

FRANK ARMITT & SON LIMITED

FRANK ARMITT & SON LTD CONDITIONS OF CONTRACT

Amended 1st November 1988

1. DEFINITIONS

For the purpose of these conditions of contract "the company" means Frank Armit & Son Ltd., its servants, agents or sub-contractors; "the conditions" means the Conditions of Contract of the company, as referred to herein "the Customer" means the party contracting with the Company whether directly or through the servants, agents or assignees of the Customer; "the Goods" (save where the context otherwise requires) means the goods which are the subject of the contract made between the Company and the Customer, or any item of such goods; and "the Owner" means the owner, consignor, sender, shipper, consignee and/or receiver of the Goods.

2. PRELIMINARY

The Conditions relate to a variety of services provided or made available by the Company, not all of which may be relevant to any individual contract. They also cover some points of general application. Titles are inserted against individual paragraphs of the Conditions as a guide to the Customer, but these titles do not in any way affect the meaning of the Conditions.

3. WARRANTIES BY THE CUSTOMER

The Customer warrants that:-

- (1) The Customer is either the Owner of the Goods or is authorised by the Owner to accept the Conditions on behalf of the Owner.
- (2) When presented to the Company the Goods will be securely and properly packed and in such condition as not to cause damage or injury or the likelihood of damage or injury to the Company and/or the property of the Company, to any other goods, or to any persons. The Customer shall indemnify the Company in full against all claims of whatever nature arising out of any or in any way connected with any such damage or injury, including all damages, costs or expenses arising therefrom.
- (3) All descriptions, values and other particulars of the Goods presented to the Company for Customs, Consular and other purposes are true and accurate, and the Customer will indemnify the Company against all losses, damages, costs, expenses and fines whatsoever arising from any inaccuracy or omission, notwithstanding that such inaccuracy or omission may not be due to negligence.
- (4) Before presentation of the Goods to the Company the Customer will inform the Company in writing of any special precautions required by the nature or condition of the Goods so as to ensure that the Company has adequate notice in advance of all such precautions as may be necessary.

4. QUOTATIONS BY THE COMPANY

All quotations by the Company are subject to withdrawal or revision at any time, and even after acceptance of a quotation by the Customer the Company reserves the right, with or without notice, to revise the quotation or charges by the Company in the event of changes to currency exchange rates, rates of freight, fuel oil surcharges, insurance premiums, or any charges applicable to the Goods and in the event of any special precautions required by the nature or condition of the Goods. Any delivery or completion date quoted or given by the Company is given in good faith and is not guaranteed, but the Company will endeavour to deliver and complete within a reasonable time of any date specified having regard to the circumstances of a particular case. Shipments shall be full shipments. All additional charges, costs or expenses incurred as a result of the Goods being shipped as a part cargo will be for the account of the Customer. Payment terms made at the time of quotation are always subject to Condition 11 hereof in that monies due to the Company are payable on demand.

5. LANDING OF THE GOODS AT DISCHARGE PORT

The Company will deliver the Goods to the instructions of the Customer. The Customer, its servants, agents or assignees shall receive the Goods as fast as the Company delivers, such delivery having regard to the rate of discharge direct to road transport effected by the vessel. At the request of the Customer, the Company may land the Goods to store or quay for subsequent redelivery at a later date, subject to the Customer paying to the Company storage and any other charges incurred in so doing as per the quotation agreed between the Company and the Customer.

6. SHIP'S AGENCY

Ship's agency shall be consigned to the Company. When acting as Ship's Agent, the Company acts as Agent only on behalf of the Shipowners and/or Demise Charterer and/or Master of the Ship concerned at all times and the Company accepts no responsibility or liability for any debt or other liability whatsoever and howsoever incurred which may be, or may be deemed or found to be, in any way related to the said agency.

7. CUSTOMS CLEARANCE

Bills of Lading and/or necessary Customs Documentation must be received by the Company prior to a vessel's arrival at the Discharge Port to enable clearance of the Goods through Customs and release of the Goods without delay to the commencement of discharge by the vessel. All costs incurred as a result of the failure of the Customer to comply with this condition shall be the sole responsibility of and paid for by the Customer.

8. DUTIES/TAXES AND OTHER CHARGES APPLICABLE TO THE GOODS

Any duties, V.A.T. and/or other taxes, levies, imposts and layouts of any kind relating to the Goods shall be payable by the Customer. The Customer shall put the Company in funds in advance of any such payments. Any deficiency in funds shall be immediately payable by the Customer upon demand.

9. DAMAGED GOODS

Any costs or expenses incurred by the Company in respect of damage to the Goods, howsoever or whenever caused, will be for the account of and payable by the Customer and will be invoiced to the Customer.

10. INSURANCE

The Goods shall be at the sole risk of the Customer at all times, and the Customer shall make all such arrangements for the insurance of the Goods as the Customer may think fit.

11. PAYMENT OF MONIES DUE TO THE COMPANY

All monies due to the Company for storage or carriage of and other charges or expenses in connection with the Goods stores or carried by or on behalf of the Company for or at the express or implied request of the Customer, and/or monies due to the Company from the Customer under or by virtue of any of the Conditions or otherwise howsoever due to the Company, are payable on demand by invoice or otherwise, and shall be paid by the Customer to the Company notwithstanding that the Customer may have a claim against the Company. The Customer shall not be entitled under any circumstances whatsoever to set off any such claim against any monies due from the Customer to the Company as aforesaid.

12. LIEN

The Company shall have a general and special lien and right of detention of the Goods, or any part thereof, and on all documents relating to the Goods, for all monies due to the Company, on any account. If such lien remains unsatisfied for a period considered by the Company to be unreasonable after notice of such lien has been given to the Customer the Company may at its absolute discretion sell the Goods as agents for the Owner and apply the proceeds of such sale towards the monies due to the Company and towards the costs and expenses of the sale, and the Company shall upon accounting to the Customer for the balance remaining, if any, be discharged from all liability whatsoever in respect of the Goods.

13. INTEREST ON MONIES OUTSTANDING

Interest on monies outstanding and payable to the Company shall be payable at the rate of 4 per cent per annum above the Barclays Bank plc. base lending rate prevailing at the time and shall accrue at a daily rate from the date on which any amounts due and payable to the Company are unpaid up to and including the date when such amounts are paid to the Company.

14. LIABILITY OF THE COMPANY

- (1) The Company shall be liable for any loss, damage, detention, delay, misdelivery or non-delivery of the Goods (herein referred to as "the loss") only if it is proved by the Customer that the loss was due to the ~~wife~~ neglect or default of the Company and that the loss occurred while the Goods were in the actual control of the Company.
- (2) In no case whatsoever shall the liability of the Company howsoever arising exceed a total aggregate sum calculated at the rate of ~~£600~~ **£600** per tonne weight of the Goods as declared to the Company at the time of the contract with the Company.
- (3) Notwithstanding the generality of the foregoing in no case will the Company be liable for any consequential loss howsoever caused.
- (4) The Company shall only be liable for any claim in respect of the loss if the Customer shall have given written notice of such claim within 14 days of the loss.

15. NOTICES

Any notice or Statement of Account given by the Company to the Customer shall be duly given if left at or sent by prepaid first class letter post to the Customer at the last known address or principal place of business of the Customer and such notice or Statement of Account shall if posted be deemed to have been given two days after posting (excluding Saturdays, Sundays and Bank Holidays).

16. ROLE OF THE COMPANY – PRINCIPAL OR AGENT

- (a) In the absence of specific agreement between the Customer and the Company, the Company shall be entitled to provide or procure all or any of its services, as either an Agent subject to the conditions or as a Principal Contractor. Unless otherwise indicated or agreed, the Company at all times acts as an Agent only.
- (b) When acting as an Agent, the Company does not make or purport to make any contract with the Customer for the carriage, storage, packing or handling of the Goods nor for any other physical service in relation to the Goods and acts solely on behalf of the Customer in securing services by establishing contracts with third parties.

17. ACCEPTANCE OF THE CONDITIONS

By contracting with the Company, the Customer acknowledges that the conditions have been read, understood and accepted by the Customer.

18. VARIATION OF THE CONDITIONS

No variation or alteration of the conditions or any of them shall be of any effect unless such variation or alteration shall have been previously agreed by a Director of the Company in writing.

19. CONSTRUCTION OF THE CONDITIONS

Each provision of the conditions shall be severable and if any such provision shall be deemed invalid or unenforceable such circumstances shall not affect the validity or enforceability of any other provision of the conditions.

20. SERVANTS/AGENTS OF THE COMPANY

The benefit of all the conditions shall enure also for the benefit of the servants, agents or employees from time to time of the Company acting in the course of and/or in connection with their employment. Such servants, agents or employees are deemed to be parties to any contract concluded by the Company in its normal course of trading.

21. LAW AND JURISDICTION

The contract evidenced hereby or contained herein shall be subject to English Law and the jurisdiction of the English Court.