

# TERMS AND CONDITIONS OF SERVICE

## 'LIMITED LIABILITY' TRANSPORTATION SERVICES

VMI TCS Limited Liability

Version 05 2011

### SPECIAL NOTE:

These terms are only applicable to Service(s) where the Customer is providing its own insurance for the Valuables; the Customer acknowledges that the Company's liability for the Valuables is strictly limited herein and any indemnity shall only apply in the event of the negligence or dishonesty of the Service Provider. These terms shall only apply to incidental storage undertaken during the course of transit which shall be limited to a maximum storage period of 30 days.

### WHEREAS:

- The Company provides various Service(s) relating to transportation of Valuables.
- The Customer wishes to contract with the Company for the provision of Service(s) in accordance with these Terms and Conditions of Service.
- **The Customer acknowledges and accepts those clauses which exclude or limit the Company's liability to the Customer as specifically set out in Clauses 5 and 6 herein.**
- The Customer acknowledges and accepts the obligations and warranties of the Customer as set out in Clause 8 herein.
- The Company and the Customer acknowledge that these Terms and Conditions of Service are deemed incorporated into any other carriage documents or other agreements issued to the Customer or its agent(s) by the Company or the Service Provider.

## 1. DEFINITIONS

Where the context so permits the following expressions mean:-

**Agreement** means the Company's service order document or other such similar document detailing, amongst other things, the contracting parties, the Service(s) to be undertaken, the Declared Value and the charges to be levied for the Service(s).

**Declared Value** means the sum declared by the Customer relative to the Valuables.

**in the Custody of the Company** means the period from when the Service Provider takes possession of and provides a signed receipt for the Valuables at the collection point until the moment the Service Provider tenders delivery of the Valuables to the Customer or its authorised consignee at the intended delivery point. In the case of any consignment which consists of several items, the liability of the Company shall only attach to those parts of the consignment determined to be in the Custody of the Company at the time of any such loss or damage.

**the Company** means the VIA MAT INTERNATIONAL company as specified in the Agreement.

**the Customer** means the party who contracts the Service(s) of the Company and includes the Customer's servants or agents.

**the Service Provider** means the Company or its subsidiary or associated companies or its sub-contractors or agents who undertake to perform the Service(s) for the Customer on behalf of the Company.

**Service(s)** means the transportation service(s) including any incidental period of storage to a maximum of 30 days to be provided by the Company which shall be performed subject to terms of these Terms and Conditions of Service.

**Excluded Risks** are:

- a. War, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, riot, civil commotion, military or usurped power or the like or loot, sack or pillage in connection therewith, confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any Government or Public or Local Authority;
- b. Radioactivity, ionising radiation or contamination occurring from any nuclear fuel, nuclear installation or reactor, any weapon of war employing nuclear fission and/or fusion or similar radioactive force or chemical, biological, bio-chemical weapons including contamination resulting from such items;
- c. Cyber attack including the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system;
- d. Acts of terrorism to the extent not covered by the Company's insurance;

**Valuables** means property such as precious and semi-precious metals, precious stones, jewellery, currency, cheques, travellers' cheques, negotiable documents, banknotes or coin or any other goods or valuable merchandise (but excluding works of art or similar) in respect of which the Company is requested to perform the Service(s).

## 2. LAW AND JURISDICTION

- 2.1 These Terms and Conditions of Service and the Agreement, including this clause, shall be exclusively governed by the laws of England. Any dispute arising from the Agreement or these Terms and Conditions of Service that cannot be resolved by commercial negotiation shall be subject to the exclusive jurisdiction of the Courts of England.
- 2.2 Where international legislation is compulsorily applicable to the Service(s) provided, these Terms and Conditions of Service shall be read subject to such legislation. If any part is found to be void or otherwise unenforceable under such legislation, then the Company and the Customer acknowledge that such parts shall be overridden but only to the extent necessary and all other terms and conditions as set out herein remain in force.

## 3. THE COMPANY'S OBLIGATIONS

- 3.1 Subject to Clause 4 below, the Company shall perform the Service(s) in accordance with the Customer's instructions. Where the Service Provider performs the Service(s) on behalf of the Company the Service Provider shall be entitled to the protection of all terms of these Terms and Conditions of Service and to this extent they are deemed to be parties to this Agreement.

- 3.2 The Service Provider shall determine the method and route to be followed in the performance of the Service(s), including the means of transportation and/or incidental storage and will acknowledge receipt of the Valuables by signing a consignment note or other document; in doing so the Service Provider is acknowledging receipt of a number of packages or items but does not warrant, confirm or acknowledge the identity, quality, authenticity, weight or declared value of the product or items.

#### **4. SUSPENSION OF THE COMPANY'S OBLIGATIONS AND FORCE MAJEURE**

- 4.1 The Company or the Service Provider shall not be obliged to perform the Service(s) if, by performance of the Service(s), they would be required to act unlawfully or in a strike-breaking nature or where political conflict may result or where the Company is unable, through no cause of its own, to obtain appropriate insurance for the Valuables or for its liability for the Valuables required to be carried in performance of the Service(s).
- 4.2 The Company shall not be obliged to perform the Service(s) if, by performance of the Service(s), they would be exposed to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America as may be in force from time to time. In the event that the Company does undertake Services to or from countries or locations subject to such sanctions, prohibitions or restrictions then the Company shall accept no liability whatsoever in relation to loss of or damage to the Valuables arising from such Services.
- 4.3 The Company has the right to decline to perform any Service(s) requested by the Customer if it chooses to do so.
- 4.4 Neither party shall be obliged to perform its obligations under these Terms and Conditions of Service where prevented from doing so by forces beyond its control, such as an Act of God or governmental intervention.

#### **5. INDEMNITY BY THE COMPANY**

- 5.1 The Customer shall, except to the limited extent to which the Company is in this Clause stated to be liable, be responsible for and shall insure against physical loss of or damage to Valuables in the Custody of the Company to the entire exoneration of the Company no matter what the circumstances or consequences of such loss or damage may be. The Customer shall provide satisfactory evidence of such insurance and shall require and evidence that the insurer has waived their rights of subrogation against the Company under the policy; where so required by the Company, the Company shall be named as Joint Insured on said policy.
- 5.2 Under these 'limited liability' terms the Customer is responsible for insuring the Valuables for the duration of the Service and, consequently, the Company's liability for loss of or damage to the Valuables is strictly limited. Subject to the provisions of Clause 6 and the Customer's observance of its obligations under Clause 8, the Company shall only be liable for loss of or damage to the Valuables whilst those Valuables are in the Custody of the Company and then only where such loss or damage is attributable to the negligence or dishonesty, including gross negligence and /or wilful misconduct, of the Service Provider. The extent of any such liability shall be limited in all circumstances to a maximum amount of GBP 100,000 (one hundred thousand British Pounds) in respect of any one incident.
- 5.3 In the event of loss of or damage to the Valuables resulting in a liability arising hereunder the Customer shall provide to the Company such information and evidence in respect of the loss as may reasonably be required by the Company or its insurers to evidence the actual value of said loss. To the extent that the Customer is unable to provide such substantiating evidence the Company shall be entitled to make such reasonable calculation of loss as would be considered standard in the industry. In such circumstances the extent of the Company's liability shall be limited to this reasonable calculation.
- 5.4 This indemnity is the totality of the Company's liability to the Customer in respect of the Valuables and the Customer will have no other claim against the Company or the Service Provider of any kind, whether in contract or tort, whether for negligence or otherwise in relation to the Valuables. For the avoidance of doubt, the Company shall have no liability whatsoever or howsoever arising if the Valuables are lost or damaged outside of the period when they are in the Custody of the Company as defined herein.

#### **6. LIMITATIONS OF LIABILITY**

- 6.1 The limited indemnity given in Clause 5 will NOT in any circumstances apply where loss of damage to the Valuables arises in consequence of any of the following or to the extent that any of the following shall have directly contributed:
- The Excluded Risks;
  - Any opening of the Valuables required by authorised officials, whether customs or otherwise, to inspect the Valuables;
  - Services provided contrary to Clause 4.2 above;
  - Any breach of the Customer's obligations or warranties as set out in Clause 8;
- 6.2 Furthermore, the Company shall have no liability whatsoever, whether as a result of negligence or otherwise, for indirect or consequential losses including but not limited to loss of interest, exchange rate losses, loss of business, payment of customs duties, taxes, fines or otherwise, including any losses arising from a delay in performing the Service(s). The Company shall have no liability for the cost of reconstructing data or information held on any recordable media or losses arising from the misuse of such media or the information therein by unauthorised persons.
- 6.3 To the fullest extent permitted by law, the liability of the Service Provider to the Customer arising from the Service Provider's negligent performance of the Services and resulting in loss of or damage to physical property, other than to the Valuables, shall be limited to a maximum amount of GBP 2,000,000 (two million British Pounds) any one incident. The Service Provider's liability for personal injury arising from its negligence is unlimited.

## 7. TIME LIMITS FOR NOTIFICATION OF CLAIMS

In the event that the Customer wishes to make a claim for loss or damage to the Valuables under this Agreement that right is subject to the requirement to provide written notice of such loss or damage to the Company within 8 days immediately following the discovery thereof.

## 8. THE CUSTOMER'S OBLIGATIONS, WARRANTIES AND INDEMNITY

- 8.1 In accordance with Clause 5 the Customer will procure and maintain in effect for the duration of the Service(s) a policy of insurance in relation to the Valuables such policy to include a waiver of insurers' rights of subrogation against the Company and, where so required by the Company, the Company shall be named as Joint Insured. The Customer shall on reasonable request provide the Company with evidence of such insurance and shall notify the Company immediately in relation to cancellation or amendment to said policy.
- 8.2 In respect of each Service the Customer will provide the following information and any further documents issued by the Service Provider will be in reliance on such information:
- Full customer name and contact information;
  - A consignment note detailing the contents and Declared Value of the item(s);
  - Number of packages or pieces and, where applicable, the seal number of each package;
  - The collection date, collection point and relevant contact information;
  - The destination of the Valuables, the delivery point and name and address of the authorised consignee;
  - Exact delivery terms for international transits.
- 8.3 The Customer shall ensure the Valuables are packed and securely sealed in such a manner that the contents cannot be removed without evidence of tampering and in such a way as to adequately protect against damage during the normal course of transit operations by whatever method (rail, air, sea or road). If agreed in writing in advance, precious metals (gold and silver standard bars only) may be delivered unpacked for transportation with the number of unpacked pieces to be indicated clearly on a consignment note.
- 8.4 The Customer warrants to the Company that:
- there are no inherent dangers, properties or characteristics of the Valuables of which the Company should be aware;
  - it is the owner of the Valuables or has been duly authorised to deal with them and that all statements and declarations concerning the Valuables are true;
  - no illegal activities will, directly or indirectly, be required as part of the Customer's instructions and that the Service(s) requested are not to give effect to any money laundering activities or to avoid the payment of taxes or otherwise defraud any tax authority.
- 8.5 The Customer will indemnify the Company against any claim made by any other person in respect of the Valuables which is outside or beyond the liability the Company accepts under this agreement. The Customer shall hold the Company harmless and keep it indemnified against all liabilities howsoever arising including but not limited to loss (physical or financial) suffered as a result of complying with the Customer's instructions or due to breach of any warranty or other term applying under these Terms and Conditions of Service as well as from the consequences of negligence by the Customer, its consignee or authorised representative.

## 9. DELIVERY OF THE VALUABLES

- 9.1 The Service Provider will deliver the Valuables to the consignee or its agent in accordance with the Customer's instructions. The Customer, consignee or agent (as the case may be) must sign for receipt of the Valuables and such act, without reservation, shall amount to prima facie evidence that the Valuables have been delivered and are received in good condition. If, at the time of delivery, the Customer, consignee or agent contends that the packaging has been opened or damaged or that seals have been broken or removed or that unpacked precious metals are damaged, then any such irregularities must be noted on the receipt. Any claim in relation to alleged damage must be made in writing to the Company in accordance with Clause 7.
- 9.2 If the Customer, consignee or agent refuses to take delivery of the Valuables or to pay the charges arising in connection with the Valuables, or if the Valuables cannot be handed over for any reason not due to the negligence of the Company then the Company will place the Valuables in temporary storage appropriate to the nature of the Valuables at which point the period of the Company's responsibility shall be deemed to have ended. All costs for this will be borne by the Customer and consignee on a joint and several basis.

## 10. PRICES, CHARGES AND PAYMENT

- 10.1 The Customer agrees to pay the Company at the rates it charges as at the time an order is placed and will also pay all costs and expenses reasonably incurred by the Company in performance of the agreed Service(s).
- 10.2 The Company's invoice shall be paid in full within 10 (ten) calendar days of the date of invoice without any deduction whatsoever, whether for a claim, counterclaim, set-off or otherwise; however, if, in order to perform the Service(s), costs and expenses need to be advanced by the Company to another party, the Customer will similarly advance such sum to the Company immediately on written demand. Any sums not paid by the due date will be subject to an interest charge calculated at five per cent (5%) per annum on all outstanding sums; interest will run from the date such sums fall due to the date of final payment.

## 11. LIEN

The Company shall have a general lien on all Valuables in its custody in respect of all sums due at any time from either the Customer, the owner of the Valuables or the consignee whether or not relating to the Valuables over which the lien is exercised. The Company is authorised to sell sufficient of the Valuables to settle any sums due after a period of twenty eight (28) days from giving written notice of the exercise of its lien if payment in full has not by then been made, such sale will be as agent for the Customer or owner of the Valuables if different. The Company will apply the sale proceeds first to the sums due to it, including accrued interest and the costs of sale, and will account to the Customer for the balance within fourteen (14) days of receiving the sale proceeds.