

Constant Climate Cool chain equipment agreement



TCC Terms and Conditions

1. Definitions and Interpretation

- 1.1 In this Agreement; unless the context otherwise requires:
- 1.1.1 The headings to Conditions are inserted for convenience only and shall not affect the interpretation or construction of this Agreement. Words imparting the singular shall include the plural and vice versa. Words imparting a gender include every gender and references to persons include an individual, company, corporation, firm or partnership;
- 1.1.2 All sums payable hereunder are exclusive of VAT or any other applicable tax or duty payable upon such sums which shall be added if appropriate at the rate prevailing at the relevant tax point;
- 1.1.3 References to any statute or statutory provision shall include (i) any subordinate legislation made under it, (ii) any provision which it has been modified or re-enacted (whether with or without modification), and (iii) any provision which subsequently supersedes it or re-enacts it (whether with or without modification); and
- 1.1.4 The words and phrases "other", "including" and "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible.
- 1.2 The following expressions shall, unless otherwise stated or inconsistent with the contract in which they appear bear the following meanings and cognate expressions shall bear corresponding meanings:
- 1.2.1 "Actual Commencement" means as set out at Condition 5 below;
- 1.2.2 "Actual Completion" means as set out at Condition 6 below;
- 1.2.3 "Air Cargo" means the shipments of cargo moved by air on the Flights;
- 1.2.4 "Agreement" means these TCC Terms and Conditions together with the Schedule of Contract Details, the British Airways General Conditions of Carriage and the terms of the Contract for Carriage of the Air Cargo set out in the conditions of contract printed on the reverse of the air waybill;
- 1.2.5 "British Airways General Conditions of Carriage" are the terms and conditions published by British Airways from time to time governing its carriage of Air Cargo;
- 1.2.6 "Business Days" means any day (other than a Saturday) on which commercial banks are open for business in the City of London;
- 1.2.7 "Cancellation Fees" means the charges set out in Part 3 of the Schedule to this Agreement;
- 1.2.8 "Cargo Rates" means the Cargo Rates applicable to the Customer Cargo Space, specified in this Agreement;
- 1.2.9 "Charges" means as set out at Condition 2 of the Schedule of Contract Details above;
- 1.2.10 "Commencement Date" means the date set out on in the Schedule of Contract Details;
- 1.2.11 "Container" means a temperature controlled container;
- 1.2.12 "Container Release Form" means a form to be signed by the Customer upon collecting and/or returning a Container from British Airways which specifies that the Container is in a good condition and/or records any damage to the Container;
- 1.2.13 "Damage Waiver" means the fee specified as such in Part 2 of the Schedule and which shall waive any liability on the part of the Customer to British Airways in respect of damage to the Container in accordance with Condition 8;
- 1.2.14 "Dangerous Goods" means articles or substances as listed in the current edition of the IATA Dangerous Goods regulations;
- 1.2.15 "Flights" means scheduled flights of British Airways;
- 1.2.16 "Force Majeure" means any event outside the reasonable control of either party liable to affect its ability to perform any of its obligations (other than payment) under this Agreement including but not limited to Act of God, explosion, fire, flood, hostilities, lightning, sabotage, war, revolution, acts of terrorism, riot or civil commotion, strikes, lock-outs or other industrial action, whether of the affected party's own employees or others, failure of supplies of power, fuel, transport, equipment, raw materials or other goods or services;
- 1.2.17 "IATA Non Return Value" means the Container value determined and published regularly by IATA;
- 1.2.18 "Intended Commencement" means the date that the services pursuant to each order are due to commence as notified to the Customer by BA at the point of booking;
- 1.2.19 "Intended Completion" means the date that the services pursuant to each order are due to be completed as notified to the Customer by BA at the point of booking;
- 1.2.20 "Lost Container" means a Container that has not been returned in accordance with the Schedule of Contract Details within 30 days of Intended Completion;
- 1.2.21 "Normal Wear and Tear" means:
- (a) for outside and inside panels and the base : scratches on panels that do not create any form of puncture minor dents (radius less than 50 mm, depth less than 5 mm), sticker residues
- (b)
- (c) others -scratches on lids and doors, tears on strap handles (not resulting in broken strap), Electronic problems with the thermostat, display, fans and/or cables not caused by physical handling;
- (d) for e-version containers: minor damages to charging unit (not resulting in broken or missing parts), red alarms not caused by wrong handling or other external impacts.
- 1.2.22 "Operations Manual" means the operations manual relating to the Container available for inspection by the Customer at www.envirocontainer.com
- 1.2.23 "Services" means the provision of a Container and transportation of Air Cargo;
- 1.2.24 "Total Repair Cost" means total costs for repair of a Container and will include labour, spare parts, costs and any additional handling cost related to replacement of the Container; and
- 1.2.25 "UCR Form" means the IATA AC20 ULD Control Receipt Form.

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1.3 The British Airways General Conditions of Carriage shall be incorporated into the Agreement.

2 Provision of Services

- 2.1 With effect from the Commencement Date, and in consideration of the due payment of the Charges by the Customer, the Customer engages British Airways, and British Airways hereby agrees to provide the Services to the Customer for the term of this Agreement in accordance with, and subject to, the terms and conditions of this Agreement.
- 2.2 In performing the Services, British Airways shall operate as, and have the status of, an independent contractor and shall not operate or have the status of agent, employee or representative of the Customer.
- 2.3 British Airways may sub-contract performance of any of the Services (or part thereof) to any person, firm, corporation or organisation provided that British Airways shall remain responsible to the Customer for the performance of such Services in accordance with the terms of this Agreement.

3 Ordering

- 3.1 Each order for the Services by the Customer from British Airways shall be deemed to be an offer by the Customer to purchase Services subject to this Agreement.
- 3.2 No order placed by the Customer shall be deemed accepted other than pursuant to the process set out in Conditions 3.3 to 3.5.
- 3.3 If a British Airways representative has advised that space for the order has been booked on a Flight this shall indicate that the Customer's order has been conditionally accepted as set out in Condition 3.5.
- 3.4 Any order shall be accepted entirely at the discretion of British Airways.
- 3.5 Each order that is conditionally accepted under Condition 3.3 shall be conditional on the availability of the Container as further described in this Condition 3.5. Once British Airways has conditionally accepted the Customer's order, the Customer will be subject to these Conditions and shall be responsible for any cancellation charges applicable under Condition 4. If for any reason the Container is not available the conditional contract in relation to the relevant order shall be terminated immediately by British Airways notifying the Customer of such unavailability and British Airways will not be liable for such cancellation. British Airways shall notify the Customer as soon as availability of the Container is confirmed at which point this Agreement shall come into full force and effect.
- 3.6 An order is considered to be a regular order if it is placed within four (4) days before Intended Commencement takes place.
- 3.7 An order placed with a shorter notice period than allowed for a regular order is considered to be an express order. An express order is subject to availability and an express order booking fee as set out in Condition 2 of the Schedule of Contract Details shall be levied.
- 3.8 The minimum duration for which an order can be accepted by British Airways is 4 days.
- 3.9 The Customer shall have the option to purchase the Damage Waiver at the time of placing the order. In the event that the Customer chooses not to purchase the Damage Waiver it will be liable for any and all damage to the Container in accordance with Condition 8.
- 3.10 The Customer may be liable to pay further Charges if following conditional acceptance by British Airways pursuant to Condition 3.5, the Customer makes changes to the order, including without limitation an increase or decrease in the number of Containers required, a change in the type of Container required or postponement of the order. Such Charges are specified in Condition 2 of the Schedule to this Agreement.

4 Cancellation

- 4.1 The Customer has the right to cancel an order and the applicable Cancellation Fees will apply.
- 4.2 The Customer will not be liable to pay any Cancellation Fees in the following circumstances:
- 4.4.1 where British Airways requests the Customer in advance not to present the shipment;
 - 4.4.2 where there is a permanent Flight cancellation;
 - 4.4.3 where, during operational disruption, the Customer removes a delayed shipment from the British Airways warehouse.
- 4.3 The Customer cargo space is for the sole use of the Customer.
- 4.4 In the event of over delivery by the Customer of freight by weight, volume or position, British Airways will charge applicable rates on the excess as set out in the Schedule of Contract Details. British Airways will endeavour to carry the excess freight, but cannot guarantee to accommodate all or part of the weight, volume or positions over and above the allocations agreed at the point of booking. The Customer will indemnify British Airways for the cost of any storage or transportation cost arising from any recovery operation that may arise.

5 Commencement

- 5.1 The Container shall be collected by the Customer from a point specified by British Airways.
- 5.2 For an additional charge, the Container may, by prior agreement with British Airways at the point of booking, either be:
- 5.2.1 collected by the Customer from British Airways; or
 - 5.2.2 delivered to the Customer.
- 5.3 If delivery occurs pursuant to Condition 5.1 or 5.2.2 then, the Customer shall inspect the Container and identify the existence of damage that could affect the functionality of the Container and sign the UCR Form.
- 5.4 If the Customer collects the Container pursuant to Condition 5.2.1, the Customer shall inspect the Container and identify the existence of damage that could affect the functionality of the Container and sign the Container Release Form.

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- 5.5 Once the Customer has taken the Container into its possession this will be deemed acceptance of its condition and serviceability. Actual Commencement shall take place once the Container is in the Customer's possession and the risk and responsibility for the Container shall be passed to the Customer for the period during which the Container is in its possession.

6 Completion

- 6.1 The Customer shall empty and clean the Container and return it to British Airways at the point specified at the point of booking. The return of the Container shall mark Actual Completion.
- 6.2 If the Container is not returned to British Airways at Intended Completion, British Airways shall be entitled to make additional charges for the Container as set out in the Schedule of Contract Details until Actual Completion.
- 6.3 On the Container's return, the Container shall be inspected and the Customer shall sign the Container Release form identifying any damage that was not present at Actual Commencement. If the Container is damaged, the damage control process set out at Condition 8.3 shall be initiated.

7 Equipment Substitution

- 7.1 In the event that the Container ordered cannot be supplied, British Airways will substitute for a higher version, if such is available, at the applicable Charges for that higher version Container. Where a higher version Container has been ordered (i.e. t2 version) but cannot be supplied, British Airways will contact the Customer and establish whether they wish to accept a lower version container, if available (i.e. t1 version). If the substitution is accepted, the Charges applicable to the lower version Container will apply but British Airways will not be liable in any way for its failure to supply the requested version of the Container.

8 Damages to the Container

- 8.1 Unless the Customer can show that damage to a Container occurred whilst in British Airways' possession, subject to the limitations contained in this Condition, the Customer agrees to assume all risk for a Container whilst in its possession and when it is uncertain at whose risk the Container was when the damage took place, and pay British Airways for any damages to the Containers, exclusive of Normal Wear and Tear, whether the Container is in the care, custody and control of a common carrier or under the direct use and control of BA. British Airways shall inform the Customer of damages outside Normal Wear and Tear as well as the Total Repair Cost. The value of the damage will be notified to the Customer and a purchase order raised before invoicing.
- 8.2 British Airways shall inform the Customer that the Container has been damaged outside Normal Wear and Tear as soon as practicable. British Airways shall inform the Customer about the Total Repair Cost as soon as practicable.
- 8.3 The Customer agrees and accepts that any Container that has been destroyed or not returned after a delay of 30 days dating from the Intended Completion may be deemed lost ("Lost Container"). The Customer shall pay British Airways for a Lost Container the full IATA Non Return Value of the Container in addition to any Charges accumulated from collection in accordance with Clause 5 to the point such Container is deemed a Lost Container.
- 8.4 If a Lost Container is found British Airways may, at its own discretion and subject to any damage, buy back a Lost Container from the Customer at a price it determines in its sole discretion.

9 Payments

- 9.1 All British Airways business transactions must be conducted in the trading currency of the station of origin and will be made payable to British Airways.
- 9.2 Invoicing will be processed through the cargo account settlement system of the country of origin and the Customer shall be invoiced monthly in arrears.
- 9.3 Payment is due 30 days from the date of invoice.

10 Operational Performance / Ground Handling

The Customer shall:

- 10.1 Ensure that all items shall be individually and clearly labelled specifying the volume and weight per item prior to delivery to British Airways warehouse or Ground Handling Agent, failing which British Airways has the right to refuse the carriage of the Air Cargo;
- 10.2 Submit all Air Cargo to the approved security measures as required by any relevant regulatory bodies and British Airways;
- 10.3 Deliver all Air Cargo and documents to the British Airways warehouse in accordance with the product standard cut-off times, failing which British Airways may refuse handling of such Air Cargo for that Flight. In such an event, the obligation of the Customer to pay the Cargo Rates for the Customer Cargo Space remains;
- 10.4 Comply with all applicable legislation and regulations for the carriage of Air Cargo and all IATA publications concerning standards, procedures and guidelines for the carriage of Air Cargo;
- 10.5 Comply with British Airways operating instructions as communicated to the Customer from time to time in writing; and
- 10.6 Not to present for carriage, Dangerous Goods (except for dry ice), prohibited articles, or commodities which British Airways is required to physically present to customs.
- 10.7 The Customer is not entitled to unduly withhold British Airways Unit Load Devices (ULD), or other such equipment, without the prior consent of British Airways, and should release ULD's back to British Airways if not in use;
- 10.8 British Airways reserves the right to charge a demurrage fee to the Customer in accordance with the current IATA rules in the event of excess ULD's, or other such equipment, being held by the Customer, or person, or agent employed by the Customer.

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11 Training Development Safety and Security

- 11.1 The Customer shall ensure that all staff have adequate training on equipment handling and loading and handling and loading of the Containers. All training costs shall be met by the Customer. The Customer is responsible for pallet/ULD building and is responsible for ensuring all personnel are fully trained for pallet/ULD building.
- 11.2 The Customer represents and warrants that it shall in its handling of the Containers always follow the instructions of British Airways as set out in this Agreement and specifically those instructions and recommendations set out in the material provided by British Airways including but not limited to the Operations Manual.

12 Title and Assignment

- 12.1 This Agreement is personal to the Customer. Accordingly, the Customer shall not, without the prior written consent of British Airways:
- 12.1.1 assign, sub-contract, transfer or in any way deal with the legal, beneficial or other interest arising in respect of any of its rights or obligations under this Agreement;
 - 12.1.2 hold on trust all or any of its rights under this Agreement, or do anything which permits or may permit all or any of its rights under this Agreement to comprise or be deemed to comprise trust property or to be exercised by or for the benefit of any third party; or
 - 12.1.3 purport to do any of the above.
- 12.2 The Customer recognises and acknowledges that the title to the Containers does not at anytime pass to the Customer notwithstanding the fact that risk passes, and that the Customer only has the right to maintain possession of the Containers conditional upon the Customer's compliance with the terms of this Agreement. The Customer agrees not to sell, assign, sublet, pledge, hypothecate, or otherwise encumber or suffer a lien upon or against any interest in this Agreement or Containers and the Customer further agrees not to modify or alter the Containers in any way. British Airways or their representatives shall have the right at any time during the lease period to inspect the Containers, and the Customer agrees that it shall take any reasonable measures with regard to the Containers required by British Airways to reinforce the rights of each of them.
- 12.3 While the Container is in the possession of the Customer, the Customer shall:
- 12.3.1 not remove any markings on the Container;
 - 12.3.2 store and use the Containers in a proper manner in conditions which adequately protect and preserve the Container; and
 - 12.3.3 not to alter the Container or attach any accessories to the Container.

13 Liability

- 13.1 Nothing in this Agreement shall exclude or limit British Airways' liability for death or personal injury caused by British Airways' negligence, for fraudulent misrepresentation or any liability that cannot legally be limited including under the British Airways General Conditions of carriage and the applicable liability regime or interfere with British Airways' liability under any international convention, including the Warsaw Convention.
- 13.2 Subject to Condition 13.1 British Airways shall not be liable for any economic loss or loss of profit (direct or indirect), or any indirect, special or consequential loss or damage howsoever arising, or any such liability arising to any third party.
- 13.3 Subject to Condition 13.1 the total aggregate liability of British Airways in connection with any one order whether for negligence or breach of contract or otherwise shall in no event exceed the Charges payable by the Customer under this Agreement for the relevant order.

14 Force Majeure

Neither British Airways, nor the Customer, is liable for a failure to perform any of its obligations in so far as it proves that the failure was due to Force Majeure.

15 Regulatory Authorities

In the event that any regulatory consents, in any country, necessary to operate the Flights are revoked (for whatever reason), during the term of the Agreement (within or without the notice period), then British Airways shall be entitled to terminate this Agreement immediately without liability to or recourse by the Customer, on written notification to the Customer.

16 Confidentiality

- 16.1 Neither party shall make any announcement or otherwise publicise the existence of or disclose to any person the terms of this Agreement without the prior written consent of the other party.
- 16.2 This Agreement shall at all times be treated as confidential and shall not be published, disclosed, or circulated by the receiving party without prior written consent of the other party.

17 Termination

- 17.1 British Airways may immediately suspend further performance of this Agreement, or cancel any outstanding provision of Services, or by notice in writing to the Customer terminate this Agreement without liability to British Airways if:
- (a) the Customer commits a material breach of any of its obligations under this Agreement which is incapable of remedy;
 - (b) the Customer fails to remedy a breach of its obligations under this Agreement which is capable of remedy, or persists in any breach of any of its obligations under this Agreement after having been requested in writing by British Airways to remedy or desist from such breach within a period of 14 days;

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- (c) the Customer (being a partnership) or the Customer's partner offers to make any arrangements with or for the benefit of the creditors of the Customer or the Customer's partner generally or there is presented in relation to the Customer or the Customer's partner a petition of bankruptcy;
- (d) the Customer (being a limited company) is deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or the Customer calls a meeting for the purpose of passing a resolution to wind up its company, or such a resolution is passed or the Customer presents or has presented a petition to wind up or present or have presented a petition to appoint an administrator or have an administrative receiver or receiver appointed to the whole or any part of the Customer's business, undertaking, property or assets.
- 17.2 Notwithstanding any such termination or suspension in accordance with Condition 17.1 above the Customer shall pay British Airways the Charges for all Services provided up to and including the date of suspension or termination and the termination of this Agreement or any contract for whatever reason shall not affect the rights or remedies of either party in respect of any antecedent breach or in respect of any such owing or to become owing to the other.
- 17.3 This Agreement may be cancelled in writing by either party to the contract by giving at least four weeks prior notice to the other party.

18 Assignment

- 18.1 The Customer shall not assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under this Agreement.
- 18.2 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement. No person who is not a party to this Agreement (including any employee, officer, agent, representative or subcontractor of either party) shall have the right (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce any term of this Agreement which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the parties which agreement must refer to this Condition.

19 General

- 19.1 Nothing in this Agreement shall create, or be deemed to create a partnership or joint venture or relationship of employer and employee or principal and agent between the parties.
- 19.2 The waiver by either party of any breach of this Agreement shall not prevent the subsequent enforcement of that breach and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.
- 19.3 If at any time any part of this Agreement (including any one or more of the Conditions of this Agreement or any sub-Condition or paragraph or any part of one or more of these Conditions) is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from the Agreement and the validity and/or enforceability of the remaining provisions of the Agreement shall not in any way be affected or impaired as a result of that omission.
- 19.4 This Agreement contains the entire agreement between the parties in relation to its subject-matter. The Customer irrevocably and unconditionally waives any right it may have to claim damages for, and/or to rescind this Agreement because of breach of any warranty not contained in this Agreement, or any misrepresentation whether or not contained in this Agreement, unless such misrepresentation was made fraudulently. For the avoidance of doubt, nothing in this contract shall affect the terms of the Contract for Carriage of the Air cargo set out in the Conditions of Carriage including the applicable liability regime.
- 19.5 This Agreement shall not be varied except in writing signed by the duly authorised representatives of both parties.

20 Governing Law

Both the Customer and British Airways shall at all times comply fully with all relevant laws and regulations. This Agreement and any dispute or claim arising out of, relating to or in connection with it shall be governed by and shall be construed and interpreted in accordance with the law of England and the parties irrevocably submit to the exclusive jurisdiction of English courts.