



## LINEAGE UK COLD STORAGE & DISTRIBUTION

### Conditions of Business

#### 1. General

1.1. As used in these conditions (the "Conditions") the following terms have the following meanings:

"Affiliate" means, in relation to a body corporate, any direct or indirect subsidiary or holding company of such body corporate, and any direct or indirect subsidiary of such holding company.

"Customer" means the person contracting with the Warehousing Provider and/or, if applicable, the Transport Provider;

"Goods" includes pallets, palletainers, and all other equipment associated therewith as well as their contents and provided by or under the arrangements with the Customer for placing in cold storage; and

"Maximum Temperature" means minus 18 degrees centigrade or such colder temperature as (i) the Warehousing Provider may specify from time to time or (ii) may be required by law in relation to the cold storage and distribution of goods in the nature of the Goods.

"Provider" means the Warehousing Provider or the Transportation Provider as applicable to any particular Contract.

"Regulations" means any applicable statute, instrument, directive, by-law, regulation or other stipulation having the force of law relating to the supply or handling of food and any act, regulation or directive replacing, modifying or amending the same.

"Transportation Provider" means Lineage UK Transport Limited or any of its Affiliates (excluding, for the avoidance of doubt, Lineage UK Warehousing Limited) that may provide transportation services to Customer.

"Warehousing Provider" means Lineage UK Warehousing Limited or any of its Affiliates (excluding, for the avoidance of doubt, Lineage UK Transport Limited but including, without limitation, Lineage UK Services Limited) that may provide warehousing services to Customer.

1.2. These Conditions and any agreement to which they are annexed or into which they are incorporated by reference (together "the Contract") are the sole terms and conditions of the agreement between the Customer and the Provider, to the exclusion of any other terms or conditions put forward by the Customer. The Contract supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between the Customer and the Provider, whether written or oral, relating to its subject matter. Without prejudice to the foregoing, to the extent that any other terms and conditions are deemed to apply, the Contract shall take precedence over these other terms and conditions.

1.3. These Conditions can only be varied by agreement in writing signed by a director of the applicable Provider.

1.4. For the avoidance of doubt:

1.4.1. where the Contract is with the Warehousing Provider for warehousing services, Condition 6 shall not apply; and

1.4.2. where the Contract is with the Transportation Provider for Transportation Services, conditions 3, 4.9, 5.2 - 5.4 and 5.6 - 5.9 shall not apply.

1.5. The Provider may at its sole discretion engage the services of a third party to fulfil the portions of the Contract which the party has been engaged to perform in whole or in part and may transfer at its own expense any Goods between or within cold stores.

1.5. Any notice or other communication to be given or sent by the Provider, to the Customer may be given or sent, if posted by pre-paid first-class letter to the last known address of the Customer or if sent by facsimile to a published facsimile number for the Customer. If sent by post the notice or other communication shall be deemed to have been received on the second business day following posting and in the case of facsimile at the time of transmission.

#### 2. General

2.1. On delivery to the custody of the Provider the Customer warrants that it is either the owner of the Goods or is authorised by the owner of the Goods to accept these Conditions on behalf of the owner.

2.2. Goods shall be presented by the Customer in good and wholesome condition and in the form and at such temperature as to comply with the terms and conditions of the Contract and the Regulations. The Goods shall be accompanied by written information concerning any special treatment necessitated by the nature or condition of the Goods and/or any statutory duties specific to the Goods with which the Provider may need to comply and/or as may otherwise be required by the Customer provided that the Provider shall only be obliged to comply with such requirement if the Provider expressly agreed to adopt such special treatment in writing before delivery of the Goods to the custody of the Provider.

#### 3. Delivery into and removal from Storage

3.1. Goods presented for storage shall be:

- 3.1.1. on four-way entry pallets (1000mm x 1200mm) in good condition ("Standard Pallets") and complying with Chep equivalent standards.
- 3.1.2. (subject always to the Warehousing Provider's prior written agreement) on standard European pallets (1000mm x 800mm) in good condition ("European pallets");
- 3.1.3. at a temperature of no warmer than the Maximum Temperature;
- 3.1.4. packed and labelled in a way which enables them to be easily separated from other similar goods if the Customer so requires;
- 3.1.5. packed in a way which enables most economic use to be made of storage space and marked clearly as to pack size, product description, name of customer, brand and best before date;
- 3.1.6. of a height including pallet not exceeding 1675mm; and
- 3.1.7. securely and properly packed and in such condition as not to cause damage or injury or the likelihood of damage or injury to any person, to the property of the Warehousing Provider or to any other goods by whatever reason.

3.2. In the event that the Customer shall fail to comply with any of the requirements of Condition 3.1 above, the Warehousing Provider shall be entitled at its discretion to (i) refuse to accept the Goods

for storage or (ii) accept the Goods for storage and make an additional charge to the Customer in accordance with the Warehousing Provider's standard charging structure from time to time.

3.3. Although undertaking no duty to do so, the Warehousing Provider may examine Goods when they are presented and at any other time and for this purpose may break bulk and open packages.

3.4. All weights are given without warranty or obligation as to correctness.

3.5. Save as may be separately agreed by the Warehousing Provider in writing, stock record details will not be given by the Warehousing Provider in writing other than those issued on the Warehousing Provider's receipt note, despatch note, and invoice and the Warehousing Provider does not maintain stock records for the benefit of Customers. The Customer is accordingly strongly recommended to keep up-to-date records of his own stock. Upon request the Warehousing Provider will use its reasonable endeavours to provide information on pallet numbers in storage from its own computer data free of charge and without liability on its part. If the Customer requires a physical check of pallets this will be subject to the specific agreement of the Warehousing Provider and a separate charge will be made.

3.6. The Warehousing Provider shall store the Goods at a temperature of no warmer than the Maximum Temperature.

3.7. Goods which in the opinion of the Warehousing Provider are not in a good and wholesome condition or which are unsaleable or might cause damage to or affect the saleability of other Goods may be removed at any time by the Warehousing Provider at the Customer's expense without notice. The Warehousing Provider may at its option and at the Customer's expense, and without liability on the Warehousing Provider arrange for destruction, storage or other disposal of such Goods or procure their delivery to the Customer on giving 24 hours' notice.

3.8. Receiving and despatching of Goods are subject to prior notification in accordance with the Warehousing Provider's booking procedures. The Warehousing Provider shall use its reasonable endeavours to comply with the Customer's requirements for receipt and despatch of Goods but shall not be liable for any delay in receipt or despatch of Goods.

3.9. The Warehousing Provider may at any time give 7 days' notice to the Customer requiring Customer to remove the Goods. If the Goods are not so removed the Warehousing Provider shall be entitled at its option to (i) sell the Goods and deduct from the proceeds all outstanding charges, interest thereon and the costs of disposal; (ii) deliver (or cause to be delivered) the Goods to the Customer and charge the Customer therefor in accordance with the Warehousing Provider's standard charging structure from time to time; or (iii) arrange for the destruction storage or other disposal of the Goods.

#### 4. Charges

4.1. All prices and other terms quoted are on the basis that the Goods are as described by the Customer, in particular as to their nature, weight, quantity, condition and dimension and are presented in accordance with these Conditions. If Goods do not comply with these requirements the Provider may either reject them or retain them subject to an additional charge. The Provider also reserves the right to refuse to accept Goods for any other reason.

4.2. Unless otherwise agreed, charges are for handling Goods only between 8.00 a.m. and 5.00 p.m. Monday to Friday inclusive. If the Provider agrees to handle Goods outside these hours the full additional cost of the labour incurred will be charged.

4.3. Storage charges unless otherwise agreed are per pallet. These are incurred on a weekly basis and are payable both for the day of receipt and the day of removal of the Goods. Part weeks are charged at the full weekly rate. A charging week commences at 0.01 a.m. Sunday and ends at midnight the following Saturday. Subject always to the provisions of Condition 4.9 payment of all charges incurred must be made in accordance with the credit terms agreed in writing by the Provider provided that if no such terms have been agreed in writing such payment must be made within 7 days of the Provider's invoice hereof and always provided that the Provider shall not release any Goods from storage unless and until all storage charges accrued in respect of such Goods up to the date of release have been paid in full. Credit terms may be varied at any time by the Provider provided that if a credit period has been agreed in writing by the Provider, the time in which the Customer is to pay the Provider's invoices is of the essence of the contract. Value Added Tax will be charged as an addition to all invoices at the prevailing rate.

4.4. The Provider may vary its charges at any time by giving seven days' written notice to the Customer. If the Customer is in arrears with payment of charges, the Provider may change any agreed rate for storage which is below its standard rate to its standard rate with effect from notice being given to the Customer accordingly.

4.5. Interest at five per cent above the base rate of Barclays Bank plc from time to time calculated on a daily basis shall be payable on all overdue accounts until payment in full is made.

4.6. All charges shall be paid in full without any set-off and notwithstanding any claim or counterclaim by the Customer against the Provider whether arising under contract or otherwise.

4.7. The Customer will be charged with any expenses incurred by the Provider in complying with the Regulations or in complying with any other statutory or regulatory duties imposed upon it from time to time in relation to the Goods.

4.8. The Provider will, subject as provided below, transfer the Goods from the account of the Customer to the account of any other person ("the transferee") on receipt of a transferee accepting that he is bound by these Conditions as if he were the Customer subject to the Provider reserving the right to request payment of all charges accrued or accruing on the Goods up to the requested transfer date and subject further to the Provider being satisfied with the status of the transferee. The charges to the transferee will not necessarily be at the same rate as the charges to the transferor.

4.9. The Provider shall have a general lien on all Goods under its control for the payment of all debts accrued or accruing on any account from the Customer to the Provider or its Affiliate in connection with any warehousing and/or transportation services. If such lien is not satisfied after seven days' written notice has been given to the Customer in accordance with Condition 1.5 the Goods or any part of them may be sold to defray the lien and all expenses incurred by the Provider in retaining the Goods and enforcing or attempting to enforce the lien.

## 5. Obligations and liability in respect of Goods

- 5.1. A shrinkage allowance of 0.2% of the despatch volume will exist in the aggregate between the warehousing and/or transportation services provided by Warehousing Provider and Transportation Provider, as applicable. Damages or loss in excess of this figure will be invoiced subject to the limits set forth in (A) this Condition 5 with respect to claims arising in connection with warehousing services, and (B) Condition 6 with respect to claims arising from transportation services. This shrinkage allowance will include any misplaced or lost stock that is subsequently found but cannot be sold at normal prices due to reduced shelf life. Any stock loss over and above the shrinkage allowance will be invoiced subject to the limits set forth in (A) this Condition 5 with respect to claims arising in connection with warehousing services and (B) Condition 6 with respect to claims arising from transportation services.
- 5.2. The Warehousing Provider's liability in respect of claims for physical loss, mis delivery, damage or deterioration of or to or in connection with the Goods, however arising, shall in all circumstances be limited to the lesser of:
- 5.2.1. the value of the goods actually lost, misdelivered, damaged or deteriorated; or
- 5.2.2. the cost of repairing or restoring any damage to or deterioration of the Goods; or
- 5.2.3. a sum calculated at the rate of £100 per tonne on the gross weight of the goods actually lost, misdelivered, damaged or deteriorated;
- and the value of the goods actually lost, misdelivered, damaged or deteriorated shall be taken to be the replacement cost thereof to the Customer at the date of delivery to the custody of the Warehousing Provider, and in all cases shall be taken to include any customs and excise duties or taxes payable in respect of those goods PROVIDED THAT:
- 5.2.4. in the case of loss, mis delivery, damage or deterioration of or to a part only of the Goods the weight to be taken into consideration in determining the amount to which the Warehousing Provider's liability is limited shall be only the nett weight of that part regardless of whether the loss, mis delivery damage or deterioration affects the value of other parts of the Goods;
- 5.2.5. nothing in this Condition 5.2 shall limit the liability of the Warehousing Provider to less than the sum of £10;
- 5.2.6. the Warehousing Provider shall be entitled to proof of weight and value of the whole of the Goods and of any part thereof lost, misdelivered, damaged or deteriorated.
- 5.3. The Warehousing Provider's liability in respect of claims for any other loss whatsoever (including indirect special or consequential loss or damage) whether for loss of profit or otherwise and loss of market, and howsoever arising in connection with the Goods, shall not exceed the amount of the aggregate amount of any charges under the relevant Contract in respect of the Goods or the amount of the Customer's proved loss, whichever is the lesser unless:
- (i) At the time of entering into the Contract with the Warehousing Provider in relation to the Goods the Customer declares to the Provider in writing a special interest in the storage in the case of loss or damage and agrees in writing to pay a surcharge calculated on the amount of that interest; and
- (ii) Prior to the commencement of the relevant services the Customer has delivered to the Warehousing Provider specific written confirmation of the special interest and amount of the interest.
- 5.4. All claims for damage to or loss or failure to produce, or failure to deliver any Goods shall be made in writing to the Warehousing Provider within 7 days after release of the Goods alleged to be damaged or in the case of Goods alleged to be lost or which the Warehousing Provider fails to produce or deliver, within 7 days after the time when the Goods should in the ordinary course of events have been released or delivered and the Warehousing Provider shall be under no such liability unless such claim is made within the time stipulated PROVIDED THAT if the Customer proves that:
- (i) it was not reasonably possible for the Customer to advise the Warehousing Provider or make a claim in writing within the time limit applicable; and
- (ii) such advice or claim was given or made within a reasonable time;
- the Warehousing Provider shall not have the benefit of the exclusion of liability afforded by this Condition.
- 5.5. The Provider shall in any event be discharged from all liability whatsoever and howsoever arising in respect of the Goods unless suit is brought within one year of the date when the Goods were released or delivered or should in the ordinary course of events have been released or delivered.
- 5.6. Save as provided in Conditions 5.2 and 5.3 all other liability of the Warehousing Provider to the Customer whether in contract, tort or otherwise and whether express or implied shall be expressly excluded to the extent permitted by law.
- 5.7. The Customer shall indemnify the Warehousing Provider against all claims, costs, damages and expenses caused by or arising from the condition of the Goods or any breach of any of the provisions of Condition 3.1.1 to 3.1.7 or the Goods failing to comply with the Regulations caused otherwise than by the negligence of the Warehousing Provider, its servants or agents acting in the course of their employment.
- 5.8. If the Warehousing Provider agrees to arrange for other persons to perform the Customer ancillary services which have not been agreed to be provided by the Warehousing Provider, it will do so without becoming in any way responsible to the Customer.
- 5.9. The Warehousing Provider shall not be liable for any failure to comply with the terms of its Contract with the Customer caused by any event beyond its reasonable control including, but without limitation, fire, floods, power failure, Acts of God, strike, lock-out and inclement weather.
- ## 6. Transport
- 6.1. If the Transportation Provider agrees to provide any transportation services, including, but not limited to, delivering the Goods from storage or collecting Goods for storage, the Conditions of Carriage 2009 of the Road Haulage Association Limited (to the extent not inconsistent herewith) and/or the Convention on the Contract for the International Carriage of Goods by Road shall apply (if appropriate) and shall be deemed to be incorporated herein. A copy of such conditions/convention is available for inspection upon request at the Transportation Provider's offices.
- 6.2. The Transportation Provider reserves the right to search the vehicles and drivers delivering and unlifting Goods and to take any steps that are necessary in the interests of security.

## 7. Law and jurisdiction

The Contract shall be governed by English law and the English Courts shall have exclusive jurisdiction in any dispute between the Provider and the Customer.

## 8. Assignment and Transfer

The Provider shall be entitled, at its sole discretion and in whole or in part, to sub-contract, assign or otherwise dispose of its rights and/or transfer its obligations (including by way of novation) to any of its Affiliates and may affect any such sub-contracting, assignment or disposal and/or transfer its obligations (including by way of novation) by entering into such documentation with any Affiliate as they see fit without the requirement of the Customer to sign any such documentation. In the event of any such sub-contracting, transfer, novation and/or assignment, in whole or in part, to any such Affiliate, such Affiliates may enforce this agreement and the Provider may continue to collect and receive all or any portion of the amounts payable by the Customer or any of its Affiliates to such Affiliate-subcontractor/ transferee/assignee under, or in connection with, this agreement, as agent for and on behalf of such Affiliate-sub-contractor/transferee/assignee of the Provider.

## 9. No Joint and Several Liability.

Notwithstanding anything to the contrary contained herein, the Customer's arrangements in respect of warehousing services and transportation services shall form separate contracts with the Warehousing Provider and the Transportation Provider respectively and in no event shall either Provider have any liability for any acts or omissions of the other Provider.