

TERMS AND CONDITIONS OF TRADING GERRY WHELAN
T/A ASAP COURIERS, WESTWARD HOUSE, RUSSELL STREET DUBLIN 1

By the conditions set out below,
Gerry Whelan

trading as ASAP COURIERS, its servants or agents are firstly NOT TO BE LIABLE AT ALL FOR CERTAIN LOSSES AND DAMAGE, AND SECONDLY, IF IT IS TO BE LIABLE, THE AMOUNT OF LIABILITY IS IN ALL CIRCUMSTANCES LIMITED to the amount stated. Customers are advised to seek their own insurance cover where liability and fault is not clearly accepted by the Company.

1. Definitions

"the carrier" means (whether in regard to carriage or storage or otherwise) the Company including its servants and agents, and its sub-contractors, together with their respective servants and agents or any of them.

"Customer" means the person, firm, company or other body entering into an Agreement with the Company for the carriage of a consignment(s) using the Company's services and includes, unless the context otherwise requires his/its principals, servants, agents, the Consignee and/or the owner of the goods.

"Company" means Gerry Whelan t/a ASAP COURIERS, and shall include all its associate and subsidiary companies and its appointed agents together with their respective servants and agents of any of them.

"Consignment" means any goods including separate units thereof whether or not packed or boxed, including such packaging, which are in the control of the carriers, for the purposes of the carriage or storage or in respect of which the company has agreed to perform any service.

"Contract" means the contract of carriage between the customer and Company.

"Contractor or Sub-Contractor" means any person or company whose services the Company engages or makes use of to perform the whole or any part of the services the subject of this contract.

"Dangerous Goods" means goods included in the list of dangerous goods as defined in the classification and labelling of dangerous substance regulations or legislation, together with any amendments thereto, or goods which present a comparable hazard

2. (a) Every transaction between the Company and the Customer will be governed by these terms and conditions. No Agent, sub-contractor or employee of the Company is permitted to alter or vary these conditions in anyway unless he is expressly authorised to do so by a Director in writing before commencement of any such transaction, and produces such written authority to the customer prior to the particular transaction being entered into and such authority is confirmed by the Manager/Chief Executive of the Company.

(b) If any legislation is compulsorily applicable to any business or consignment undertaken, these Conditions shall as regards such business or consignment be read as being subject to such legislation but nothing in these conditions shall be construed as a surrender by the Company of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation and if any part or term of these conditions be repugnant to such legislation to any extent, such part shall as regards such business or consignment shall be void to that extent but no further.

3. (a) At the time the customer orders services from the Company a docket will be prepared by the Company which will contain the details of the collection and delivery address, the date and time of the order, any order number or special references by the customer, and details of charging. If the customer has an approved account an account will be issued in accordance with the invoicing terms already agreed between the Company and the customer. All other transactions are strictly cash. Any queries as to the correctness of the charges must be made in writing within fourteen days of the issue of the invoice otherwise the invoice will be payable in full. All charges are based on the Company's tariff in force at the date of invoice which is available on request at the Company's principal place of business.

(b) Quotation are given on the basis of immediate acceptance and are subject right of withdrawal or revision with or without notice. Verbal quotations are given only as estimates and not as fixed prices.

4. Except under special arrangements previously made in writing payment of the invoice shall be made to the Company, within twenty-eight days of the date of the Company's invoice without any deductions. In the event of the customer failing to make full payment within such a period the Company shall, without prejudice to any other right or remedy available to it, be entitled to suspend or cancel any other contract then subsisting between the Company and the customer. The Company shall also be, entitled to charge interest on the balance due on any account, if such account is not discharged in full within the credit terms agreed between the customer and the Company. The customer hereby agrees to pay interest on all such overdue amounts, at the rate of 2% per month, to be calculated on the daily outstanding basis.

5. The Company is not, and does not contract as, a common carrier. The Company reserves the right, in its absolute discretion, to refuse the carriage or transportation of any consignment for any customer.

6. Where the customer is not the owner of some or all of the goods in any consignment, he shall be deemed for all purposes to be the agent of the owner or owners.

7. The Company may employ the services of any other carrier for the purpose of fulfilling contract. Any such carrier shall have the like power to sub-contract on similar terms.

8. Any Sub-contractor shall be under no liability whatsoever to the customer claiming in respect of the consignment in addition to or separately from the Company under the contract.

9. Except under special arrangement previously made in writing, the Company will not accept or deal with any dangerous goods or any goods or consignment likely to cause or any goods or consignment which include drugs, documents or other things which it is illegal to possess in the Republic of Ireland or elsewhere nor things which it is illegal or prohibited to take out of Ireland or take into the Country. To which they are consigned. Any person delivering such goods or consignment to the Company or causing the Company to handle or deal with any such goods or consignment (except under special arrangements previously made in writing) shall be liable for all loss or damage caused thereby and shall indemnify the Company against all penalties, claims, damages, costs and expenses with at the sole discretion of the Company or any other person in whose custody the goods or consignment may be at the relevant time. If such goods or consignments are accepted under arrangements previously made in writing they may nevertheless be so destroyed or otherwise dealt with if they become dangerous to other goods, property or health or in any other way whatsoever. The expression "goods or consignments likely to cause damage" includes goods or a consignment likely to harbour or encourage vermin or other pests.

10. Except under special arrangements previously made in writing, the Company will not accept or deal with bullion, currency, coins, precious stones, jewellery, valuables, antiques, pictures, fragile objects, livestock or plants or any matter the carriage of which would contravene the exclusive privilege of An Post. Should any person nevertheless deliver any such goods in consignment to the Company or cause the company to handle or deal with any such goods otherwise than under special arrangements previously made in writing the Company shall be under no liability whatsoever for or in connection with and damage to the said goods however caused.

11. SUBJECT TO THE TERMS OF CONDITION 13 HEREUNDER.

(i) The Company shall be responsible for any loss of or damage to a consignment or any part thereof, or for any non-delivery or mis-delivery if it is proven that the loss, damage, non-delivery or mis-delivery occurred whilst the consignment was in the actual custody of the Company and under its control and that such loss, damage, non-delivery or mis-delivery was due to the willful neglect of default of the company or its servants, or agents.

(ii) The Company shall only be liable for any non-compliance or mis-compliance with instructions given to it if it is proven that the same was caused by the willful neglect of the Company or its servants.

12. The Company has no precise knowledge of the nature, contents, or value of any consignment carried or stored and cannot obtain insurance therefore. NOTWITHSTANDING, ANYTHING CONTAINED HEREIN THE LIABILITY OF THE COMPANY IN RESPECT OF ANY ONE CONSIGNMENT SHALL BE IN ANY CASE BE LIMITED TO THE SUM OF €75.00 (SEVENTY-FIVE EURO) (UNLESS OTHERWISE AGREED IN ADVANCE BETWEEN THE CUSTOMER AND THE COMPANY).

13. The customer shall keep the Company indemnified against all claims or demands whatsoever made in excess of the liability of the Company under these Conditions of Trading in respect of any loss, damage or injury, except if caused by the negligence of the Company, its servants, agents or subcontractors.

14. In any event the Company shall be discharged from all liability for loss, damage, non-delivery or miss-delivery (however caused) of a consignment or part thereof unless notice be received in writing within fourteen days after the date when the consignment should have been delivered.

15. The Company accepts no liability for damage caused to a consignment due to improper or insufficient packaging.

16. A consignment accepted by the Company for carriage may be carried by such means of transport and by such route as the Company thinks fit and these conditions shall apply by whatever means or route the consignment is carried. The term "courier service" shall not be taken to mean that the goods are necessarily accompanied at all times.

17. (a) Transit shall commence when the consignment is handed to the Company/Contractor.

(b) Transit shall end when the consignment is either:

(i) Tendered at the usual place of delivery at the consignee's address.

(ii) Returned to the Sender's customer's address if known (as appropriate) in which case the customer will be responsible for the return charges.

(iii) If the Sender's or Consignee's address is not known, and cannot be immediately ascertained, at the expiration for one clear day after the arrival of the consignment at the place to which it was intended that they be consigned.

18. Where the Company is unable for whatever reason to deliver a consignment to the consignee or as the customer may order or where by virtue of Clause 18 (b) or (c) hereof transit is deemed to be at an end, the Company may sell the goods and deduct from the proceeds of sale all proper charges and expenses in relation to the sale, carriage and storage of such goods. PROVIDED THAT the Company shall do what is reasonable in the circumstances to obtain the value of the consignment.

19. The Company/Contractor shall if so required, sign a document prepared by the sender acknowledging the receipt of a consignment but no such document shall be evidence of the condition or of the correctness of the declared nature, quantity or weight of the consignment at the time it was received by the Company/Contractor.

20. Where "carriage forward" consignments have been accepted by the Company the customer shall pay all the charges if the consignee fails to pay on delivery or demand according to the prior arrangements.

21. Any time given by the Company for delivery of goods is given as an estimate only and shall not be a term of the contract between the Company and the customer and thus any delay in delivery shall not constitute a breach of such contract. Whilst every endeavor will be made to meet such estimates the Company reserves the right to amend the given time without prior notification. Without prejudice to the aforesaid, delivery may in any event be delayed, suspended or cancelled without liability on the part of the Company in the vent of industrial action, inability to obtain services, any alteration in the part of the customer's requirements, Government intervention, transport requirements, always delays, Act of God, war, civil disturbance or any other cause beyond the direct control of the company. In addition the deterioration, or evaporation of the consignment or any part thereof) costs or penalties incurred or suffered by the consumer as a result of the Company's inability or failure for any reason to meet specified delivery times.

22. (i) The Company shall be under no obligation to provide any plant, power, or labour other than the Company's driver/despatch rider(s) for the purpose of loading or unloading at a sender's or consignee's premises.

23. The Company shall have a general lien against the customer and/or the owner of any goods or consignment for any monies howsoever due from such customer and/or the owner of the Company. If all such monies, charges or expenses are not paid in full within twenty-eight days from the date upon which the Company first gives notice of the exercise of its lien, to the customer and/or the owner of the consignment, the said consignment or any part hereof may be sold and the proceeds of sale applied in or toward the satisfaction of such monies, charges or expenses and all costs incurred by the Company in relation to the exercise of the Company's lien and the sale. The Company shall upon accounting to the customer and/or owner for the balance remaining (if any), be discharged from all liability whatsoever in respect of the goods or consignment.

24. The customer hereby authorise the Company (but the Company shall be under no obligation) to advance any duties, taxes or charges and to make any disbursements, in respect of the consignment, shall be jointly and severally liable for reimbursement thereof. The Company shall not be under any obligation to incur any expenses or to make any advance in connection with the forwarding of the consignment except against payment by the customer. If it is necessary to make customs, consular or other like entries of the consignment at any place of consignment shall be deemed to be consigned at such place to the foresigned and the customer shall indemnify the Company against all losses, damages, expenses or fines arising from any inaccuracy or omission of all of any descriptions, values and other particulars furnished to the Company.

25. The Company is not competent to give advice with respect to the provisions of any statute, order, ordinance or other governmental regulation of whatsoever type or kind or represent or advise that an action by it or on its behalf complies or will not comply with such provisions. The Company does not claim that it possesses the standard of competence or is prepared to exercise the diligence generally shown by persons who carry on the business of giving advice of the kind herein before referred to. The Company is not acquainted with this standard or capable of complying with it and has not the appreciation of the nature and magnitude of the loss which the customer may sustain if the acts of the Company do not comply with such provisions.

26. (i) In respect of the Company's driver(s) driving customers' vehicles the customer undertakes to have in force insurance in respect of the vehicle(s) and the Company's driver(s) and shall indemnify the company, its staff and its driver(s) against all and any claims in respect of injury, loss, damage or destruction of any property or person whilst the vehicle is in the charge of the Company or its driver(s). The foregoing shall apply irrespective of whether or not such injury, loss, damage or destruction arises as a result of any negligence or breach of duty on the part of the Company or its driver(s). The foregoing shall apply irrespective of whether or not such injury, loss, damage or destruction arises as a result of any negligence or breach of duty on the part of the Company or its driver(s).
- (ii) The customer undertakes to indemnify the company and its driver(s) against any legal liability in respect of its obligations with regard to the vehicle(s).
27. For passenger vehicles every endeavor is made to supply the type of vehicle requested, and to retain the same vehicle and driver during the period of hiring, but the Company must reserve the right to supply a suitable substitute (Vehicle or Driver) as exigencies of a mechanical and/or human nature may demand.
28. Drivers are (as a general rule) instructed by the Company to travel at reasonable legal speeds and to follow the best and most convenient route to a destination and not necessarily the shortest route. The customer may of course instruct a particular route. In both cases the time and mileage actually incurred are charged and the Company accepts no responsibility for any delay howsoever caused.
29. Drivers are instructed, in the interest of safety, not to exceed the legal road limits set for their vehicle, therefore the Company will abide by their judgement in respect of the number of passengers and/or quantity of goods/luggage/consignment they are prepared to carry.
30. A claim or counterclaim by the customer shall not be made the reason for deferring or withholding payment of monies payable to the Company.
31. The Company shall be relieved of its obligation to perform the Contract to the extent that the performance thereof is prevented by failure of the customer, consignee, fire, weather, conditions, Industrial dispute, labour disturbance or any other cause beyond the reasonable control of the Company. Furthermore, delivery caused by the unavailability at the delivery address of the Consignee or to the authorised recipient.
32. Any dispute, difference, or question which shall at any time hereafter arise between the customer and the Company or their respective representatives, touching any claims or counter-claim put forward on the part of the customer against the Company in connection with or arising out of the contract or any extension thereof shall be referred to the Arbitration of a single Arbitrator to be agreed by the parties or to be appointed at the request of either party by the President for the time being of the Law Society of Ireland.
33. The Company shall not in any circumstances be liable in respect of a Consignment where there has been fraud on the part of the customer or the owner of the goods or the servants or agents of either in respect of the Consignment, unless the fraud has been contributed by the complicity of the Company or any servant of the Company acting in the course of his employment.
34. This Contract and these conditions shall be construed according to and governed by the Laws of Ireland and the parties hereby submit to the exclusive jurisdiction of the Courts of the Republic of Ireland.