged; or
- (c) £15,000,

whether such loss or damage was due to Our fault or negligence or that of Our servants, agents or employees or otherwise.

14.3 Subject to Conditions 14.1 and 14.2, We shall not in any circumstances be liable to You for any:

- (a) loss of or damage to any Goods arising out of or in connection with any collection and delivery Services;
- (b) loss of or damage to any Goods arising out of or in connection with any storage Services;
- (c) losses, expenses, fines, liability or damages You may incur as a result of Our performance, non-performance or mis-performance of the Services;
- (d) special, indirect, consequential or incidental losses or punitive or exemplary damages; or
- (e) loss of profits, loss of contracts, loss of business, loss of anticipated revenue or savings, or loss of opportunity (in each case whether direct or indirect),

whether arising from negligence, breach of contract or otherwise under or in connection with these Terms or any Contract.

14.4 If the Customer wishes to arrange a higher level of liability in respect of any Consignment, then he should apply to First Distribution who may be able to arrange this at an additional charge to the Customer.

15 Time Limits for Claims

15.1 We shall not be liable for any:

- (a) damage to the whole or part of any Consignment unless We are given written notification of the damage on the day of delivery, or within 24 hours of delivery where the Consignment has been delivered by a dedicated sameday vehicle, or the day of the end of the Transit or Storage. Under the circumstances of any loss, notification must be made in writing within 3 days after the end of the Transit or Storage (as determined in accordance with Conditions 7 and 8);

16 Indemnity to First Distribution

16.1 The Customer shall indemnify First Distribution against:

(a) all consequences suffered by First Distribution (including claims, demands, proceedings, fines, penalties, damages, costs, expenses and loss of or damage to the carrying vehicle and/or to other Consignment carried) as a result of:

(i) any error, omission, misstatement or misrepresentation by the Customer or owner of the Consignment or by any servant or agent of either of them; and/or

(ii) insufficient or improper packaging, labelling or addressing of the Consignment ;

(b) all claims and demands whatsoever by whomsoever made in excess of the liability of First Distribution under these Terms as set out in Condition 11 above;

(c) all losses suffered by and claims made against First Distribution resulting from loss of or damage to property caused by or arising out of the carriage by First Distribution of Dangerous Consignment whether or not declared by the Customer as such; and

(d) all claims made upon First Distribution by H M Customs & Excise in respect of dutiable Consignment consigned in bond whether or not Transit or Storage has ended or been suspended.

17 Unreasonable Detention

The Customer shall be liable for the cost of unreasonable detention of any vehicle, trailer, or other property belonging or leased to First Distribution, but the rights of First Distribution against any other person shall remain unaffected.

18 Data Protection

Where, in connection with these Terms or a Contract, the Customer or We (the **Data Processor**) processes Personal Data (as defined in the General Data Protection Regulation 2018) on behalf of the other, the Data Processor shall:

(a) only process such Personal Data to the extent reasonably necessary for the performance by it of its obligations under the Contract; and

(b) implement appropriate technical and organisational measures to protect such Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and against all other unlawful forms of processing.

For further information please see <https://www.firstdistribution.co.uk/privacy-policy>

19 Notices

19.1 Any notice given under or in connection with these Terms or any Contract by one party to the other party shall be:

(a) delivered by hand or by pre-paid first-class post or other next working day delivery service at the other party's registered office or its principal place of business; or

(b) sent by email to the relevant party and confirmed as received by recipient to the sender

19.2 Any notice shall be deemed to have been received:

(a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

(b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second working day after posting or at the time recorded by the delivery service;

(c) if sent by email, at 9.00 am on the second working day after transmission.

20 General

20.1 Neither You nor We shall be entitled to assign, novate or otherwise transfer any of our rights and/or obligations under these Terms or any Contract without the prior written consent of the other party (that consent not to be unreasonably withheld or delayed) except that the Customer acknowledges and agrees that subject to Condition 3, We may use sub-contractors to perform the Services or parts of the Services from time to time.

20.2 No variation to these Terms shall be valid unless it is in writing and signed by duly authorised representatives of First Distribution and of the Customer which, in the case of First Distribution, is one of the statutory Directors in place at the time. The variation will take effect from the date of last signature.

20.3 No failure or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach. No waiver by either party of any requirements of these Terms or any Contract, or of any remedy or right under these Terms or any Contract, shall have effect unless given in writing and signed by that party.

20.4 If any provision of a Contract or these Terms is held to be invalid or unenforceable by any judicial or other competent authority, all other provisions of the Contract or these Terms will remain in full force and effect and will not in any way be impaired.

20.5 If any provision of a Contract or these Terms is held to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question will apply with the minimum modifications necessary to make it valid and enforceable.

20.6 The relationship between First Distribution and the Customer is that of supplier and purchaser. Nothing in Terms or in any Contract shall be construed as creating a partnership or joint venture of any kind between the parties or as constituting either party as the agent of the other party for any purpose whatsoever and neither party shall have the authority or power to bind the other party, or to contract in the name of, or to create a liability against, the other party in any way or for any purpose.

20.7 No person other than the Customer and Us shall have any right under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any of these Terms.

20.8 Each Contract together with any documents referred to in it contain the entire agreement between the parties relating to the subject matter covered and supersede any previous agreements, arrangements, undertakings or proposals, written or oral, between the parties in relation to such matters. No oral explanation or oral information given by any party shall alter the interpretation of these Terms.

20.9 The Customer confirms that, in entering into the Contract, it has not relied on and shall have no remedy in respect of any statement, representation or warranty that is not set out in these Terms and agrees that the only remedy available to it for breach of any statement, representation or other term that is expressly set out in these Terms shall be for breach of contract. Nothing contained in this Condition 19.8 shall however operate to limit or exclude any liability of either party for fraud or fraudulent misrepresentation.

20.10 These Terms and each Contract and any claim or dispute arising out of or in connection with any of them or their subject matter or formation (including non-contractual claims or disputes) shall be governed by, and construed in accordance with, the laws of England and Wales.

20.11 You and We both irrevocably submit to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with these Terms and each Contract or their subject matter or formation (including non-contractual claims or disputes).