

- (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**



Road Haulage Association Limited

CONDITIONS OF CARRIAGE 2009

EXPLANATORY NOTES

STATUS OF THE CONDITIONS

The RHA Conditions of Carriage 2009 result from a review of the RHA Conditions of Carriage 1998. They will take effect from 1st September 2009 and include amendments reflecting changes in the law and members' experience in using the RHA Conditions of Carriage 1998. Other specialist group conditions are in the process of revision to take account of the new RHA Conditions of Carriage and will be re-issued over the coming months.

The use of the RHA Conditions by members is not compulsory but members are recommended to use them as they are designed to enable a reasonable contractual balance to be struck between the interests of members as carriers and those of their customers. Members should always seek professional advice before making or agreeing any variation in the conditions to meet special circumstances.

The Conditions are the copyright of the RHA and may not be used by non-members. It is most important that members should arrange to have the printed forms stamped or overprinted with their details in the box provided at the top and with their membership number in the space provided as this will deter the use of the form by non-members. There have been instances in the past where non-members using the RHA Conditions have been prosecuted under the provisions of the Trades Descriptions Act.

TO USE THE CONDITIONS

A member who intends to trade under these Conditions, or any of the specialist group conditions, should take the following action:-

1. Refer the Conditions to his insurers or brokers and secure any necessary adjustments to existing insurance covers.
2. Inform existing customers in writing, preferably by Recorded Delivery, of the intention to trade subject to the new Conditions saying for example: "Please note that as from the _ day of _ 2009 goods will be accepted for carriage only subject to the RHA Conditions of Carriage 2009 a copy of which is attached/available free on request". If it is intended to use the specialist group conditions reference should instead be made to the relevant specialist conditions.
3. Inform existing sub-contractors in writing, preferably by Recorded Delivery, that as from the _ day of _ 2009 goods will be accepted for carriage and sub-contracted only subject to the RHA Conditions of Carriage 2009. If it is intended to use the specialist group conditions reference should instead be made to the relevant specialist conditions.
4. Retain Recorded Delivery receipts or, if the above letters are not sent by Recorded Delivery, maintain a permanent record of customers and sub-contractors and the dates on which letters were dispatched.
5. Print or overprint at the foot of all letterheads, quotation forms, fax forms, e-mailed documents, confirmation forms and notes, Consignment Notes and invoices etc: "Goods are accepted for carriage (and sub-contracted) only subject to the RHA Conditions of Carriage 2009 a copy of which is available free on request." If it is intended to use the specialist group conditions reference should instead be made to the relevant specialist conditions. If present letterheads, etc refer to the "current RHA Conditions of Carriage" this will probably suffice provided that all existing customers and sub-contractors have been informed in accordance with 2-4 above that you are now using the 2009 conditions.
6. Maintain a stock of the printed Conditions for issue to customers or sub-contractors as and when requested.
7. Specifically mention that the Conditions will apply during any telephone call in which the terms of the contract are first agreed verbally, and confirm this immediately afterwards to the customer by fax, e-mail, letter, note or memo at the same time as any quotation. Clear, simple, contemporary, dated and timed documents provide better proof than later conflicting oral evidence of recollections of conversations.

EFFECT OF THE CONDITIONS

The intention in revising the RHA family of Conditions has been to retain their familiar style, layout and content, wherever outside factors have not suggested changes, so that they retain their status as an industry standard. The principal amendments to the Conditions of Carriage are set out below:-

CONDITION 1: The definition of "Dangerous Goods" has been revised to take account of the application of the European Agreement Concerning the

International Carriage of Dangerous Goods by Road (ADR) as domestic law. A definition of what constitutes "writing" has been introduced to take account of the use of e-mail and similar means of communication. A definition of "Trader" has been introduced for use with the revised lien clause.

CONDITION 2: There are no substantive changes.

CONDITION 3: The use of TREMCARDS in the carriage of dangerous goods has been phased out since 1st July 2009 in favour of documentary provisions based around the ADR Agreement. The revised Condition 3 takes this into account. A separate guidance note for members is in preparation. Members are again reminded of the statutory requirement for specialist knowledge, training and equipment before undertaking most dangerous goods haulage.

CONDITION 4: References to "special appliances" have been replaced by references to "plant power or labour" throughout to achieve greater consistency across the clauses.

CONDITION 5: The wording has been simplified in the interests of greater clarity

CONDITION 6: There are no substantive changes.

CONDITION 7: There are no substantive changes.

CONDITION 8: The opportunity has been taken to introduce a provision to cancel credit terms immediately if a customer becomes insolvent or fails to pay invoices when due. This is intended to work with the revised lien clause to improve the position of carriers when faced with defaulting customers. Any overdue accounts are made specifically subject to the benefit of the whole of the Late Payment of Commercial Debts (Interest) Act 1998, as amended, in favour of the carrier. A separate guidance note for members on how to make best use of the Act if customers default is under preparation.

CONDITION 9: There are no substantive changes.

CONDITION 10: There are no substantive changes.

CONDITION 11: There are no substantive changes.

CONDITION 12: There are no substantive changes.

CONDITION 13: The working of the time period of one year within which legal proceedings must be brought against the carrier has been brought into line with some other conditions by requiring that written notice of any proceedings must be given within the one year period itself.

CONDITION 14: This Condition has been substantively revised for the first time since 1991 to reflect both the practical manner in which the exercise of liens has developed in recent years and the way in which courts have tended to validate a wider general lien for carriers when certain conditions have been met. The right of lien is potentially exercisable against a range of persons coming within the definition of "Trader" and the clauses have been re-written to widen and accelerate the potential circumstances in which a lien may be validly exercised at a time when carriers are facing increasing difficulties from defaulting customers. More detailed guidance is being separately developed for members on factors to take into account when seeking to exercise a lien. It should be emphasised that liens remain a contentious area of law and members should always seek clarification of their rights in specific circumstances from their legal advisers at the earliest opportunity to avoid possible later difficulties.

CONDITION 15: This now stipulates that demurrage will be due at the carrier's current rate of demurrage for unreasonable detention of any vehicle, trailer, container or other equipment such as pallets. Carriers must establish their own individual scales for demurrage based on their actual operating costs as competition law prevents the RHA from making any recommendations in this area. However, it is intended to provide members with information from which they can construct a framework for setting demurrage charges based on their own real-time costs of vehicle operation.

CONDITION 16: The law and jurisdiction clause introduced in the 1998 Conditions has been slightly modified to take account of international practice. It now states that English law applies to the contract and any dispute arising under it and that proceedings should be brought only in the English courts. As under the previous Conditions, carriers in Scotland and Northern Ireland may wish to vary the Condition to apply a local law and jurisdiction and separate guidance will be available to members on how to do so.