



STANDARD TERMS & CONDITIONS OF TRADING

1. DEFINITIONS.

In these conditions

1.1 'We' 'Company' means J H Kemp Ltd of 409 Tyburn Road, Erdington, Birmingham, West Midlands B24 8HJ and shall include every company, servant, or agent with the intention that they shall have the benefit of this contract collectively and together;

1.2 'You' 'Your' 'Customer' means the person or company who contracts for the Services of the Company.

1.3 'Goods' means the items specified in the Company's quotation;

1.4 'Dangerous Goods' means dangerous substances identified by the Health and Safety Commission in Part 1 of the Authorised and Approved List of Dangerous Substances, explosives or radioactive substances and any other substance presenting a similar hazard. For the purposes of this agreement reference to 'Goods' shall include 'Dangerous Goods' where the context requires.

1.5 'Services' means the work or services to be performed by the Company as specified in the Company's quotation,

1.6 'Site' means the place or places where the Services are to be performed or where Goods are to be delivered

1.7 'Consignment' means goods in bulk or contained in one parcel, package or containers, as the case may be, or any number of separate parcels, packages or containers sent at one time in one load for you from one address to another.

1.8 'Transit' 'Carriage' means the conveyance and transportation of the Goods by vehicle, trailer, ship, or aircraft including loading and unloading by crane, fork lift truck, or other lifting apparatus.

1.9 'Private Consumer' means a person using our services in a personal capacity, not during the course of their business.

2. CONTRACT

2.1 The Company is only prepared to contract with the Customer upon these conditions. No servant or agent of the Company is permitted to alter or vary these conditions unless expressly authorised by the Company.

2.2 These conditions shall take precedence over any printed conditions appearing on any purchase order form, delivery form or any other documents emanating from the Customer and the Customer's conditions shall have no effect whatsoever.

2.3 Any conduct of the Customer which confirms an agreement for the provision of Services by the Company shall constitute unqualified acceptance by the Customer of these conditions,

2.4 The Company is not a Common Carrier nor does it contract as such.

2.5 The Company may at its absolute discretion employ the services of other contractors, air, railway, steamship or dock or harbour company or authority, to carry out in whole or in part the carriage or any other Services the Company has contracted to supply to the Customer.

2.6 The Company contracts for itself and as agent of and trustee for its servants, agents or other contractors including those referred to in Clause 2.5 or elsewhere in these conditions,

2.7 Our normal service is to collect and deliver door to door, unless we specifically agree otherwise.

2.8 We may keep hold of all or some of your goods until you have paid all the charges you owe us, even if the unpaid charges do not relate to those goods. We may sell all or some of your goods to recover any unpaid charges. We can only take this action after giving you 30 days written notice that we intend to do so. If we do sell any of your goods, and the proceeds from the sale are greater than the amount you owe us, we will pay you the difference after deducting the cost of selling the goods. This clause does not apply to a private consumer.

2.9 If we cannot deliver your goods we will contact you for instructions. If you do not give us instructions, we will give you 30 days written notice that we intend to sell all or some of your goods to recover any money you owe us. If the proceeds from the sale are greater than the amount you owe us, we will pay you the difference after deducting the cost of selling the goods.

2.10 Important - if we do not keep to these conditions, or if you suffer any loss, our liability to you is limited and excluded in certain circumstances. The limitations and exclusions are explained below. If you are a private consumer some limitations may not apply. This will not affect the remaining conditions, which will still apply.

2.11 We will not be liable for any loss of use, loss of profit, loss of customers, or other direct or indirect loss you suffer. For example, if we do not deliver a tender document within the agreed time, we will not be liable for the cost of preparing the tender or the value of any potential contract. However, we will be liable for the carriage charge relating to that document.

2.12 We will not be liable for loss of or damage to the goods or for an incorrect delivery or a delay if the loss, damage, delay or incorrect delivery has been caused by any of the following:

a Natural disasters (such as floods), including unfavourable weather conditions.

b War, invasion, terrorism, riot or any similar event.

c The goods being legally seized, confiscated, destroyed or damaged by any authority.

d Any act or omission by you or anyone acting on your behalf.

e Any natural wastage of, fault in or deterioration of the goods.

f Insufficient or incorrect packaging of all or some of the goods.

g Insufficient or incorrect addressing of all or some of the goods.

h Insufficient or incorrect information in any consignment note filled in by you.

i Any labour dispute or disturbance of any kind.

j Your not giving us further instructions for delivery within 30 days of our giving you notice that we could not deliver the goods when originally planned.

k Any events beyond our control including congestion and delay.

2.13 We will accept liability if the loss, damage, incorrect delivery or delay is our fault. However, our liability will be limited as follows:

a If your consignment has been lost, damaged or incorrectly delivered our liability will be limited to one of the following (whichever is the lowest):

b An amount which we calculate by multiplying each kilo of the consignment (according to the gross weight specified on our invoice or, if a weight is not specified, the actual gross weight of the goods including packaging) by £15. However, the maximum amount we will pay is £15,000 for each consignment and the minimum amount we will pay is £10.

c The cost value of the consignment to you.

d The cost of repairing your goods if they have been damaged.

e If only some of the goods are lost, damaged or incorrectly delivered our liability to you will be limited to:

f the cost of repairing any damage; or

g an amount equal to the weight in kilos of the lost, damaged or incorrectly delivered goods multiplied by £15; whichever is the lower.

h If you do not know the weight of the goods lost, damaged or incorrectly delivered, we will calculate our liability using the following formula:

i multiply either the cost value of the lost, incorrectly delivered goods or the repair cost of the damaged goods by the weight in kilos of the total consignment

multiply this figure by £15

divide the total by the value of the consignment.

2.14 You may increase our liability to up to £15,000 for any consignment weighing under 1000 kilos including packaging. If you want to increase our liability you must ask us before we collect your consignment. You will have to pay us an extra charge for the additional liability and this will either appear in our rate schedule or we will tell you the amount.

2.16 We recommend that you insure your goods before we collect them.

2.17 For our European Road Service the carriage of goods is governed by the Convention on the Contract for the International Carriage of Goods by Road 1956 (CMR). Our liability for loss or damage to your goods is limited to 8.33 SDR's per kilo under the CMR Convention or £15.00 per kilo whichever is the greater.

2.18 If we accept your order for our services, we will collect, carry and deliver your consignment with care.

3. CUSTOMER WARRANTY

The Customer warrants that it is either the owner of the Goods and the Site in respect of which the Company contract to provide Services or that it is authorised by the owner to accept these conditions on the owner's behalf

4. DANGEROUS GOODS

4.1 The Company may accept Dangerous Goods for carriage or storage provided.

(a) the Dangerous Goods are disclosed by the Customer prior to the Company accepting them for carriage or storage:

(b) the Dangerous Goods are classified, packed and labelled in accordance with statutory regulations:

(c) Transport Emergency Cards (TREM CARDS) or other statutory written information is provided by the Customer in respect of each substance and that such information accompanies each consignment.

4.2 The Customer will indemnify the Company against all liability for any loss or damage arising from the Customer's failure to comply with the provisions of clause 4.1 and to pack the Dangerous Goods properly and safely.

4.3 The Company will not accept for carriage or storage any dangerous damaging or explosive articles goods or substances, other than Dangerous Goods pursuant to Clause 4.1. Should the Company inadvertently accept such articles, goods or substances the Customer will indemnify the Company for any loss or damage cost or expense howsoever caused suffered by the Company and against all claims made against the Company by a third party as a consequence of the presence of any such articles goods or substances amongst the Customer's Goods.

4.4 If any such articles, goods or substances are discovered by the Company, the Company may at its absolute discretion, remove, sell, destroy or otherwise dispose of the same at the expense of the Customer and shall be under no liability to the Customer in respect thereof..

5. CUSTOMER INFORMATION.

5.1 It is the Customer's responsibility to provide the Company with accurate information including dimensions, weight, and any special requirements of the Goods along with any special storage requirements

5.2 The Customer will provide the Company with accurate information regarding the Site(s) where the Services are to be performed including full addresses for collection and deliver, and any access difficulties which may impede the Services.

5.3 The Customer shall indemnify the Company against all consequences suffered by the Company (including but not limited to claims, demands, proceedings, fines, penalties, damages, costs, expenses and loss or damage to the Company's vehicles or equipment) for any error, omission, mis-statement or mis-representation made by the Customer in respect of information required under clauses 5.1 and 5.2.

5.3 The Company reserves the right to apply fuel surcharges where increases in fuel are in excess of the annual rate of inflation in any 12 month period.

6. YOUR RIGHTS AND OBLIGATIONS

6.1 If you do not own the goods, the owner must have given you permission to make the contract with us.

6.2 You must make sure the goods are safe for handling and carrying. You must package, label and address the goods and correctly complete any consignment note you have filled in. You must also make sure the goods and their packaging comply with all transport regulations. You must tell us if your consignment is not suitable for carriage by air, by ticking the appropriate box on the consignment note.

6.3 If any goods are dangerous goods you must make this clear to us in writing before we collect them.

6.4 Unless we are shown to be at fault, you agree that you will be responsible to us and indemnify us against any claims, costs and damages arising from our transporting or storing your goods.

6.5 You must provide any special equipment we may need to load or unload the goods on to or off our vehicle. If you give us reasonable notice we will provide any special equipment but you may have to pay an extra charge for this service.

6.6 We may make a reasonable extra charge if when our driver and vehicle arrive they are kept waiting for more than 15 minutes.

Alternatively we may re-arrange with you the collection or delivery.

6.7 You must pay our charges by the 15th of the month after the month in which our invoice is dated. Our invoices will include VAT, customs duty and any other taxes that apply. They will also include any extra charges such as those for increasing our liability, providing special equipment or delays under 6.6 above.

6.7 If you are a business customer rather than a private consumer, you may not withhold payment to us to set off against any claims you may have against us. Private consumers are not affected by this provision.

6.8 Our charges are set out in the current rate schedule or as quoted to you in writing. The charges are usually based on whichever of the following is greater.

6.9 The gross weight of the goods including packaging. If the actual gross weight is greater than you declared on the consignment note we will base our charge on the actual gross weight.

6.10 The volumetric weight of the goods including packaging. We calculate the volumetric weight by multiplying the length by the width by the height in centimetres and dividing the result by 4242.

6.11 You must arrange for the consignment to be carefully checked when it is delivered. Checking is important in order to make sure that any claims you have can be dealt with as quickly and effectively as possible.

6.12 Important - if you think that you have a claim against us, whether for loss, damage, incorrect delivery or delay, you must send us written details within 28 days of us collecting the goods. You must provide proof of the cost value of the goods claimed upon request. We will not be liable for any loss, damage, incorrect delivery or delay if we do not receive written details of your claim within the 28-day period and in the case of damage exceeding £200.00 if you have not given us the opportunity to examine the damage and the packaging prior to repair. We may destroy the original documentation relating to your consignment after six months and you shall not hold its absence against us.