Road Haulage Association Limited
CONDITIONS OF CARRIAGE 2009
Effective 1 September 2009

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

Company stamp or details

F S W Ltd
Gate 3 BIP Site
Tat Bank Road
Oldbury
West Midlands
B69 4NH

0030454-000

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 those substances and articles the carriage of which is prohibited by the provisions of the European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR) as applied in the United Kingdom, or authorised only under the conditions prescribed in accordance therewith.
"In writing" includes, unless otherwise agreed, the transmission of information by electronic, optical or similar means of communication, including, but not limited to, facsimile, electronic mail or electronic data interchange (EDI), provided the information is readily accessible so as to be usable for subsequent reference.
"Trader" means the owner of the Consignment, any other person having an interest therein and anyone acting on behalf of such owner or other person, including, as the case may be, the Customer, sender and Consignee.

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 whatsoever 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, marked, labelled and documented in accordance with the statutory regulations for the carriage by road of the substance declared.

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 plant, power or labour required for loading or unloading the Consignment which is 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 whatsoever to the Customer for any damage whatsoever, howsoever caused, if the Carrier is instructed to load or unload any Consignment requiring plant, power or labour which, in breach of the warranty in (b) above, has 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.
(2) The Customer shall indemnify the Carrier against all claims and demands whatsoever 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 or electronic record prepared by the sender acknowledging the receipt of the Consignment but the burden of proving the condition of the Consignment and its nature, quantity or weight at the time of collection 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;
  (b) when for any other reason whatsoever 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 also 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. If the Customer becomes insolvent or any sums owed by the Customer on any invoice or account with the Carrier become overdue for payment, any credit terms shall be cancelled with immediate effect and all invoices or accounts issued by the Carrier shall immediately be deemed due for payment and thereupon become payable. The Late Payment of Commercial Debts (Interest) Act 1998, as amended, shall apply to all sums due from the Customer.

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 howsoever or whensoever 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 howsoever caused;

(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 notice in writing to be delivered at least seven 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 confirmation in writing 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 H.M. Revenue and Customs 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 and notice in writing thereof given to the Carrier 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) a particular lien on the Consignment, and

(b) a general lien against the Trader for sums unpaid on any invoice, account or Contract whatsoever.

If such lien, whether particular or general, is not satisfied within a reasonable time, the Carrier may sell the Consignment, or part thereof, as agent for the owner and apply the proceeds towards any sums unpaid 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 whatsoever in respect of the Consignment.

(2) The Carrier may exercise its lien on its own behalf or as agent for any assignee of its invoices at any time and at any place at its sole discretion whether or not sums have become payable in accordance with Condition 8(2) hereof and whether or not the contractual carriage has been completed and these conditions shall continue to apply during the period of exercise of such lien.

15. Unreasonable Detention

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

16. Law and Jurisdiction

Unless otherwise agreed in writing, the Contract and any dispute arising thereunder shall be governed by English law and shall be subject to the jurisdiction of the English courts alone.

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

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