

# Terms of Service

## NOTICE CONCERNING CARRIER'S LIMITATION OF LIABILITY

IF THE CARRIAGE INVOLVES AN ULTIMATE DESTINATION OR STOP IN A COUNTRY OTHER THAN THE COUNTRY OF DEPARTURE, THE WARSAW CONVENTION MAY BE APPLICABLE AND THE CONVENTION GOVERNS AND IN MOST CASES LIMITS THE LIABILITY OF THE CARRIER IN RESPECT OF LOSS, DAMAGE, OR DELAY TO GOODS.

**In this Air Waybill, the following words have the following meanings :**

**"Carrier"** means JANCO E-COMMERCE SOLUTIONS LIMITED

**"Merchant"** means and includes the shipper, the consignee and/or the owner of the goods.

**"Dangerous Goods"** includes goods which are of dangerous, explosive, inflammable, radioactive or damaging nature.

**"Services"** means any services of the Carrier provided for the Merchant e.g. carriage of goods by air, road, sea, inland waterway, and/or rail; and/or storage, loading, unloading, packing, unpacking, consolidation, de-consolidation, collection, delivery and/or other handling of goods.

**"Warsaw Convention"** means the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12/10/1929 or that Convention as amended by the Hague Protocol of 28/9/1955, whichever may be legally applicable.

**“Montreal Convention”** means the Convention for the Unification of Certain Rules for International Carriage by Air done at Montreal on 28/5/1999.

**1.1.** If at any time one or more of the terms of this Air Waybill becomes invalid or illegal, the validity or legality of the remaining terms of this Air Waybill shall not in any way be affected.

**1.2.** The carriage by air comprises the period during which the goods are in the charge of the Carrier, whether in an airport or on board an aircraft, or, in the case of a landing outside an airport, in any place whatsoever. The period of the carriage by air does not extend to any services (including any carriage by land, road, rail, sea, river or inland waterway) performed outside an airport.

**1.3.** As far as the carriage by air is concerned, the Carrier’s liability shall be determined by the Montreal Convention or any legislation making the Montreal Convention or the Warsaw Convention compulsorily applicable to this Air Waybill.

**1.4.** Regarding the responsibility and liability of the Carrier for loss of or damage to, or in connection with, the custody and care and handling of the goods prior to and subsequent to the carriage by air, such shall be determined by the terms of this Air Waybill but not by the Warsaw Convention nor the Montreal Convention.

**1.5.** To the extent not in conflict with Clause 1.3, the Services including those outside aircraft and airport are subject to the terms of this Air Waybill.

**1.6.** In this Air Waybill, words importing the singular include the plural and vice versa; words importing a gender include every gender.

**1.7.** Wherever it is provided in this Air Waybill that notice shall be dispatched by the Carrier to the Merchant, such notice shall be deemed as having been dispatched if (i) the Carrier does not know the address, e-mail address or fax number of the Merchant or (ii) the notice cannot reach the Merchant through its address, e-mail address or fax number last known to the Carrier.

**1.8.** The Merchant's liability under this Air Waybill shall be joint and several.

**2.1.** This Air Waybill is prima facie evidence of receipt of the goods by the Carrier.

**2.2.** The Carrier will give notice to the consignee as soon as the goods arrive. The consignee is entitled, on arrival of the goods at the place of destination, to require the Carrier to deliver the goods to it, on payment of the charges due and on complying with the terms set out in this Air Waybill. If the consignee declines to accept the goods, or if it cannot be communicated with, the shipper resumes its right of disposition of the goods.

**3.1.** The Merchant entering into any business with the Carrier warrants to the Carrier that the Merchant is either the owner of the goods or the authorized agent of the owner of the goods and that it is authorized to accept the terms of this Air Waybill not only for itself but also for the owner of the goods.

**3.2. The Merchant further warrants that:**

all the goods have been properly and sufficiently packed and that the Carrier has no liability for any loss of, damage to or any other claims relating to the goods which are improperly or insufficiently packed; and the goods are fit and suitable for the carriage, storage and

any other handling in accordance with the Merchant's instructions; and it shall fully comply with applicable laws and regulations of airports, Customs or other authorities.

**4.1.** The Merchant shall indemnify the Carrier against all claims, liability, losses, damage, costs and expenses (including but not limited to loss of or damage to any aircraft) arising out of the Carrier acting in accordance with the Merchant's instructions, or arising from a breach of warranty or obligation on the part of the Merchant, or arising from the inaccurate information or the insufficient instructions provided by the Merchant, or arising from the mistake, negligence or wilful default of the Merchant.

**4.2.** The Merchant undertakes that no claim shall be made against any employee, agent or sub-contractor of the Carrier if such claim imposes upon them any liability in connection with any Services provided by the Carrier. If any such claim should nevertheless be made, the Merchant shall indemnify the Carrier against all consequences. Every such employee, agent and sub-contractor shall have the benefit of all the terms herein benefiting the Carrier as if such terms were expressly provided for his or its benefit. For these purposes, the Carrier contracts for itself and also as agent and trustee for each such employee, agent and sub-contractor.

**4.3.** The Merchant shall defend, indemnify and hold harmless the Carrier from and against all claims, costs and demands whatsoever and by whomsoever made or preferred in excess of the liability of the Carrier under the terms of this Air Waybill, and such indemnity shall include all claims, costs and demands arising from the negligence or mistake of the Carrier or from the mistake, negligence, wilful default or deliberate wrongdoing of the Carrier's employee, agent or sub-contractor. Except under special arrangements previously made in writing, the Merchant warrants that the goods are not Dangerous Goods, nor are goods of comparable hazard,

nor are goods otherwise likely to cause damage. Should the Merchant nevertheless deliver any such goods to the Carrier or cause the Carrier to handle any such goods otherwise than under special arrangements previously made in writing, then whether or not the Carrier is aware of the nature of such goods, the Merchant shall be liable for all expenses, losses or damage whatsoever caused by or to or in connection with such goods and howsoever arising, and shall indemnify the Carrier against all penalties, claims, damages, costs, expenses and any other liability whatsoever arising in connection with such goods, and such goods may be destroyed or otherwise dealt with at the risk and expenses of the Merchant in the sole discretion of and without any liability to the Carrier. If such goods are handled by the Carrier under arrangements previously made in writing, they may nevertheless be destroyed at the risk and expenses of the Merchant in the sole discretion of and without any liability to the Carrier on account of risk to other goods, property, life or health. The goods that are likely to cause damage include goods that are likely to encourage vermin or other pests.

Except under special arrangements previously made in writing, the Carrier will not deal with bullion, bank notes, coins, cheques, bonds, negotiable documents and securities, precious stones, precious metal objects, jewellery, valuables, antiques, valuable works of art, live animals or plants. Should the Merchant nevertheless deliver any such goods to the Carrier or cause the Carrier to handle any such goods otherwise than under special arrangements previously made in writing, the Carrier shall be under no liability whatsoever in connection with such goods (including any loss, damage, misdelivery, misdirection or delay howsoever caused) and notwithstanding that the value of any such goods may be shown, declared or indicated on any documents accompanying such goods.

**5.1.** If delivery of the goods is not taken by the Merchant at the time and place when and where delivery should be taken, the Carrier shall be entitled (but is not obliged) to store the goods at the sole risk of the Merchant, whereupon any liability which the Carrier may have in respect of the goods stored as aforesaid shall wholly cease and the cost of such storage shall be paid by the Merchant to the Carrier.

**5.2.** The Carrier is entitled (but not obliged) to sell by public auction or private treaty or to dispose of all goods which in the opinion of the Carrier cannot be delivered either because the consignee's address is incorrect or because the goods are not collected or accepted by the Merchant within 14 days after notice has been dispatched to the Merchant's address, e-mail address or fax number last known to the Carrier. In case the Merchant does not receive the notice dispatched by the Carrier asking the Merchant to take delivery of the goods, such shall not affect the Carrier's aforesaid right to sell or dispose of the uncollected goods. The Merchant shall pay all costs and expenses (including but not limited to storage costs) incurred in connection with the storage and the sale and/or disposal of the goods.

**5.3.** All goods and documents relating thereto shall be subject to a particular and general lien for monies due in respect of such goods, or for any particular or general balance or other monies due from the Merchant to the Carrier. If any such monies due to the Carrier are not paid within 14 days after notice has been dispatched to the Merchant's address, e-mail address or fax number last known to the Carrier, the goods may be sold by public auction or private treaty or may be disposed of at the sole discretion of the Carrier at the expense of the Merchant, and the proceeds if any (net of the expenses in connection with such sale) shall be applied in satisfaction of such debts, and the Carrier shall not be liable for any reduction in value received on the sale of

the goods, nor shall the Merchant be relieved from the liability of any outstanding debts merely because the goods have been sold or disposed of. In case the Merchant does not receive the notice dispatched by the Carrier asking the Merchant to pay the outstanding monies, such shall not affect the Carrier's aforesaid right to sell or dispose of the goods. The Merchant is responsible for payment of all costs and expenses (including but not limited to storage costs) being incurred when the goods are being liened.

**6.1.** Charges for the Services shall be deemed fully earned and non-returnable upon receipt of the goods by the Carrier. The Merchant shall pay to the Carrier all sums immediately when due without deduction on account of any claim, counterclaim or set-off. Payment to the Carrier is due as soon as an invoice is rendered to the Merchant. For any amount unpaid within 30 days from the date of the invoice, the Carrier shall be entitled to interest from the date of the invoice until payment at 2% per month.

**6.2.** If the shipment is on the freight collect basis but the consignee does not take delivery of the goods within 14 days from the date of the goods' arrival at the place or airport of destination, the shipper shall be responsible for payment of all the outstanding freight charges, and costs and expenses (including but not limited to storage costs) incurred until the goods are duly delivered or are sold or disposed of as per Clauses 5.2 and/or 5.3.

**7.1.** The Carrier shall be entitled to sub-contract on any terms to any agents and/or sub-contractors the whole or any part of the Services whatsoever undertaken by the Carrier.

**7.2.** The Carrier reserves to itself absolute discretion as to the means, the manner, the routes and the procedures to be followed in the performance of the Services

including the carriage, the storage and the other handling of the goods. The Carrier has liberty to use any means, routes or procedures, including using any flight or airline whether or not named on the front page of this Air Waybill. Anything done in accordance with the aforesaid discretion or liberty shall not be a deviation of whatsoever nature or degree.

If there is any loss, damage, deterioration, delay, non-compliance or miscompliance of instructions, non-delivery, misdelivery, unauthorised delivery or misdirection of or to or in connection with the goods that arises from the negligence or mistake of the Carrier or that arises from the negligence, mistake, wilful default or deliberate wrongdoing of the Carrier's employee, agent or sub-contractor, the Carrier shall be liable for any claim relating to the aforesaid incident. However, the Carrier's aforesaid liability shall not exceed an amount of US\$100 for the shipment under this Air Waybill.

If the Carrier's agent or sub-contractor negligently or deliberately misdelivers the goods to a person (not entitled to receive the goods) without the Carrier's instruction or prior approval, the Carrier shall be liable for any claim relating to the aforesaid misdelivery of goods. However, the Carrier's aforesaid liability shall not exceed an amount of US\$100 for the shipment under this Air Waybill.

Notwithstanding any other terms in this Air Waybill to the contrary but subject to Clause 1.3, the Carrier shall not be liable for any claim relating to:  
any special, incidental, indirect, consequential or economic loss (including but not limited to loss of market, profit, tax, tax return, revenue, business or goodwill); or any loss, damage, expense or cost arising from fire, flood, storm, typhoon, explosion, deviation, airport congestion, strike, lock out, stoppage or restraint of labour even if the aforesaid incident arises from the

negligence or mistake of the Carrier or from the negligence, mistake, wilful default or deliberate wrongdoing of the Carrier's employee, agent or sub-contractor. However, if the Carrier is still legally held liable for the aforesaid claim despite the aforesaid provision, the Carrier's liability shall not exceed an amount of US\$100 for the shipment under this Air Waybill.

If there is any claim that the Carrier is legally held liable, and no other terms in this Air Waybill (limiting or excluding the Carrier's liability) are suited to that claim, the Carrier's aforesaid liability shall not exceed an amount of US\$100 for the shipment under this Air Waybill.

The Carrier may accept liability in provided that (i) the value of the goods has been declared in writing by the shipper and accepted by the Carrier and (ii) the Merchant pay to the Carrier additional charges as decided by the Carrier. Details of the additional charges will be provided upon written request by the shipper. The declared value accepted shall be the Carrier's limit of liability.

All and any Services provided by the Carrier gratuitously are provided on the basis that the Carrier will not accept any liability whatsoever.

It is agreed that superficial rust, oxidation, discoloration, or any like condition due to moisture is not a condition of damage but is inherent to the nature of the goods, and acknowledgement of receipt of the goods by the Carrier in apparent good order and condition is not a representation that such conditions of rust, oxidation, discoloration, or the like did not exist on receipt.

No cargo insurance will be arranged except upon Merchant's written instructions accepted by the Carrier. In so far as the Carrier agrees to arrange cargo insurances, the Carrier acts solely as the agent of the

Merchant. All cargo insurances arranged by the Carrier are subject to the usual exceptions and conditions of the insurance policies. Should the insurance companies dispute their liability, the Merchant shall have recourse against the insurance companies only and the Carrier shall have no liability whatsoever.

If the Services are or are likely to be affected by any risk, delay, hindrance, difficulty or disadvantage of any kind whensoever and howsoever arising (including but not limited to airport congestion, strike, lock out, stoppage and/or restraint of labour), the Carrier may terminate and/or abandon the Services and place the goods at any place for the Merchant to dispose of the goods, whereupon the Carrier's liability and responsibility in respect of the goods shall cease. If the Merchant does not dispose of the goods within 14 days after notice has been dispatched to the Merchant's address, e-mail address or fax number last known to the Carrier, the Carrier is entitled (but not obliged) to sell by public auction or private treaty or to dispose of the goods at the expense of the Merchant. In case the Merchant does not receive the notice dispatched by the Carrier asking the Merchant to dispose of the goods, such shall not affect the Carrier's aforesaid right to sell or dispose of the goods. The Merchant is responsible for payment of all the outstanding freight charges, and costs and expenses (including but not limited to storage costs) incurred until the goods are disposed of or sold.

Receipt by the person entitled to delivery of goods without complaint is prima facie evidence that the same has been delivered in good condition. In the case of damage, the person entitled to delivery must complain to the Carrier after the discovery of the damage, and, at the latest, within 14 days from the date of receipt of the goods. In the case of delay, the complaint must be made at the latest within 21 days from the date on which the goods have been placed at his disposal. Every complaint

must be made in writing upon the document of carriage or by separate notice in writing despatched within the times aforesaid. Failing complaint within the times aforesaid, no action shall lie against the Carrier, save in the case of fraud on its part.

The Carrier shall in any event be discharged of all liability whatsoever and howsoever arising in respect of the Services, unless suit is brought against the Carrier in the courts of the Hong Kong Special Administrative Region within two years from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

The defences, exemptions and limitations of liability provided for in this Air Waybill shall apply in any action against the Carrier whether such action is founded in contract or in tort.

The contract evidenced by this Air Waybill is governed by the laws of the Hong Kong Special Administrative Region. Any claim or dispute must be determined exclusively by the courts in the Hong Kong Special Administrative Region and no other court.