



ACS&T Logistics Terms and Conditions of Business (Warehouse Services)

In this Agreement “ACS&T” means Associated Cold Stores & Transport Limited whose registered office is at Linton Park, Linton, Near Maidstone, Kent ME17 4AB and “the Customer” means that individual, business or company who contracts with ACS&T to receive storage, handling and related warehousing services (“the Services”) from ACS&T in accordance with these terms and conditions.

This Agreement may only be varied in writing and on the authority of a director of Associated Cold Stores and Transport Limited.

1. AUTHORITY OF THE CUSTOMER

By receiving the Services from ACS&T the Customer agrees that either: -

- 1.1 any goods (which expression includes any packaging of goods and any pallets) (“the Goods”) in respect of which the Services are provided are owned by the Customer; or
- 1.2 where Goods are not owned by the Customer these terms are entered into by the Customer on behalf of the owner of the Goods and the Customer has the authority to bind the owner to these terms.

2. LIABILITY OF ACS&T IN PROVIDING THE SERVICES

- 2.1 ACS&T is only responsible for any loss or deterioration of or damage to the Goods if the same has arisen due to the negligent or wilful act or default of ACS&T, provided that ACS&T’s liability shall in no case exceed a total of £250 per tonne weight of that part of the Goods in respect of which a claim arises or the value of the Goods whichever is the lesser. The value of the Goods shall be the replacement cost value of the Goods at the commencement of the Services together with any Customs and Excise duties or taxes payable in respect of those Goods.
- 2.2 The Customer recognises that the price it pays for the Services takes into account ACS&T’s limitation of liability in Clause 2.1 above. The Customer may elect, by written notice to ACS&T, to increase ACS&T’s liability for loss or deterioration of or damage to the Goods if the same has arisen due to the negligent or wilful act or default of ACS&T under 2.1 above. Any notice given shall specify (i) the nature and value of the Goods per tonne including any duty and taxes paid or payable on the Goods; and (ii) the limit of liability required by the Customer per tonne if different from the value stated in (i) and; (iii) the maximum value of the Goods held or to be held at any one time on behalf of the Customer; and (iv) a date from which ACS&T’s revised liability limit is to apply such date being at least 10 clear working days from the date of the notice.
- 2.3 ACS&T’s liability under Clause 2.2 is conditional upon (i) ACS&T’s ability to place insurance in respect of its liability for the Goods; and (ii) receipt from the Customer of an additional sum specified by ACS&T, acting reasonably, to cover the cost of ACS&T insuring its additional liability.
- 2.4 ACS&T shall not be liable for any claim unless
 - I. it has been notified in writing by the Customer either within 10 working days of the existence of the claim coming to the Customer’s knowledge or the Goods leaving ACS&T’s warehouse, whichever is the earlier, provided that ACS&T shall not have the benefit of this time limit if the Customer can prove it was not reasonably possible for the Customer to advise ACS&T within the time limit and ACS&T was advised within a reasonable time; and
 - II. any claim notified in accordance with clause 2.4(I) above shall (if not previously satisfied, settled or withdrawn) be deemed to have been irrevocably withdrawn 12 months after the date on which the Goods left ACS&T’s warehouse unless on or before that date, legal proceedings have been issued and served on ACS&T in respect of the relevant claim; and, additionally in the case of a claim for operational loss or damage to stock only,
 - III. the average service level for stock accuracy per case despatched for the 90 day period ending on the date of the claim (“Average Service Level”) falls below 99% where such service level for stock accuracy is calculated as being the number of cases despatched which are not damaged or lost expressed as a percentage of the total number of cases despatched as determined from the records of ACS&T which shall be made available to the Customer upon written request.
 - IV. PROVIDED ALWAYS THAT in the case of a claim for operation loss or damage to stock which satisfies the conditions for a valid claim set out in sub clauses (I), (II) and (III) above, the Customer may only make a claim for the amount by which the Average Service Level falls below the service level of 99% subject always to the limitation of £250 per tonne set out in clause 2.1 above.
- 2.5 Where the Customer notifies ACS&T of any potential claim ACS&T shall be entitled to inspect the relevant Goods immediately if they are on ACS&T’s premises or on 24 hours notice if the Goods have been removed from the premises.
- 2.6 Notwithstanding any other provision in this Agreement, ACS&T shall not be liable to the Customer in contract, tort (including negligence), misrepresentation or otherwise for:
 - I. any economic loss of any kind, (including but not limited to loss of profit, business, contracts, revenue or anticipated savings); or
 - II. any damage to the Customer’s reputation or goodwill; or
 - III. any special, indirect or consequential loss;
 - IV. whatsoever and howsoever caused which arises out of or in connection with the provision of the Services by ACS&T.
- 2.7 Save as set out in Clause 2.1 ACS&T shall not be liable to the Customer for any other direct loss or damage.
- 2.8 The Customer shall indemnify ACS&T in respect of any claim brought against ACS&T by or on behalf of HM Customs and Excise in respect of excise and customs duties, fines or penalties or any other costs, expenses (including legal expenses) liabilities or obligations arising by reference to any such claim where such claim arises in respect of the storage or removal of Goods at ACS&T’s warehouse or any other location where the Goods are held in bonded storage by ACS&T on behalf of the Customer.
- 2.9 The Customer shall indemnify ACS&T against any costs, damages, claims, liabilities and expenses resulting from any claim by any third party arising from or in connection with the Services which is in excess of ACS&T’s liability to the Customer under this Agreement.

3. CUSTOMER’S OBLIGATIONS

3.1 Information and Management

- I. It will provide all necessary information and advices in a timely manner so as to enable the Company to comply with this Agreement. This will include the requirement that notification of any Services required must be provided within agreed time frames
- II. It will not rely on the records maintained by the Company as being the only such record.
- III. It will be solely responsible for the management of their supply chain including but not restricted to best before dates, shelf life, stock rotation and obsolescence.

3.2 Vehicles & Equipment

- I. That any vehicle in which Goods are delivered to the Company is roadworthy, internally clean, untainted and free from debris.
- II. That any Goods to be offloaded are easily accessible and without requiring other goods to be moved.
- III. It will provide, or arrange for, all necessary equipment for the unloading of Company vehicles at the point of delivery.

3.3 Goods and Packing

The Customer acknowledges and agrees that it is responsible for ensuring that on delivery of Goods to ACS&T: -

- I. Goods presented are securely and properly packed in compliance with the law, in a wholesome condition, in a manner suitable and adequate to protect the contents during storage and handling and in such a condition as not to cause damage or injury to any person or property;
- II. Goods are presented on standard (1000mm x 1200mm) 4 way pallets (“Standard Pallets”), such pallets to be in good condition and state of repair;
- III. Goods are adequately secured on the pallet and not overhanging the pallet edge; and
- IV. Goods are marked in such a way that enables them to be easily distinguished from other goods and which shows product codes, qualities and type of Goods; and
- V. Goods are in a condition and at a temperature which complies with the law and are at a temperature -18°C or colder if intended for cold storage or +2°C or colder if intended for chilled storage; and
- VI. Goods are accompanied by written information specifying any special precautions necessitated by the nature or condition of the Goods and/or any statutory duties specific to the Goods with which ACS&T is required to comply.
- VII. That all pallets or other containers are of a standard size, contain only one type of Goods and are within the temperature tolerances set out in this Agreement. Any product to be consolidated with other products should be packed so as to withstand being placed at any level of the consolidated pallet.

3.4 The Customer undertakes:

- I. except where ACS&T is liable in accordance with Clause 2, to pay all duties and taxes in relation to the Goods and to reimburse ACS&T for any such duties and taxes paid by ACS&T together with a reasonable sum in respect of ACS&T’s expenses in respect of such taxes and duties; and
- II. where Goods are loaded onto trailers and/or vehicles by the Customer or its contractors then the Customer warrants that such trailers or vehicles will be loaded safely; and
- III. its employees, agents and contractors comply with ACS&T’s site rules and regulations whilst at ACS&T’s premises and in particular comply with ‘no smoking’ rules.

3.5 If the Customer breaches any of its obligations under this Clause 3 it shall be liable for and indemnify ACS&T against any claims, costs and expenses incurred by ACS&T.

3.6 The Customer shall indemnify ACS&T against any claims made against it by any HM Customs and Excise, the Inland Revenue or any other governmental agency in connection with any Goods assigned in Bond.

4. CHARGES

- 4.1 In consideration of the provision of Services the Customer shall pay the charges calculated in accordance with the terms contained in the attachment hereto or as stated in any other document provided by ACS&T to the Customer without any deduction or set off whatsoever.
- 4.2 In respect of storage charges part weeks are charged at full weekly rates and invoices are payable weekly or monthly in arrears, as notified by ACS&T. Charges are incurred on a Sunday to Saturday calendar weekly basis and are payable for both the day of receipt and the day of removal of the Goods.

- 4.3 ACS&T's charges cover handling of Goods only between 8.00 a.m. and 4.30. p.m. Monday to Friday inclusive. Additional charges are payable for any work carried out outside these hours.
- 4.4 ACS&T's charges may be subject to adjustment at any time for increases in the cost of fuel and electricity, for extraordinary items (including but not limited to legislative changes) and/or significant increases or decreases in volume and/or significant changes in profile or storage characteristics.
- 4.5 ACS&T shall be entitled to vary its charges at any time by giving a minimum of 28 days' written notice to the Customer.
- 4.6 All charges are exclusive of value added tax which shall be paid by the Customer at the rate and in the manner prescribed by law.
- 4.7 Unless otherwise agreed in writing with the Customer and subject to Clause 9.2 all charges are payable within 30 days of date of invoice. ACS&T reserves the right to charge interest at 8% above the Bank of England base rate from time to time, calculated on a daily basis, on all amounts not received by the due date for payment.
- 4.8 The Customer agrees that ACS&T will have a general lien on the Goods for payment of all monies due to ACS&T either in respect of the Services or outstanding from the Customer on any other account due to ACS&T. In addition, ACS&T shall have the right to retain Goods to the value of any invoice issued not yet paid.
- 4.9 ACS&T shall be entitled to continue to charge the Customer for any charges accruing during the exercise of its lien.
- 4.10 ACS&T reserves the right to move any Goods which it holds under lien to alternative storage provided it shall use reasonable endeavours to keep Goods safe.
- 4.11 Where ACS&T elects to exercise its right of lien in accordance with Clause 4.8, it shall have the right to dispose of the Goods to satisfy the debt provided that ACS&T first gives the Customer 7 days' written notice in respect of non-perishable Goods and 24 hours written notice in the case of perishable Goods. ACS&T shall be entitled to use any monies realised to satisfy the debt and to pay any reasonable costs of sale or disposal.
- 4.12 If the Customer fails to make any payment due on the due date, without prejudice to ACS&T's rights under this Agreement or any other right or remedy available, ACS&T shall be entitled to suspend any further performance of any of the Services upon giving to the Customer not less than 7 days notice in writing of its intention to do so.
- 4.13 Where ACS&T acts in accordance with this Agreement or performs additional work as instructed by the Customer then it is entitled to raise a reasonable charge, whether or not the Customer actually takes advantage of the work requested.

5. ACS&T'S RIGHTS

- 5.1 ACS&T reserves the right to search the vehicles and drivers delivering and unlifting Goods to and from sites operated by ACS&T and to take any steps that are necessary in the interests of security (including refusing to accept Goods).
- 5.2 ACS&T reserves the right to refuse to accept Goods that are not presented in accordance with the Customer's obligations or, in ACS&T's absolute discretion, to accept such Goods for an additional charge.
- 5.3 Where Goods are presented on Standard Pallets ACS&T is under no obligation to issue empty pallets in return. If Goods are received on CHEP pallets (or an equivalent pallet hire scheme) unless a separate written agreement has been entered into between the Customer and ACS&T these will be treated as one way pallets.
- 5.4 ACS&T may sub-contract all or any part of the Services to a third party.
- 5.5 ACS&T may provide the Services itself but from a location different to the one initially agreed by the Customer, provided that such location is not materially less convenient for the Customer.
- 5.6 ACS&T is entitled to rely on the fact that the Customer has fulfilled all of its obligations under this Agreement.
- 5.7 ACS&T will perform its duties with a reasonable degree of care and skill in line with the normal expectations of an operator in the frozen food storage and distribution industry in the UK. This will include the manner in which the Goods are stored, handled, controlled and recorded and their delivery managed.
- 5.8 ACS&T will check all Goods received for accuracy and condition and at its discretion, and without liability, it may break open Goods so as to enable it to ascertain their condition. It will place all damaged and returned Goods on hold unless otherwise instructed by the Customer. Such items will be put a separate pallet for each product line and will be charged accordingly if this is not the fault of ACS&T. It may refuse to accept or put into quarantine any Goods which it believes to be infested or to pose a similar threat to health or to other products. It may also serve Notice upon the Customer to remove Goods which are in an unfit condition.

6. INSURANCE

ACS&T does not insure the Goods. The Customer is advised to make arrangements to obtain insurance cover against all insurable risks of loss of or damage to the Goods to their full insurance value.

7. FRUSTRATION OF CONTRACT

ACS&T shall be relieved of or be entitled to vary its contractual obligations to the extent that the performance of any such obligation is prevented or interfered with directly or indirectly by or in consequence of any failure by the Customer, storm, flood, fire, explosion, breakdown or failure of plant equipment or computer systems, shortage of supplies, riot, industrial dispute, labour disturbance or any cause beyond the reasonable control of ACS&T.

8. RIGHTS OF THIRD PARTIES

No third party shall have the benefit of these terms under the Contracts (Rights of Third Parties) Act 1999.

9. TERMINATION

- 9.1 Either party may terminate this Agreement on service of 28 days' notice upon the other.
- 9.2 Following service of a notice to terminate this Agreement the Customer shall pay for all services carried out during the period of notice in advance. Before final removal of Goods can proceed all charges must be paid in full.
- 9.3 On termination of this Agreement, and subject to ACS&T's continuing right of lien in respect of unpaid monies, the Customer shall remove the Goods forthwith from ACS&T's premises. If the Customer fails to remove such Goods within 7 days of a written request by ACS&T then ACS&T shall have the right to sell or dispose of the Goods as it feels appropriate and retain any proceeds. Any costs of sale or disposal shall be a debt due from the Customer to ACS&T.

10. EMPLOYEES

- 10.1 The Customer undertakes to indemnify ACS&T and its sub-contractors and keep ACS&T and its sub-contractors indemnified against all claims, costs, demands, liabilities, penalties and expenses (including without limitation legal expenses) arising from any claim (including without limitation any claims for statutory redundancy payment or contractual notice monies, compensation for breach of contract, wrongful or unfair dismissal, re-instatement or sexual, disability or racial discrimination) made against ACS&T and/or its sub-contractor by or on behalf of any employee or former employee of the Customer or any contractor of the Customer arising by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006 at any time on commencement of, during or after termination of the provision of Services.
- 10.2 The Customer hereby undertakes with ACS&T that (save with the prior written consent of ACS&T) it will not either during the continuance in force of this Agreement or within twelve months after the date of termination of this Agreement either on its own account or for any other person, firm or company, solicit, interfere with or endeavour to entice away any manager or other senior employee of ACS&T or any such manager or senior employee of any company associated with ACS&T with whom the Customer has dealt in relation to the Services or any ancillary arrangements to the Services.

11. NOTICES

Any notice served shall be in writing and shall be deemed validly served if sent to the registered office of the other party or in the case of the Customer to the last known address of the Customer by: -

- I. 'Signed for', registered or recorded post and shall be deemed served 48 hours after posting; or
- II. By facsimile and shall be deemed served on the date of correct transmission.
- III. No other method of service shall be valid.

12. ASSIGNMENT

- 12.1 The Customer may not assign this Agreement.
- 12.2 ACS&T may assign this Agreement to any other member of its group of companies or otherwise with the prior written consent of the Customer, such consent not to be unreasonably withheld or delayed.

13. SEVERABILITY

If any provision of this Agreement is held to be void or unenforceable in whole or in part, the other provisions of this Agreement and the remainder of the affected provisions shall continue to be valid.

14. SOLE CONDITIONS

- 14.1 This Agreement shall form the entire agreement between ACS&T and the Customer unless this Agreement is annexed to a contract signed by both parties.
- 14.2 If the Customer's documentation contains terms or conditions additional to or at variance with this Agreement every such additional or varying term or condition shall be of no effect.

15. GOVERNING LAW

This Agreement shall be construed in accordance with and governed by English law and shall be subject to the exclusive jurisdiction of the English courts except where Services are performed wholly in Scotland in which case they will be governed by the laws of Scotland and subject to the exclusive jurisdiction of the Scottish courts.

16. OTHER CONDITIONS OF BUSINESS

This Agreement relates only to the provision of storage, handling and related warehousing services by ACS&T. Any other services provided are subject to the relevant terms and conditions which include: -

Service Provided :	Relevant Terms and Conditions:
Carriage of goods over public roads.	The Road Haulage Association Limited Conditions of Carriage 2009