

## CONDITIONS OF CONTRACT

### SOLE CONDITIONS

**LOCKER FREIGHT LTD** ("the Company") is a member of the United Kingdom Warehousing Association (formerly the National Association of Warehouse Keepers), is not a common carrier, and undertakes all services subject solely to the following Conditions which can be varied only in writing by a Director, Company Secretary or Partner of the Company. If a Customer's acceptance document, purchase order or other documentation, received by the Company before or after notification of these Conditions, contains terms or conditions additional to, or at variance with these Conditions, then every such additional or varying term or condition shall be of no effect.

### IMPORTANT NOTE

**THE CUSTOMER'S ATTENTION IS DRAWN SPECIFICALLY TO CONDITION 3.** Condition 3 has been included herein solely to relieve the owner of the goods (including any associated packing and equipment) the subject of this contract ("the Goods"), or the owner's agent, of the additional costs that the Company would need to include to recover insurance charges were its liability not limited as provided for in Condition 3. Condition 3(v)(b) will become operative at the option of the Customer on the terms provided therein.

### WARRANTY OF AGENCY

1 The Customer warrants that it is either the owner of the Goods or is authorised by such owner to accept these conditions on the owner's behalf.

### CUSTOMER'S UNDERTAKINGS

2(i) The Customer undertakes that:-

- (a) When presented for warehousing, the Goods shall be securely and properly packed in compliance with any statutory regulations or official or recognised standards and in such condition as not to cause damage or injury or the likelihood of damage or injury to the property of the Company or to any other goods, whether by spreading of damp, infestation, leakage or the escape of fumes or substances or otherwise howsoever.
- (b) Before presentation of the Goods for warehousing, the Customer will inform the Company in writing of any special precautions necessitated by the nature, weight or condition of the Goods and of any statutory duties specific to the Goods with which the Company may need to comply.
- (c) It will reimburse all duties and taxes that the Company may be required to pay in respect of the Goods including situations where the liability to pay them arises due to the fault of the Company or its employees or sub-contractors.
- (d) Unless prior to acceptance of the Goods by the Company, the Company receives written notice containing all appropriate information, none of the Goods constitute "Waste" as defined in the Environmental Protection Act 1990.
- (e) Unless prior to acceptance of the Goods by the Company, the Company receives written notice containing all appropriate information, none of the Goods are or contain substances the storage of which would require the obtaining of any consent or licence or which, if they escaped from their packaging, would or may cause pollution of the environment or harm to human health.
- (f) It will be liable for any breach of HM Customs & Excise Regulations relating to goods warehoused and undertakes to indemnify and keep indemnified the Company against all actions, proceedings, costs, claims and demands arising out of any further breach, non-observance or non-performance of the same.

2(ii) Notwithstanding any notice under Condition 3(v)(b), if there is a breach of contract by the Customer, the Customer will indemnify the Company against any loss or damage it suffers which is related to the breach, and will pay all costs and expenses (including professional fees) incurred in, and the Company's reasonable charges for, dealing with the breach and its consequences. The Customer will pay an extra storage charge equal to the amount of any fine or penalty payable by the Company wholly or partly as a result of a breach by the Customer of this contract. If the Company suspects a breach of warranty in Condition 1 or of any undertaking in Condition 2(i), it may demand the immediate removal of any goods held for the Customer, or itself arrange their removal without notice, at the Customer's expense.

### COMPANY'S LIABILITY FOR GOODS AND OTHER LOSSES

- 3(i) Except as provided in Condition 3(iii) below, the Company does not insure the Goods and the Customer shall make arrangements to cover the Goods against all risks to the full insurable value thereof (including all duties and taxes).
- 3(ii) Subject only to sub-clause 3(iii) below, the Company excludes all liability whatsoever and howsoever arising in respect of the Goods including (without limitation) all liability for loss, damage, duties and taxes, deterioration, delay, non-delivery, mis-delivery, unauthorised delivery or non-compliance with instructions ("Loss").
- 3(iii) If and to the extent that Loss is directly caused by neglect or wilful act or default of the Company, its employees (acting in furtherance of their duties as employees) or sub-contractors (acting in furtherance of their duties as sub-contractors) and subject to sub-clause 3(iv) below, the Company will accept liability for Loss up to the Limit fixed by sub-clause 3(v) below.
- 3(iv) In no case whatsoever (including without limitation a case within sub-clause 3(iii) above) shall the Company be liable for any loss of profit or income or indirect or consequential Loss of any kind.
- 3(v) In no case whatsoever (including inter alia a case within sub-clause 3(iii) above) shall any liability of the Company (including inter alia any liability in respect of duties and taxes) exceed a limit per tonne weight of that part of the Goods in respect of which a claim arises ("the Limit") fixed as follows:-
  - (a) If a higher Limit has not been implemented under (b) below, the Limit shall be a total of £100 per tonne.
  - (b) The Customer may require an increase in the per tonne limit under (a) by notice in writing to be received by the Company at least 7 days before the date ("the Date") on which the increased Limit is required to be operative. The notice shall state the increased Limit and the nature and maximum value of the Goods, including duty and taxes. The increased Limit shall apply in respect of any cause of action arising after the Date. The Company shall accept such increase subject to payment by the Customer within 7 days of invoice of the Company's costs in insuring against its increased liability under the increased Limit.
- 3(vi) Without prejudice to the Company's rights under clause 6 to be paid free from deductions, any limitation of liability on the part of the Company shall be applied to any claim by the Customer before any set off or counterclaim is asserted against money due to the Company.
- 3(vii) (a) The Company shall not be liable for any Claim unless it has received written notice of the Claim from the Customer with 21 days (7 days in the case of sub-contract carriage) of the cause of the Claim coming to the Customer's knowledge or of the goods being delivered by the Company to or to the use of the Customer, whichever is the later.

(b) No legal proceedings may be brought against the Company unless they are issued and served, and no counterclaim may be raised unless full written details are received by the Company, within 9 months of the event giving rise to the Claim.

3(viii) The Company shall not be liable hereunder for any loss or damage to the extent that the same is caused or contributed to by a breach of any of the Customer's warranties and undertakings (or by any of the circumstances by virtue of which the Company is relieved of its contractual obligations in accordance with Condition 8).

#### **EMPLOYEES AND SUB-CONTRACTORS**

- 4(i) The Customer and the Owner of the Goods will not take any proceedings against any employee or sub-contractor of the Company for a Claim.
- 4(ii) Without prejudice to Condition 4(i), if an employee or sub-contractor pays or is liable to make a payment to the Customer or Owner of the Goods in connection with a Claim, the Customer and the Owner of the Goods will each fully indemnify the Company against any claim (including all costs and expenses) by the employee or sub-contractor against the Company for reimbursement of or indemnity against that payment to the extent that it exceeds £100 per tonne weight of that part of the Goods the subject of a Claim or any higher figure agreed under Condition 3(v)(b).
- 4(iii) In any of the circumstances referred to in Condition 4(iv) hereof, and otherwise with the written consent of the Customer, the Company shall be entitled to sub-contract all or any part of its business and in this event these Conditions shall apply to such services. The Company shall be entitled to sub-contract with others for the security, cleaning, maintenance, repair and other services and works at the premises where the Goods are located.
- 4(iv) The circumstances referred to in Condition 4(iii) hereof are actual or anticipated storm, flood, fire, explosion, breakdown or failure of plant and/or machinery, riot, civil disturbance, industrial dispute, labour disturbance, requirement of a responsible Authority or any emergency reasonably requiring such action by the Company.

#### **CHANGE OF CUSTOMER**

5 The Customer may give written authority for the Goods or any part thereof to be transferred by the Company to the account of another party but subject to the Customer ensuring before the effective date of the transfer that such other party notifies the Company in writing that it is to become the Customer and is to be bound by these Conditions and by any notice given under Condition 3. Further, the Customer agrees to continue to pay the Company's charges until receipt and acceptance by the Company of the other party's written notification.

#### **CHARGES, PAYMENTS AND LIEN**

6 The Company's charges, which may be increased from time to time by at least 21 days' prior notice to the Customer, shall be payable free of any deductions at such periodic intervals as may have been agreed between the parties and in any event on the earlier of (a) the expiry of any agreed period of credit and (b) the time immediately before the removal of the Goods from the Company's custody or control. Interest on amounts due and unpaid shall be payable from the date when payment of such amounts fell due and shall be calculated at the rate of 2 per cent for each calendar month during all or part of which a payment is overdue. Further, the Company shall have on the Goods a particular lien, as well as a general lien entitling it to retain the Goods as security for payment of all sums claimed by the Company from the Customer or the owner of the Goods on any account (relating to the Goods or not). Storage charges shall continue to accrue on any goods detained under lien.

#### **TERMINATION**

- 7(i) The Goods shall be removed by the Customer from the custody or control of the Company at such date as may have been agreed between the parties. In the absence of such agreement, and otherwise where reasonably necessary, the Company may at any time by notice in writing to the Customer require the removal of the Goods within 28 days from the date of such notice or, in the case of perishable goods, within 3 days.
- 7(ii) In the event of failure by the Customer by the due time to remove any of the Goods from the custody or control of the Company (notice in accordance with Condition 7(i) having been given) or to pay any amount claimed by the Company, the Company may, without prejudice to its other rights and remedies against the Customer, give notice in writing to the Customer of the Company's intention to sell or otherwise dispose of the Goods at the Customer's entire risk and expense if such amount is not paid and/or such Goods are not removed within 28 days, or in the case of perishable goods within 3 days from the date of such notice. On the expiry of such period, if such payment has not been made and/or the Goods have not been so removed the Company shall be entitled to sell or otherwise dispose of all or any part of the Goods at the Customer's entire risk and expense, and the proceeds of any sale or disposal shall be remitted to the Customer after deduction therefrom of all expenses and all amounts claimed by the Company from the Customer or the Goods owner on any account. The Company will use a reasonably appropriate method of sale but will not be liable for any inadequacy in the price achieved.
- 7(iii) In the case of perishable goods, notice under Condition 7(ii) may be combined with a notice under Condition 7(i).

#### **FRUSTRATION OF CONTRACT**

8 The Company shall be relieved of its contractual obligations to the extent that their performance is prevented by, or their non-performance results wholly or partly, directly or indirectly from the act, neglect, or default of the Customer, including any breach by the Customer of these Conditions, or by storm, flood, fire, explosion, breakdown or unavailability of plant and/or machinery, riot, civil disturbance, industrial dispute, labour disturbance or cause beyond the reasonable control of the Company.

#### **GENERAL**

- 9(i) Each exclusion or limitation in these Conditions exists separately and cumulatively.
- 9(ii) When reasonably necessary and at the discretion of the Company the Goods may be carried, stored or handled with other compatible goods or transferred between stores.
- 9(iii) Any notice or statement of account given by the Company to the Customer shall be duly given if left at or sent by first class post to the last known address of the Customer or by facsimile to the last notified number or by e-mail to the last notified e-mail address and such notice or account shall if posted be deemed to have been given 2 working days after posting and, if by facsimile or e-mail (in the case of e-mail, with delivery reported), the next working day.

#### **GOVERNING LAW**

10 All contracts between the Company and the Customer shall be governed in all respects by the law of England (unless the goods are stored in Scotland in which case Scottish Law applies) and the Customer hereby submits to the exclusive jurisdiction of the English (or Scottish if appropriate) courts.

#### **OTHER CONDITIONS OF BUSINESS**

- 11 If the business undertaken comprises or includes any of the following activities, then these Conditions shall still apply to the activity except to the extent that they are inconsistent with the Company's own standard terms (if any) for such activity in which case those standard terms shall apply (but these Conditions will always apply in connection with the loading or unloading of the Goods, or the transfer of the Goods as referred to in Condition 9(ii)).
- (a) Carriage of goods.
  - (b) Vehicle repair and maintenance.
  - (c) Freight Forwarding.

# Road Haulage Association Limited

## CONDITIONS OF CARRIAGE 1998 - Effective 1 September 1998

PLEASE NOTE THAT THE CUSTOMER WILL NOT IN ALL CIRCUMSTANCES BE ENTITLED TO COMPENSATION, OR TO FULL COMPENSATION, FOR ANY LOSS AND IS THEREFORE RECOMMENDED TO SEEK PROFESSIONAL ADVICE AS TO APPROPRIATE INSURANCE COVER TO BE MAINTAINED WHILE CONSIGNMENTS ARE IN TRANSIT.

Company stamp or details

  
  
  
  
  
  
  
  
  
  

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RHA membership number

(hereinafter referred to as "*the Carrier*") is not a common carrier and accepts goods for carriage only upon that condition and the Conditions set out below. No servant or agent of the Carrier is permitted to alter or vary these Conditions in any way unless expressly authorised in writing to do so by a Director, Principal, Partner or other authorised person. If any legislation is compulsorily applicable to the Contract and any part of these Conditions is incompatible with such legislation, such part shall, as regards the Contract, be overridden to that extent and no further.

## 1. Definitions

**In these Conditions:**

"Customer" means the person or company who contracts for the services of the Carrier including any other carrier who gives a Consignment to the Carrier for carriage.

"Contract" means the contract of carriage between the Customer and the Carrier.

"Consignee" means the person or company to whom the Carrier contracts to deliver the Consignment.

**"Consignment"** means goods, whether a single item or in bulk or contained in one parcel, package or container, as the case may be, or any number of separate items, parcels, packages or containers sent at one time in one load by or for the Customer from one address to one address.

*"Dangerous Goods"* means goods named individually in the Approved Carriage List issued from time to time by the Health and Safety Commission, explosives, radioactive material, and any other goods presenting a similar hazard.

## 2. Parties and Sub-Contracting

- (1) The Customer warrants that he is either the owner of the Consignment or is authorised by such owner to accept these Conditions on such owner's behalf.
- (2) The Carrier and any other carrier employed by the Carrier may employ the services of any other carrier for the purpose of fulfilling the Contract in whole or in part and the name of every other such carrier shall be provided to the Customer upon request.
- (3) The Carrier contracts for itself and as agent of and trustee for its servants and agents and all other carriers referred to in (2) above and such other carriers' servants and agents and every reference in these Conditions to "the Carrier" shall be deemed to include every other such carrier, servant and agent with the intention that they shall have the benefit of the Contract and collectively and together with the Carrier be under no greater liability to the Customer or any other party than is the Carrier hereunder.
- (4) Notwithstanding Condition 2(3) the carriage of any Consignment by rail, sea, inland waterway or air is arranged by the Carrier as agent of the Customer and shall be subject to the Conditions of the rail, shipping, inland waterway or air carrier contracted to carry the Consignment. The Carrier shall be under no liability whatever to whomsoever and howsoever arising in respect of such carriage: Provided that where the Consignment is carried partly by road and partly by such other means of transport any loss, damage or delay shall be deemed to have occurred while the Consignment was being carried by road unless the contrary is proved by the Carrier.

### 3. Dangerous Goods

Dangerous Goods must be disclosed by the Customer and if the Carrier agrees to accept them for carriage they must be classified, packed and labelled in accordance with the statutory regulations for the carriage by road of the substance declared. Transport Emergency Cards (Tremcards) or information in writing in the manner required by the relevant statutory provisions must be provided by the Customer in respect of each substance and must accompany the Consignment.

#### 4. Loading and Unloading

- (1) Unless the Carrier has agreed in writing to the contrary with the Customer:

- (a) The Carrier shall not be under any obligation to provide any plant, power or labour, other than that carried by the vehicle, required for loading or unloading the Consignment.
  - (b) The Customer warrants that any special appliances required for loading or unloading the Consignment which are not carried by the vehicle will be provided by the Customer or on the Customer's behalf.
  - (c) The Carrier shall be under no liability whatever to the Customer for any damage whatever, however caused, if the Carrier is instructed to load or unload any Consignment requiring special appliances which, in breach of the warranty in (b) above, have not been provided by the Customer or on the Customer's behalf.
  - (d) The Carrier shall not be required to provide service beyond the usual place of collection or delivery but if any such service is given by the Carrier it shall be at the sole risk of the Customer.
- The Customer shall indemnify the Carrier against all claims and demands whatever which could not have been made if such instructions as are referred to in (1)(c) of this Condition and such service as is referred to in (1)(d) of this Condition had not been given.

## 5. Signed Receipts

The Carrier shall, if so required, sign a document prepared by the sender acknowledging the receipt of the 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 is received by the Carrier and the burden of proving the condition of the Consignment on receipt by the Carrier and that the Consignment was of the nature, quantity or weight declared in the relevant document shall rest with the Customer.

## 6. Transit

- (1) Transit shall commence when the Carrier takes possession of the Consignment whether at the point of collection or at the Carrier's premises.
- (2) Transit shall (unless otherwise previously determined) end when the Consignment is tendered at the usual place of delivery at the Consignee's address within the customary cartage hours of the district: Provided that;
  - (a) if no safe and adequate access or no adequate unloading facilities there exist then transit shall be deemed to end at the expiry of one clear day after notice in writing (or by telephone if so previously agreed in writing) of the arrival of the Consignment at the Carrier's premises has been sent to the Consignee; and
  - (b) when for any other reason whatever a Consignment cannot be delivered or when a Consignment is held by the Carrier 'to await order' or 'to be kept till called for' or upon any like instructions and such instructions are not given or the Consignment is not called for and removed within a reasonable time, then transit shall be deemed to end.

## 7. Undelivered or Unclaimed Consignments

Where the Carrier is unable for any reason to deliver a Consignment to the Consignee or as he may order, or where by virtue of the proviso to Condition 6(2) hereof transit is deemed to be at an end, the Carrier may sell the Consignment, and payment or tender of the proceeds after deduction of all proper charges and expenses in relation thereto and of all outstanding charges in relation to the carriage and storage of the Consignment shall (without prejudice to any claim or right which the Customer may have against the Carrier otherwise arising under these Conditions) discharge the Carrier from all liability in respect of such Consignment, its carriage and storage:

Provided that:

- (1) the Carrier shall do what is reasonable to obtain the value of the Consignment; and
- (2) the power of sale shall not be exercised where the name and address of the sender or of the Consignee is known unless the Carrier shall have done what is reasonable in the circumstances to give notice to the sender or, if the name and address of the sender is not known, to the Consignee that the Consignment will be sold unless within the time specified in such notice, being a reasonable time in the circumstances from the giving of such notice, the Consignment is taken away or instructions are given for its disposal.

## 8. Carrier's Charges

- (1) The Carrier's charges shall be payable by the Customer without prejudice to the Carrier's rights against the Consignee or any other person: Provided that when any Consignment is consigned 'carriage forward' the Customer shall not be required to pay such charges unless the Consignee fails to pay after a reasonable demand has been made by the Carrier for payment thereof.
- (2) Charges shall be payable when due without reduction or deferment on account of any claim, counterclaim or set-off. The Carrier shall be entitled to interest at 8 per cent above the Bank of England Base Rate prevailing at the date of the Carrier's invoice or account, calculated on a daily basis on all amounts overdue to the Carrier.

## 9. Liability for Loss and Damage

- (1) The Customer shall be deemed to have elected to accept the terms set out in (2) of this Condition unless, before the transit commences, the Customer has agreed in writing that the Carrier shall not be liable for any loss or mis-delivery of or damage to or in connection with the Consignment however or whenever caused and whether or not caused or contributed to directly or indirectly by any act, omission, neglect, default or other wrongdoing on the part of the Carrier, its servants, agents or sub-contractors.
- (2) Subject to these Conditions the Carrier shall be liable for:
  - (a) physical loss, mis-delivery of or damage to living creatures, bullion, money, securities, stamps, precious metals or precious stones comprising the Consignment only if:
    - (i) the Carrier has specifically agreed in writing to carry any such items; and
    - (ii) the Customer has agreed in writing to reimburse the Carrier in respect of all additional costs which result from the carriage of the said items; and
    - (iii) the loss, mis-delivery or damage is occasioned during transit and is proved to be due to the negligence of the Carrier, its servants, agents or sub-contractors;
  - (b) physical loss, mis-delivery of or damage to any other goods comprising the Consignment unless the same has arisen from, and the Carrier has used reasonable care to minimise the effects of:
    - (i) Act of God;
    - (ii) any consequences of war, invasion, act of foreign enemy, hostilities (whether war or not), civil war, rebellion, insurrection, terrorist act, military or usurped power or confiscation, requisition, or destruction or damage by or under the order of any government or public or local authority;
    - (iii) seizure or forfeiture under legal process;
    - (iv) error, act, omission, mis-statement or misrepresentation by the Customer or other owner of the Consignment or by servants or agents of either of them;
    - (v) inherent liability to wastage in bulk or weight, faulty design, latent defect or inherent defect, vice or natural deterioration of the Consignment;
    - (vi) insufficient or improper packing;
    - (vii) insufficient or improper labelling or addressing;
    - (viii) riot, civil commotion, strike, lockout, general or partial stoppage or restraint of labour from whatever cause;
    - (ix) Consignee not taking or accepting delivery within a reasonable time after the Consignment has been tendered.
- (3) The Carrier shall not in any circumstances be liable for loss or damage arising after transit is deemed to have ended within the meaning of Condition 6(2) hereof, whether or not caused or contributed to directly or indirectly by any act, omission, neglect, default or other wrongdoing on the part of the Carrier, its servants, agents or sub-contractors.

## 10. Fraud

The Carrier 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, or the servants or agents of either, in respect of that Consignment, unless the fraud has been contributed to by the complicity of the Carrier or of any servant of the Carrier acting in the course of his employment.

## 11. Limitation of Liability

- (1) Except as otherwise provided in these Conditions, the liability of the Carrier in respect of claims for physical loss, mis-delivery of or damage to goods comprising the Consignment, howsoever arising, shall in all circumstances be limited to the lesser of
  - (a) the value of the goods actually lost, mis-delivered or damaged; or
  - (b) the cost of repairing any damage or of reconditioning the goods; or
  - (c) a sum calculated at the rate of £1,300 Sterling per tonne on the gross weight of the goods actually lost, mis-delivered or damaged; and the value of the goods actually lost, mis-delivered or damaged shall be taken to be their invoice value if they have been sold and shall otherwise be taken to be the replacement cost thereof to the owner at the commencement of transit, and in all cases shall be taken to include any Customs and Excise duties or taxes payable in respect of those goods: Provided that:
    - (i) in the case of loss, mis-delivery of or damage to a part of the Consignment the weight to be taken into consideration in determining the amount to which the Carrier's liability is limited shall be only the gross weight of that part regardless of whether the loss, mis-delivery or damage affects the value of other parts of the Consignment;
    - (ii) nothing in this Condition shall limit the liability of the Carrier to less than the sum of £10;
    - (iii) the Carrier shall be entitled to proof of the weight and value of the whole of the Consignment and of any part thereof lost, mis-delivered or damaged;
    - (iv) the Customer shall be entitled to give to the Carrier written notice to be delivered at least 7 days prior to commencement of transit requiring that the £1,300 per tonne limit in 11 (1)(c) above be increased, but not so as to exceed the value of the Consignment, and in the event of such notice being given the Customer shall be required to agree with the Carrier an increase in the carriage charges in consideration of the increased limit, but if no such agreement can be reached the aforementioned £1,300 per tonne limit shall continue to apply.

- (2) The liability of the Carrier in respect of claims for any other loss whatsoever (including indirect or consequential loss or damage and loss of market), and howsoever arising in connection with the Consignment, shall not exceed the amount of the carriage charges in respect of the Consignment or the amount of the claimant's proved loss, whichever is the lesser, unless;
  - (a) at the time of entering into the Contract with the Carrier the Customer declares to the Carrier a special interest in delivery in the event of physical loss mis-delivery or damage or of an agreed time limit being exceeded and agrees to pay a surcharge calculated on the amount of that interest, and
  - (b) at least 7 days prior to the commencement of transit the Customer has delivered to the Carrier written confirmation of the special interest, agreed time limit and amount of the interest.

## 12. Indemnity to the Carrier

The Customer shall indemnify the Carrier against:

- (1) all liabilities and costs incurred by the Carrier (including but not limited to claims, demands, proceedings, fines, penalties, damages, expenses and loss of or damage to the carrying vehicle and to other goods carried) by reason of any error, omission, mis-statement or misrepresentation by the Customer or other owner of the Consignment or by any servant or agent of either of them, insufficient or improper packing, labelling or addressing of the Consignment or fraud as in Condition 10;
- (2) all claims and demands whatsoever (including for the avoidance of doubt claims alleging negligence), by whomsoever made and howsoever arising (including but not limited to claims caused by or arising out of the carriage of Dangerous Goods and claims made upon the Carrier by HM Customs and Excise in respect of dutiable goods consigned in bond) in excess of the liability of the Carrier under these Conditions in respect of any loss or damage whatsoever to, or in connection with, the Consignment whether or not caused or contributed to directly or indirectly by any act, omission, neglect, default or other wrongdoing on the part of the Carrier, its servants, agents or sub-contractors.

## 13. Time Limits for Claims

- (1) The Carrier shall not be liable for:
    - (a) damage to the whole or any part of the Consignment, or physical loss, mis-delivery or non-delivery of part of the Consignment unless advised thereof in writing within seven days, and the claim is made in writing within fourteen days, after the termination of transit;
    - (b) any other loss unless advised thereof in writing within twenty-eight days, and the claim is made in writing within forty-two days, after the commencement of transit.
- Provided that if the Customer proves that,
- (i) it was not reasonably possible for the Customer to advise the Carrier or make a claim in writing within the time limit applicable, and
  - (ii) such advice or claim was given or made within a reasonable time,
- the Carrier shall not have the benefit of the exclusion of liability afforded by this Condition.
- (2) The Carrier shall in any event be discharged from all liability whatsoever and howsoever arising in respect of the Consignment unless suit is brought within one year of the date when transit commenced.
  - (3) In the computation of time where any period provided by these Conditions is seven days or less, Saturdays, Sundays and all statutory public holidays shall be excluded.

## 14. Lien

- (1) The Carrier shall have a general lien against the Customer, where the Customer is the owner of the Consignment, for any monies whatever due from the Customer to the Carrier. If such a lien is not satisfied within a reasonable time, the Carrier may, at its absolute discretion sell the Consignment, or part thereof, as agent for the Customer and apply the proceeds towards the monies due and the expenses of the retention, insurance and sale of the Consignment and shall, upon accounting to the Customer for any balance remaining, be discharged from all liability whatever in respect of the Consignment.
- (2) Where the Customer is not the owner of the Consignment, the Carrier shall have a particular lien against the said owner, allowing the Carrier to retain possession, but not to dispose of, the Consignment against monies due from the Customer in respect of the Consignment.

## 15. Unreasonable Detention

The Customer shall be liable to pay demurrage for unreasonable detention of any vehicle, trailer, container or other equipment but the rights of the Carrier against any other person in respect thereof shall remain unaffected.

## 16. Law and Jurisdiction

The Contract shall be governed by English law and United Kingdom courts alone shall have jurisdiction in any dispute between the Carrier and the Customer.

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Registered under the provisions of the Restrictive Trade Practices Act 1976

**THESE CONDITIONS MAY ONLY BE USED BY  
MEMBERS OF THE ROAD HAULAGE ASSOCIATION**

These Conditions may be used by BIFA members ONLY

THE CUSTOMER'S ATTENTION IS DRAWN TO SPECIFIC CLAUSES HEREOF WHICH EXCLUDE OR LIMIT THE COMPANY'S LIABILITY AND THOSE WHICH REQUIRE THE CUSTOMER TO INDEMNIFY THE COMPANY IN CERTAIN CIRCUMSTANCES AND THOSE WHICH LIMIT TIME, BEING CLAUSES 8, 10, 12-14 INCLUSIVE, 18-20 INCLUSIVE, AND 24-27 INCLUSIVE

Insurance may only be effected by the Company under clause 11(A) if so authorised by the Financial Services Authority or its successor

All headings are indicative and do not form part of these conditions

#### DEFINITIONS AND APPLICATION

- 1 In these conditions the following words shall have the following meanings:-
 

"Company"	the BIFA member trading under these conditions
"Consignee"	the Person to whom the goods are consigned
"Customer"	any Person at whose request or on whose behalf the Company undertakes any business or provides advice, information or services
"Direct Representative"	the Company acting in the name of and on behalf of the Customer and/or Owner with H.M. Revenue and Customs ("HMRC") as defined by Council Regulation 2193/92 or as amended
"Goods"	the cargo to which any business under these conditions relates
"Person"	natural person(s) or any body or bodies corporate
"SDR"	are Special Drawing Rights as defined by the International Monetary Fund
"Transport Unit"	packing case, pallets, container, trailer, tanker, or any other device used whatsoever for and in connection with the carriage of Goods by land, sea or air
"Owner"	the Owner of the Goods or Transport Unit and any other Person who is or may become interested in them
- 2 (A) Subject to sub-paragraph (B) below, all and any activities of the Company in the course of business, whether gratuitous or not, are undertaken subject to these conditions.
- (B) If any legislation, to include regulations and directives, is compulsorily applicable to any business undertaken, these conditions shall, as regards such business, be read as subject to such legislation, and 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 of these conditions be repugnant to such legislation to any extent, such part shall as regards such business be overridden to that extent and no further.
- 3 The Customer warrants that he is either the Owner, or the authorised agent of the Owner and, also, that he is accepting these conditions not only for himself, but also as agent for and on behalf of the Owner.
- THE COMPANY**
- 4 (A) Subject to clauses 11 and 12 below, the Company shall be entitled to procure any or all of the services as an agent, or, to provide those services as a principal.
- (B) The Company reserves to itself full liberty as to the means, route and procedure to be followed in the performance of any service provided in the course of business undertaken subject to these conditions.
- 5 When the Company contracts as a principal for any services, it shall have full liberty to perform such services itself, or, to subcontract on any terms whatsoever, the whole or any part of such services.
- 6 (A) When the Company acts as an agent on behalf of the Customer, the Company shall be entitled, and the Customer hereby expressly authorises the Company, to enter into all and any contracts on behalf of the Customer as may be necessary or desirable to fulfil the Customer's instructions, and whether such contracts are subject to the trading conditions of the parties with whom such contracts are made, or otherwise.
- (B) The Company shall, on demand by the Customer, provide evidence of any contract entered into as agent for the Customer. Insofar as the Company may be in default of the obligation to provide such evidence, it shall be deemed to have contracted with the Customer as a principal for the performance of the Customer's instructions.
- 7 In all and any dealings with HMRC for and on behalf of the Customer and/or Owner, the Company is deemed to be appointed, and acts as, Direct Representative only.
- 8 (A) Subject to sub-clause (B) below, the Company:
  - (i) has a general lien on all Goods and documents relating to Goods in its possession, custody or control for all sums due at any time to the Company from the Customer and/or Owner on any account whatsoever, whether relating to Goods belonging to, or services provided by, or on behalf of the Company to the Customer or Owner. Storage charges shall continue to accrue on any Goods detained under lien;
  - (ii) shall be entitled, on at least 28 days notice in writing to the Customer, to sell or dispose of or deal with such Goods or documents as agent for, and at the expense of, the Customer and apply the proceeds in or towards the payment of such sums;
  - (iii) shall, upon accounting to the Customer for any balance remaining after payment of any sum due to the Company, and for the cost of sale and/or disposal and/or dealing, be discharged of any liability whatsoever in respect of the Goods or documents.
- (B) When the Goods are liable to perish or deteriorate, the Company's right to sell or dispose of or deal with the Goods shall arise immediately upon any sum becoming due to the Company, subject only to the Company taking reasonable steps to bring to the Customer's attention its intention to sell or dispose of the Goods before doing so.
- 9 The Company shall be entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by, or paid to, freight forwarders.
- 10(A) Should the Customer, Consignee or Owner of the Goods fail to take delivery at the appointed time and place when and where the company is entitled to deliver, the Company shall be entitled to store the Goods, or any part thereof, at the sole risk of the Customer or Consignee or Owner, whereupon the Company's liability in respect of the Goods, or that part thereof, stored as aforesaid, shall wholly cease. The Company's liability, if any, in relation to such storage, shall be governed by these conditions. All costs incurred by the Company as a result of the failure to take delivery shall be deemed as freight earned, and such costs shall, upon demand, be paid by the Customer.
- (B) The Company shall be entitled at the expense of the Customer to dispose of or deal with (by sale or otherwise as may be reasonable in all the circumstances):-
  - (i) after at least 28 days notice in writing to the Customer, or (where the Customer cannot be traced and reasonable efforts have been made to contact any parties who may reasonably be supposed by the Company to have any interest in the Goods) without notice, any Goods which have been held by the Company for 90 days and which cannot be delivered as instructed; and
  - (ii) without prior notice, any Goods which have perished, deteriorated, or altered, or are in immediate prospect of doing so in a manner which has caused or may reasonably be expected to cause loss or damage to the Company, or third parties, or to contravene any applicable laws or regulations.
- 11 (A) No insurance will be effected except upon express instructions given in writing by the Customer and accepted in writing by the Company, and all insurances effected by the Company are subject to the usual exceptions and conditions of the policies of the insurers or underwriters taking the risk. Unless otherwise agreed in writing, the Company shall not be under any obligation to effect a separate insurance on the Goods, but may declare it on any open or general policy held by the Company.
- (B) Insofar as the Company agrees to effect insurance, the Company acts solely as agent for the Customer, and the limits of liability under clause 26(A) (ii) of these conditions shall not apply to the Company's obligations under clause 11.
- 12(A) Except under special arrangements previously made in writing by an officer of the Company so authorised, or made pursuant to or under the terms of a printed document signed by the Company, any instructions relating to the delivery or release of the Goods in specified circumstances (such as, but not limited to, against payment or against surrender of a particular document) are accepted by the Company, where the Company has to engage third parties to effect compliance with the instructions, only as agents for the Customer.
- (B) Despite the acceptance by the Company of instructions from the Customer to collect freight, duties, charges, dues, or other expenses from the Consignee, or any other Person, on receipt of evidence of proper demand by the Company, and, in the absence of evidence of payment (for whatever reason) by such Consignee, or other Person, the Customer shall remain responsible for such freight, duties, charges, dues, or other expenses.
- (C) The Company shall not be under any liability in respect of such arrangements as are referred to under sub-clause (A) and (B) hereof save where such arrangements are made in writing, and in any event, the Company's liability in respect of the performance of, or arranging the performance of, such instructions shall not exceed the limits set out in clause 26(A) (ii) of these conditions.
- 13 Advice and information, in whatever form it may be given, is provided by the Company for the Customer only. The Customer shall indemnify the Company against all loss and damage suffered as a consequence of passing such advice or information on to any third party.
- 14 Without prior agreement in writing by an officer of the Company so authorised, the Company will not accept or deal with Goods that require special handling regarding carriage, handling, or security whether owing to their thief attractive nature or otherwise including, but not limited to bullion, coin, precious stones, jewellery, valuables, antiques, pictures, human remains, livestock, pets, plants. Should any Customer nevertheless deliver any such goods to the Company, or cause the Company to handle or deal with any such goods, otherwise than under such prior agreement, the Company shall have no liability whatsoever for or in connection with the goods, howsoever arising.



15 Except pursuant to instructions previously received in writing and accepted in writing by the Company, the Company will not accept or deal with Goods of a dangerous or damaging nature, nor with Goods likely to harbour or encourage vermin or other pests, nor with Goods liable to taint or affect other Goods. If such Goods are accepted pursuant to a special arrangement, but, thereafter, and in the opinion of the Company, constitute a risk to other goods, property, life or health, the Company shall, where reasonably practicable, contact the Customer in order to require him to remove or otherwise deal with the goods, but reserves the right, in any event, to do so at the expense of the Customer.

16 Where there is a choice of rates according to the extent or degree of the liability assumed by the Company and/or third parties, no declaration of value will be made and/or treated as having been made except under special arrangements previously made in writing by an officer of the Company so authorised as referred to in clause 26(D).

#### THE CUSTOMER

17(A) The Customer warrants:

(i) that the description and particulars of any Goods or information furnished, or services required, by or on behalf of the Customer are full and accurate, and

(ii) that any Transport Unit and/or equipment supplied by the Customer in relation to the performance of any requested service is fit for purpose, and

(B) that all Goods have been properly and sufficiently prepared, packed, stowed, labelled and/or marked, and that the preparation, packing, stowage, labelling and marking are appropriate to any operations or transactions affecting the Goods and the characteristics of the Goods.

(C) that where the Company receives the Goods from the Customer already stowed in or on a Transport Unit, the Transport Unit is in good condition, and is suitable for the carriage to the intended destination of the Goods loaded therein, or thereon, and

(D) that where the Company provides the Transport Unit, on loading by the Customer, the Transport Unit is in good condition, and is suitable for the carriage to the intended destination of the Goods loaded therein, or thereon.

18 Without prejudice to any rights under clause 15, where the Customer delivers to the Company, or causes the Company to deal with or handle Goods of a dangerous or damaging nature, or Goods likely to harbour or encourage vermin or other pests, or Goods liable to taint or affect other goods, whether declared to the Company or not, he shall be liable for all loss or damage arising in connection with such Goods, and shall indemnify the Company against all penalties, claims, damages, costs and expenses whatsoever arising in connection therewith, and the Goods may be dealt with in such manner as the Company, or any other person in whose custody they may be at any relevant time, shall think fit.

19 The Customer undertakes that no claim shall be made against any director, servant, or employee of the Company which imposes, or attempts to impose, upon them any liability in connection with any services which are the subject of these conditions, and, if any such claim should nevertheless be made, to indemnify the Company against all consequences thereof.

20 The Customer shall save harmless and keep the Company indemnified from and against:-

(A) all liability, loss, damage, costs and expenses whatsoever (including, without prejudice to the generality of the foregoing, all duties, taxes, imposts, levies, deposits and outlays of whatsoever nature levied by any authority in relation to the Goods) arising out of the Company acting in accordance with the Customer's instructions, or arising from any breach by the Customer of any warranty contained in these conditions, or from the negligence of the Customer, and

(B) without derogation from sub-clause (A) above, any liability assumed, or incurred by the Company when, by reason of carrying out the Customer's instructions, the Company has become liable to any other party, and

(C) all claims, costs and demands whatsoever and by whomsoever made or preferred, in excess of the liability of the Company under the terms of these conditions, regardless of whether such claims, costs, and/or demands arise from, or in connection with, the breach of contract, negligence or breach of duty of the Company, its servants, sub-contractors or agents, and

(D) any claims of a general average nature which may be made on the Company.

21(A) The Customer shall pay to the Company in cash, or as otherwise agreed, all sums when due, immediately and without reduction or deferment on account of any claim, counterclaim or set-off.

(B) The Late Payment of Commercial Debts (Interest) Act 1998, as amended, shall apply to all sums due from the Customer

22 Where liability arises in respect of claims of a general average nature in connection with the Goods, the Customer shall promptly provide security to the Company, or to any other party designated by the Company, in a form acceptable to the Company.

#### LIABILITY AND LIMITATION

23 The Company shall perform its duties with a reasonable degree of care, diligence, skill and judgment.

24 The Company shall be relieved of liability for any loss or damage if, and to the extent that, such loss or damage is caused by:-

(A) strike, lock-out, stoppage or restraint of labour, the consequences of which the Company is unable to avoid by the exercise of reasonable diligence; or

(B) any cause or event which the Company is unable to avoid, and the consequences of which the company is unable to prevent by the exercise of reasonable diligence.

25 Except under special arrangements previously made in writing by an officer of the Company so authorised, the Company accepts no responsibility with regard to any failure to adhere to agreed departure or arrival dates of Goods.

26(A) Subject to clause 2(B) and 11(B) above and sub-clause (D) below, the Company's liability howsoever arising and, notwithstanding that the cause of loss or damage be unexplained, shall not exceed

(i) in the case of claims for loss or damage to Goods:

(a) the value of any loss or damage, or

(b) a sum at the rate of 2 SDR per kilo of the gross weight of any Goods lost or damaged

whichever shall be the lower.

(ii) subject to (iii) below, in the case of all other claims:

(a) the value of the subject Goods of the relevant transaction between the Company and its Customer, or

(b) where the weight can be defined, a sum calculated at the rate of 2 SDR per kilo of the gross weight of the subject Goods of the said transaction, or

(c) 75,000 SDR in respect of any one transaction,

whichever shall be the least.

(iii) in the case of an error and/or omission, or a series of errors and/or omissions which are repetitions of or represent the continuation of an original error, and/or omission

(a) the loss incurred, or

(b) 75,000 SDR in the aggregate of any one trading year commencing from the time of the making of the original error, and/or omission,

whichever shall be the lower.

For the purposes of clause 26(A), the value of the Goods shall be their value when they were, or should have been, shipped. The value of SDR shall be calculated as at the date when the claim is received by the Company in writing.

(B) Subject to clause 2(B) above and sub-clause (D) below, the Company's liability for loss or damage as a result of failure to deliver, or arrange delivery of goods, in a reasonable time, or (where there is a special arrangement under Clause 25) to adhere to agreed departure or arrival dates, shall not in any circumstances whatever exceed a sum equal to twice the amount of the Company's charges in respect of the relevant contract.

(C) Save in respect of such loss or damage as is referred to at sub-clause (B), and subject to clause 2(B) above and Sub-Clause (D) below, the Company shall not in any circumstances whatsoever be liable for indirect or consequential loss such as (but not limited to) loss of profit, loss of market, or the consequences of delay or deviation, however caused.

(D) On express instructions in writing declaring the commodity and its value, received from the Customer and accepted by the Company, the Company may accept liability in excess of the limits set out in sub-clauses (A) to (C) above upon the Customer agreeing to pay the Company's additional charges for accepting such increased liability. Details of the Company's additional charges will be provided upon request.

27(A) Any claim by the Customer against the Company arising in respect of any service provided for the Customer, or which the Company has undertaken to provide, shall be made in writing and notified to the Company within 14 days of the date upon which the Customer became, or ought reasonably to have become, aware of any event or occurrence alleged to give rise to such claim, and any claim not made and notified as aforesaid shall be deemed to be waived and absolutely barred, except where the Customer can show that it was impossible for him to comply with this time limit, and that he has made the claim as soon as it was reasonably possible for him to do so.

(B) Notwithstanding the provisions of sub-paragraph (A) above, the Company shall in any event be discharged of all liability whatsoever and howsoever arising in respect of any service provided for the Customer, or which the Company has undertaken to provide, unless suit be brought and written notice thereof given to the Company within nine months from the date of the event or occurrence alleged to give rise to a cause of action against the Company.

#### JURISDICTION AND LAW

28 These conditions and any act or contract to which they apply shall be governed by English law and any dispute arising out of any act or contract to which these Conditions apply shall be subject to the exclusive jurisdiction of the English courts.