

# WAKO EXPRESS (HK) CO. LTD.

## STANDARD TRADING CONDITIONS Effective 15/6/2004

### DEFINITIONS AND INTERPRETATIONS

1. In these Conditions, the following words have the following meanings:

"Company"

means WAKO EXPRESS (HK) CO. LTD.

"Customer"

means any person at whose request or on whose behalf the Company provides Services.

"goods"

includes goods, wares, merchandise and articles of every kind whatever; and any container, trailer, tank or pallet (including similar articles of transport used to store or consolidate goods) not supplied by or on behalf of the Company.

"Dangerous Goods"

includes goods that are of a dangerous, explosive, inflammable, radioactive or damaging nature.

"Hague Rules"

means the International Convention for the Unification of certain Rules of Law relating to Bills of Lading signed at Brussels on 25 August 1924.

"Owner"

means the owner of goods.

"Services"

means the services provided by the Company either as principal or as agent, including undertaking or arranging carriage of goods by air, sea and/or road.

- 2.1. All business undertaken by the Company is transacted subject to these Conditions, which shall be deemed to be incorporated in any agreement between the Company and the Customer.
- 2.2. If at any time one or more of such provisions becomes invalid or illegal, the validity or legality of the remaining provisions of these Conditions shall not in any way be affected.
- 2.3. The Company may issue its own waybill, bill of lading or other documents of carriage naming the Company as the carrier. Where such a document is issued, the terms and conditions in it shall prevail in so far as they are inconsistent with these Conditions.
- 2.4. Where the Company is held to be a carrier, the Company shall be entitled to all the rights, immunities, exceptions and limitations conferred on the carrier by any applicable law or legislation.
- 2.5. Where the Company has not issued its own bill of lading and is held to be a carrier as far as carriage of goods by sea or inland waterway is concerned, the Company's liability shall be determined by Article III and Article IV of the Hague Rules. The aforesaid Articles shall prevail in so far as they are inconsistent with these Conditions. The limitation amount in Article IV (5) of the Hague Rules is deemed to be the nominal value of 100 pounds sterling.
3. The Customer entering into any business with the Company warrants to the Company that the Customer is either the Owner or the authorized agent of the Owner and that it is authorized to accept these Conditions not only for itself but also for the Owner.
4. The Customer further warrants that:
  - a. all the goods have been properly and sufficiently packed and that the Company has no liability for any loss of, damage to or any other claims relating to the goods which are improperly or insufficiently packed; and
  - b. the goods are fit and suitable for the carriage, storage and any other handling in accordance with the Customer's instructions; and
  - c. it shall fully comply with applicable laws and regulations of ports, airports, Customs or other authorities.
- 5.1. The Customer shall indemnify the Company against all claims, liability, losses, damages, costs and expenses arising out of the Company acting in accordance with the Customer's instructions, or arising from a breach of warranty or obligation on the part of the Customer, or arising from the inaccurate information or insufficient instructions provided by the Customer, or arising from the negligence of the Customer or the Owner.
- 5.2. The Customer undertakes that no claim shall be made against any servant, agent or sub-contractor of the Company if such claim imposes upon them any liability in connection with any Services provided by the Company. If any such claim should nevertheless be made, the Customer shall indemnify the Company against all consequences. Every such servant, agent and sub-contractor shall have the benefit of all provisions herein benefiting the Company as if such provisions were expressly provided for his or its benefit. For these purposes, the Company contracts for itself and also as agent and trustee for each such servant, agent and sub-contractor.
- 5.3. 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 these Conditions, and such indemnity shall include all claims, costs and demands arising from the negligence of the Company, its servants, agents or sub-contractors.
- 5.4. The Customer shall defend, indemnify and hold harmless the Company in respect of any general average claim that may be made against the Company and the Customer shall provide such security as may be required by the Company.

6. Except under special arrangements previously made in writing, the Customer warrants that the goods are not Dangerous Goods, nor are goods of comparable hazard, nor are goods otherwise likely to cause damage. Should the Customer nevertheless deliver any such goods to the Company or cause the Company to handle any such goods otherwise than under special arrangements previously made in writing, then whether or not the Company is aware of the nature of such goods, the Customer shall be liable for all expenses, losses or damage whatsoever caused by or to or in connection with such goods and howsoever arising, and shall indemnify the Company against all penalties, claims, damages, costs, expenses and any other liability whatsoever arising in connection with such goods, and such goods may be destroyed or otherwise dealt with at the risk and expenses of the Customer or the Owner in the sole discretion of and without any liability to the Company. If such goods are handled by the Company under arrangements previously made in writing, they may nevertheless be destroyed at the risk and expenses of the Customer or the Owner in the sole discretion of and without any liability to the Company on account of risk to other goods, property, life or health. The goods that are likely to cause damage include goods that are likely to encourage vermin or other pests.
7. Except under special arrangements previously made in writing, the Company will not deal with bullion, bank notes, coins, cheques, bonds, negotiable documents and securities, precious stones, precious metal objects, jewellery, valuables, antiques, valuable works of art, livestock or plants. Should the Customer nevertheless deliver any such goods to the Company or cause the Company to handle any such goods otherwise than under special arrangements previously made in writing, the Company shall be under no liability whatsoever in connection with such goods (including any loss, damage, misdelivery, misdirection or delay howsoever caused) and notwithstanding that the value of any such goods may be shown, declared or indicated on any documents accompanying such goods.
- 8.1. If delivery of the goods is not taken by the Customer or the Owner at the time and place when and where delivery should be taken, the Company shall be entitled (but is not obliged) to store the goods at the sole risk of the Customer and the Owner, whereupon any liability which the Company may have in respect of the goods stored as aforesaid shall wholly cease and the cost of such storage shall be paid by the Customer to the Company.
- 8.2. The Company is entitled (but not obliged) to sell or dispose of all goods which in the opinion of the Company cannot be delivered either because they are insufficiently or incorrectly addressed or because they are not collected or accepted by the Customer or the Owner within 14 days after notice has been given to the Customer. The Customer shall pay all charges and expenses in connection with the storage and the sale and/or disposal of the goods.
- 8.3. All goods shall be subject to a particular and general lien for monies due either in respect of such goods, or for any particular or general balance or other monies due from the Customer and/or the Owner to the Company. If any such monies due to the Company are not paid within 14 days after notice has been given to the Customer, the goods may be sold by auction or otherwise at the sole discretion of the Company at the expense of the Customer, and the proceeds (net of the expenses in connection with such sale) shall be applied in or towards satisfaction of such debts, and the Company shall not be liable for any reduction in value received on the sale of the goods, nor shall the Customer be relieved from the liability of any outstanding debts merely because the goods have been sold.
9. The Customer shall pay to the Company all sums immediately when due without deduction on account of any claim, counterclaim or set-off. Payment to the Company is due as soon as an invoice is rendered to the Customer. For any amount unpaid within 30 days from the date of the invoice, the Company shall be entitled to interest from the date of the invoice until payment at 2% per month.
- 10.1 The Company shall be entitled to sub-contract on any terms the whole or any part of the Services whatsoever undertaken by the Company.
- 10.2 The Company reserves to itself discretion as to the means, routes and procedures to be followed in the carriage, storage and other handling of goods. The Company has liberty to use any means, routes or procedures.
- 11.1. The Company shall not be liable for any damage to, loss, delay, misdirection or misdelivery of goods or any other claims, unless it is proved that such damage, loss, delay, misdirection, misdelivery or any other claims are caused by the negligence of the Company, its servants, agents or sub-contractors. In any event, the liability of the Company shall not exceed those limits as set out in Clause 11.3.
- 11.2. Notwithstanding any other provisions in these Conditions to the contrary but subject to Clauses 2.3 and 2.5, the Company shall not in any event be liable whatsoever for:
  - a. any indirect, consequential or economic loss (including loss of market, profit, revenue, business or goodwill); or
  - b. any loss, damage, expense or claim arising from fire, flood, storm, typhoon, explosion or strike howsoever caused and whether or not resulting from any act or omission or default or neglect on the part of the Company, its servants, agents or sub-contractors.
- 11.3. For those liability which cannot be exempted or excluded by any other provisions in these Conditions, the liability of the Company howsoever arising shall in no event exceed a sum of whichever is the lower of:
  - a. US\$500 per package or unit of; or
  - b. US\$2 per kilogram of the gross weight of the goods or any other properties lost, damaged, misdirected, misdelivered or in respect of which a claim is made provided that the Company's liability whatsoever shall in no circumstance exceed a total sum of US\$250,000 per event or events arising from a common cause. Without prejudice to the other provisions of these Conditions, if the Company is held liable for delay, liability shall be limited to an amount equivalent to the Services charges applicable to the goods delayed.
- 11.4. By special arrangement agreed in writing, the Company may accept liability in excess of the limits set out in Clause 11.3 provided that the Customer shall pay to the Company additional charges as decided by the Company from time to time. Details of the additional charges will be provided upon written request by the Customer.
- 11.5 All and any Services provided by the Company gratuitously are provided on the basis that the Company will not accept any liability whatsoever.
- 11.6. It is agreed that superficial rust, oxidation, discoloration, or any like condition due to moisture, is not a condition of damage but is inherent to the nature of the goods and acknowledgement of receipt of the goods in apparent good order and condition is not a representation that such conditions of rust, oxidation, discoloration, or the like did not exist on receipt.
12. Any claim against the Company must be in writing and delivered to the Company within 14 days from the date of delivery of the goods or the date the goods should have been delivered or the date of the event giving rise to the claim,

whichever is the earliest. In the case of loss or damage, the Company shall be given the opportunity to conduct survey or inspect such loss or damage.

13. The Company shall be discharged of all liability whatsoever in respect of any claim unless suit is brought against the Company in the courts of the Hong Kong Special Administrative Region within nine months from the date of delivery of the goods or the date the goods should have been delivered or the date of the event giving rise to the claim, whichever is the earliest.
14. The defences, exemptions and limitations of liability provided for in these Conditions shall apply in any action against the Company whether such action is founded in contract or in tort.
15. These Conditions and any contract with the Company shall be governed by the laws of the Hong Kong Special Administrative Region. Any proceedings against the Company must be brought only in the courts of the Hong Kong Special Administrative Region and no other court.