

TERMS & CONDITIONS OF TRADE

1. DEFINITIONS

- 1.1 "Sky360" means Sky360 Limited, and its agents, employees and contractors.
- 1.2 "Client" means the Client, any person acting on behalf of and with the authority of the Client, or any person purchasing products and services from Sky360.
- 1.3 "Services" means all services arranged by Sky360 for the Client and includes without limitation all freight, storage and distribution services and charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Services by Sky360 to the Client.
- 1.4 "Price" means the cost of the Services as agreed between Sky360 and the Client (unless clause 4 applies) and includes all amounts paid by Sky360 to others on the Client's behalf.

2. ACCEPTANCE

- 2.1 Any instructions received by Sky360 from the Client for the supply of Services shall constitute acceptance by the Client of these terms and conditions..

3. COLLECTION AND USE OF INFORMATION

- 3.1 The Client authorises Sky360 to collect, retain and use any information about the Client, for the purpose of assessing the Client's credit worthiness, enforcing any rights under this contract, or marketing any Services provided by Sky360 to any other party.
- 3.2 The Client authorises Sky360 to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the Client is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

4. PRICE

- 4.1 Where no price is stated in writing or agreed to orally the Services shall be supplied at the usual amount charged by Sky360 at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Services that is beyond the control of Sky360 between the date of the contract and delivery of the Services.

5. PAYMENT

- 5.1 All disbursements (including duty, freight and taxes) shall be payable in advance unless otherwise agreed in writing by Sky360. All other fees/accounts shall be payable on completion of the supply of services by Sky360 or as stipulated by Sky360.
- 5.2 Interest may be charged on a daily basis on any amount owing after the due date at Sky360's bank overdraft rate (as it applies from time to time) plus 5%, whether or not Sky360 is at any given time in overdraft.
- 5.3 Any expenses, disbursements and costs incurred by Sky360 in the enforcement of any rights contained in this contract shall be paid by the Client, including any reasonable solicitor's fees or debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.

6. AGENCY

- 6.1 The Client authorises Sky360 to contract on any terms and either as principal or agent for the provision of the Services.
- 6.2 Where Sky360 enters into any contract for the provision of the Services it shall be read with and form part of this agreement and the Client agrees to pay any amounts due under that contract.

7. LIEN

- 7.1 Sky360 shall have a general and particular lien against any property or documents relating to property of the Client that are or which come into the possession of Sky360 or Sky360's agents or contractors for all sums owed under this contract and any other contract to which the Client and Sky360 are parties, whether or not any such sums are overdue.
- 7.2 If the lien is not satisfied within fourteen (14) days of the date on which Sky360 gives the Client notice that it is exercising the same, Sky360 may, at its option either:
 - 7.2.1 Store such property in such a place and in such a manner as Sky360 shall think fit and proper, at the sole risk and expense of the Client; or
 - 7.2.2 Sell such property or part thereof upon such terms as it thinks fit and apply the proceeds in or towards discharge of the lien and costs of sale without being liable to the Client or any other person for damage or loss whatsoever.

8. CLAIMS

- 8.1 Pro-forma claims must be received within three (3) days of the date of notification of availability of freight for collection or the date of delivery or the date of release of freight, whichever date is the earlier.
- 8.2 Valued claims must be received within nine (9) months of the pro-forma claim.
- 8.3 Proceedings must be issued and notice thereof must be given to Sky360 within twelve months of the date on which the goods are delivered to or collected by the Client, as the case may be.
- 8.4 Failure to comply with any of the time periods set out in this clause 8 shall extinguish any liability on the part of Sky360 and the Client shall not be entitled to any remedy in respect of any claim.

9. DESCRIPTION AND PACKAGING

- 9.1 The Client warrants the description and particulars of the freight is true, correct and adequate and indemnifies Sky360 against all loss, damage, expense and liability arising or resulting from any inaccuracies or inadequacy in that information.
- 9.2 The Client warrants that the freight is properly packed and labelled for carriage except where Sky360 has accepted written instructions for it to provide packing and labelling services.

10. DANGEROUS GOODS

- 10.1 Sky360 may at any time (without compensation or notice to the Client and without prejudice to its right to freight and charges) destroy, dispose of, abandon, render harmless or otherwise deal with any goods, whether originally dangerous or not, that in the opinion of Sky360 or any other person constitute a risk or become dangerous or of damaging nature to other goods, property, life or health.
- 10.2 Whether or not the client was aware of the nature of the goods, the Client shall indemnify and hold harmless Sky360 against all claims, losses, penalties, damages, or expenses arising in consequence of any breach of the provisions of this clause.

11. STORAGE, RISK AND DELIVERY

- 11.1 At any time the goods may be warehoused or otherwise held at any place at Sky360's sole discretion at the Client's expense.
- 11.2 To the maximum extent permitted by law all Services in respect of the goods shall be carried out at the Client's risk and that risk shall remain with the Client throughout this agreement. Subject to clause 12.1 the Client is responsible for arranging insurance.
- 11.3 Delivery shall be deemed complete at the time and place when and where Sky360 is entitled to call upon the client to take delivery. Upon notice of delivery being given to the Client, Sky360 shall be entitled without notice to unstow or store the goods at the expense of the Client and such storage shall be deemed delivery.
- 11.4 Sky360 shall not be liable for any loss, damage or expense whether due to failure by Sky360 to deliver the goods (or any of them) promptly or at all, or by negligence, wilful act or default or howsoever otherwise. Sky360 reserves the right to deliver the goods by instalments and each instalment shall be deemed to be a separate contract subject to the same conditions as the main contract. Failure by Sky360 to deliver one or more instalments shall not entitle the Client to repudiate the main contract.

12. INSURANCE

- 12.1 Insurance will not be arranged by Sky360 except on the express written instructions of the Client and then only at the Client's expense and on lodgement of a declaration as to value prior to receipt of goods by Sky360.
- 12.2 Sky360 accepts no liability for any inadequacy in relation to any insurance arrangements and the Client agrees to indemnify Sky360 for any loss or damage it may suffer in relation to or arising out of the insurance of the goods.
- 12.3 Where Sky360 arranges insurance on the Client's behalf, the amount invoiced to the Client for the premium will include a fee for having done so. Such fee will not be separately disclosed.

13. LIABILITY

- 13.1 Except where Sky360 issues a bill of lading or similar document of carriage in which it describes itself as the "Carrier", Sky360 carries on business as a customs and forwarding agent, warehouse storage and distribution and is not the actual carrier of goods. Sky360's obligations are restricted to arranging carriage of the goods by a reputable carrier and are performed subject only to these terms and conditions and when applicable the conditions printed on any transport document issued by a carrier or by Sky360 as agent for the carrier. To the extent of any inconsistency between these terms and any such transport document, these terms prevail to the maximum extent permitted by law.
- 13.2 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Sky360 which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on Sky360, Sky360's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 13.3 Except as otherwise provided by clause 13.1 Sky360 shall not be liable for:
 - 13.3.1 Any loss or damage or expense of any kind whatsoever, arising from the supply of Services by Sky360 to the Client, whether direct, indirect or consequential and whether suffered or incurred by the Client or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Services provided by Sky360 to the Client; and whether or not the loss, damage or expense was reasonably foreseeable and whether or not Sky360 had knowledge that such would actually result from its act or omission.
 - 13.3.2 If, contrary to Sky360's disclaimer of liability contained in these terms and conditions of trade, Sky360 is held to be liable then such liability is limited and shall not in aggregate exceed \$2,000.00;
 - 13.3.3 The Client shall indemnify and hold Sky360 harmless against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Sky360 or otherwise, brought by any person in connection with any matter, act, omission, or error by Sky360 its agents or employees in connection with the Services.

14. CONSUMER GUARANTEES ACT

- 14.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Client acquires Services from Sky360 for the purposes of a business in terms of section 2 and 43 of that Act.

15. MISCELLANEOUS

- 15.1 Sky360 shall not be liable for delay, loss of market, loss of profits or failure to perform its obligations.
- 15.2 Failure by Sky360 to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations Sky360 has under this contract.
- 15.3 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 15.4 Sky360 and the Client agree that any additional conditions of carriage and trade issued by Sky360 at the time any contract of carriage is entered into, shall also form part of these terms and conditions of trade.
- 15.5 Sky360 shall be entitled to retain all commissions, brokerages and the like which are customarily paid to forwarding and customs agents.