

1 DEFINITION

1.1 In this document, the following words will have the meanings set out below:

"Agreement" means the terms and conditions contained in this document;

"Consignment" means the documents, articles or other item(s) in respect of which the Customer has asked Swift to perform the Courier Services;

"Consignee" means the person or company to whom Swift contracts to deliver the Consignment.

"Courier Services" means the collection and delivery of the Consignment at the addresses specified by the Customer for such purposes, in accordance with this Agreement,

"Customer" means the person, firm or company requesting the provision of the Courier Services from Swift; and

"Swift" means Swift Group of Companies its subsidiaries and associated companies with its principal place of business at Swift House, Hambridge Lane, Newbury, Berkshire. RG14 5TU.

1.2 Headings are inserted for convenience only and will not affect the construction or interpretation of this Agreement

2 APPLICATION OF THIS AGREEMENT

2.1 This Agreement will apply (to the exclusion of all other terms and conditions including those of the Customer) to all Courier Services provided by Swift to the Customer.

2.2 Any variation to this Agreement shall have no effect unless made in writing and signed by an authorised representative of Swift.

3 THE COURIER SERVICES

3.1 Swift is not a "common carrier"

3.2 Where Swift has agreed to perform Courier Services in respect of any Consignment of the Customer, the Customer shall be responsible for providing Swift with details of:

3.2.1 the address from which the Consignment is to be collected and the name of a person(s) at such address responsible for the relevant Consignment (the "Collection Address");

3.2.2 the address to which the Consignment is to be delivered (the "Delivery Address");

3.2.3 the name of the intended recipient (the "Recipient");

3.2.4 the date on which (and, where applicable, the time at which) the Consignment is to be collected;

3.2.5 the Customer's desired delivery date (and, where applicable, the desired delivery time) (the "Target Date");

3.2.6 any relevant telephone numbers and other contact details; and

3.2.7 any other information reasonably requested by Swift.

3.3 The Customer shall ensure that all information provided to Swift under Clause 3.1 is accurate and complete in all material respects. Swift shall not be responsible for any delay or error in the Courier Services caused by any inaccuracy in or omission from such information.

3.4 Swift shall be solely responsible for the selection and allocation of personnel to perform the Courier Services. Swift reserves the right to use persons other than its employees to perform the Courier Services and may sub-contract any of its obligations arising hereunder without the prior written consent of the Customer.

3.5 The Customer shall procure that Swift personnel who perform the Courier Services are allowed access to the Collection Address and the Delivery Address for the purpose of carrying out the Courier Services. The Customer shall take full responsibility for the safety and security of Swift personnel whilst at the Customer's premises.

3.6 Swift shall be solely responsible for selecting the method of transportation, the carrier and the route by which it shall deliver the Consignment to the Delivery Address.

4 DELIVERY

4.1 The Customer shall ensure that the Recipient is aware of and willing to accept delivery of the Consignment and shall procure that the Recipient provides the Swift courier delivering the Consignment with an appropriate written acknowledgement of receipt.

4.2 Swift shall make only one attempt to deliver the Consignment, during normal working hours, on a normal working day. Swift shall use all reasonable endeavours to deliver the Consignment by the Target Date but can not guarantee delivery dates or times and time of delivery shall not be of the essence of this Agreement.

4.3 Delivery of the Consignment will be taken to have occurred when the Consignment is tendered for delivery to the Recipient at the Delivery Address. Swift shall not be responsible for any delay or failure in delivery due to:

4.3.1 the Recipient being unavailable or unwilling to accept delivery of the relevant Consignment;

4.3.2 the Customer and/or the Recipient having failed to obtain any necessary documents, licences or authorisations, or having failed to pay any applicable taxes, duties or other charges, for such delivery;

4.3.3 the confiscation of the Consignment by any customs or other competent authority or

4.3.4 any other cause or circumstance beyond the reasonable control of Swift.

4.4 If delivery of the Consignment is not possible for any reason, Swift shall be entitled at its option to:

4.4.1 arrange the storage the Consignment until delivery can be effected (or until the Customer or the Recipient, by prior arrangement with Swift, collects the Consignment from the storage location);

4.4.2 return, or instruct the relevant carrier to return, the Consignment to the Customer;

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Where such failure to deliver is due to any act or omission of the Customer or the Recipient, the Customer shall be liable for the full charges for the relevant Courier Services together with all costs and expenses incurred by Swift as a result of taking the steps set out above (including without limitation the costs of storage, insurance and/or returning the Consignment to the Customer).

5 RISK AND TITLE

- 5.1 Title to and risk in the Consignment shall remain with the Customer until delivery to the Delivery Address.
- 5.2 The Customer shall be responsible for effecting and maintaining appropriate insurance in respect of the Consignment whilst in transit.

6 PAYMENT

- 6.1 The Customer shall pay fees to Swift for the Courier Services at Swift's rates applicable from time to time. Swift shall provide the Customer upon the Customer's reasonable request with details of Swift current rates. All rates are quoted exclusive of value added tax and all other applicable sales or other taxes which shall, if and to the extent applicable, be paid by the Customer.
- 6.2 Unless otherwise agreed, Swift shall invoice the Customer at the end of each week in respect of all Courier Services performed during the relevant week and the Customer shall pay each invoice within 30 days of the invoice date. All invoices and all payments hereunder shall be in UK pounds sterling.
- 6.3 If the cost to Swift of performing the Courier Services increases as a result of any change to the law or any other reason beyond Swift's reasonable control, such increase shall be added to the fees payable in respect of the Courier Services hereunder. Swift shall give the Customer prior written notice of any such increase.
- 6.4 If, as a consequence of any breach of this Agreement by the Customer, or the supply of incorrect or inadequate information by the Customer, the cost to Swift of performing the Courier Services is increased, Swift reserves the right to charge extra fees as its then prevailing rates to cover such additional costs and expenses.
- 6.5 If the Customer is late paying any sum due to Swift, Swift may (without limitation to its other rights and remedies):
 - 6.5.1 suspend delivery of any Consignment(s) in transit;
 - 6.5.2 cancel all outstanding delivery instructions from the Customer; and/or
 - 6.5.3 charge the Customer interest on such outstanding sum at the rate of 4% above the prevailing base rate of National Westminster Bank PLC, which interest shall accrue on a daily basis from the date on which payment became overdue until the date on which Swift receives full payment of (the outstanding sum together with all accrued interest.
- 6.6 Swift shall have a right of lien over any Consignment(s) suspended in transit pursuant to Clause 6.5.1 and shall be entitled to sell such Consignment(s) upon such terms as Swift sees fit and to retain from the proceeds of sale sufficient sums to pay all monies due from the Customer to Swift (including the expenses of the sale). Swift shall return the balance of the sale proceeds (if any) to the Customer.

7 LIABILITY

- 7.1 All activity carried out by Swift in relation to the carriage of goods by Swift are subject to the provisions of Clause 7
 - 7.1.1 Swift shall be liable for any loss of or physical damage to the Consignment up to a limits set out in Clause 8. Higher levels of risk/damage cover are available on request, subject to an adjustment to the applicable delivery fees.
- 7.2 Subject to Section 7.4, Swift's maximum aggregate liability under or in connection with this Agreement, whether in contract, tort (including negligence) or otherwise, shall in no circumstances exceed the fees payable hereunder in respect of the Courier Services in question and Swift shall not be liable for any loss of income or profits, loss of contracts or for any indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise.
- 7.3 Nothing in this Agreement shall exclude or in any way limit Swift's liability for fraud, or for death or personal injury caused by its negligence, or any other liability to the extent the same may not be excluded or limited as a matter of law.
- 7.4 This Agreement sets forth the full extent of Swift's obligations and liabilities in respect of the performance of the Courier Services. In particular, there are no conditions, warranties, representations or other terms, express or implied, that are binding on Swift except as specifically stated in this Agreement. Any condition, warranty representation or other term concerning the performance of the Services which might otherwise be implied into or incorporated in this Agreement, or any collateral contract, whether by statute, common law or otherwise, is hereby excluded.
- 7.5 The customer shall be deemed to have elected to accept the terms set out in Clause 8 of this Condition unless, before the delivery commences, the Customer has agreed in writing that Swift shall not be liable for the loss or mis-delivery of or damage to or in connection with the Consignment however or wherever caused and whether or not caused or contributed to directly or indirectly by any act, omission, neglect, default or other wrongdoing on the part of Swift, its servants, agents or sub-contractors.
- 7.6 Subject to these Conditions Swift shall be liable for:
 - 7.6.1 physical loss, mis-delivery of or damage to living creatures, perishables, bullion, money, cheques, money orders, securities, stamps, precious metals or precious stones, jewellery, works of art, antiques, watches, wines and spirits, furs, tobacco, firearms, glass, ceramics, pottery or plasma screens comprising the Consignment only if:
 - 7.6.1.1 Swift has specifically agreed in writing to carry any such items; and
 - 7.6.1.2 the Customer has agreed in writing to reimburse Swift in respect of all additional costs which result from the carriage of the said items; and
 - 7.6.1.3 the loss, mis-delivery or damage is occasioned during transit and is proved to be due to the negligence of Swift, its servants, agents or sub-contractors;
 - 7.6.2 physical loss, miss-delivery of or damage to any other goods comprising the Consignment unless the same has arisen from, and Swift has used reasonable care to minimise the effects of:
 - 7.6.2.1 Act of God;
 - 7.6.2.2 any consequences of war, invasion, act of foreign enemy, hostilities (whether war or not), civil war, rebellion, insurrection, terrorist act, military or usurped power or confiscation, requisition, or destruction or damage by or under the order of any government or local

authority;

7.6.2.3 seizure or forfeiture under legal process;

7.6.2.4 error, act, omission, mis-statement or misrepresentation by the Customer or other owner of the Consignment or by servants or agents of either of them;

7.6.2.5 inherent liability to wastage in bulk or weight, faulty design, latent defect or inherent defect, vice or natural deterioration of the Consignment;

7.6.2.6 insufficient or improper packaging;

7.6.2.7 insufficient or improper labelling or addressing;

7.6.2.8 riot, civil commotion, strike, lockout, general or partial stoppage or restraint of labour from whatever cause;

7.6.2.9 Consignee not taking or accepting delivery within a reasonable time after the Consignment has been tendered.

7.6.3 Swift shall not be in any circumstances liable for loss or damage arising after delivery is deemed to have ended within the meaning of Clause 4 hereof, whether or not caused or contributed to directly or indirectly by any, omission, neglect, default or other wrongdoing on part of Swift, its servants, agents or sub-contractors.

8 LIMITS OF LIABILITY

8.1 The liability of Swift in respect of claims for physical loss, mis-delivery of or damage to goods comprising the Consignment, howsoever arising, shall in all circumstances be limited to the lesser of

8.1.1 the value of the goods actually lost, mis-delivered or damaged; or

8.1.2 the cost of repairing any damage or reconditioning the goods, or

8.1.2.1 in regards to network Deliveries a sum calculated at a rate of £13 Sterling per Kilogram on the gross weight of the goods actually lost, mis-delivered or damaged; and the value of the goods actually lost, mis-delivered or damaged 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 owner at the commencement of the delivery, and in all cases shall be taken to include any Customs and Excise duties or taxes payable in respect to those goods: Provided that:

8.1.2.2 in the case of loss, mis-delivery of or damage to a part of the Consignment the weight to be taken into consideration in determining the amount to which Swift's liability is limited shall be only the gross weight of the part regardless of whether the loss, mis-delivery or damage affects the value of other parts of the Consignment;

8.1.2.3 Swift shall be entitled to proof of the weight and value of the whole of the Consignment and of any part thereof lost, mis-delivered or damaged;

8.1.2.4 the Customer shall be entitled to give Swift written notice prior to commencement of the network Delivery requesting that the £13 per kilo limit in Section 8.1.2.1 above be increased, but not so as to exceed the value of the Consignment, and in the event of such notice being given the Customer may be offered **Increased Liability Cover (ILC)** at revised carriage charges in consideration of the increased limit, but if the offer is not acceptable to the customer, then the aforementioned £13 per kilo limit shall continue to apply;

8.1.3 Swifts liabilities in regards to dedicated Deliveries up to a limit of £5000 per movement.

8.1.3.1 the Customer shall be entitled to give Swift written notice prior to commencement of the dedicated Delivery requesting that the £5000 limit in section 8.1.3 above be increased, but not so as to exceed the value of the Consignment, and in the event of such notice being given the Customer may be offered **Increased Liability Cover (ILC)** at revised carriage charges in consideration of the increased limit, but if the offer is not acceptable to the customer, then the aforementioned limit shall continue to apply;

8.1.3.2 in attempting to reach an agreement pursuant to section 8.1.2.4 or 8.1.3.1 above the Customer shall provide Swift with all such information regarding the Consignment as Swift shall need to assess any suggested new limit and charge;.

9 TIME LIMITS FOR CLAIMS

9.1 Swift shall not be liable for:

9.1.1 damage to the whole or any part of the Consignment, or physical loss, mis-delivery or non-delivery of part of the Consignment unless advised thereof in writing within two days, and the claim is made in writing within seven days, after the termination of the Delivery,

9.1.2 any other loss unless advised thereof in writing within fourteen days, and the claim is made in writing within twenty-eight days, after the commencement of the Delivery.

9.1.2.1 Provided the Customer proves that, it was not reasonably possible for the Customer to advise Swift or make a claim in writing within the time applicable, and

9.1.2.2 such advice or claim was given or made within a reasonable time. Swift shall not have the benefit of the exclusion of liability afforded by this Condition.

9.1.3 Swift shall in any event be discharged from all liability whatsoever and howsoever arising in respect to the Consignment unless suit is brought within one year of the date when the Delivery commenced.

9.1.4 In the computation of time where any period provided by these Conditions is seven days or less, Saturdays, Sundays and statutory public holiday shall be excluded.

10 FRAUD

10.1 Swift shall not in any circumstances be liable in respect of a Consignment where there has been fraud on the part of the Customer or owner, or servants or agents of either, in respect to that Consignment, unless the fraud has been contributed to by the complicity of Swift or of any servant of Swift acting in the course of his employment.

11 LIEN

11.1 Swift shall have a general lien against the customer, where the Customer is the owner of the Consignment, for any monies whatever due from the Customer to Swift, if such a lien is not satisfied within a reasonable time, Swift may, at its absolute discretion, sell the Consignment or part thereof as agent for the Customer and apply the proceeds towards the monies due and the expenses of the retention, insurance and sale of the Consignment and shall, upon accounting to the Customer for any balance remaining, be discharged from all liability whatever in respect of the Consignment.

11.2 Where the Customer is not the owner of the Consignment, Swift shall have a particular lien against the said owner, allowing Swift to retain possession, but not to dispose of, the Consignment against monies due from the Customer in respect of the Consignment.

11.3 Unreasonable Detention

The Customer shall be liable to pay demurrage for unreasonable detention of any vehicle, trailer, container or other equipment but the rights of the Carrier against any other person in respect thereof shall remain unaffected.

12 CONSENTS AND LEGAL COMPLIANCE

12.1 The Customer warrants that it shall obtain and maintain, at its own expense, all necessary licences, permits and authorisations and shall comply with all applicable laws, conventions, regulatory requirements and codes of practice in relation to the Consignment (and its delivery to the Delivery Address) and shall not do or permit anything to be done which might cause or otherwise result in a breach by the Customer of the same.

12.2 The Customer warrants that the delivery, importation, possession or use of the Consignment in the country of destination is lawful in that country and shall not violate the rights of any third party, and Swift shall not assume, and hereby disclaims, any obligation or liability in these regards.

13 GENERAL

13.1 The failure of either party to enforce or to exercise at any time or for any period of time any term of or any right pursuant to this Agreement does not constitute, and shall not be construed as, a waiver of such term or right and shall in no way affect that party's right later to enforce or to exercise it.

13.2 If any term of this Agreement is found to be illegal, invalid or unenforceable under any applicable law, such term shall, insofar as it is severable from the remaining terms, be deemed omitted from this Agreement and shall in no way affect the legality, validity or enforceability of the remaining terms.

13.3 This Agreement contains all the terms agreed between the parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between the parties, whether oral or in writing. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the parties prior to this Agreement except as expressly stated in this Agreement.
Neither party shall have any remedy in respect of any untrue statement made by the other upon which that party relied in entering into this Agreement (unless such untrue statement was made fraudulently) and that party's only remedies shall be for breach of contract as provided in this Agreement.

13.4 The Contract shall be governed by English Law and the United Kingdom courts alone shall have jurisdiction in any dispute between Swift and the Customer.

13.5 Swift reserve the right to make changes and additions to the Terms and Conditions without prior notice.