

- (3) Should the delivery of Goods be postponed or cancelled by the Customer, the Contractor shall be entitled to recover from the Customer all expenses incurred by the Contractor and all rental charges in respect of space reserved for such Goods.

#### 9. Liability for Loss and Damage

- (1) The Customer shall be deemed to have elected to accept the terms set out in (2) of this Condition unless, before the Goods are Stored, the Customer has agreed in writing that the Contractor shall not be liable for any loss or mis-delivery of or damage to or in connection with the Goods howsoever or whensoever 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 the Contractor, its servants, agents or sub-contractors.
- (2) Subject to these conditions the Contractor shall be liable for:
- (a) physical loss, mis-delivery of or damage to living creatures, bullion, money, securities, stamps, precious metals or precious stones only if:
- the Contractor has specifically agreed in writing to Store any such items; and
  - the Customer has agreed in writing to reimburse the Contractor in respect of all additional costs which result from the Storage of the said items; and
  - the loss, mis-delivery or damage is occasioned during Storage and is proved to be due to the negligence of the Contractor, its servants, agents or sub-contractors.
- (b) physical loss, mis-delivery of or damage to any other Goods occasioned during Storage unless the same has arisen from, and the Contractor has used reasonable care to minimise the effects of:
- Act of God;
  - 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 public or local authority;
  - seizure or forfeiture under legal process;
  - error, act, omission, mis-statement or misrepresentation by the Customer or other owner of the Goods or by servants or agents of either of them;
  - inherent liability to wastage in bulk or weight, faulty design, latent defect or inherent defect, vice or natural deterioration of the Goods;
  - leakage or deficiency of Goods of a perishable or leaky nature, moth, vermin, insects, atmospheric or climatic causes;
  - insufficient or improper packing;
  - insufficient or improper labelling or addressing;
  - riot, civil commotion, strike, lockout, general or partial stoppage or restraint of labour howsoever caused;
  - any other cause beyond the reasonable control of the Contractor.
- (3) The Contractor shall not in any circumstances be liable for loss of or damage to Goods arising after Storage of such Goods has ended, whether or not caused or contributed to directly or indirectly by any act, omission, neglect, default or other wrongdoing on the part of the Contractor, its servants, agents or sub-contractors.

#### 10. Fraud

The Contractor shall not in any circumstances be liable in respect of Goods where there has been fraud on the part of the Customer or the owner, or the servants or agents of either, in respect of those Goods, unless the fraud has been contributed to by the complicity of the Contractor or of any servant of the Contractor acting in the course of his employment.

#### 11. Limitation of Liability

- (1) Except as otherwise provided in these Conditions, the liability of the Contractor in respect of claims for physical loss, mis-delivery of or damage to Goods, howsoever arising, shall in all circumstances be limited to the lesser of
- the value of the Goods actually lost, mis-delivered or damaged; or
  - the cost of repairing any damage or of reconditioning the Goods; or
  - a sum calculated at the rate of £100 Sterling per tonne 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 storage, and in all cases shall be taken to include any Customs and Excise duties or taxes payable in respect of those Goods: Provided that:
- in the case of loss, mis-delivery of or damage to a part of the Goods the weight to be taken into consideration in determining the amount to which the Contractor's liability is limited shall be only the gross weight of that part regardless of whether the loss, mis-delivery or damage affects the value of other parts of the Goods;
  - nothing in this Condition shall limit the liability of the Contractor to less than the sum of £10;
  - the Contractor shall be entitled to proof of the weight and value of the whole of the Goods and of any part thereof lost, mis-delivered or damaged;
  - the Customer shall be entitled to give to the Contractor notice in writing to be delivered at least seven days prior to commencement of Storage requiring that the £100 per tonne limit in 11(1)(c) above be increased, but not so as to exceed the value of the Goods, and in the event of such notice being given the Customer shall be required to agree with the Contractor an increase in the Storage charges in consideration of the increased limit, but if no such agreement can be reached

the aforementioned £100 per tonne limit shall continue to apply.

- (2) The liability of the Contractor in respect of claims for any other loss whatsoever (including indirect or consequential loss or damage and loss of market), and howsoever arising in connection with the Goods, shall not exceed the amount of the Storage charges in respect of the Goods or the amount of the claimant's proved loss, whichever is the lesser, unless:
- at the time of entering into the Contract with the Contractor the Customer declares to the Contractor a special interest in Storage in the event of physical loss mis-delivery or damage and agrees to pay a surcharge calculated on the amount of that interest, and
  - at least seven days prior to the commencement of Storage the Customer has delivered to the Contractor written confirmation of the special interest and amount of the interest.

#### 12. Indemnity to the Contractor

The Customer shall indemnify the Contractor against:

- all liabilities and costs incurred by the Contractor (including but not limited to claims, demands, proceedings, fines, penalties, damages, expenses and loss of or damage to the place of storage and to other goods Stored) by reason of any error, omission, mis-statement or misrepresentation by the Customer or other owner of the Goods or by any servant or agent of either of them, insufficient or improper packing, labelling or addressing of Goods or fraud as in Condition 10;
- all claims and demands whatsoever (including for the avoidance of doubt claims alleging negligence), by whomsoever made and howsoever arising (including but not limited to claims caused by or arising out of the Storage of Dangerous Goods and claims made upon the Contractor by HM Revenue and Customs in respect of dutiable goods consigned in bond) in excess of the liability of the Contractor under these Conditions in respect of any loss or damage whatsoever to, or in connection with, the Goods whether or not caused or contributed to directly or indirectly by any act, omission, neglect, default or other wrongdoing on the part of the Contractor, its servants, agents or sub-contractors.

#### 13. Time Limits for Claims

- All claims for damage to or physical loss or mis-delivery of or failure to release any Goods and any claim referred to in Condition 11(2) shall be made in writing by the Customer within seven days after release of the Goods alleged to be damaged or, in the case of Goods alleged to be lost or mis-delivered or which the Contractor fails to release, within seven days after the time when the Goods should in the ordinary course of events have been released and the Contractor shall be under no liability unless such claim is made within the time stipulated. Provided that if the Customer proves that:

  - it was not reasonably possible for the Customer to advise the Contractor or make a claim in writing within the time limit applicable, and
  - such advice or claim was given or made within a reasonable time, the Contractor shall not have the benefit of the exclusion of liability afforded by this Condition.

- The Contractor shall in any event be discharged from all liability whatsoever and howsoever arising in respect of the Goods unless suit is brought and notice in writing thereof given to the Contractor within one year of the date when the Goods were released or should, in the ordinary course of events, have been released.
- In the computation of time where any period provided by these Conditions is seven days or less, Saturdays, Sundays and all statutory public holidays shall be excluded.

#### 14. Lien

- The Contractor shall have:
  - a particular lien on the Goods, and
  - a general lien against the Trader for sums unpaid on any invoice, account or Contract whatsoever.
 If such lien, whether particular or general, is not satisfied within a reasonable time, the Contractor may sell the Goods, or part thereof, as agent for the owner and apply the proceeds towards any sums unpaid and the expenses of the insurance and sale of the goods and shall, upon accounting to the Customer for any balance remaining, be discharged from all liability whatsoever in respect of the Goods.
- The Contractor may exercise its lien on its own behalf or as agent for any assignee of its invoices at any time and at any place at its sole discretion whether or not sums have become payable in accordance with Condition 8(2) hereof. These conditions shall continue to apply during the period of exercise of such lien and Storage charges shall continue to be payable by the Trader in respect of the Goods until the lien has been satisfied in full, whether by sale or otherwise.

#### 15. Impossibility of Performance

The Contractor shall be relieved of its obligations to perform the Contract to the extent that the performance thereof is prevented by failure of the Customer, fire, weather conditions, industrial dispute, labour disturbance or cause beyond the reasonable control of the Contractor.

#### 16. Notice

All written communications from the Contractor to the Customer shall be deemed to have been served if delivered or posted to the last known address of the Customer.

#### 17. Law and Jurisdiction

Unless otherwise agreed in writing, the Contract and any dispute arising thereunder shall be governed by English law and shall be subject to the jurisdiction of the English courts alone.

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- (a) physical loss, mis-delivery of or damage to living creatures, bullion, money, securities, stamps, precious metals or precious stones only if:
- (i) the Contractor has specifically agreed in writing to Store any such items; and
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- (i) Act of God;
  - (ii) 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 public or local authority;
  - (iii) seizure or forfeiture under legal process;
  - (iv) error, act, omission, mis-statement or misrepresentation by the Customer or other owner of the Goods or by servants or agents of either of them;
  - (v) inherent liability to wastage in bulk or weight, faulty design, latent defect or inherent defect, vice or natural deterioration of the Goods;
  - (vi) leakage or deficiency of Goods of a perishable or leaky nature, moth, vermin, insects, atmospheric or climatic causes;
  - (vii) insufficient or improper packing;
  - (viii) insufficient or improper labelling or addressing;
  - (ix) riot, civil commotion, strike, lockout, general or partial stoppage or restraint of labour howsoever caused;
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  - (b) the cost of repairing any damage or of reconditioning the Goods; or
  - (c) a sum calculated at the rate of £100 Sterling per tonne 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 storage, and in all cases shall be taken to include any Customs and Excise duties or taxes payable in respect of those Goods: Provided that:
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- (2) all claims and demands whatsoever (including for the avoidance of doubt claims alleging negligence), by whomsoever made and howsoever arising (including but not limited to claims caused by or arising out of the Storage of Dangerous Goods and claims made upon the Contractor by HM Revenue and Customs in respect of dutiable goods consigned in bond) in excess of the liability of the Contractor under these Conditions in respect of any loss or damage whatsoever to, or in connection with, the Goods whether or not caused or contributed to directly or indirectly by any act, omission, neglect, default or other wrongdoing on the part of the Contractor, its servants, agents or sub-contractors.

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