

STANDARD TERMS OF CONTRACT

SANTOVA LOGISTICS LTD

1. DEFINITIONS

- 1.1 For the purposes of these contractual terms, unless inconsistent with the context, the following words shall have the following meaning:
- “the/ these Contractual Terms” - these Standard Terms of Contract
- “the Customer” - any person or persons at whose request or on whose behalf or for whom Santova undertakes any business, or provides any advice, information or Services, whether gratuitously or not
- “the Goods” - any Goods of any nature whatsoever in respect of which Santova provides Services, and includes without limitation, any container, transportable tank, flat pallet, package or any other form of covering, packaging, container or equipment used in connection with or in relation to such Goods
- “the Services” - any Services of any nature whatsoever that Santova performs or may be required to perform for and on behalf of a Customer, including, without limitation, the handling, transportation, consolidation, forwarding and clearing, procurement, receipt, warehousing, storage and despatch of Goods, project management (including research, planning, organising and delivery), together with any advice or information given in respect thereof, whether gratuitously or not
- “Santova” - Santova Logistics Ltd, Registration No. 36495437
- 1.2 The head notes to the clauses of these Contractual Terms are inserted for reference purposes only and shall in no way govern or affect the interpretation of these contractual terms.
- 1.3 Unless inconsistent with the context, an expression which denotes:-
- 1.3.1 any gender includes the other genders;
- 1.3.2 a natural person includes an artificial person and vice versa;
- 1.3.3 the singular includes the plural and vice versa.
- 1.4 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the interpretation clause, effect shall be given to it as if it were a substantive provision of this agreement.
- 1.5 Where any term is defined within the context of any particular clause in these Contractual Terms, the terms so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in these Contractual Terms, notwithstanding that the term has not been defined in this interpretation clause.

2. APPLICABILITY

All and any business undertaken by Santova, including without limitation in connection with the supply of Goods and the provision of Services is and shall be subject to the terms contained in these Contractual Terms, which shall apply to the exclusion of any other terms and conditions (including without limitation any other general or standard trading terms and conditions of the Customer) unless otherwise specifically agreed to in writing by Santova.

3. STATUS OF SANTOVA AND THE CUSTOMER

- 3.1 Santova is not a common carrier nor a public carrier, nor a depository for or without reward.
- 3.2 Every Customer contracting with Santova to provide Services shall be deemed to do so in every respect not only on its own behalf (as principal) but also as agent on behalf of every person owning or otherwise interested at any time in any Goods that are the subject of the Services in question.
- 3.3 Every Customer warrants that it has the authority to contract with Santova, either as owner of the Goods in question, or as the authorised agent of the persons referred to in clause 3.2.
- 3.4 If the Customer is an agent acting on behalf of a principal, Santova may, at its sole discretion, claim performance and/or payment, from both the agent and the principal, or any one of them.

4. GENERAL ACKNOWLEDGEMENTS BY AND OBLIGATIONS OF THE CUSTOMER

The Customer agrees and acknowledges that:-

- 4.1 Santova shall be entitled to undertake such credit reference checks on the Customer and the Customer's members, directors or shareholders with such persons or parties (including without limitation the Customer's bankers and any credit bureau) as Santova may reasonably require from time to time;
- 4.2 Santova shall be entitled to have access to such information as it may reasonably require in order to assess the ability of the Customer to pay any amounts due to Santova and the Customer shall allow and procure that Santova obtain such access;
- 4.3 Santova may at any time and for any reason whatsoever immediately withdraw all and any credit facilities extended to the Customer and claim forthwith from the Customer the full outstanding balance due and payable in terms of such facility;
- 4.4 in the event that it fails to effect payment of any amount whatsoever due to Santova in terms of this agreement by the due date for such payment, Santova shall at any time be entitled to call upon and the Customer shall be obliged to immediately furnish Santova with copies of the Customer's business management accounts and annual financial statements over such period as Santova may require;
- 4.5 it shall ensure, where relevant, that the Goods bear all proper marks and labels to facilitate easy identification so as to enable Santova to perform the Services;
- 4.6 it shall ensure that the Goods are fit for the safe and proper execution of the Services.

5. CHARGES AND PAYMENT

- 5.1 Santova shall be remunerated by the Customer in accordance with the rates or charges quoted to the Customer from time to time.
- 5.2 Subject to clause 5.7, unless otherwise agreed in writing, all sums shall be paid to Santova without set-off or deduction on delivery of the invoice.
- 5.3 All payments due by the Customer to Santova shall be made to Santova without deduction or demand and payment shall not be withheld or deferred on account of any counterclaim or set-off.
- 5.4 An amount not paid on due date shall, at the discretion of Santova, bear interest from the due date until it is paid, at the prime lending rate of Santova's principle banker in Hong Kong.
- 5.5 The Customer must notify Santova of any dispute relating to any invoice within 14 days after the date of invoice setting out clearly the areas and issues of dispute, failing which the invoices shall be deemed to be correct in all respects. The parties undertake to use their best endeavours to resolve any such disputes within 30 working days after the date of the invoice in question.
- 5.6 Any quotation given shall be on the basis of immediate acceptance and shall be subject to withdrawal or revision by Santova. Further, unless otherwise agreed in writing, Santova shall notwithstanding acceptance, be at liberty to revise estimates or charges (with or without notice) in the event of changes occurring in currency exchange rates, rates of freight, surcharges, insurance premiums, equipment rental rates, labour rates and any other charges applicable to the handling or procurement of the Goods.
- 5.7 When Goods are procured on behalf of a Customer, as soon as the Customer accepts the purchase price for such Goods, Santova shall request samples (in partial or complete form) from the factory for the Customer to test and approve. On approval of the aforesaid samples and on satisfaction that the Goods meet the required specifications and standards of the Customer, the Customer shall issue a written order to Santova. On receipt of the written order, Santova shall issue a commercial invoice to the Customer for the purchase price of the Goods to enable the Customer to raise and deliver a Letter of Credit to Santova. If the Letter of Credit is not acceptable, the Customer must pay a non-refundable (minimum 30%) deposit to Santova prior to the commencement of the production of the Goods. The balance of the payment for the Goods procured will be payable against a draft Bill of Lading prior to shipment departure.
- 5.8 When Goods are accepted or dealt with on instructions to collect freight, duties, charges or other expenses from the consignee or any other person, the Customer shall nevertheless remain responsible for same if they are not paid by such consignee or other person immediately when due.
- 5.9 If accepted by Santova, instructions to collect payment on delivery in cash or otherwise shall be subject to the condition that Santova in the matter of such collection will be liable for the exercise of reasonable care only.
- 5.10 The Customer, sender, owner, consignor and/or consignee and their agents, if any, shall be liable for any duties, taxes, imposts, levies, deposits, unpaid freight or outlays of whatsoever nature levied in connection with the Goods, and for any payments, fines, expenses, loss or damage whatsoever incurred or sustained by Santova in connection therewith. The Customer indemnifies Santova against all such amounts and agrees to pay them on demand.
- 5.11 In the event that payment to Santova is effected electronically, the Customer bears the risk in respect of such payment until such time as the funds are received and cleared into Santova's bank account.

6. WAREHOUSING

- 6.1 In providing the Services, the Goods may be warehoused or otherwise held on such terms at any place as determined by Santova in its absolute discretion. At all times the Goods will be held at the Customers risk and expense.
- 6.2 The Customer warrants that:
- 6.2.1 all Goods delivered to Santova for warehousing shall be properly packed and labeled and in the event of any such Goods requiring special storage, packing or labeling by reason of their nature or properties or in accordance with any regulation, convention or statute, that all such requirement shall be complied with; and
- 6.2.2 notice of any special storage requirements of any such Goods shall be given to Santova in writing prior to the delivery of the Goods into the custody of Santova or its agents, provided that Santova shall be obliged to take delivery of any such Goods if it believes that such Goods or the handling or storage thereof are for any reason whatsoever undesirable.
- 6.3 If Santova agrees to undertake the packing of the Goods into any container or the packaging or unitization of the Goods for any purpose, such packaging or unitization shall be undertaken at the sole risk and expense of the Customer. The Customer shall provide Santova with full packing and labeling instructions in writing, including but not limited to any requirements as to the internal or other securing, mass distribution, maximum aggregate mass restrictions, labeling, temperature control or other restrictions, information as to the properties of the Goods and any noxious or other possible hazards or dangerous properties they might possess.

7. TRANSPORT DOCUMENTS

Santova may issue in respect of the whole or any part of any contract for the movement of Goods, a combined transport document or bill of lading in a form that shall be within Santova's discretion, including a FIATA combined transport bill of lading, a warehouse and/or forwarding receipt, an air or sea waybill, a consignment or delivery note, a container movement or transport order, a groupage or house bill of lading or a receipt for shipment or dispatch bill of lading (any of which may reflect Santova or any other as the carrier in terms thereof) provided that where a combined transport document or bill of lading is issued, these trading terms and conditions shall continue to apply as between Santova on the one part and the Customer and/or the Owner on the other part.

8. SANTOVA'S DISCRETION IN THE ABSENCE OF INSTRUCTIONS

- In the absence of specific instructions given timeously in writing by the Customer to Santova:
- 8.1.1 it shall be in the sole discretion of Santova to decide at what time to perform or to procure the performance of any or all of the acts which may be necessary for the discharge of its obligations to the Customer;
- 8.1.2 Santova shall have the sole discretion to determine the means, route and procedure to be followed by it in performing all or any of the acts or Services it has agreed to perform; and
- 8.1.3 in all cases where there is a choice of tariff rates or premiums offered by any carrier, warehouseman, underwriter or any other person depending on the declared value of the relevant Goods or the extent of the liability assumed by the carrier, warehouseman, underwriter or any other person, it shall be in the sole discretion of Santova as to what declaration, if any, shall be made, and what liability, if any, shall be imposed on the carrier, warehouseman, underwriter or any other person.

9. SECURITY

- 9.1 As security for the due fulfilment (including without limitation, payment) by the Customer to Santova of all its obligations arising from any cause whatsoever, the Customer assigns to Santova all its right title and interest in and to any money held by Santova on behalf of the Customer, and any claims the Customer has against the Receiver for a refund of Value Added Tax which have or may in the future accrue to it from time to time.
- 9.2 The Customer shall deliver to Santova upon demand all documents necessary to perfect this assignment and to serve all necessary notices to effect the same on demand.

10. TIME NOT OF THE ESSENCE

- 10.1 Although Santova will make an effort to render the Services within any time stated, such stated time is approximate only and shall not be a material term. It is also subject to the Customer timeously providing any instruction or information to enable Santova to carry out its obligations.
- 10.2 Unless otherwise agreed in writing, all Services to be rendered will be executed by Santova during normal working hours.
- 10.3 Santova will not be liable for any delay in the delivery of goods no matter what the cause of that delay.

11. RECEIPT OF GOODS, DELIVERY AND RISK

- 11.1 Unless otherwise agreed in writing, the Customer shall deliver the Goods to, or take delivery of the Goods from such place as may be stipulated by Santova.
- 11.2 If Santova agrees to accept delivery of, or to deliver the Goods to any other place then the following provisions will apply:
- 11.2.1 the Customer will be liable for all the costs of delivery and shall pay such costs to Santova on invoice;
- 11.2.2 Santova may, acting as the Customers agent, arrange for someone to deliver the Goods to or for the Customer ("the carrier") on such terms as Santova decides, and the Customer will be liable for all the carrier's charges;
- 11.2.3 Santova may effect delivery and the Customer shall accept delivery of the Goods as available;
- 11.2.4 if it is apparent to Santova that on receipt of the Goods by Santova, they are damaged or defective, Santova shall advise the Customer in writing and shall provide reasonable assistance (at the cost of the Customer) to the Customer to enable the Customer to make any claim (whether for insurance or otherwise) which the Customer considers necessary;
- 11.2.5 if the Customer does not take delivery of the Goods from Santova or the carrier at the agreed time or place, Santova may charge the Customer for all expenses incurred by Santova in attempting to make delivery.
- 11.3 Where the Customer provides the vehicle or rail truck, Santova shall not be responsible for the suitability of that vehicle or rail truck to transport the Goods properly or safely, or at all.
- 11.4 Where the Customer or shipping line provides any container or any other transportation unit, Santova shall not be responsible for the suitability of that container or other transportation unit to carry or transport the Goods properly or safely, or at all.
- 11.5 Where the Goods are in bulk or in break bulk, Santova will make reasonable efforts to maximise the quantity of the Goods to be loaded onto or into vehicle, rail truck, container or other transport unit. Accordingly, Santova shall not be liable or responsible to the Customer for any inability to fit the requested quantity of the Goods into the vehicles, rail trucks, containers or other transport units.

12. GOODS INFORMATION

- 12.1 The Customer shall provide to Santova such particulars of the Goods, including weights, measurements, characteristics and descriptions as Santova may reasonably require for the purpose of providing and performing the Services. The Customer guarantees and Santova shall at all times be entitled to rely upon all particulars and information furnished in terms of this clause. Without limiting the foregoing, the Customer guarantees to Santova the accuracy of all samples, marks, measurements, numbers and weights and any other specifications or information given, reflected in or shown on any documentation relating to the Goods, including, but not limited to packing lists, invoices, bills of lading, waybills, customs and revenue service documents.
- 12.2 Unless otherwise agreed in writing by Santova the Goods shall be handled at the Customers risk and the Customer hereby indemnifies Santova against any claim, loss or damage faced or suffered by it as a result of any breach of this clause 12.

13. HAZARDOUS OR DANGEROUS GOODS

- 13.1 Santova will not be obliged to provide any Services in respect of Goods which are hazardous, dangerous, noxious or liable to cause injury or damage to any person, Goods or property whatsoever (including without limitation those likely to harbour or encourage vermin or other pests) ("Dangerous Goods"), unless it agrees to do so.
- 13.2 If Services are provided in respect of Dangerous Goods, whether with or without the knowledge or express consent of Santova, the Customer indemnifies Santova against all loss or damage suffered by Santova, or any third party, caused by or as a result of the presence of, any Dangerous Goods.
- 13.3 Santova may at its discretion remove, sell, destroy or otherwise dispose of any Dangerous Goods received by it or under Santova's control whether with or without its knowledge or express consent. Santova will not be liable in any way to the Customer or any other party for compensation or the value thereof.
- 13.4 The Dangerous Goods or the container, package or other covering in which the Dangerous Goods are to be tendered to Santova or its agents shall be prominently marked on the outside so as to indicate the nature and the character of the Goods. Such markings must comply with internationally and locally accepted practices as well as all applicable laws, regulations or requirements.

14. PERISHABLE GOODS

- 14.1 Without limiting or affecting any other terms of these Contractual Terms, Goods (whether perishable or otherwise) in the care, custody or control of Santova may at the customer's expense be sold by private treaty or public auction or otherwise disposed of by Santova in its sole discretion, without notice to the customer, sender, owner or consignee, if:
- 14.1.1 such Goods have begun to deteriorate or are likely to deteriorate;
- 14.1.2 such Goods are insufficiently addressed or marked;
- 14.1.3 the Customer cannot be identified; or
- 14.1.4 the Goods have not been collected or accepted by the Customer or any other person after the expiration of 21 days from Santova notifying the Customer in writing to collect or accept such Goods, provided that if Santova has no address for the Customer such notice period shall not be necessary.
- 14.2 Payment or tender of the net proceeds, if any, of the Goods after the sale thereof, after deduction of those charges and expenses incurred by Santova in respect thereof shall be equivalent to delivery of such Goods.
- 15. INSURANCE**
- 15.1 Santova has no obligation to take out and maintain any form of insurance cover on the Goods. This is the sole responsibility of the Customer.
- 15.2 The Company shall not be obliged to make any declaration for the purpose of any Statute, convention or contract as to the nature of any Goods or as to any special interest in delivery or otherwise unless expressly instructed by the Customer in writing. In particular, Santova shall be under no obligation, unless written instructions to that effect are given to, and accepted in writing by Santova, to make any declaration or to seek any special protection or cover from any carrier, in respect of any Goods which are, or fall within the definition by that body of dangerous or very dangerous Goods or Goods liable to be stored in the open.
- 15.3 In all cases where there is a choice of tariff rates or premiums offered by carriers, warehousemen, underwriters, or others, depending upon the value declared or the extent of the liability assumed by the carrier, warehousemen, underwriter or other persons, it shall be in the entire discretion of Santova as to what declaration, if any, shall be made and what liability, if any, shall be imposed on the carrier, warehousemen, underwriters or other persons, unless express instructions in writing are timeously given by the Customer and accepted by Santova.
- 16. CONTRACTING AS AGENT**
- 16.1 The Customer acknowledges that Santova itself will not always provide, perform or carry out the Services, which may be performed by third parties. The Customer authorises Santova to act as its agent in contracting with such third parties for the provision or performance of the Services. The Customer acknowledges that such contracts shall bind the Customer to the third party and be on such terms as Santova considers reasonable.
- 16.2 Santova shall have no liability of any nature whatsoever to the Customer for the performance by the third parties of their obligations to the Customer in respect of the Services.
- 17. CLAIMS / LIMITATION OF LIABILITY**
- 17.1 Santova shall not be liable to the Customer for any loss or damage of any nature whatsoever, whether actual, prospective or contingent, other than in terms of this clause 17.
- 17.2 In respect of Goods procured on behalf of the Customer:
- 17.2.1 Santova's responsibility is limited to delivering Goods in conformity with any of the Goods information provided in terms of clause 12.1 above. In the event that a Good is found to be damaged or defective, the Customer must notify Santova in writing within 7 days of delivery of the Good and shall bear the onus of proof that such Good is not in conformity with the Goods information provided in terms of clause 12.1.
- 17.2.2 Should such notice not be given within the stipulated time period or sufficient proof provided, Santova shall not be liable for any damaged or defective Goods.
- 17.2.3 In the event that the Customer proves that a Good is damaged or defective, Santova shall be responsible only for the repair or replacement of that specific Good, by implementing logistical means in its own discretion, without any other form of recourse or compensation against Santova. Santova shall have the election to repair or replace any specific Good.
- 17.2.4 Any repair to a Good, including one found damaged or defective, done without Santova's prior consent, shall result in the loss of the Customer's right of recourse against Santova.
- 17.2.5 Santova will not accept return of any Good without its prior written authorisation and all charges for transport, packing, assembly, disassembly or other ancillary costs relating to such return shall be paid by the Customer.
- 17.3 Santova shall not be liable to the Customer for any loss or damage howsoever caused and of any nature whatsoever, nor the death nor injury to any person, unless the Customer or the party who suffers such loss, damage, death or injury, proves that the loss, damage, death or injury arose from the gross negligence of Santova, its servants, agents, sub-contractors or any person for whom Santova is vicariously liable.
- 17.4 In any event, and notwithstanding clause 17.2 and 17.3, Santova shall not be liable for any consequential loss, special damages, demurrage or loss of profits.
- 17.5 If Santova is liable to the Customer in terms of this clause 17, then notwithstanding anything to the contrary contained in these Contractual Terms or otherwise, Santova's liability, howsoever arising, within contract or in delict, in connection with the Services shall not exceed the lower of:
- 17.5.1 the value of the Goods evidenced by the relevant documentation or declared by the Customer for Customs purposes or for any purpose connected with their transportation or handling;
- 17.5.2 the value of the Goods declared for insurance purposes;
- 17.5.3 double the amount of the fees charged by Santova for the Services in connection with the Goods, but excluding any amount payable to sub-contractors, agents and third parties.
- 17.6 The Customer must give Santova immediate notice of any occurrence giving rise to any loss, damage, injury or death.
- 17.7 The Customer shall have no claim against Santova and Santova shall be discharged from all liability unless legal proceedings are commenced against it within one year of the date of the occurrence giving rise to the claim.
- 18. INDEMNITY**
- The Customer indemnifies Santova and holds it harmless, against all and any claims, loss, damages or liability of whatsoever nature and howsoever arising, which may at any time be suffered or incurred or made against Santova, and whether in contract or tort, in respect of loss, damage or injury, howsoever caused, including without limiting the generality hereof, the negligence of Santova in relation to or directly or indirectly arising from or connected with Goods owned by the Customer, or procured on the Customer's behalf, or any owner or consignee of the Goods who is not the Customer and, delivered to Santova, including, but not limited to, any claims made by the Customs and Excise and other lawful authority of any relevant country of jurisdiction.
- 19. FRUSTRATION**
- 19.1 If any performance by Santova is prevented or delayed by the closure of a port, strikes, lock-outs, shortened working hours, shortage of labour or materials, delays in transport, accidents of any kind, any default or delay by any sub-contractor of Santova, war, political or civil disturbances, the elements or any other cause whatever beyond Santova's control, then Santova shall have the election either:
- 19.1.1 to cancel the contract relating to the performance in question; or
- 19.1.2 subject to clause 19.2, to extend the time for performance until the cause preventing or delaying performance ceases to apply.
- 19.2 If Santova elects to extend the time for performance in terms of clause 19.1.2, the Customer shall be entitled to cancel the contract if Santova does not commence or recommence performance within a period of 30 days following the original date of prevention or delay of performance, by giving written notice to that effect to Santova.
- 20. LIEN**
- 20.1 Santova will have a lien on all Goods, freight money and documents, including but not limited to Bills of Lading, sea waybills and import permits, in its possession or under its control for any amount owing to it by the Customer (whether or not such amounts relate to such Goods, freight, money or documents). If the Customer is in breach of these Contractual Terms or any other agreement with Santova, Santova shall have the right to sell, without notice to the Customer, the whole or any part of the Goods, either by public auction or by private treaty and to apply the proceeds of such sale, after deducting all expenses thereof, in payment towards any sum due to Santova by the Customer.
- 20.2 Any surplus will be paid over to the Customer, within 90 days after such sale or, in the event of Santova being unaware of the whereabouts or address of the Customer, on application of the Customer.

