

# Our terms of business

## CONDITIONS OF CARRIAGE

Smith's Grab Hire Ltd (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.

### 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 goods.
- "Consignment" means goods in bulk or contained in one parcel, package or container, as the case may be, or any number of separate 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 dangerous substances listed by the Health and Safety Commission in Part 1 of the Authorised and Approved List of Dangerous Substances, explosives, radioactive substances and any other substance presenting a similar hazard.

### 2. Parties and Subcontracting

- The Customer warrants that he is either the owner of the goods in any Consignment or is authorised by such owner to accept these Conditions on such owner's behalf.
- 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 same of every other such carrier shall be provided to the Customer upon request.

- 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 carrier's servants and agents and every reference in Conditions 3-19 inclusive hereof "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.
- Notwithstanding Condition 2(3) the carriage of goods in 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 goods. The Carrier shall be under no liability whatever to whomsoever and however arising in respect of such carriage. Provided that where goods are 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 goods were 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 labeled 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:

- The Carrier shall not be under any obligation to provide any plant, power or labor other than that carried by the vehicle, required for loading or unloading the Consignment.

- 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.
- 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 goods 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.
- 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 whatever which could not have been made if such instructions as are referred to in (1c) of this Condition and such service is referred to in (1d) of this Condition had not been given.

## 5. Consignment Notes

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.

## 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) 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;

- 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

- 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 Goods**

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 end, the Carrier may sell the goods 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 goods 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 goods. their 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 goods 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 goods are taken away or instructions are given for their 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 goods are 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. Except where a quotation states otherwise all quotations based on a tonnage rate shall apply to the gross weight unless:

- - the goods exceed 2.25 cubic meters in measurement per tonne, in which case the tonnage rate shall be computed upon and apply to each measurement of 2.25 cubic metres or any part thereof, or
  - the size or shape of a Consignment necessitates the use of a vehicle of greater carrying capacity than the weight of the Consignment would otherwise require, in which case the tonnage rate shall be computed upon and apply to the carrying capacity of such vehicle as is reasonably required.

3. Charges shall be payable on the expiry of any time limit previously stipulated and the Carrier shall be entitled to interest at 5 per cent above the Clearing Bank Basic Rate current at this time, 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 misdelivery of or damage to goods 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.

2. Subject to these Conditions the Carrier shall be liable for

1. loss or misdelivery of or damage to livestock, bullion, money, securities, stamps, precious metals or precious stones only if:

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- the Carrier has specifically agreed in wording to carry any such items and
- the Customer has agreed in writing to reimburse the Carrier in respect of alit additional costs which result from the carrying of the said items and
- the loss, misdelivery or damage is occasioned during transit and results from negligent act or omission by the Carrier.

2. any loss or misdelivery of or damage to any other goods occasioned during transit unless the same had arisen from, and the Carrier has used reasonable care to minimise the effects of:

- - - Act of God;
    - any consequences of war, invasion act of foreign enemy, hostilities (whether war or not), civil war, rebellion, insurrection, military or usurped power or confiscation, requisition, or destruction of or damage to property by or under the order of any government or public or local authority;
    - seizure or forfeiture under legal process;
    - error, act, omission, misstatement or misrepresentation by the Customer or other owner of the goods or by servants or agents of either of them;
    - inherent liability to wastage in bulk or weight, latent defect or inherent defect, vice or natural deterioration of the goods;
    - insufficient or improper packing;
    - insufficient or improper labeling or addressing;
    - riot, civil commotion, strike, lockout, general or partial stoppage or restraint of labour from whatever cause;

- 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 of or damage to goods after transit of such goods 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.

## 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 of the goods or the servants or agents of either in respect of that Consignment, unless the fraud has been contributed 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 loss or misdelivery of or damage to goods, however sustained, shall in all circumstances be limited as follows:

1. To the value of the Consignment where, at any time prior to the commencement of transit, the Customer has given seven days' written notice to the Carrier requiring that the limit of the Carrier's liability be set at the value of the Consignment where this value exceeds £1,300 per tonne or, if no such notice has been given;

2. To £1,300 per tonne on either the gross weight of the Consignment or, where applicable, the tonnage computed in accordance with Condition 8(2)(a) or (b) hereof; or

3. To the proportion of the sum, ascertained in accordance with (1)(a) or (b) of this Condition, which the actual value of part of the Consignment bears to the actual value of the whole of

the Consignment where loss, misdelivery or damage, however sustained, is in respect of that part of the Consignment. Provided that:

- - - nothing in this Condition shall limit the liability of the Carrier to less than the sum of £10;
    - the Carrier shall be entitled to require proof of the value of the whole of the Consignment and of any part thereof lost, misdelivered or damaged;
    - the Customer shall be required to agree with the Carrier the carriage charges appropriate to the value of the Consignment where the limit of liability is increased above £1300 per tonne in accordance with (1)(a) of this Condition.

2. Notwithstanding Condition 11(1), the liability of the Carrier in respect of the indirect or consequential loss or damage, however arising, and including loss of market, 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 smaller, unless;

- - - at the time of entering into the Contract with the Carrier the Customer declares to the Carrier a special interest in delivery in the case of loss or damage or of an agreed time limit being exceeded and agrees to pay a surcharge calculated on the amount of that interest, and
    - 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. Insurance



The Carrier shall insure his liabilities arising out of the carriage of goods under these Conditions.

### **13. Indemnity to the Carrier**

The Customer shall indemnify the Carrier against:

1. all consequences suffered by the Carrier (including but not limited to claims, demands, proceedings, fines, penalties, damages, costs, expenses and loss of or damage to the carrying vehicle and to other goods carried) of any error, omission, misstatement 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, labeling or addressing of the goods or fraud as in Condition 10.
2. all claims and demands whatever by whomsoever made in excess of the liability of the Carrier under these Conditions.
3. all losses suffered by and claims made against the Carrier resulting from loss of or damage to property caused by or arising out of the carriage by the Carrier of Dangerous Goods whether or not declared by the Customer as such;
4. all claims made upon the Carrier by H.M. Customs and Excise in respect of dutiable goods consigned in bond whether or not transit has ended or been suspended.

### **14. Time Limits for Claims**

The Carrier shall not be liable for:

1. loss from a parcel, package or container or from an unpacked Consignment or for damage to a Consignment or any part of a Consignment unless he is advised thereof in writing otherwise than upon a consignment note or delivery document within three days, and the claim is made in writing within seven days, after the termination of transit;

2. loss, misdelivery or nondelivery of the whole of a Consignment or of any separate parcel, package or container forming part of a Consignment unless he is advised of the loss, misdelivery or nondelivery in writing otherwise than upon a consignment note or delivery document 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.

1. it was not reasonably possible for the Customer to advise the Carrier or make a claim in writing within the time limit applicable and

2. 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.

## **15. Lien**

The Carrier shall have a general lien against the Customer, where the Customer is the owner of the goods, 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 his absolute discretion sell the good, 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 goods and shall, upon accounting to the Customer for any balance remaining, be discharged from all liability whatever in respect of the goods. Where the Customer is not the owner of the goods, the Carrier shall have a particular lien against said owner, allowing him to retain possession, but not dispose of, the goods against monies due from the Customer in respect of the Consignment.

## **16. Unreasonable Detention**

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

## **17. Computation of Time**

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.

## **18. Loss Adjustment**

The value of a Consignment or part Consignment shall be taken as its invoice value if the goods have been sold. otherwise it shall be taken as the cost thereof to the owner.

## **19. Impossibility of Performance**

The Carrier shall be relieved of its obligation to perform the Contract to the extent that the performance is prevented by failure of the Customer, fire, weather conditions, industrial dispute, labour disturbance or cause beyond the reasonable control of the Carrier. © Road Haulage Association Limited tot 1998 Registered under the provisions of the Restrictive Trade Practices Act 1976.