

## **Standard Terms and Conditions of Trading**

The Attention of the Customer is drawn to the following terms and conditions of trading which exclude or limit the Company's liability and those which require the Customer to indemnify the Company in certain circumstances.

### **1. APPLICATION AND DEFINITIONS**

#### **(i) Application**

All services of the Company, whether gratuitous or not, are subject to the following:

- (a) The provisions of these Terms and Conditions and to the provisions of the Company's or any other applicable Tariff, if any.
- (b) To the extent that the Company undertakes or arranges for the carriage of Goods, Units and any Services connected therewith, the provisions of these Conditions, shall be paramount, subject to sub-paragraph 1(E) below, in so far as such provisions are inconsistent with these other conditions.
- (c) In so far as these Conditions are inconsistent with the provisions of any applicable Tariff, these Conditions shall be paramount.
- (d) Copies of the provisions of any applicable tariff are obtainable from the Company upon written request.
- (d) If any legislation, to include regulations and directives, and/or any International Conventions regulating the international carriage of goods by Road, Sea and Air is compulsorily applicable to any business undertaken, these conditions shall, as regards such business, be read as subject to such legislation, and nothing in these conditions shall be construed as a surrender by the Company of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation, and if any part of these conditions be repugnant to such legislation to any extent, such part shall as regards such business be overridden to that extent and no further.

#### **(ii) Definitions**

In these terms and conditions

- (a) The term "**Authority**" shall mean any person or body of persons which is a duly constituted legal or administrative person, acting within its legal powers and exercising jurisdiction within any nation, state, municipality, port or airport;

- (b) The term “**Company**” shall mean a “Gollcher Company Ltd” and / or “Gollcher Air Express Ltd” and / or “O.F. Gollcher & Sons Ltd” trading under these conditions;  
;
- (c) The term “**Unit**” shall mean any Transport Unit, Flexitank, Trailer, Transportable Tank, Flat-rack, or any other article of transport used to carry or consolidate goods and any equipment of or connected thereto and in respect of which the Company performs or is requested to perform any service or which enters the Company’s depot in connection with such service;
- (d) The term “**Customer**” shall mean any person at whose request or on whose behalf the Company undertakes any business or provides a service and any person having any rights or obligations under any contract whatsoever concluded with the Company or as a result of that person’s activity in connection with such services;
- (e) The term “**Goods**” shall mean the cargo as well as transport units, pallets or similar articles of transport or packaging, in respect of which the Company provides or is requested to provide a service;
- (f) The Term “**Dangerous Goods**” shall mean goods which are officially classified as hazardous and includes goods which are or may become of a dangerous, inflammable, radioactive, noxious or damaging nature and goods likely to harbour or encourage vermin or other pests;
- (g) The term “**Goods of High Value**” shall include but not be limited to bullion, precious stones, bank notes or coins, bonds, negotiable instruments or securities of any kind, cigarettes, spirits, precious metal objects, precious jewellery, valuable works of art, antiques, historical artefacts and bloodstock, computers/hand held electronic products/mobile telephones (and electronic components of these)
- (h) The term “**in writing/written**” shall mean and include *inter alia* any telegram, telex, facsimile, e-mail, handwriting, processed or typewritten text or any recording by electronic means.
- (i) The term “**Owner**” shall mean and include the owner, shipper and consignee of goods or transport unit and any other person who is or who may become interested in the Goods and anyone acting on their behalf
- (j) The term “**Agent**” shall mean and include direct and indirect sub-contractors and their respective servants and agents.
- (k) The term “**Person**” shall mean and include persons or any body or bodies corporate;
- (l) The term “**Vehicle**” shall mean any motor vehicle (including but not limited to any lorry, van, trailer, crane, fork-lift truck or car) in respect of which the Company performs or is requested to perform any service or which enters the Company’s depot in connection with such service.
- (m) The term “**SDR**” means the Special Drawing Right as it is defined by the International Monetary Fund.
- (n) Except where the context otherwise requires, words denoting the singular include the plural and the masculine include the feminine and vice versa.

## **2. SERVICES PROVIDED TO THE CUSTOMER**

The Company shall undertake to provide or to make arrangements for the provision of the following services to the Customer:

- (i) the carriage of goods and/or the arrangement for the carriage of goods and/or
- (ii) storage of goods whether temporary or otherwise and/or
- (iii) handling of goods and/or
- (iv) lifting of goods and/or
- (v) packaging and labelling of goods and/or
- (vi) renting and leasing of equipment, vehicles, machinery and/or
- (vii) renting and leasing of dry van units.

## **3. WARRANTY OF AGENCY**

The Customer warrants that he is either the owner of the Goods concerned or is duly authorised by such owner to accept these Conditions for and on such owner's behalf.

The Customer contracts and agrees with the Company on behalf of himself and as agent for all persons who have or may acquire any proprietary, possessory or other rights in respect of Goods, Units or Vehicles to be bound by the terms of these Conditions and by the terms of any applicable Tariff and warrants that he has the authority of all such persons to contract and to agree as aforesaid.

## **4. OBLIGATIONS OF THE CUSTOMER**

- (i) The Customer shall give sufficient and executable instructions in writing wherever possible.
- (ii) The Customer warrants that the description and particulars of the Goods and Units (including, but not limited to, weight, content, measure, quantity, condition, marks, numbers and value) are complete and correct and that the Goods are labelled and marked in compliance with all laws, regulations and requirements which may be applicable.
- (iii) The Customer warrants that the Goods and non-empty Units are properly packed in a manner adequate to withstand normal handling or storage and in compliance with all laws, regulations and requirements or official or recognized standards as may be applicable and in such condition as not to cause damage or injury to the property of the Company or to any other goods, whether by spreading of damp, infestation, leakage or the escape of fumes or substances or otherwise howsoever.
- (iv) Before presentation of the Goods for any of the services provided in Article 2 of these Standard Terms and Conditions of Trading, the Customer shall duly inform the Company in writing of any special precautions necessitated by the nature, weight or condition of the Goods and of any statutory duties specific to the Goods with which the Company may need to comply. The Customer also undertakes to

supply the Company with any information concerning the nature of the Goods and their packaging as the Company may reasonably request.

- (v) The owners or agents of the owners of the Goods undertake to reimburse the Company with all duties and taxes that the Company may be required to pay in respect of the Goods, except to the extent that the Company is required to accept responsibility for them in accordance with this Article.

## **5. GOODS OF A PARTICULAR NATURE**

- (i) Unless prior to acceptance of the Goods by the Company, the Company receives written notice containing all appropriate information, none whatsoever of such Goods will be construed to be Valuables, Dangerous Goods, human remains, live animals or plants and unless prior to acceptance of the Goods by the Company, the Company receives written notice containing all appropriate information, none of the Goods will be construed as to being of their very nature or as to containing 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 of the environment or harm to human health and to other cargo.
- (ii) If Goods in the opinion of the Company and/or any Authority constitute a risk to other goods, property, life or health such Goods may without notice be destroyed or otherwise dealt with at the sole discretion of the Company and at the risk and expense of the Customer.

## **6. GOODS OF HIGH VALUE**

Unless otherwise agreed in writing, the Customer undertakes that no Goods of High Value or requiring special use or handling shall be delivered to the Company and that the Company shall not be caused to deal with or handle such Goods. If such Goods are delivered without such agreement, the Goods may be refused receipt by the Company or stored elsewhere at the Customer's own risk and expense.

## **7. TEMPERATURE CONTROLLED GOODS**

- (a) Unless otherwise previously agreed in writing, the Customer undertakes that no Goods requiring temperature control will be delivered to the Company and that the Company shall not be caused to deal with or handle such Goods.
- (b) If the Company agrees to handle Goods which require temperature control, the Customer warrants and undertakes:
  - (i) to give written notice of the nature of the Goods and particular temperature range to be maintained and that the Unit has been properly pre-cooled or pre-heated as appropriate; that the Goods have been properly stuffed in the unit and that its thermostatic controls have been properly set. If the above requirements are not complied with, the Company shall not be liable for any loss of or damage to the Goods to the extent caused by such non-compliance.

- (ii) that any refrigerated unit shall be in good working order at the time it is placed in the custody of the Company and to hold the Company harmless for any loss of or damage to the Goods directly or indirectly arising from any failure of the cooling mechanism of any refrigerated unit.

## **8. BREACH**

- (i) If the Customer is in breach of Articles 5 or 6 or 7 above the Goods may without notice be refused receipt by the Company, be destroyed or otherwise dealt with at the sole discretion of the Company and at the risk and expense of the Customer.
- (ii) The Customer shall indemnify the Company against any loss or damage it suffers which is directly related to the breach, including all costs and expenses, judicial and extra-judicial incurred therein, and the Company's reasonable charges for reparation of the breach and its consequences.
- (iii) The Customer shall in addition pay an extra charge equal to the amount of any fine or penalty payable by the Company wholly or partly as a result of a breach by the Customer of this contract.

## **9. INDEMNITIES**

- (i) The Customer shall defend, indemnify and hold harmless the Company against all loss, damage, liability, costs and expense to the extent arising from:-
  - (a) any breach of the Customer's undertakings in accordance with the articles above;
  - (b) the act or omission of the Customer or the Owner or any person acting on their behalf;
  - (c) the Company complying with the instructions given by or on behalf of the Customer or Owner;
  - (d) the Company complying with the orders of an Authority with regard to the Goods;
  - (e) the handling, loading, stowage or unloading and of the Goods by the Customer or Owner or any person acting on their behalf;
  - (f) the nature of the Goods,
  - (g) the defective condition of or overweight Units or Vehicles, or
  - (h) any claims of a general average nature which may be made on the Company.
- (ii) The Customer shall defend, indemnify and hold harmless the Company against all duties, taxes and fines in respect of the Goods howsoever arising. Notwithstanding the foregoing, if the duty or tax arises from the physical loss or damage to the Goods for which the Company is liable under article 13 of these Conditions, the Customer having indemnified the Company may include such duty or tax in any claim arising under Article 4 of these Standard Terms and Conditions.

- (iii) The Customer's Contract of Carriage, handling or temporary storage shall include a provision prohibiting the making of any claim against the Company, its servants or agents by the Carrier or party with whom the Customer has negotiated a contract of carriage, handling or storage and a provision that the Company, its servants and agents shall have the benefit of any provisions in such contract of carriage, handling or temporary storage excluding or limiting the liability of the Customer in respect of the Goods, Units or Vehicles.
- (iv) The Customer undertakes that no claim will be made against any servant or agent of the Company which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods, Units or Vehicles and if any such claim should nevertheless be made, to indemnify the Company against all consequences thereof.
- (v) Without prejudice to the foregoing, every such servant or agent shall have the benefit of all provisions herein, as if such provisions were expressly for their benefit. In entering into this contract the Company, to the extent of those provisions, does so not only on its own behalf, but as agent and trustee for such servants and agents.
- (vi) The Customer shall defend, indemnify and hold harmless the Company from and against all claims, costs and demands whatsoever and by whomsoever made or preferred in excess of the liability of the Company under the terms of these Conditions and without prejudice to the generality of this article this indemnity shall cover all claims, costs and demands arising from or in connection with the negligence of the Company, its servants and agents.

## **10. RECEIPTS**

- (i) Goods, Units or Vehicles are not received by the Company until the person delivering has reported to the Company's reception office or area and in addition the Company has agreed to receive the Goods, Unit or Vehicle or until the Company has acknowledged receipt thereof in writing.
- (ii) The Company may refuse to receive load or unload any Goods, Units or Vehicles if the Company is not satisfied that arrangements have or will be made for the removal of such Goods, Units or Vehicles.

## **11. DELIVERY AND DISPOSAL**

- (i) If any Goods, Units or Vehicles are not removed from the Company's premises within fourteen (14) days of the Company having given notice to the Customer, the Company shall be entitled to remove or dispose of such Goods, Units or Vehicles at the sole discretion of the Company and at the risk and expense of the Customer.
- (ii) If at any time whatsoever, any Goods constitute a risk to other goods, property, life or health in the opinion of the Company or any Authority, such Goods may without notice be destroyed or otherwise dealt with at the sole discretion of the Company and at the risk and expense of the Customer.

- (iii) Instructions contained in the Customer's Contract of Carriage, delivery order or other documents shall entitle the Company to deliver to the bearer thereof notwithstanding that such contract of carriage, delivery order, or other document provides for delivery to another named party or to his order. The Company is entitled to assume that the person presenting such contract of carriage, delivery order or other document is the person lawfully entitled to take delivery. The Company is not required to verify signatures appearing on such contract of carriage, delivery order or other document. It will accept the document on good faith and at face value.

## **12. INSPECTION OF THE GOODS AND/OR VEHICLES**

The Company will inform the Customer of any discrepancies to Goods ascertained on receipt by or delivery from the Company and which are apparent upon reasonable inspection and if possible without affecting, as much as possible, the packaging of the Goods.

## **13. LIABILITY AND LIMITATION OF LIABILITY**

- (i) The Company shall not be liable for any loss and/or damage, whether sustained in the course of transit or whilst in temporary storage, to the units (as defined in 1 (B) above), Goods (as defined in 1 (E), (F) and (G) above, delay, duty, tax, rent, charges or demurrages or consequential loss, non-performance of any obligation, mis-delivery, misdirection, costs, expense, death or injury of whatsoever nature and howsoever caused except as specified in this article.
- (ii) Subject to the exclusions of liability in these Conditions, to the extent that it is proved that the claim arises from the negligence of the Company, its servants, agents or sub-contractors, the Company shall be liable for the type of loss or damage set out below subject to the financial limits stated.
  - (a) Physical loss of or damage to Goods, but not exceeding the lesser of:
    - the value of the Goods lost, or
    - the reasonable cost of repair in the case of damage, or
    - 2 Special Drawing Rights per kilogram of the gross weight of the Goods lost or damaged.
  - (b) Misdirection of the Goods but not exceeding the lesser of:
    - the cost of transporting the Goods to the correct destination by the mode of transport that would have applied in the absence of such misdirection less the cost that would have been incurred in transporting the Goods to the correct destination in the absence of such misdirection, or
    - the value of the Goods misdirected, or
    - 2 Special Drawing Rights per kilogram of the Goods misdirected.
  - (c) Loss of or damage as a direct result of failure to deliver or arrange delivery of goods, in a reasonable time but not exceeding the lesser of:
    - The sum equal to twice the amount freight that would have been earned by the Company, or
    - the value of the goods, or
    - 2 Special Drawing Rights per kilogram of the goods.

- (d) Physical loss of or damage to the Customer's owned or leased Unit or Vehicles, but not exceeding the lesser of:
    - the value of the Unit or Vehicle, or
    - the reasonable cost of repair in the case of physical damage, or
    - 2 Special Drawing Rights per kilogram.
  - (e) Physical loss of or damage to property of any form other than that in Section 13 (a), (b), or (c), but not exceeding the lesser of:
    - the value of the property lost, or
    - the reasonable cost of repair in the case of damage, or
    - 2 Special Drawing Rights per kilogram each event or events arising from a common cause.
  - (f) In the case of all other claims not exceeding the lesser of:-
    - (a) the amount of direct loss, or
    - (b) 75,000 Special Drawing Rights,
  - (g) The Company shall not in any circumstances whatsoever be liable for indirect or consequential loss such as (but not limited to) loss of profit or loss of market.
- (iii) For the purposes of this Article,
- (a) the value of Goods shall mean the invoice value added to the cost of freight (if paid) and insurance (if applicable) plus any Customs Duty or tax incurred on the Goods in respect of their carriage and not recoverable from any Authority or, in the absence of such value, the market value at the place where the Company received the Goods;
  - (b) the value of the Customer's Unit or Vehicle shall be taken to be its lease value if leased by the Customer and if owned by the Customer the value shall be taken to be the market value at the place where the loss or damage occurred;
  - (c) the value of property under article 13(ii[d]) is the market value at the place where the loss or damage occurred.
- (iv) The Company shall not incur any liability whatsoever for claims arising from:
- (a) any act or omission of the Customer Or Owner or any person acting on their behalf,
  - (b) any acts of the Company conforming with the instructions given by or on behalf of the Customer or Owner,
  - (c) the act or order of any Authority,
  - (d) insufficiency or inadequate packaging or labeling of the Goods or Units except where such services have been provided by the Company,

- (e) the handling, loading, stowage or unloading of the Goods by the Customer or Owner or any person acting on their behalf,
- (f) the nature of the Goods,
- (g) the defective or overweight condition of Units or Vehicles
- (h) riots, civil commotions, strikes, lockouts, stoppage or restraint of labour,
- (i) explosion, fire, flood or storm,
- (j) breakdown of or failure of any handling equipment of the Company,
- (k) breakdown of, accident to, failure or interruption of or reduction in the mains electrical supply to the Company, it hereby being agreed that the Company is under no obligation whatsoever to have available any auxiliary Power supply,
- (l) any cause which the Company could not avoid and the consequences whereof it could not prevent by the exercise of reasonable diligence.

#### **14. CHARGES**

- (i) The Customer shall pay to the Company as agreed all sums immediately when due without deduction or deferment on account of any claim, counterclaim or set-off.
- (ii) When the Company is instructed to collect freight, duties, charges or other expenses from any person other than the Customer, the Customer shall be responsible for the same on receipt of evidence of demand and non-payment by such other person when due.
- (iii) On all amounts overdue to the Company, the Company shall be entitled to interest, calculated at one per cent above the base rate established by The Central Bank of Malta applicable during the period that such amounts are overdue.
- (iv) The Company's contracted charges, which may be increased from time to time by at least one (1) day prior notice to the Customer, shall be payable free of any deductions at such periodic intervals as may have been agreed between the parties and in any event on the earlier of (a) the expiry of any agreed period of credit and (b) the time immediately before the removal of the Goods from the Company's custody or control.

#### **15. LIEN**

The Company shall have a particular and general lien or similar charge on all Goods, Units and Vehicles, or documents relating thereto, in its possession for all sums due at any time from the Customer or Owner, entitling it to retain the goods as security for payment of all sums due from the Customer or any outstanding account whether relating to the Goods or not. Storage charges shall continue to accrue on any of the goods detained under lien or similar charge.

The Company shall be entitled, on at least 28 days notice in writing to the Customer, to sell or dispose of or deal with such Goods or documents, as agents for and at the

expense of the Customer and apply the proceeds in or towards the payment of such sums.

## **16. INSURANCE**

The Company does not provide insurance cover for the Goods being carried and the customer may, if he so wishes, make arrangements to effect insurance cover for the Goods.

## **17. TIME LIMIT**

The Company shall be discharged of all liability:

- (i) in respect of damages, unless the Company has been given a reasonable time period in which to survey such damage except where it was not reasonably possible for the Company to be given such opportunity,
- (ii) in respect of loss or damage at the Company's premises of any Unit or Vehicle, unless written notice of such loss or damage is received within five working days of the date when such Unit or Vehicle left the Company's premises or, if lost, when such Unit or Vehicle should have left the Company's depot,
- (iii) in respect of all claims, unless within 9 (nine) months from the date of delivery of the goods to the Customer, suit is brought against the Company in the proper forum and written notice thereof received by the Company.

## **18. MISCELLANEOUS**

- (i) Any notice given by the Company to the Customer shall be duly given if left at or sent by mail to the last known address of the Customer or by facsimile or electronic transmission to the last notified number and/or address and such notice or account shall if posted be deemed to have been given 2 working days after posting and, if by facsimile or electronic mail, the next working day.
- (ii) The defences and limits of liability provided for by these Conditions shall apply in any action against the Company and each exclusion and liability in these Conditions exists separately and cumulatively.
- (iii) No servants or agents of the Company shall have power to waive or vary any of the terms hereof unless such waiver or variation is in writing and is specifically authorized or ratified in writing by a director or officer of the Company who has the actual authority of the Company so to waive or vary.
- (iv) When reasonably necessary and at the discretion of the Company the Goods may be carried, stored or handled with other compatible goods or handled between stores.
- (v) The Customer and the Owner shall not take any proceedings against any employee or sub-contractor of the Company for a claim.

- (vi) The Company shall be relieved of its contractual obligations to the extent that their performance is prevented by, or their 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 storm, flood, fire, explosion, breakdown or failure of plant and/or machinery, riot, civil disturbance, industrial dispute, labour disturbance, acts of terrorism or cause beyond the reasonable control of the Company.

## **19. SERVICES UNDERTAKEN OR ARRANGED BY THE COMPANY**

- (i) When engaging companies and/or persons to perform the services of carriage, handling or storage, or any other services the Company may enter into contract on its own behalf and, where required, on behalf of the Customer, with such companies and/or persons on any terms whatsoever including terms less favourable than the terms of these Conditions.
- (ii) In the event of a claim in respect of the Goods or Units, the Company shall provide the Customer with particulars of the identity, services of companies and/or persons instructed to perform the carriage, handling or storage or any other services to the extent that such particulars are relevant to the Customer's claim.
- (iii) If any cargo has been received by the Company for local delivery or for local handling or for transshipment from a foreign principal with which the Company has had no previous contractual or commercial relationship, then the Company shall act and be responsible only in her capacity as that Principal's local handling representative.

## **20. JURISDICTION AND FORUM**

These Conditions and any claim or dispute arising out of or in connection with the services of the Company shall be governed by and in accordance with Maltese Law and any dispute in relation with such services shall be subject to arbitration in Malta in terms of the Arbitration Act 1996. The award of the arbitrators shall be final and binding on both parties.

## **21. AMENDMENT**

The Company reserves the right to amend these Standard Terms and Conditions of Trading at any time without notifying the Customer.

Such amendments will not, of course, apply retrospectively, and will not effect any business transaction which the Company has contracted with the Customer prior to such amendment.