



# Road Haulage Association Limited

## CONDITIONS OF CARRIAGE 2020

Effective 1 September 2020

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

A C TRANSPORT LTD  
Unit 7 Ouzledale Foundry  
Long Ing Lane  
Barnoldswick  
Lancashire  
BB18 6BJ

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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 on the conditions set out below (the **Conditions**). No servant or agent of the Carrier is permitted to alter or vary these Conditions in any way unless expressly authorised to do so in writing by a Director of, Principal of, or Partner in the Carrier, or by another person separately authorised by such a person in writing. If any provision or part-provision of these Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of these Conditions. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose, have agreed or incorporate, and to the exclusion of any terms which might be implied by trade, custom, practice or course of dealing. It is expressly stated to be the Customer’s responsibility to read and understand these Conditions which will form the basis of the Contract under which any claims or disputes are settled. Customers are recommended to take professional advice and must arrange adequate insurance to provide full cover for the Consignment, and any liabilities they may be under in respect of it, when the Consignment is in transit.

### 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 with the Customer to deliver the Consignment.

“Consignment” means goods -- whether sent as 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 are 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 permitted to be carried only under the conditions prescribed therein, as well as all other substances and articles of a nature or having characteristics which represent a hazard or danger to persons or property, or which include any radioactive or explosive material.

“Demurrage” means any cost or expense the Carrier suffers as a result of the improper, excessive or unreasonable detention of any vehicle, trailer, container or other equipment belonging to or under the control of the Carrier.

“Force Majeure Event” shall have the meaning set out in Condition 10(2)(c)

“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 that the information is readily accessible and durable so as to be usable for subsequent reference.

### 2. Parties and Sub-Contracting

- (1) The Customer warrants that he is either the owner of the Consignment or is authorised by the owner to accept these Conditions on his behalf; and that he is similarly authorised by all those having a proprietary or possessory interest in the Consignment, to accept these Conditions on their 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. The Carrier may at any time assign, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract, to the extent permitted by law.

- (3) The Carrier contracts both for itself and also as agent of and trustee for its servants and agents and all other carriers referred to in (2) above, and also as agent of and trustee for 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 full benefit of the terms of this Contract, and collectively and together with the Carrier shall 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 has been or will be arranged by the Carrier solely as agent of the Customer, and any such carriage 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, howsoever caused, to any person for such carriage: Provided always 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

If the Customer does not disclose in writing and in advance that a Consignment contains Dangerous Goods, the Carrier shall be entitled to rescind the Contract. If the Carrier agrees to accept for carriage any Dangerous Goods so disclosed then the Customer must arrange for and ensure that the Dangerous Goods are classified, packed, marked, labelled and documented in accordance with all applicable statutory regulations for the carriage by road of the substance declared.

### 4. Loading and Unloading

- (1) Unless otherwise agreed in writing the Customer will be responsible for the loading of goods onto the vehicle and will also be responsible for the Consignee unloading the goods off the vehicle. The Carrier will not be responsible for any loss or damage to the goods arising from loading the goods onto or unloading them off the vehicle, or from the overloading of the vehicle or from the unsafe loading of the vehicle. The Carrier may, at its sole discretion, through its servants and agents provide assistance in loading or unloading the goods if requested to do so by the Customer or the Consignee or the agents of either. The Customer shall indemnify the Carrier from and against all and any loss, damage, death or injury that may arise whilst the loading or unloading operations is taking place whether or not such loss, damage, death or injury is attributable to the negligence of the Carrier, its agents or servants.
- (2) The Customer shall ensure that any cranes, fork lift trucks, slings, chains or other equipment used in loading or unloading the vehicle are suitable for that purpose and will indemnify the Carrier against any and all consequences of failure of or unsuitability of such equipment.
- (3) The Customer shall ensure that there is adequate access to the loading and the unloading points and that the roadways to and from the public highway are of suitable material and that unloading will take place on good sound hardstanding, where there will be sufficient space to load or unload the vehicle in safety.
- (4) The Carrier shall not be liable for any loss or damage whatsoever, howsoever caused, if the Carrier’s personnel are instructed by the Customer or the Consignee or their servants or agents to provide service to an area which does not comply with Condition 4(3) above, whether or not against the recommendations of the Carrier or the Carrier’s personnel.
- (5) The Customer shall indemnify the Carrier against all liability or loss or damage suffered or incurred (including but not limited to damage to the Carrier’s vehicle) as a result of the Carrier’s personnel complying with the instructions of the Customer or the Consignee or their servants or agents.
- (6) The Customer shall make available to the Carrier upon request details of any risk assessments which may have been carried out at the collection and/or delivery addresses. The responsibility for carrying out such risk assessments shall be that of the Customer and not of the Carrier.

### 5. Obligations of the Customer

The Customer warrants that:

- (1) The Consignment does not and will not: cause pollution of the environment or harm to human health; require any official consent or licence to handle, possess, deal with or carry; at any time whilst in the care or control of the Carrier constitute waste (unless the Carrier has been previously advised otherwise); and that the Consignment is of a nature that can be legally transported in the United Kingdom;
- (2) It will comply, and will procure that all of its agents, employees and sub-contractors also comply, with any reasonable regulations of the Carrier relating to handling, health and safety, and security, of which they are notified or have been notified; and
- (3) It will provide the Carrier with such information and materials as the Carrier may reasonably require in order to comply with its obligations under the Contract, and will ensure that such information is complete and accurate in all material respects.

- (4) If the Carrier's performance of any of its obligations under the Contract is prevented, hindered or delayed by any act or omission of the Customer or by any failure by the Customer to perform any relevant obligation (**Customer Default**), then:
- (a) without limiting or affecting any other right or remedy available to it, the Carrier shall have the right to suspend performance of its obligations until the Customer remedies the Customer Default, and may rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents, hinders or delays the Supplier's performance of any of its obligations;
  - (b) the Carrier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Carrier's failure to perform or delay in performing any of its obligations as set out in this Condition 5(4); and
  - (c) the Customer shall on written demand reimburse the Carrier for any costs or losses sustained or incurred by the Carrier arising directly or indirectly from the Customer Default.

#### 6. Signed Receipts

The Carrier shall, if so required, sign a document or electronic record prepared by the Customer or its agent acknowledging the receipt of the Consignment; but the burden of proving the condition of the Consignment and/or its nature, quantity, quality, or weight at the time of that receipt shall rest with the Customer.

#### 7. Transit

- (1) Unless otherwise agreed expressly between the parties, transit shall commence after the Consignment has left the premises from where the Consignment is collected.
- (2) Transit shall (unless it has terminated earlier) end when the Consignment arrives at the proper 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 to that address exists, or if no safe and adequate unloading facilities exist there, then transit shall be deemed to end at the expiry of one clear day after notice (by letter, telephone, fax or email or other agreed method of communication) of the arrival of the Consignment at the premises has been sent to the Consignee or the Customer;
  - (b) when for any other reason whatsoever a Consignment cannot be delivered, or when a Consignment is held by the Carrier on instructions 'to await order' or 'to be kept till called for' or upon any like instructions, and no such order is given within a reasonable time, or the Consignment is not called for and removed within a reasonable time, then transit shall also be deemed to end at the expiry of that reasonable time.
- (3) The Consignment shall be at the sole risk of the Customer at all times when the Consignment is not in transit.

#### 8. Undelivered or Unclaimed Consignments

Where either of the provisos to Condition 7(2) operate such that transit is deemed to have ended, the Carrier may sell the Consignment; and payment or tender of the proceeds of sale to the Customer, 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 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 a reasonable price for the Consignment; and
- (2) the power of sale shall not be exercised where the name and address of the Customer or of the Consignee or of the owner of the Consignment or of any other person having any proprietary or possessory interest in it is known; unless the Carrier shall first have done what is reasonable in the circumstances to give notice to such persons that the Consignment will be sold unless within the time specified in that 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.

#### 9. Carrier's Charges

- (1) The Carrier's charges shall be payable by the Customer, without prejudice to any rights the Carrier may have against the Consignee, or any other person, to secure or obtain payment: Provided however that when any Consignment is consigned 'carriage forward' the Customer shall not be required to pay such charges unless the Consignee shall, within a reasonable period of demand for payment having been made of it, have failed to pay the Carrier's charges.
- (2) Charges shall be payable when due without deduction or deferment on account of any claim, counterclaim or set-off. If the Customer becomes insolvent, or any sums owed by the Customer to the Carrier become overdue for payment, all credit terms previously agreed shall be cancelled with immediate effect and all invoices and accounts issued by the Carrier shall be deemed due for immediate payment and all sums owing (whether due or not) shall thereupon become payable. The Late Payment of Commercial Debts (Interest) Act 1998, as amended, shall apply to all sums due from the Customer.

- (3) The Carrier shall use reasonable endeavours to obtain a signed proof of delivery of the Consignment from the Consignee, unless otherwise agreed with the Customer. No payment shall however be withheld by the Customer where the Carrier is unable to provide a proof of delivery unless notification of non-delivery is received by the Carrier no more than 48 hours after the expected time of delivery of the Consignment and the Carrier is subsequently unable to evidence proof of delivery.
- (4) The Customer shall pay to the Carrier any storage charges incurred as a result of it exercising its lien in accordance with clause 15 below.
- (5) If the Contract is cancelled at any time the Customer shall pay the Carrier all costs and expenses which the Carrier has incurred prior to such cancellation.

#### 10. Liability for Loss and Damage

- (1) The Customer shall be deemed to have elected to accept the terms set out in sub-clause (2) of this Condition unless, before the transit commences, the Customer has agreed in writing that the Carrier shall be under no liability for loss of, 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 comprised within 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 have been caused by the negligence of the Carrier, its servants, agents or sub-contractors;
  - (b) physical loss, mis-delivery of or damage to any goods of a type not covered by sub-clause (a) above comprised within the Consignment, unless the same has arisen from a Force Majeure Event.
  - (c) a "**Force Majeure Event**" shall mean any act(s), event(s), circumstance(s) or cause(s) the occurrence of which is beyond the reasonable control of the Carrier, including but not limited to:
    - (i) act of God, riot, civil commotion, strike, lockout, general or partial stoppage or restraint of labour from whatever cause, war, act of terrorism, seizure or forfeiture under legal process, restraint of government;
    - (ii) error, act, omission, mis-statement or misrepresentation by the Customer or the owner of the Consignment or by any servant or agent of either of them;
    - (iii) inherent wastage in bulk or weight, faulty design, latent defect or inherent vice or natural deterioration of the Consignment;
    - (iv) any special handling requirements in respect of the Consignment which have not been notified to the Carrier;
    - (v) insufficient or improper packaging, labelling or addressing, unless the Carrier has contracted to provide this service;
    - (vi) fire, flood, storm, earthquake, pandemic, or epidemic;
    - (vii) road congestion, road accidents, delays incurred at any delivery location or lack of delivery instructions from the Customer, vehicle breakdown;

- (3) The Carrier shall not in any circumstances be liable for any loss or damage arising after transit is deemed to have ended within the meaning of Condition 7(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.

#### 11. Fraud

The Carrier shall in no circumstances be liable in respect of a Consignment in relation to which there has been fraud on the part of the Customer, the Consignee or the owner of the Consignment, or their servants or agents, unless the Carrier or of any servant of the Carrier acting in the course of his employment has been complicit in that fraud.

#### 12. Limitation of Liability

- (1) Except as otherwise provided in these Conditions, the liability of the Carrier in respect of claims for physical loss of, mis-delivery of or physical damage to goods comprised within the Consignment, howsoever arising, shall in all circumstances be limited to the lesser of
  - (a) the value of the goods actually lost or mis-delivered, at the place they should have been delivered; or the amount by which damaged goods have been depreciated in value by reason of that damage; or
  - (b) the cost of replacing the goods actually lost or mis-delivered and/or reconditioning or repairing any damage to 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 their replacement cost to the owner at the commencement of the transit, and in all cases shall be taken to include any Customs and Excise duties or taxes paid or payable in respect of those goods when lost, mis-delivered or damaged:

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, requesting that the £1,300 per tonne limit referred to in Condition 12(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, 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 type of loss, liability or damage whatsoever 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 less, unless:
- (a) at the time of entering into the Contract with the Carrier, the Customer declares to the Carrier a special interest in the avoidance of physical loss, mis-delivery or damage to the Consignment, and/or a special interest in delivery within a specified period, undertaking to pay such surcharge, referable to the declared value of that interest or those interests, as may be agreed with the Carrier, and
  - (b) at least 7 days prior to the commencement of transit the Customer has delivered to the Carrier confirmation in writing of the declared value of any special interest and of any agreed time limit, and of its agreement to pay the specified surcharge which it has agreed with the Carrier.
- (3) The Carrier shall not be in breach of the Contract nor liable for any delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure results from a Force Majeure Event.
- (4) The following types of loss or damage are wholly excluded, and will not under any circumstances be the subject of compensation by the Carrier:
- (a) loss of profits;
  - (b) loss of sales or business;
  - (c) loss of agreements or contracts;
  - (d) loss of anticipated savings;
  - (e) loss of use of, or corruption of, software, data or information;
  - (f) loss of or damage to goodwill;
  - (g) indirect or consequential loss;
  - (h) any fine imposed on the Customer by the Consignee or its customer.

### 13. Indemnity to the Carrier

The Customer shall indemnify the Carrier against:

- (1) all losses, liabilities and costs incurred by the Carrier (including but not limited to those incurred in connection with loss of or damage to the carrying vehicle or to other goods carried) as a result of any breach of these Conditions by the Customer or any party on whose behalf it has contracted, or by reason of any error, omission, mis-statement or misrepresentation by the Customer or owner of the Consignment or by any servant or agent of either of them, or by reason of insufficient or improper packing, labelling or addressing of the Consignment, or by reason of fraud on the part of the Customer, the Consignee or the owner of the Consignment, or their servants or agents (as referred to in Condition 11);
- (2) all losses, liabilities and costs arising from claims and demands by whomsoever made and howsoever arising (including, for the avoidance of doubt, claims alleging negligence or conversion, or by H.M. Revenue and Customs in respect of dutiable goods, or arising out of the carriage of Dangerous Goods) in respect of any loss of or damage to, or in connection with, the Consignment in an amount exceeding the liability of the Carrier under these Conditions in respect of that loss or damage, whether or not that loss or damage was 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.

### 14. Time Limits for Claims

(1) The Carrier shall not be liable for:

- (a) physical loss of, mis- or non-delivery of, or physical damage to goods comprised within the Consignment unless advised thereof in writing within seven days after the termination of transit or the date on which the transit should have terminated;
- (b) any other type of loss unless advised thereof in writing within twenty-eight days after the termination of transit or the date on which the transit should have terminated.

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 after the time at which it did become reasonably possible for the Customer to advise the Carrier or make a claim in writing,

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 legal proceedings are issued 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.

### 15. Lien

(1) The Carrier shall have:

- (a) a particular lien on the Consignment for all charges due to the Carrier for the carriage, storage and/or warehousing of the Consignment and for all other proper charges or expenses incurred in connection with the carriage of the Consignment, and
- (b) a general lien on the Consignment for any sums overdue and unpaid by the Customer, by the owner of the Consignment or by any other person having any proprietary or possessory interest in it, by the Consignee, or by any agent of these persons, on any invoice, account or contract whatsoever.

If the Carrier exercises a lien, but appropriate payment is not made within 14 days after notice that the payment is due has been given in accordance with Condition 8(2) above, the Carrier may sell the Consignment, or any part thereof, as agent for its owner and for those having a proprietary or possessory interest in it, and shall apply the proceeds towards any sums unpaid and towards the expenses of the retention, storage, 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 in its sole discretion, whether or not the contractual carriage has been completed, and these Conditions shall continue to apply during the period of exercise of such lien.
- (3) If the Consignment is not solely the property of the Customer, the Customer warrants that it has the authority of all those having a proprietary or possessory interest in the Consignment to grant to the Carrier liens as set out in Condition 15(1) above, and the Customer shall indemnify the Carrier for all claims and demands the Carrier may receive asserting that the Customer did not have that authority.

### 16. Unreasonable Detention

The Customer shall be liable to pay Demurrage, without prejudice to any rights that the Carrier may have against any other person in respect of any improper, excessive or unreasonable detention of any vehicle, trailer, container or other equipment belonging to or under the control of the Carrier.

### 17. Confidentiality

- (1) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by these Conditions.
- (2) Each party may disclose the other party's confidential information:
  - (a) to its employees, officers, representatives, sub-contractors or advisers who need to know such information for the purposes of carrying out the party's legal obligations; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

### 18. Law and Jurisdiction

Unless otherwise agreed in writing, the Contract and any dispute arising under it or in connection with it shall be governed by English law and each party irrevocably agrees that such dispute shall be subject to the exclusive jurisdiction of the English courts.

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



# Road Haulage Association Limited

## CONDITIONS OF CARRIAGE 2020

### Explanatory Notes

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#### **BACKGROUND**

These terms and conditions are to be used by the members of the Road Haulage Association (RHA) with fully-paid up memberships and can be incorporated into contracts they have with their customers. They are a set of terms and conditions which - if incorporated correctly - will have contractual effect on both parties to an agreement as if they were part of the original contract. The manner in which they have been drafted tilts them in favour of the carrier and so it is naturally recommended that all the members incorporate these terms into all of their consignment contracts.

**Please note that these terms and conditions may only be used by RHA Members and cannot be used by anyone who does not pay their membership subscription, unless they are explicitly permitted to do so by someone within the RHA with the authority to authorise such a decision.**

In order to incorporate these terms, there are some considerations the member must have when quoting and invoicing their customers. These terms will not have contractual effect and will not bind the parties to an agreement unless the customer is aware at the time of agreement to contract that they are terms that the member uses. This means that an RHA Member hoping to use these terms must make it explicitly clear to their customers at the outset that they will be using these terms and conditions when carrying or storing goods. We recommend that a quote or some form of ticket or documentation be provided to the customer with the below wording explicitly and obviously displayed:

*'[COMPANY NAME] uses the Road Haulage Association Conditions of Carriage as they may be amended from time to time, and these terms and conditions shall have effect to the exclusion of all other terms including the customer's own.'*

The method of giving the above statement is not necessarily important, however if written down, copies and records of the fact that the statement was given can be kept. We advise that the customer be made clear that these terms and conditions will be used at the time the RHA Member gives their quotes or terms of business to their customer, which means at the outset of contract, job or consignment discussions. We also recommend that throughout the performance of the contract, job or consignment, the terms and conditions are consistently referred to on the bottom of emails and on other correspondence exchanged with the customer, as well as being referenced on the final invoice once the work has been carried out. This makes it undeniably clear that the customer understands that the RHA Member operates under these terms and conditions and that these are the terms that apply to the contract.

#### **DEFINITIONS**

There is little that has changed in terms of definitions between the newly issued Conditions of Carriage and the previous conditions. Also, the definitions themselves operate to clarify the main

body of the terms. Each word sits next to its definition. There are, however, two new terms introduced and defined which were not present before:

**'Demurrage'** - these are extra costs which the RHA Member may wish to charge as a consequence of the detention of a vehicle or other object they own. As they are extra costs, it is important that the fact that the RHA Member has the right to charge them is written in black and white. The customer must be aware of financial consequences in contracts in order for the RHA Member to be able to rely on the legally binding nature of an agreement when charging. Thus, this definition has been included in these terms and conditions in order to make clear what exactly demurrage is and that the member has the right to charge.

**'Force Majeure Event'** - whilst referenced now under the 'Definitions' section the explicit definition is outlined in the newly introduced clause 9(c). The effect of these new definitions and clauses is that an RHA Member using these terms and conditions cannot be found liable for an act of God, riots, civil commotion and a variety of other events that the member cannot reasonably be said to have anticipated at the time the contract was entered into.

### **PARTIES AND SUB-CONTRACTING**

There has been minimal addition to this section. The amendment to clause 2(2) including an additional sentence makes it explicitly clear that the RHA Member or carrier under these terms has the right to assign and delegate (among other actions) their obligations and rights under the contract between the member and their customer to a third-party. Essentially, this makes clear that in certain circumstances, whilst the customer may be contracting with the RHA Member, it may be another individual (i.e. a sub-contractor) carrying out the work under these terms and conditions.

### **DANGEROUS GOODS**

Where the carriage of dangerous goods is concerned, the carrier's safety and the safety of other members of the public and road users is a top priority. In order to ensure that these are maintained, it is vital that the RHA Member is informed that they will be carrying dangerous goods and that they have the right to rescind the contract if this is not disclosed to them explicitly in writing.

In furtherance of the above, the customer also agrees where the goods are dangerous, and this is communicated to the member, to categorise and mark at their own expense those goods.

### **LOADING AND UNLOADING**

In the business of road transport, it is important to know where your risks start and end. Under these terms and conditions, the default position is that the customer is responsible for loading the goods that they wish to be moved onto the vehicle of the RHA Member, or another consignor instructed by the RHA Member. The consignee is responsible for the unloading of those goods from that vehicle.

Under these terms, the RHA Member or carrier is excluded from being found liable for loss or damage done to goods that arise from the loading onto or unloading off the vehicle or from overloading the vehicle. Further to this, the customer indemnifies the carrier under these terms against any loss, damage, death or injury that might arise during loading and/or unloading. Whilst this is the default position, we acknowledge that in a lot of cases it may be the carrier who is actually responsible for loading and

unloading, and this is fine provided it is agreed separately in writing, i.e. in the original quote or order acceptance.

In respect of the actual loading onto the vehicle, the customer is required to ensure that any necessary equipment to be used for such activities is in functional condition and the customer further indemnifies the carrier who in most cases will be the RHA Member against loss, damage or death that might come about due to faulty or inappropriate equipment.

There are further provisions included relating to the personnel involved in the actual loading and unloading of the vehicles. Where the carrier or member's staff or personnel are carrying out the loading or unloading, but those individuals take instructions from the customer, and they are given instructions that do not operate in conjunction with Condition 4(3) as contained in the conditions, then the member is not liable. The customer also agrees to indemnify the carrier or member against all demands and claims that arise out of the member's personnel complying with the instructions of the customer.

These terms essentially seek to nail down the points in the loading and unloading process for which the customer indemnifies the RHA Member and which the RHA Member is not liable for, and also what the member may be considered liable for.

### **OBLIGATIONS OF THE CUSTOMER**

By virtue of this clause, the customer with whom the RHA Member is contracting warrants that the goods or consignment which they require moving will not pollute the environment or do harm to human health and make clear that it should not need official consent to be moved by the RHA Member, in the sense that all licences and approvals should already have been acquired. The customer also warrants to provide the carrier with the necessary information and/or materials to comply with its legal obligations under domestic and - if applicable - EU legislation.

In the event that the carrier's performance is delayed as a consequence of the actions of the customer, then the member is entitled to suspend performance of its obligations until the situation is remedied by the customer. In doing so, the member or carrier will not be liable for costs of losses sustained or incurred, and the customer shall reimburse the member or carrier for their own incurred costs or losses.

### **TRANSIT**

Under these provisions what constitutes as 'transit' commences after the consignment or load or goods have left the premises from which they were collected. Transit ends once the consignment, load or goods have arrived at the proper place of delivery. This arrangement may, however, be contracted out of - as can most of the terms under these conditions. If alternative arrangements are required, these can be agreed in writing.

When the goods, consignment or load is not in transit, it shall be at the sole risk of the customer.

## **UNDELIVERED OR UNCLAIMED CONSIGNMENTS**

These terms give guidance where the carrier or RHA Member carrying out transport services are unable to deliver a consignment or load or where transit is at an end and the carrier is unable to deliver. In such circumstances the carrier may sell the consignment or goods and payment or tender of the proceeds after the deduction of charges incurred by the member shall discharge the carrier from liabilities. That being said, there are criteria for the member or carrier to satisfy if they wish to exercise this right:

1. They must do what is reasonable in order to obtain the value of the goods - this essentially means that there must be some negotiation and discussion aiming at bringing in the market value, at least, of the consignment. The member cannot simply settle to sell the goods to discharge themselves.
2. The carrier or member must be aware of the name and address of the sender of the goods, load or consignment as the carrier must give that entity or individual notice as to what they intend to do. They must give the entity or individual a reasonable time in which to respond or to take away the load, goods or consignment.

## **CARRIER'S CHARGES**

Any charges which the carrier issues to the customer shall be payable by the customer without prejudice to the carrier's rights against the consignee. These charges must be paid when due and there can be no attempts from the customer to set-off any other claim or outstanding amount that they may have accounted for against the carrier or RHA Member. This means that the customer must pay the charges and then only seek any other form of recoup for a separate matter at a latter point. It is important and made overtly clear under condition 8(3) that the carrier or RHA Member use reasonable endeavours to obtain a signed proof of delivery of the load, goods or consignment. It may be agreed otherwise with the customer; however, we would recommend acquiring a proof of delivery note for your own records regardless. That being said, there is no right of the customer to withhold payment where no proof of delivery is provided, unless a notification of non-delivery is given to the carrier or RHA Member within 48 hours after the expected delivery time.

Where a contract is cancelled at any point during its performance, the customer has agreed under these terms to pay the carrier or member all costs and expenses incurred prior to the cancellation.

## **LIMITATION OF LIABILITY**

This section pertains to more general liabilities which may arise under the contract with your customer, inclusive of but not limited to costs, taxes, fines or duties which might arise during the performance of the contract. That being said, in accordance with the tests of reasonableness and in consideration of legislation relating to the fairness of contracts, there are instances where we are not able to totally exclude or limit liability. For example, where it is deemed unfair to totally exclude liability for damage done to goods, the liability of the carrier or member is limited to the actual value of the goods, any reparation costs or a sum calculated at the rate of £1,300.00 per tonne on the gross weight of the goods lost or damaged. With respect to wholly excluded liabilities, these conditions exclude:

- loss of profits;

- loss of sales or business;
- loss of agreements or contracts
- loss of anticipated savings;
- loss of use or corruption of software, data or information;
- loss of or damage to goodwill; and
- indirect or consequential loss;
- any fines imposed on the Customer by the Consignee or its customer.

### **INDEMNITY TO THE CARRIER**

This is essentially the method by which the customer agrees to indemnify and cover the carrier of the goods or RHA Member, by agreeing to the contract incorporating these terms and conditions the customer agrees to grant this indemnity. The coverage is for all liabilities and costs incurred by the carrier and/or member as a result of a breach of the conditions by the customer where that breach occurs through error, omission, mis-statement or misrepresentation. There is further coverage provided by the customer for all claims and demands in excess of the liability of the carrier or member under these conditions.

### **LIEN**

The lien is one of the most important tools under these conditions. It grants an explicit interest on behalf of the carrier and/or member in the consignment, load or goods. The lien itself is activated where the customer has overdue amounts owed to the carrier or RHA Member and/or has accrued charges. The carrier or member can take control of the goods, loads or consignment. There are two liens granted: 1) a particular lien against the consignment, load or goods, focusing on the charges outstanding in respect of that consignment, and 2) a general lien against the trader to whom the goods belong for all and any outstanding sums or unpaid invoices, not just those relating to the consignment.

If, having received notice and adequate time with which to respond, the customer still does not satisfy outstanding charges, then the carrier or member will be entitled to sell the goods, load or consignment or the relevant part of that consignment to recover the amount owed to them. Any surplus to that amount should be returned to the customer.

The reason this lien is made explicitly clear is so that there is no doubt that the carrier or member has the right to hold the goods and sell them on. If this is not done, then the carrier or member leaves themselves vulnerable to litigation and other complaints from their customers or owners of the goods.

Whilst this clause and the contractual right it asserts is an incredibly useful tool for the carrier, it has to be exercised with caution to ensure the exercise of this right does not inadvertently create claims and liabilities against the carrier, particularly where the customer is not the owner of the consignment.

**It is therefore strongly advised that where the owner of the goods and the customer are not one and the same, specific legal advice should be obtained before exercising this right.**



## **CONCLUSION**

The above advice and explanatory notes should adequately explain the key mechanisms of the Road Haulage Association Conditions of Carriage 2020 and the effect that they may have on commercial contracts between RHA Members and their customers. It is important to note that these terms are to be used when contracting for transport services and would offer little if the member were contracting for some other service that they may provide. They are drafted in favour of the haulier and so we would recommend that they are incorporated into every contract for transport or distribution as outlined at the beginning of these explanatory notes.