

# **STERLING ART SERVICES** **TERMS AND CONDITIONS OF TRADING**

The Customer's attention is drawn to these Terms and Conditions of trading, which include clauses that exclude or limit Sterling Art Service's liability (clauses 6 and 15); impose obligations upon the Customer (clauses 2 and 7); and define the time limits for bringing a claim (clause 8).

## 1. GENERAL

1.1 In these Terms and Conditions, the following terms shall have the meaning assigned to them below:

**"Collection"** or **"Collection services"** means the carriage of Goods (including loading and unloading) from the place of collection, as advised by the Customer in writing, to SAS's premises for the sole purpose of Packing.

**"Customer"** means any person at whose request or on whose behalf SAS performs the Services, or undertakes any business or provides advice, information or other services.

**"Delivery"** or **"Delivery services"** means the carriage of Goods (including loading and unloading) from the place of collection to the place of delivery, as advised by or agreed with the Customer in writing, and includes any intermediate storage and the additional services and liberties set out at clauses 5.2.1 to 5.2.4. Provided that Delivery does not include Collection or any carriage or storage associated with the performance of the Collection services. Subject to clause 5.2, SAS does not contract to perform the Delivery, but arranges Delivery solely as the Customer's agent.

**"Goods"** mean the property, items, products or works of art in respect of which the Services are to be performed.

**"Packing"** or **"Packing services"** means the preparation of Goods for Delivery, which may include (where appropriate) the stowage of Goods in or on a Transport Unit.

**"SAS"** means Sterling Art Services.

**"Services"** mean (i) Packing; and (ii) Collection; and (iii) arranging Delivery as agent; and (iv) Delivery, but only if agreed by SAS in writing pursuant to clause 5.2; and (v) such other services as may be agreed between the parties in writing from time to time.

**"Transport Unit"** means packing case, pallet, container, trailer, flat, tank or any other device used for or in connection with the carriage of Goods by land, sea, rail or air.

1.2 All business is transacted and all Services are undertaken and performed by SAS in accordance with these Terms and Conditions. No servant or agent of SAS or other party or person has the authority to alter, amend or qualify these Terms and Conditions.

1.3 All contracts entered into by SAS shall be deemed to have been entered into at the office of SAS and shall be construed and governed by the Laws of England.

1.4 If, at any time, any individual term or clause is rendered illegal, invalid, void or unenforceable (in whole or in part) by statute or international Convention to which the United Kingdom is a signatory or by an Arbitrator or Court of Law of competent jurisdiction, this shall not affect or impair the legality, validity or enforceability of the remainder of these Terms and Conditions, which shall continue to have full effect.

1.5 SAS is not a common carrier and the rights and liabilities of the parties shall be governed strictly in accordance with these Terms and Conditions.

1.6 Headings are inserted for convenience only and shall not affect the construction of these Terms and Conditions.

1.7 Any reference to the “**parties**” means the parties to these Terms and Conditions and any reference to a “party” shall mean either of them as the context may require.

## 2. PARTIES

2.1 SAS may, in its absolute discretion, engage agents or sub-contractors to perform all or any part of the Services and SAS contracts with the Customer for itself and on behalf of such agents or sub-contractors all of whom shall have the benefit of these Terms and Conditions and who shall be under no liability to the Customer greater than or in addition to that of SAS under these Terms and Conditions and the Customer warrants that no claim shall be made against such agent or sub-contractor in addition to or in excess of the limitation or exclusions of liability as set out in these Terms and Conditions.

2.2 The Customer warrants that he is either the owner of the Goods or the authorised agent of the owner of the Goods and the Customer further warrants that he accepts these Terms and Conditions not only for himself, but also as agent for and on behalf of the owner of the Goods. The Customer shall fully indemnify SAS against any claims, demands, liabilities (whether arising in contract, tort, duty or otherwise), damages, losses (including direct, indirect or consequential losses), costs and expenses (including legal costs and expenses on an indemnity basis) made against or incurred by SAS by virtue of a breach of this clause 2.2 by the Customer.

2.3 The Customer warrants that no claim shall be made against any director, servant or employee of SAS arising out of or in connection with the performance of the Services or otherwise in respect of these Terms and Conditions. In the event that such a claim is made against such director, servant or employee of SAS then the Customer agrees to fully indemnify SAS against all consequences thereof.

## 3. CHARGES

3.1 Any charges quoted by SAS whether orally or in writing may be amended by SAS in its absolute discretion:-

3.1.1 at any time before any such quotation is accepted by the Customer; or

3.1.2 In the event that the performance of the Services has not be completed within a

period of 30 days from the date of collection of the Goods by SAS or its agent or subcontractor, but only in the event that such delay is caused by an act or omission of the Customer, his servants or agents; or

3.1.3 if the charges are affected by changes in taxation, duty, fuel prices, freight rates or any other reason beyond the reasonable control of SAS; or

3.1.4 in the event that (i) additional services are provided at the request of the Customer or (ii) the performance of the Services is delayed beyond the reasonable control of SAS or at the request of the customer; or

3.1.5 if the weight, quantity or cubic measurements of the Goods are greater than that which was disclosed by the Customer and relied upon by SAS in calculating the quotation. In the event that additional Goods are packed and/or carried then extra charges may be rendered by SAS and these Terms and Conditions shall apply to the provision of all Services in respect of such additional Goods.

3.2 The Customer agrees to pay all additional charges as soon as they become due.

3.3 SAS shall be entitled to retain and be paid any brokerage, commission, allowances and other remuneration customarily retained by or paid to a freight forwarder.

#### 4. PACKING:

4.1 At the request of the Customer in writing SAS will perform the Packing services and will pack the Goods for carriage by land, sea, rail or air, as appropriate. The choice of materials used to pack the Goods shall be made at the sole discretion of SAS.

#### 5. COLLECTION AND DELIVERY:

5.1 SAS will if requested by the Customer in writing perform the Collection services and will collect the Goods for Packing. Collection may be carried out by SAS, its servants or agents or sub-contractors and these Terms and Conditions shall apply to any Collection.

5.2 Unless expressly agreed in writing to the contrary, SAS will merely arrange Delivery as an agent of the Customer. In respect of the Delivery, the Customer hereby authorises SAS (acting as agent on behalf of the Customer) to enter into a contract with a third party carrier:-

5.2.1 To perform the Delivery services by any route or means or person.

5.2.2 for the storage, packing, trans-shipment, loading, unloading or handling of the Goods by any person at any place whether on shore or afloat and for any period of time.

5.2.3 for the carriage or storage of the Goods in or on a Transport Unit or with other goods of whatever nature.

5.2.4 To do any such acts as may in the reasonable opinion of SAS be necessary to enable the third party carrier to properly perform the Delivery services.

5.3 Where there is a choice of charges quoted by a carrier dependent upon the extent or degree of liability accepted by such carrier no declaration of value where optional will be

made by SAS except under special arrangements previously made in writing with the Customer. Furthermore, SAS shall be at liberty to enter into a contract with a third party carrier (as agent on behalf of the Customer) which incorporates the third party carrier's standard trading conditions and SAS shall have no liability whatsoever to the Customer by reason of having entered into any contract on behalf of the Customer whereby the extent or degree of the liability assumed by a third party carrier or other party is in any respect excluded or limited save where such contract is entered into contrary to specific instructions given by the Customer and accepted by SAS in writing.

5.4 Any Delivery services performed by SAS, as agreed in writing with the Customer pursuant to clause 5.2, shall be subject to these Terms and Conditions.

## 6. RESPONSIBILITIES AND LIABILITIES OF STERLING ART SERVICES:

### 6.1 Collection

6.1.1 SAS shall not be liable for any loss or damage to Goods whatsoever and howsoever arising during or in respect of the performance of the Collection services, unless such loss or damage is proven to have been caused by the negligence of SAS, its servants, agents or sub-contractors.

### 6.2 Packing

6.2.1 SAS shall not be liable for any loss or damage to Goods whatsoever and howsoever arising during or in respect of the performance of the Packing services, unless such loss or damage is proven to have been caused by the negligence of SAS its servants, agents or sub-contractors.

6.2.2 SAS shall not be liable for loss or damage to Goods arising out of any defect in or failure of any packing material or as a result of atmospheric or climatic conditions of whatsoever nature unless it is proved that such loss or damage arose directly out of the performance of the Packing services and SAS has been negligent in its choice or use of such packing materials.

### 6.3 Delivery

6.3.1 In accordance with clause 5.2 above SAS merely arranges the Delivery as an agent of the Customer and contracts with a third party carrier to perform the Delivery services. Subject to clause 6.4 below, SAS shall not be liable for any loss or damage to Goods whatsoever and howsoever arising during or in respect of the performance of the Delivery services unless such loss or damage is proved to have been caused directly by:

6.3.2 Any defect or failure of any packing material, subject to clauses 6.2.1 and 6.2.2; or

6.3.3 as a result of the negligence of SAS in its choice of third party carrier.

6.4 In the event that SAS performs the Delivery services (as agreed in writing with the Customer pursuant to clause 5.2) then SAS shall not be liable for any loss or damage to Goods whatsoever and howsoever arising during or in respect of the performance of the

Delivery services by SAS unless such loss or damage is proven to have been caused by the negligence of SAS, its servants, agents or sub-contractors.

#### 6.5 Limitation of Liability

Where loss or damage to Goods shall be proven to have been caused by the negligence of SAS, its servants, agents or sub-contractors in accordance with clauses 6.1 to 6.4 above, then the liability of SAS shall not exceed:-

6.5.1 The market value of the Goods at the time and place of collection; or

6.5.2 The repair or refurbishment costs; or

6.5.3 The sum of GBP5000.00 (five thousand pounds sterling);

Whichever shall be the lower.

6.6 In the event that any lost or damaged Goods from part of a pair or set, then the liability (if any) of SAS shall be calculated by reference to the individual or particular part or parts lost or damaged irrespective of any special value which such Goods may have had as part of a pair or set.

6.7 Any collection or delivery times or dates provided by SAS are estimates only and are provided solely as a guide to assist the Customer. The time for collection or delivery shall not be of the essence.

6.8 SAS shall not be liable in any circumstances whatsoever and howsoever arising (including, without limitation, the negligence or willful misconduct of SAS, its servants, agents or sub-contractors) for any delay, deviation, loss of profit, loss or market, loss of margin, loss of business, loss of contracts, or for any indirect or consequential loss or damage whatsoever.

6.9 Without prejudice to the generality of the foregoing and subject to clause 6.8, SAS's liability whatsoever and howsoever arising out of in connection with any obligation upon SAS to arrange insurance on behalf of the Customer pursuant to clause 12 shall not exceed:

6.9.1 The sum of GBP50,000 (fifty thousand pounds sterling) in the aggregate in any 1 (one) trading year commencing from the date of the agreement to arrange insurance pursuant to clause 12.2.

6.10 Save in respect of clauses 6.5, 6.8 and 6.9, the liability of SAS in respect of claims for any other loss whatsoever and howsoever arising shall not exceed (i) the amount of SAS's charges in respect of the Services to which the claim or claims relate or (ii) the amount of the Customer's proved loss; whichever is the lesser amount.

#### 7. RESPONSIBILITIES AND LIABILITIES OF THE CUSTOMER:

7.1 The Customer shall ensure that arrangements are made for the Customer, consignee or owner of the Goods to accept delivery of the Goods at the place of delivery. In the event that the Customer, consignee or owner of the Goods fail to take delivery at the appointed time and place where the third party carrier or SAS is entitled to deliver, SAS shall be entitled to

arrange for the storage of the Goods at the Customer's sole risk and expense and SAS's liability in respect of the Goods shall immediately cease. Additional costs, (including, without limitation, demurrage and storage charges) may be raised by SAS if the Goods cannot be delivered as aforesaid and the Customer hereby agrees to pay any such costs.

7.2 The Customer warrants:

7.2.1 That the description and particulars of the Goods and the collection/delivery address and all other instructions and information provided to the Customer are full and accurate; and

7.2.2 that any Transport Unit and equipment supplied by the Customer is fit for purpose and is clean and dry; and

7.2.3 that all Goods have been properly and sufficiently prepared, packed, stowed, labeled and marked, in the event that the Customer is responsible for such preparation or packing or stowage or labeling or marking of the Goods

7.3 Unless it has otherwise been agreed in writing by the parties it is the responsibility of the Customer to ensure that all Customs requirements have been complied with and all relevant documentation has been properly and accurately completed and submitted. In any dealings with any Customs authority, SAS is appointed and acts as a direct representative only of the Customer.

7.4 The Customer shall fully indemnify SAS against any claims, demands, liabilities (whether arising in contract, tort, duty or otherwise), damages, losses (including direct, indirect or consequential losses), costs and expenses (including legal costs and expenses on an indemnity basis) made against or incurred by SAS by virtue of a breach of clauses 7.1 to 7.3, and 7.6 to 7.8 by the Customer.

7.5 The Customer shall save harmless and fully indemnify SAS from and against any claims, demands, liabilities (whether in contract, tort, duty or otherwise), damages, losses (including direct, indirect or consequential losses), costs and expenses (including legal costs and expenses on an indemnity basis) in excess of the liability of SAS under these Terms and Conditions, regardless as to whether such claims, demands, liabilities, damages, losses, costs or expenses arise from or in connection with a breach of contract, tort, duty or otherwise by SAS, its servants, agents or subcontractors.

7.6 In the event that the Customer elects to procure his own insurance to cover the Goods or his interest in the Goods during the performance of the Services, then the Customer warrants that he will ensure that such insurance complies with Clause 12.5.

7.7 The Customer shall immediately provide security to SAS or to any other party designated by SAS in a form acceptable to SAS in the event that a liability arises in respect of a claim for general average in respect of the Goods.

7.8 SAS will not accept the following Goods for Collection, Packing or Delivery and the Customer warrants that he will not submit such Goods for Collection, Packing or Delivery:

7.8.1 Jewellery, watches, trinkets, precious stones, money, deeds, securities, stamps, coins (or similar collections of any such kind) or

7.8.2 Any dangerous or explosive article or substance or any article or substance likely to cause damage to other goods or any article or substance likely to encourage vermin or other pests or likely to cause infection or contamination. SAS may at its sole discretion remove, sell, destroy or otherwise dispose of any such article or substance without any liability whatsoever.

#### 8, TIME LIMIT FOR CLAIMS:

8.1 The Customer shall notify SAS in writing of any claim, arising out of or in connection with SAS's performance of the Services, within 14 (fourteen) days of the date upon which the Customer became aware or ought to have become aware of any event or occurrence alleged to give rise to such claim. Any claim not made or notified within this 14 (fourteen) day period shall be deemed to be waived and absolutely time barred, except where the Customer can show that it was impossible for it to comply with this time limit and that it notified SAS of the claim in writing as soon as it was reasonably possible for it to do so.

8.2 Notwithstanding clause 8.1 above, SAS shall, in any event, be discharged of all liability whatsoever and howsoever arising, unless court proceedings are commenced and written notice thereof is given by the Customer to SAS within 9 (nine) months from the date of the event or occurrence alleged to give rise to a cause of action against SAS.

8.3 Time shall be of the essence in respect of the making and notification of such claims and the commencement and notification of such proceedings.

#### 9. PAYMENT:

9.1 Unless it has otherwise been agreed in writing by the parties all monies due and payable to SAS by the Customer in respect of the performance of the Services shall be payable at the offices of SAS, as shall exist from time to time.

9.2 All monies due to SAS shall be paid in cash or as otherwise agreed by SAS, immediately upon receipt by the Customer of SAS's invoice.

9.3 The customer hereby expressly agrees that he shall not set off, deduct, withhold or defer payment of any invoice or other sums due to SAS against any claim or counterclaim, whether arising under these Terms and Conditions or otherwise.

9.4 SAS shall be entitled, in its sole discretion, to charge interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998, as amended, upon any sums which remain unpaid for a period of 7 (seven) days after an invoice has been rendered.

#### 10 LIENS AND POWER OF SALE:

10.1 SAS shall have a general lien upon all Goods and documents relating to Goods in its custody, control or possession for all sums due at any time from the Customer or owner of

the Goods on any account whatsoever, whether relating to Goods belonging to or services provided by or on behalf of the Customer or owner of the Goods. Storage charges shall continue to accrue on any Goods detained under lien and SAS shall be entitled to payment of such storage charges and any other expenses reasonably incurred during the period in which the Goods are detained under lien.

10.2 SAS may at any time upon giving 28 (twenty eight) days notice in writing to the Customer require the Customer to remove the Goods from the custody, control or possession of SAS and to pay all sums due to SAS. In the event that the Customer fails to remove the Goods and to pay all sums due to SAS, then SAS shall have the power to sell or otherwise dispose of the whole or part of the Goods without further notice and may apply the proceeds of sale towards payment of all sums due to SAS and any expenses incurred by reason of the said sale or disposal. Any surplus will be paid to the Customer without interest. SAS may in its absolute discretion sell all or any part of the Goods at any time once notice has been served and the prescribed time has expired.

#### 11. LAW AND JURISDICTION:

11.1 These Terms and Conditions and any contract to which they apply shall be governed by and construed in accordance with the laws of England and all disputes and claims arising out of or in connection with these Terms and Conditions or any contract to which they apply shall be referred to and determined exclusively by the English High Court.

#### 12. INSURANCE:

12.1 It is agreed by the Customer that SAS has no knowledge of the value of the Goods and it is further acknowledged by the Customer that SAS's charges are calculated on the premise that (i) insurance to cover the Customer's interest in the Goods during the performance of the Services is readily available and will be procured by the Customer and (ii) SAS is entitled to limit its liability pursuant to clause 6.

12.2 Upon receipt of express written instructions from the Customer, SAS will be at liberty to act as the Customer's agent to procure marine cargo insurance to cover the Customer's interest in the Goods during the performance of the Services, but strictly subject to the terms of such insurance policy, including without limitation, all warranties, conditions and exceptions. SAS are authorised and regulated by The Financial Services Authority for insurance mediation activity only.

12.3 It is the responsibility of the Customer to fully acquaint himself of the terms of any insurance policy procured by SAS on behalf of the Customer pursuant to clause 12.2, including without limitation all warranties, conditions and exceptions and the Customer is deemed to accept such policy terms. SAS will provide to the Customer an initial disclosure document that will provide details of the policy terms.

12.4 Unless otherwise expressly agreed in writing SAS shall not be under any obligation to procure or arrange separate insurance cover in respect of each consignment of Goods but shall be at liberty to declare the Goods and the relevant shipment on any open or general policy held by SAS.

12.5 In the event that the Customer declines to arrange insurance through the agency of SAS but instead procures his own insurance then the Customer warrants that he will ensure that the insurance policy names SAS as a co-assured and incorporates a term preventing insurers from pursuing any claim against SAS, whether under rights of subrogation, assignment or otherwise, and any failure on the part of the Customer to comply with this clause 12.5 shall constitute a breach of these Terms and Conditions and SAS shall be relieved of all liability for any loss or damage to Goods whatsoever and howsoever arising.

### 13. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT

13.1 A person who is not a party to these Terms and Conditions has no rights under the Contracts (Right of Third Parties) Act 1999 to enforce any term of these Terms and Conditions, but this does not affect any right or remedy of a third party available other than under the Act.

### 14. WAIVER

14.1 The failure or delay by either party in exercising any right, power or remedy of that party under these Terms and Conditions shall not in any circumstances impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise by either party of any right, power or remedy under these Terms and Conditions shall not in any circumstances preclude any other or further exercise of it or the exercise of any other right, power or remedy. Any waiver of a breach of, or default under, any of the terms of these Terms and Conditions shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of these Terms and Conditions.

### 15. FORCE MAJEURE

15.1 SAS shall not be liable in the event that the non performance of part performance of any of its obligations under these Terms and Conditions is caused by a force majeure event, which shall include (without limitation) any act of God, epidemic, inclement weather, fire, flood, industrial dispute, strike or lock out, blockade or embargo, piracy, acts of government or its agencies, consequences of war or civil dispute or terrorism, seizure or forfeiture under legal process and any other circumstances beyond the reasonable control of SAS.