Road Haulage Association Limited
CONDITIONS OF STORAGE 2009
Effective 1 December 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 GOODS ARE IN STORAGE.

Company stamp or details and RHA membership number

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

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RHA membership number

(hereinafter referred to as *"the Contractor"*) accepts Goods for Storage only upon the Conditions set out below. No servant or agent of the Contractor 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 Contractor.
"Contract" means the contract between the Customer and the Contractor for the Storage of the Goods.
"Goods" 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 Stored under the Contract.
"Storage" means the storage and handling of Goods including unloading and loading of Goods and movement of Goods between stores and such other ancillary services as the Contractor may agree to in writing, and the words *"Store"* and *"Stored"* shall be construed accordingly.
"Dangerous Goods" means:

(i) 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;
(ii) any weapon, drug, poison, damaging article or substance or any article or substance likely to encourage vermin or other pests or likely to cause infection; and
(iii) any Goods which, although, not included in (i) or (ii) above, in the sole opinion of the Contractor, present a similar hazard.

"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 Goods, 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.

2. Parties and Sub-Contracting

(1) The Customer warrants that he is either the owner of the Goods or is authorised by such owner to accept these Conditions on such owner's behalf.
(2) The Customer also warrants that the Goods are as described to the Contractor with regard to their nature, weight, quantity, condition and dimensions.
(3) The Customer also warrants that Dangerous Goods accepted for Storage comply with all relevant statutory regulations for the time being in force concerning the Storage, carriage, packing, marking, documentation and labelling of such articles or substances.
(4) The Contractor and any other contractors employed by the Contractor may employ the services of any other contractor for the purpose of fulfilling the Contract in whole or in part and the name of every such other contractor shall be provided to the Customer on request.
(5) The Contractor contracts for itself and as agent of and trustee for its servants and agents and all other contractors referred to in (4) above and such other contractors' servants and agents and every reference in these Conditions to the "Contractor" shall be deemed to include every other such contractor, servant and agent with the intention that they shall have the benefit of the contract and collectively and together with the Contractor be under no greater liability to the Customer or any other party than is the Contractor hereunder.

3. Dangerous Goods

(1) Dangerous Goods must be disclosed by the Customer and if the Contractor agrees to accept them for Storage such Goods must be properly and safely packed, marked, labelled and documented in accordance with any legislation for the time being in force for the Storage and carriage of such articles or substances and the Customer shall, whilst the Dangerous Goods remain in Storage, keep the Contractor informed of any statutory modification or re-enactment thereof or any rules or regulations made thereunder or rules or recommendations made by any relevant authority, concerning the Storage or handling thereof.
(2) Prior to receipt of the Dangerous Goods, the Customer shall provide the Contractor with such information in writing as will enable the Contractor to know the identity of the Dangerous Goods, the nature of the hazards created thereby, and any action to be taken in an emergency. While the Dangerous Goods remain in Storage, the Customer shall keep the Contractor informed of its recommendations on the handling and Storage of such Goods including all health and safety recommendations. The Contractor shall be entitled to disclose the information supplied by the Customer to its servants, agents and other contractors referred to in condition 2(5), and any relevant Government department.

4. Notice of Delivery or Collection

The Customer shall give the Contractor not less than twenty-four hours notice of its intention to deliver or remove Goods at the premises of the Contractor.

5. Receipt of Goods

(1) Following acceptance of the Goods for Storage the Contractor shall if so required provide the Customer with a receipt in writing but the burden of proving the condition of the Goods on receipt by the Contractor and that the Goods were of the nature, property, chemical composition, quantity, quality or weight declared in the relevant document shall rest with the Customer.
(2) The Contractor shall notify the Customer of any pre-existing damage to and/or deficiency in the Goods to be Stored, within a reasonable time of the Contractor becoming aware of such damage or deficiency. Such Goods shall, in the absence of any express agreement to the contrary between the Customer and the Contractor, be returned to the Customer at the Customer's expense.

6. Termination of Storage

(1) Either the Contractor or Customer may at any time give not less than twenty-one clear days' notice in writing to the other of its intention to terminate the Contract and notwithstanding that the Contractor may have released the Goods before the expiry of such notice, all charges shall be payable to the date when the notice would have expired.
(2) The Contractor may require the removal of the Goods or any part thereof, forthwith, if in the Contractor's opinion:
(a) the Customer's financial position becomes unsatisfactory or if the Customer ceases to pay its debts in the ordinary course of business or cannot pay its debts as they become due, or (being a company) is deemed to be unable to pay its debts or has a winding up petition issued against it or a receiver appointed of all or any part of its assets, or if a proposal is made for a composition with creditors or scheme of arrangement or for an administrator to be appointed in respect of all or any part of the business or assets of the Customer or (being an individual) commits an act of bankruptcy or has a bankruptcy petition issued against him, or the Customer is in breach of any of its obligations arising under the Contract;
(b) the Storage of Goods poses a risk to the health and safety of the Contractor, its servants or any third party or to the Contractor's property or any third party property;
(c) the continued Storage of the Goods will result in the Goods perishing or otherwise deteriorating and/or will cause damage to other goods or property.
(3) If the Goods or any part thereof are not removed after notice is given by the Contractor to the Customer in accordance with paragraphs (1) and (2) above, then the Contractor may, at its absolute discretion, sell the Goods after the lapse of a reasonable period of time after notice is given by the Contractor of its intention to sell the Goods or part thereof.

7. Revision of Storage Charges and Conditions of Storage

The Contractor's charges and these Conditions may be revised by the Contractor from time to time. Any such revision shall not become effective until the expiry of twenty-one days from the date notice of proposed revision is given to the Customer.

8. Contractor's Charges

(1) Goods accepted for Storage during any calendar week (Monday to Sunday both inclusive) shall be charged for as though they were received on the first day of such week.
(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 Contractor become overdue for payment, any credit terms shall be cancelled with immediate effect and all invoices or accounts issued by the Contractor 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.

(3) Should the delivery of Goods be postponed or cancelled by the Customer, the Contractor shall be entitled to recover from the Customer all expenses incurred by the Contractor and all rental charges in respect of space reserved for such Goods.

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 Goods are Stored, the Customer has agreed in writing that the Contractor shall not be liable for any loss or mis-delivery of or damage to or in connection with the Goods 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 Contractor, its servants, agents or sub-contractors.

(2) Subject to these conditions the Contractor shall be liable for:

(a) physical loss, mis-delivery of or damage to living creatures, bullion, money, securities, stamps, precious metals or precious stones only if:

(i) the Contractor has specifically agreed in writing to Store any such items; and

(ii) the Customer has agreed in writing to reimburse the Contractor in respect of all additional costs which result from the Storage of the said items; and

(iii) the loss, mis-delivery or damage is occasioned during Storage and is proved to be due to the negligence of the Contractor, its servants, agents or sub-contractors.

(b) physical loss, mis-delivery of or damage to any other Goods occasioned during Storage unless the same has arisen from, and the Contractor 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 Goods 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 Goods;

(vi) leakage or deficiency of Goods of a perishable or leaky nature, moth, vermin, insects, atmospheric or climatic causes;

(vii) insufficient or improper packing;

(viii) insufficient or improper labelling or addressing;

(ix) riot, civil commotion, strike, lockout, general or partial stoppage or restraint of labour howsoever caused;

(x) any other cause beyond the reasonable control of the Contractor.

(3) The Contractor shall not in any circumstances be liable for loss of or damage to Goods arising after Storage of such Goods has ended, whether or not caused or contributed to directly or indirectly by any act, omission, neglect, default or other wrongdoing on the part of the Contractor, its servants, agents or sub-contractors.

10. Fraud

The Contractor shall not in any circumstances be liable in respect of Goods where there has been fraud on the part of the Customer or the owner, or the servants or agents of either, in respect of those Goods, unless the fraud has been contributed to by the complicity of the Contractor or of any servant of the Contractor acting in the course of his employment.

11. Limitation of Liability

(1) Except as otherwise provided in these Conditions, the liability of the Contractor in respect of claims for physical loss, mis-delivery of or damage to Goods, 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 £100 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 storage, 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 Goods the weight to be taken into consideration in determining the amount to which the Contractor'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 Goods;

(ii) nothing in this Condition shall limit the liability of the Contractor to less than the sum of £10:

(iii) the Contractor shall be entitled to proof of the weight and value of the whole of the Goods and of any part thereof lost, mis-delivered or damaged;

(iv) the Customer shall be entitled to give to the Contractor notice in writing to be delivered at least seven days prior to commencement of Storage requiring that the £100 per tonne limit in 11(1)(c) above be increased, but not so as to exceed the value of the Goods, and in the event of such notice being given the Customer shall be required to agree with the Contractor an increase in the Storage charges in consideration of the increased limit, but if no such agreement can be reached the aforementioned £100 per tonne limit shall continue to apply.

(2) The liability of the Contractor 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 Goods, shall not exceed the amount of the Storage charges in respect of the Goods 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 Contractor the Customer declares to the Contractor a special interest in Storage in the event of physical loss mis-delivery or damage and agrees to pay a surcharge calculated on the amount of that interest, and

(b) at least seven days prior to the commencement of Storage the Customer has delivered to the Contractor written confirmation of the special interest and amount of the interest.

12. Indemnity to the Contractor

The Customer shall indemnify the Contractor against:

(1) all liabilities and costs incurred by the Contractor (including but not limited to claims, demands, proceedings, fines, penalties, damages, expenses and loss of or damage to the place of storage and to other goods Stored) by reason of any error, omission, mis-statement or misrepresentation by the Customer or other owner of the Goods or by any servant or agent of either of them, insufficient or improper packing, labelling or addressing of Goods 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 Storage of Dangerous Goods and claims made upon the Contractor by HM Revenue and Customs in respect of dutiable goods consigned in bond) in excess of the liability of the Contractor under these Conditions in respect of any loss or damage whatsoever to, or in connection with, the Goods whether or not caused or contributed to directly or indirectly by any act, omission, neglect, default or other wrongdoing on the part of the Contractor, its servants, agents or sub-contractors.

13. Time Limits for Claims

(1) All claims for damage to or physical loss or mis-delivery of or failure to release any Goods and any claim referred to in Condition 11(2) shall be made in writing by the Customer within seven days after release of the Goods alleged to be damaged or, in the case of Goods alleged to be lost or mis-delivered or which the Contractor fails to release, within seven days after the time when the Goods should in the ordinary course of events have been released and the Contractor shall be under no liability unless such claim is made within the time stipulated.
Provided that if the Customer proves that:

(a) it was not reasonably possible for the Customer to advise the Contractor or make a claim in writing within the time limit applicable, and

(b) such advice or claim was given or made within a reasonable time, the Contractor shall not have the benefit of the exclusion of liability afforded by this Condition.

(2) The Contractor shall in any event be discharged from all liability whatsoever and howsoever arising in respect of the Goods unless suit is brought and notice in writing thereof given to the Contractor within one year of the date when the Goods were released or should, in the ordinary course of events, have been released.

(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 Contractor shall have:

(a) a particular lien on the Goods, 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 Contractor may sell the Goods, or part thereof, as agent for the owner and apply the proceeds towards any sums unpaid and the expenses of the insurance and sale of the goods and shall, upon accounting to the Customer for any balance remaining, be discharged from all liability whatsoever in respect of the Goods.

(2) The Contractor 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. These conditions shall continue to apply during the period of exercise of such lien and Storage charges shall continue to be payable by the Trader in respect of the Goods until the lien has been satisfied in full, whether by sale or otherwise.

15. Impossibility of Performance

The Contractor shall be relieved of its obligations to perform the Contract to the extent that the performance thereof is prevented by failure of the Customer, fire, weather conditions, industrial dispute, labour disturbance or cause beyond the reasonable control of the Contractor.

16. Notice

All written communications from the Contractor to the Customer shall be deemed to have been served if delivered or posted to the last known address of the Customer.

17. 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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