

## International Delivery Networks (Private) Limited trading as "Swyft"

### Terms of Service

These "Terms of Service" (Terms) constitute the legal agreement between **International Delivery Networks (Private) Limited of 11, Castle Lane, Colombo 04, Sri Lanka** and the Customer that governs the Customer's use of IDN's Services and the Website at [www.swyft.lk](http://www.swyft.lk).

**By registering on the Website the Customer shall be deemed to have:**

- reviewed the entire Terms before accepting and continuing with the Customer's registration; and
- agreed to be bound by the Terms, which shall remain in effect (subject to any changes as set forth in Clause 15) so long as the Customer continues to use the Services or the Website

**If the Customer does not wish to be bound by the Terms or does not understand any of the Terms or their legal implications, the Customer should not complete the registration and should seek independent legal advice.**

#### 1. Definitions

- 1.1. **Carrier** means any person that is in the business of transporting goods.
- 1.2. **Customer** means any person that uses the Services or the Website
- 1.3. **IDN** means International Delivery Networks (Private) Limited which has its registered office and principal place of business at 11, Castle Lane, Colombo 04, Sri Lanka.
- 1.4. **Party** means IDN or the Customer.
- 1.5. **Person** includes natural and legal persons.
- 1.6. **Services** means all services that IDN provides to the Customer including Forwarding Services as specified in Clauses 3.1 and 3.2 of these Terms.
- 1.7. **Shipment** means any goods, regardless of number, weight or size that the Customer has provided or will provide (either directly or through a third party) to a Carrier for transportation under a single transport contract to be issued by the said Carrier.
- 1.8. **Software** means the software, technology and processes by which IDN provides Services and makes the Website available to the Customer.
- 1.9. **Terms** means these Terms of Service.
- 1.10. **Website** means IDN's website at [www.swyft.lk](http://www.swyft.lk)

#### 2. Accepting the Terms

- 2.1. The Customer warrants to IDN that the Customer has agreed to these Terms before accepting and continuing with the Customer's registration.
- 2.2. The Customer accepts and agrees that the Terms are binding on the Customer and shall remain in effect (subject to any changes being made to the Terms as set out in Clause 15) so long as the Customer continues to use the Services or the Website.
- 2.3. The Customer agrees that if at any stage prior to booking a shipment the Customer considers that the Terms are not acceptable to the Customer the Customer will immediately stop using the Services and the Software.
- 2.4. The Customer's use of the Software and/or the Services will constitute acceptance of these Terms.

#### 3. Services

- 3.1. IDN's may act as an intermediary between the Customer and one or more Carriers that will transport one or more Shipments upon instructions given by the Customer. The Website permits the Customer to select Carriers based on price, timeliness and other applicable factors.
- 3.2. The Customer acknowledges that:
  - 3.2.1. IDN is not a Carrier and will have none of the obligations of a Carrier to the Customer;
  - 3.2.2. IDN does not have any obligations pertaining to customs clearance.
  - 3.2.3. The terms and conditions governing any Shipments that the Customer may book through the Website will be established by the applicable Carriers;
  - 3.2.4. IDN shall not have any responsibility for any inadequacy or failure of, or any delay in, performance by any Carrier;
  - 3.2.5. IDN shall not have any liability for any delays in performance resulting from causes beyond IDN's reasonable control;
  - 3.2.6. The Customer will be responsible for and pay any additional costs resulting from any of the causes referred to in Clause 3.2.4 and Clause 3.2.5.
  - 3.2.7. IDN may subcontract any order or booking of a Customer and/or the work connected therewith to one or more third parties or the servants of third parties. All provisions (inter alia) regarding non-liability and limitation of liability and also regarding indemnification of IDN as described herein shall apply to such third parties.
- 3.3. If the Customer has not given specific instructions for any Shipment, IDN may select the mode, route and means of transport for the Shipment.
- 3.4. The Customer will be responsible for (a) tendering or causing the tendering of the Shipment at the specified place and time and (b) ensuring that IDN has all documents required for receipt and for dispatch and all instructions, including without limitation customs documents. IDN will have no obligation to investigate whether the Customer's documents or specifications are correct or complete. If documents are not provided, IDN or any Carrier may refuse to render or may postpone Services.

#### 4. Charges

- 4.1. Prices quoted by IDN and accepted by the Customer will be based on Carrier rate schedules and other factors prevalent and applicable at the time of quotation and acceptance. If any such factor subsequently changes before a shipment is tendered to the Carrier, the price will be adjusted accordingly at such time. Prices may be adjusted upwards or downwards.
- 4.2. All quotations provided by IDN shall be without any obligation on its part.
- 4.3. If IDN quotes or charges "all-in" or fixed rates, as the case may be, these rates shall be deemed to include all costs which in the normal course of IDN handling the Customer's order would be for the account of IDN. Notwithstanding the use of "all-in" or fixed rates IDN shall not have any liability to the Customer as a Carrier.
- 4.4. For work of a special or unusual nature, or work requiring a special amount of time or effort, an additional reasonable amount or surcharge may at all times be charged by IDN.
- 4.5. Except as expressly provided to the contrary, prices quoted by IDN to the Customer (including "all-in" or fixed rates) do not include:

- 4.5.1. taxes, government duties or levies, insurance premiums, bank guarantee fees, customs fines, storage costs, or other third-party charges; or
- 4.5.2. any Carrier surcharges arising from loading or unloading goods outside normal working hours or on weekends or holidays or other cause.

The Customer agrees that the Customer will reimburse IDN for any such costs referred to in Clause 4.5.1 and Clause 4.5.2 that it (IDN) and/or the Carrier may incur.

- 4.6. In the event of loading and/or unloading time being inadequate (regardless of the cause thereof) all costs resulting therefrom shall be borne by the Customer without objections, even when IDN has accepted the bill of lading and/or chartered goods from which the additional costs arise.
- 4.7. If a Carrier provides a discount because of late delivery, IDN will credit the discount to the Customer, less any administrative costs incurred by IDN because thereof.
- 4.8. The Customer shall bear all risk of exchange rate fluctuations.

**5. Payment**

- 5.1. The Customer agrees to pay IDN the full amount of IDN's charges and all other costs including freights and duties arising from any booking made by the Customer using the Website.
- 5.2. The Customer agrees to make all payments upon arrival or dispatch of any Shipment under these Terms and notwithstanding any damage to a Shipment howsoever arising.
- 5.3. The Customer, at its option, may pay all charges specified in these Terms with respect to any Shipment by credit card.
- 5.4. If the Customer elects not to pay by credit card, the Customer agrees to make payment to IDN upon receipt of IDN's invoice.
- 5.5. IDN may at its discretion grant the Customer deferred payment terms in accordance with the following table.

Category	Number of Shipments per Week	Invoice Frequency	Payment Due (from Invoice Date)
A	No more than 1	Per-Shipment	5 business days
B	More than 1 but No more than 5	Per-week	5 business days
C	More than 5 but No more than 15	Per-week	5 business days
D	More than 15	Per-week	10 business days
E	Private customer	Per-Shipment	In advance

- 5.6. Interest will accrue on any amount that the Customer does not pay IDN as specified herein at the rate of one and one-half percent (1<sup>1</sup>/<sub>2</sub>%) pre month or the maximum rate permitted by the applicable law whichever is lower.
- 5.7. In the event that the Customer disputes any invoice, the Customer agrees to provide written notice of such dispute to IDN within seven (7) days of the invoice date. Any dispute raised by the Customer will not serve to alter the Customer's payment obligations hereunder, including without limitation the obligation to pay any invoice raised by IDN in full and by a specified date. In the event that IDN determines that any disputed invoice was, indeed, incorrect, IDN will refund any resulting excess payment to the Customer within fourteen (14) days of such determination.
- 5.8. The Customer's obligation to make payment to IDN is not suspended as a result of any dispute that the Customer may have in respect of any invoice and/or any other document requiring the Customer to make payment to IDN. The Customer agrees that in the event of any dispute the Customer will first pay IDN any amount that is due from the Customer to IDN and then raise its dispute with IDN.
- 5.9. In the event of any cancellation or termination of any Services provided by IDN to the Customer, all claims of IDN, including any ascertained future claims, shall become due and payable forthwith and in full.
- 5.10. All claims of IDN shall be due and payable forthwith and in full in any event, if:
  - 5.10.1. the Customer is involuntarily wound up, the Customer applies for bankruptcy or suspension of payment or otherwise loses the unrestricted disposition over his assets;
  - 5.10.2. the Customer offers a settlement to his creditors, is in default of fulfilling any financial obligation owed to IDN, ceases to trade or
  - 5.10.3. where the Customer is a legal entity or a corporate body if the legal entity or the corporate body is dissolved.
- 5.11. The Customer agrees that IDN is not obliged to provide any security from its own means for the payment of any freight, duties, levies, taxes and/or other costs should the same be demanded by any person.
- 5.12. Without prejudice to the generality of Clause 14 below, the Customer agrees to indemnify IDN with any amount that:
  - 5.12.1. may be levied or additionally demanded by any person or authority in connection with any Shipment, as well as any related fines imposed upon any Carrier and/or IDN and/or agent of either the Carrier or IDN. The Customer shall also reimburse the said amounts to IDN if a third party engaged by IDN reasonably demands a payment for the purpose of providing the Services.
  - 5.12.2. may be claimed or additionally claimed from IDN in connection with any Service as a result of incorrectly charged freight rates and costs.
- 5.13. Under no circumstances will the Customer be entitled to set-off any sums payable by the Customer to IDN against any sums which the Customer claims or purports to claim is payable by IDN and/or by any Carrier to the Customer in respect of any Service.
- 5.14. Any cash payments by the Customer shall be deemed in the first place to have been made on account of non-preferential debts of the Customer, regardless of whether any other instructions were given at the time of payment.
- 5.15. If it is necessary for IDN to commence legal proceedings or resort to other legal means to recover an overdue payment from the Customer, the Customer agrees that IDN shall have the liberty to charge an additional amount up to 10% of the total amount due from the Customer to cover IDN's further administrative expenses.

**6. Security rights**

- 6.1. The Customer hereby grants to IDN a lien or equivalent security interest in respect of all goods, documents and moneys which IDN holds or will hold in his possession whatever the reason and the purpose thereof may be, as against any party requiring their delivery to secure the Customer's payment obligations hereunder with respect to such Shipment or any other Shipment. If the goods are forwarded on, IDN shall be

- entitled to collect the sum due on subsequent delivery or draw a bill therefore with the shipping documents annexed.
- 6.2. IDN may also exercise the rights granted to it in Clause 6.1 for the amount that the Customer owes it with respect to previous orders.
- 6.3. Notwithstanding and without prejudice to Clause 6.1 above, the Customer agrees that it will upon demand by IDN provide security for any amount for which the Customer is or may become indebted to IDN. The Customer's obligation to provide security at the request of IDN applies even if the Customer already has provided security in connection with any amount owed and to the extent that any such security provided by the Customer is found by IDN to be inadequate.
- 6.4. All consequences of non-compliance or of failure to comply forthwith with any demand by IDN to provide security shall be borne by the Customer.
- 6.5. If IDN has, notwithstanding the provisions of Clause 5.11 provided security to any other person or authority from its own funds, IDN has the liberty to demand and the Customer agrees to pay IDN the full amount of any security provided by IDN before any Shipment is delivered.
- 6.6. Upon any default by the Customer and at any time thereafter, IDN may declare all obligations secured hereby immediately due and payable and IDN shall be deemed to have the remedies of a secured party to the fullest extent permitted under the law.
- 7. Specific Covenants**
- 7.1. The Customer will use the Software, the Website and the Services only as permitted by the Terms and all applicable laws and regulations.
- 7.2. The Customer will not access (or attempt to access) any of the Services or the Software by any means other than through the interface that is provided by IDN including, without limitation, through any automated means, such as the use of scripts or web crawlers.
- 7.3. The Customer will not engage in any activity that interferes with or disrupts the Software or the Website.
- 7.4. The Customer shall not reproduce, duplicate, copy, sell, trade, lease, license or resell the Services for any purpose.
- 7.5. The Customer agrees that the Customer is solely responsible for any breach of the Customer's obligations under the Terms and for the consequences (including any loss or damage that IDN may suffer) of any such breach.
- 8. The Customer's Password and Account Security**
- 8.1. The Customer will maintain the confidentiality of passwords and other security codes that the Customer uses to access the Services. The Customer will be solely responsible to IDN for all activities that occur under the Customer's account. If the Customer becomes aware of any unauthorized use of the Customer's password, other security codes or account, the Customer will notify IDN immediately at [www.swyft.lk](http://www.swyft.lk) or by e-mail to [support@swyft.lk](mailto:support@swyft.lk).
- 9. Proprietary Rights**
- 9.1. The Customer acknowledges and agrees that IDN owns/has all legal right, title and interest in and to the Services and the Software, including any intellectual property rights therein.
- 9.2. The Customer acknowledges and agrees that the Customer has no right to use any of IDN's trade names, trademarks, service marks, logos, domain names, or other distinctive brand features, including without limitation the trade name "Swyft".
- 10. License from IDN**
- 10.1. So long as the Customer complies with these Terms, IDN grants the Customer a revocable, worldwide, non-assignable, non-transferable, and non-exclusive license to use the Software and the Website solely in connection with the Services (the License).
- 10.2. The Customer may not (and the Customer may not permit anyone else to) copy, modify, create a derivative work of, reverse engineer, decompile or otherwise attempt to extract the source code of the Software, or any part thereof.
- 10.3. The Customer may not assign (or grant a sub-license of) the Customer's rights to use the Software, grant a security interest in or over the Customer's rights to use the Software, or otherwise transfer any part of the Customer's rights to use the Software.
- 11. Termination of License**
- 11.1. The License will remain in effect until terminated as set forth below.
- 11.2. The Customer may terminate the License and the Customer's rights under these Terms by e-mail notice to IDN at \_\_\_\_\_ or by e-mail to [support@swyft.lk](mailto:support@swyft.lk). Termination will be effective when acknowledged by IDN.
- 11.3. IDN may terminate the License and the Customer's rights under these Terms at any time, with or without notice to the Customer:
- 11.3.1. if the Customer has breached any provision of these Terms;
- 11.3.2. if IDN is required to do so by law; or
- 11.3.3. upon (i) the institution by or against the Customer of insolvency, receivership or bankruptcy or winding up proceedings or any other proceedings for the settlement of the Customer's debts, (ii) the Customer making an assignment for the benefit of creditors, or (iii) the Customer's dissolution or ceasing to do business.
- 12. Exclusion of Warranties and Limitation of IDN's Liability**
- 12.1. IDN expressly disclaims all representations and warranties of any kind, whether express or implied, including, but not limited to any implied warranties of merchantability, fitness for a particular purpose and non-infringement. The customer uses the services, the software and the website, which are provided "as is" and "as available" at the customer's sole risk. IDN does not represent or warrant that use of the services will meet the customer's requirements; that use of the services will be uninterrupted, timely, secure or free from error; that any information obtained as a result of the services will be accurate or reliable; or defects in the operation or functionality of any services or software will be corrected.
- 12.2. All Shipments are made at the Customer's expense and risk, subject to the Customer's agreement with the applicable Carrier. In the event of any loss, the Customer will look solely to the applicable Carrier for any compensation that may be due (if any).
- 12.3. IDN will not be liable for any indirect, incidental, special consequential or exemplary damages which may be incurred by the customer, howsoever arising or caused whether in contract and/or in tort and/or otherwise, including, but not be limited to, any loss of profit, any loss of goodwill or business reputation, any loss of data, or cost of procurement of substitute goods or services.
- 12.4. IDN will not be liable for any direct damages except in the case of IDN's gross negligence, and then only to the extent of the fees that IDN received from the customer for the shipment giving rise to the applicable claim for damages.
- 12.5. The limitations on IDN's liability to the customer set forth in clauses 12.2 and 12.4 will apply whether or not IDN has been advised of or should have been aware of the possibility of any such losses arising.
- 12.6. The provisions of clause 18.5 notwithstanding, if any limitation on IDN's liability set forth in clause 12.2 is deemed invalid or unenforceable, then that limitation will be replaced by the following: IDN's total liability to the customer will not exceed the fees that IDN has received or is entitled to receive from the customer for the shipment giving rise to the applicable claim for damages.
- 12.7. In the event the exclusion of any warranties or liabilities is not permitted by any applicable law IDN's liability shall be limited to the maximum extent permitted by the aforesaid applicable law.

- 12.8. Any action by the customer against IDN hereunder must be brought within one year of the date that the shipment giving rise to the applicable claim for damages was picked up by the carrier (or was scheduled to be picked up in the event that the shipment was not actually picked up).
- 12.9. Without limiting the generality of Clause 12.2, the Customer will be liable for any loss arising from the nature of the goods shipped or any insufficiency in their packing; incorrectness, inaccuracy or incompleteness of instructions or data; failure to tender goods in the agreed place or at the agreed time; failure to provide instructions or documents in the agreed place or at the agreed time; negligence of the Customer or its agents; or any Carrier's refusal to sign for the number or weight of items being shipped.
13. **Claims Against Third Parties**
- 13.1. If any goods are not delivered without delay at the place of destination in the state in which they were tendered IDN will provide the Customer with all particulars relating to the transport contracts which have been entered into for the purpose thereof and put at the disposal of the Customer all documents in IDN's possession or which IDN can reasonably obtain and supply, at any rate in as far as they may be used to claim any damages sustained.
- 13.2. IDN shall not be obliged to take any legal or arbitration proceedings against third parties unless IDN has in writing stated its willingness to do so at the Customer's request and expense. If IDN assists the Customer to recover any amounts from any third parties, the Customer will reimburse IDN for any legal and out-of-pocket expenses incurred in providing such assistance.
- 13.3. Where the Customer wishes to receive a copy of any document or data held by a Carrier, government agency, or any other third party as referred to in Clause 3.2.7, the Customer hereby grants IDN a Power of Attorney to request and collect a copy of such document or data from such Carrier, agency or party. Where such document or data is covered by any personal data protection rights granted by the applicable law, the Power of Attorney shall also cover the right of access and right of correction to be exercised by IDN on behalf of the Customer, insofar as allowed by applicable law. Where required by applicable law or the Carrier, agency or party, the Customer shall provide IDN with proof of his/its identity, either by a copy of a state-issued identity document or by any means otherwise accepted by the Carrier, agency or third party. Furthermore, the Customer will provide IDN with any information relevant to exercise the Power of Attorney. The Customer shall reimburse IDN for any costs incurred in requesting of collecting such document or data, including the costs to be paid to the carrier, agency or third party for exercising the right of access or correction. Notwithstanding the generality of Clause 14 the Customer shall hereby indemnify IDN for any breach of law or confidentiality as well as for any claim from the Carrier, agency or third party arising out of such request or collection.
14. **Customer's duty to Indemnify**
- The Customer will defend, indemnify and hold harmless IDN and all of its officers, directors, owners, employees, agents, successors and assigns of the Customer's Shipments (each an "Indemnitee") against any and all third-party (including, without limitation, governmental) claims, damages, costs, fines, penalties, liabilities, losses, attorneys' and other professional fees and disbursements, suffered, incurred by, or asserted against any Indemnitee, including any amounts incurred or paid in settlement or any judgment of any action, suit, or proceeding brought under any statute, at common law, or otherwise, that arises under or in connection with the Customer's use of the Services or the Software or the Website. IDN reserves the right, at its own expense, to assume the exclusive defence and control of any matter for which the Customer are obligated to indemnify any Indemnitee, and the Customer agree to cooperate with IDN's defence of these matters at no cost to IDN.
15. **Changes to the Terms**
- 15.1. IDN may make changes to the Terms from time to time. When any changes are made, IDN will notify the Customer and will make a new copy of the Terms available to the Customer. The Customer understands and agrees that if the Customer uses the Services after IDN has satisfied its obligations set forth in the preceding sentence, such use will constitute acceptance of the updated Terms.
- 15.2. Clause 15.1 notwithstanding, IDN may, at any time, add to the Terms any provisions that are required by the Carrier for any Shipment. IDN will use its best efforts to notify the Customer of any such addition as promptly as is practicable.
- 15.3. Any changes to the Terms that are proposed by the Customer will take effect only if they are accepted in writing by an officer of IDN.
16. **Force majeure**
- 16.1. All circumstances which IDN could not reasonably avoid and the consequences of which IDN could not reasonably prevent are to be regarded as force majeure.
- 16.2. In the event of force majeure, the all contractual relations between the Customer and IDN shall remain in force; IDN's obligations shall, however, be suspended for the duration of the event of force majeure.
- 16.3. Without prejudice to the provisions of Clause 4.5 and Clause 5.1 all additional costs caused by force majeure, such as carriage and storage charges, warehouse or yard rentals, demurrage for vessels or trucks, insurance, removal, etc., shall be borne by the Customer and shall be paid to IDN upon IDN's first request.
17. **Choice of Law and Jurisdiction**
- 17.1. These Terms will be governed by the laws of Sri Lanka without regard to its conflict of laws provisions.
- 17.2. The Parties agree to submit to the exclusive jurisdiction of the courts of Sri Lanka to resolve any dispute, difference or controversy arising from the Terms. The choice of jurisdiction notwithstanding, in the event of a breach or threatened breach of the Terms, IDN may apply for injunctive or other equitable remedies in any jurisdiction.
- 17.3. In the event of any suit hereunder, the prevailing party will be entitled to an award of costs, including reasonable attorneys' fees.
18. **Other General Legal Terms**
- 18.1. These Terms constitutes the entire legal agreement between the Customer and IDN; governs the Customer's use of the Services, the Software, and the Website; and completely replaces any prior agreements between the Customer and IDN in relation to the Services, the Software, or the Website.
- 18.2. Except as set forth in Clause 14, there are no third-party beneficiaries of these Terms.
- 18.3. The Customer agrees that IDN may provide the Customer with notices, including those regarding changes to the Terms, by e-mail, postal service, overnight courier, or postings on the Website.
- 18.4. The Customer agrees that if IDN does not exercise or enforce any legal right or remedy which is contained in the Terms (or which IDN has the benefit of under any applicable law), this will not be taken to be a waiver of IDN's rights and that those rights or remedies will still be available to IDN.
- 18.5. If any court of competent jurisdiction determines that any provision of the Terms is invalid, then that provision will be deemed removed from the Terms, and the remaining provisions of the Terms will remain in full force and effect.
- 18.6. Clauses 1, 3 to 9 inclusive, 12 to 15 inclusive and 17 to 18 inclusive will survive any termination or expiration of these Terms.