

# NR Evans & Son Limited

## Standard Terms and Conditions of Trade

Published on **FTA**

Online <http://www.fta.co.uk/services/publications/conditionsofcarriage/conditions.htm>

### **Specimen Conditions for the Carriage of Goods by Road in the United Kingdom 2002**

The Conditions set down the basis on which the Carrier will carry goods for the Customer (definitions of Carrier and Customer are given in Condition 1). The Carrier is not and does not contract as a common carrier. The Conditions may not be altered or varied in any way except by express agreement **in writing** signed by a director or proprietor of the Carrier. The Conditions cannot and do not override any Statutory provisions imposed by Law or the application of any applicable international Conventions.

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 to ensure they arrange adequate insurance to provide full cover when the property is in transit.

#### **1. Definitions**

##### **Notes**

In the Conditions:

- 1.1 Carrier** means the person (corporate or otherwise) who contracts with the Customer to carry the goods.
- 1.2 Consignee** means the person (corporate or otherwise who may or may not be the Customer) to whom the Carrier contracts to deliver the consignment.
- 1.3 Consignor** means the person (corporate or otherwise who may or may not be the Customer) who supplies the consignment to the Carrier for carriage.
- 1.4 Customer** means the person (corporate or otherwise) who contracts with the Carrier for the carriage of goods.
- 1.5 Contract** means the Agreement between the Customer and the Carrier for the carrying out of the transport service including all documents expressly incorporated therein.
- 1.6 Consignment** means goods whether single or multiple units or in bulk despatched at any one time from one Consignor in a single load from one address in the United Kingdom to one Consignee at any one other address in the United Kingdom.
- 1.7 Dangerous Goods** means goods of any nature as may be included in the Approved Carriage List prepared pursuant to the Carriage of Dangerous Goods (Classification, Packaging and Labelling) and Use of Transportable Pressure Receptacles Regulations 1996 as may be amended from time to time and goods which represent a similar hazard, radioactive material and explosives of any nature.
- 1.8 Day** means any day Monday to Friday inclusive other than a Bank or Statutory

Holiday, including the delivery day and the day on which any claim or notice is first made.

- 1.9 Alternative Dispute Resolution** means any procedure agreed by the parties for the resolution of disputes other than those involving formal arbitration or litigation.
- 1.10 Loss** means the actual loss of the goods or failure by the Carrier to deliver the goods within 30 days of the agreed time limit for delivery or, if there is no agreed time limit, within 60 days from the date on which the Carrier took over the goods.
- 1.11 Delay** means failure by the Carrier to deliver the goods within the agreed time limit, or if there is no agreed time limit, within the period of 60 days from the date upon which the Carrier takes possession of the goods.
- 1.12 Owners Risk** means that the goods are held upon terms that the Carrier shall not be liable for any loss of whatsoever nature and howsoever caused including negligence in relation to the goods or as a consequence of the goods being in the Carrier's possession. The Customer will indemnify the Carrier against all claims that may be made against the Carrier arising from the carriage, retention or storage of such goods.
- 1.13** The expressions Carrier, Consignee, Consignor and Customer shall include those parties' principals, agents and servants.

## **2. principal parties and sub-contractors**

### **Notes**

- 2.1** The Customer contracts as the legal owner of the goods or as the authorised agent of such legal owner in which case the Customer warrants that he has the authority to accept these Conditions on behalf of the legal owner.
- 2.2** Unless written instructions to the contrary are received from the Customer, the Carrier may sub-contract part or the whole of the consignment.
- 2.3** Where carriage of any consignment or part of a consignment is sub-contracted to a sea, air or rail carrier then the liability of the carrier and of any sub-contractor shall be limited and/or excluded in accordance with the conditions of carriage of that sub-contractor or as provided for by statute or international convention.
- 2.4** Notwithstanding the provisions of the Condition 2.2, the Carrier may not sub-contract the carriage of Dangerous Goods without the prior written consent of the Customer.
- 2.5** Where part or the whole of the carriage has been sub-contracted as provided for in Condition 2.2 above, such sub-contractors shall have the benefit of these Conditions of Carriage and shall be under no greater liability to the Customer than or in addition to that of the Carrier under the Contract and the Customer agrees with the Carrier that no claim shall be made against a sub-contractor in addition to or excess of the limitation and/or exclusions of liability as set out in these Conditions.

## **3. Loading and Unloading**

### **Notes**

- 3.1** The Carrier shall not be required to provide additional services other than the service for the carriage of the Consignment from the designated place of

collection to the designated place of delivery unless any such service has been requested by the Customer and agreed by the Carrier in writing, prior to collection or delivery being made.

- 3.2** The Customer shall be responsible for providing and safely operating any equipment that may be required for loading the Consignment on or unloading the Consignment from the vehicle unless arrangements to the contrary are agreed in writing between the Carrier and the Customer prior to despatch and these Conditions shall apply during such loading and/or unloading.
- 3.3** The Carrier shall be liable for any loss or damage caused as a result of its use of defective equipment supplied by the Consignee or Consignor and the Customer shall indemnify the Carrier against any claim made against the Carrier in respect of such loss or damage including claims in respect of death or personal injury.
- 3.4** The Carrier shall not be liable for any loss or damage caused as a result of negligent acts committed by the Consignor or Consignee or their servants or agents in assisting with loading and/or unloading and the Customer shall indemnify the Carrier against any claim made against the Carrier in respect of such loss or damage including claims for death or personal injury.
- 3.5** The Carrier will endeavour to make the Consignment reasonably accessible on the vehicle at the place designated for delivery.
- 3.6** 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.

#### **4. Dangerous Goods**

##### **Notes**

- 4.1** The Contract for the carriage of Dangerous Goods shall be voidable by the Carrier and the Carrier shall have no liability unless, prior to loading, the Carrier receives precise and correct identification of the substances in writing and has agreed to accept the same for carriage. Transport Emergency Cards ("Tremcards") must be provided by the Customer in the form prescribed by the appropriate Statutory authority giving details of each and every substance the Carrier is requested to carry. Written information must be provided in respect of goods classified as "Dangerous" and where a "Tremcard" is not required by Statute. "Tremcards" or other written notification provided by the Customer must accompany each and every Consignment.
- 4.2** The Customer shall be responsible for ensuring that such substances are properly and safely packaged and labelled with the identities of the substances and all other relevant information as specified by any Statutory requirements for the time being in force.
- 4.3** The Customer shall be responsible for and indemnify the Carrier against any loss or damage and claims made upon the carrier in respect of any injury to persons or damage to property arising from the non-compliance by the Customer or the Consignor with any of the provisions of these Conditions in as far as they relate to the carriage of Dangerous Goods, unless the Customer proves that the loss, damage or injury was due to the negligence of the Carrier.

## **5. Consignment Notes/Receipts**

### **Notes**

- 5.1** The Carrier shall, if requested, sign a document acknowledging receipt for the carriage of the quantity and description of the Consignment loaded on to the Carrier's vehicle, to the extent this can be determined, by visual inspection. Such receipt shall not be evidence as to accuracy of the condition, weight, quantity nor nature of the goods said to comprise the Consignment at the time the receipt document is signed by the Carrier and/or his agents and/or his servants. The burden of proof in the event of dispute is the responsibility of the Customer.
- 5.2** The Carrier shall use its best endeavours to obtain a signed receipt of delivery of the Consignment from the Consignee unless otherwise agreed with the Customer. Such receipts will be returned to the Customer as proof of delivery, unless otherwise agreed in writing by the Customer and/or his agent and/or his servants.

## **6. Carrier's Responsibility**

### **Notes**

- 6.1** Goods are accepted by the Carrier for carriage at 'owner's risk' where the Carrier is able to show that the Customer has explicitly agreed to the carriage of the goods at 'owner's risk'. In that event, the Carrier shall not be liable for loss damage or delay to the goods no matter howsoever or by whomsoever caused and the Customer agrees to indemnify the Carrier against any claims made by any Third Party in respect of the goods carried.
- 6.2** Subject to the provisions of Condition 6.1 above the Carrier's responsibility for the Consignment shall commence when the Carrier takes physical control of the Consignment at the point of collection or by receiving the same at the Carrier's premises.
- 6.3** The Carrier's responsibility for the Consignment shall end when the Carrier, its agents or sub-contractors relinquish physical control of the Consignment at the proper place of delivery or the Consignment is presented at the proper place of delivery within normal business hours allowing sufficient time for unloading.
- 6.4** If it has been agreed that the Consignee will collect the goods from the Carrier's premises or if the Carrier is prevented from making delivery at the Consignee's address as a consequence of the absence of a safe and/or adequate access or unloading facility then the Carrier's responsibility for the goods shall end at the expiration of 24 hours after notice by letter, telephone, fax or e-mail or other agreed method of communication of the availability of the goods has been given to the consignee and/or the consignor.
- 6.5** At any time during the term of the Contract the Customer may request or the Contractor may recommend variations to the service and/or variations to any other matters covered by the Contract. The Carrier shall investigate the likely impact of any such requested or recommended variations upon the service, the charge for the service and other aspects of the Contract and shall report promptly to the Customer. Neither party shall be obliged to agree to any requested or recommended variation but neither party shall withhold its Agreement unreasonably. Until such time as any variation to the Contract resulting therefrom have been mutually agreed in writing, the parties shall continue to perform their respective obligations without taking account of the

requested or recommended variation.

## **7. Carrier's Charges**

### **Notes**

- 7.1** The Carrier's charges shall be payable by the Customer provided always that, when the goods are consigned 'carriage forward', the Consignee shall have primary responsibility for the payment of the carriage charges but the Customer shall pay such charges in the event of default by the Consignee and the Carrier shall not be required to take any steps to obtain payment from the Consignee other than a written request for payment.
- 7.2** Notwithstanding any claim which the Customer may have against the Carrier, the Carrier's charges for carriage and any other services incidental to the carriage chargeable under the Contract shall be payable by the Customer within 30 days of the date of the invoice unless otherwise agreed in writing. Should the charges not be paid within such a period, then the Carrier shall be entitled to interest at the rate of 8 per cent above the base rate of the Bank of England prevailing at the date of invoice, calculated on a daily basis.

## **8. Disposal of the Goods by the Carrier**

### **Notes**

- 8.1** In the event that the Carrier is unable for any reason beyond its reasonable control to deliver the Consignment in accordance with the Contract, the Carrier shall seek further instructions from the Customer. The Carrier's reasonable additional charges for retaining the goods pending the arrival of such further instructions and for carrying out those instructions shall be chargeable to the Customer.
- 8.2** Subject to the provisions contained in Condition 8.2 (a) to (c) below, where the Carrier is unable to obtain further instructions from the Customer in accordance with Condition 8.1, the Carrier may sell the goods provided that such sale is permitted by law. Payment or tender of the net proceeds to the Customer after deductions of all costs of and charges for carriage, other services incidental to the carriage chargeable under the contract, storage and disposal and expenses in relation to the goods shall (without prejudice to any claim or right which the Customer may have against the Carrier otherwise arising under the Conditions) discharge the Carrier from all liability in respect of such goods, their carriage and storage.

- (a) The goods may not be sold unless the Carrier shall have made reasonable efforts (having regard, if appropriate, to the perishable nature of the Consignment) to notify the Customer of the Carrier's intention to sell the goods. The goods may then be sold unless within reasonable time (such time to be specified in the notice) the Customer shall have arranged to collect the goods or given instructions for their disposal and have paid, without prejudice, all outstanding charges as referred to in this Condition including any warehousing charges which may have been incurred during the time that the goods have been retained.
- (b) Pending the expiry of such periods of notice as aforesaid and of disposal of the goods under these provisions the Carrier shall at the expense of the Customer have authority to arrange proper storage of the Consignment. During such period of storage the goods will be held at "owners risk" and the carrier shall not be liable for loss or damage of the goods howsoever caused.
- (c) In the event of a sale under this Condition the Carrier shall do what is reasonable to obtain the market value of the Consignment (subject to any unavoidable deterioration thereof). If the goods have no market value, then the Carrier may dispose of them subject to compliance with all legal requirements in force in respect of such goods.

**8.3** Subject to the provision of Clause 8.1 above, and in circumstances in which the Carrier is unable to obtain further written instructions, the Carrier may, in respect of Dangerous Goods only, at his sole discretion dispose of the goods or return them to the Customer. Where such action is taken by the Carrier, it shall comply with all prevailing legal requirements that may be in force in respect of the goods. Any such action taken by the Carrier under this Clause shall be at the sole risk and expense of the Customer.

## **9. Liability for Loss, Damage or Delay**

### **Notes**

**9.1** Subject to these Conditions the Carrier shall be liable for:

- (a) any loss of or damage to the goods in a Consignment occurring whilst the Carrier has responsibility for the Consignment in accordance with Condition 6 above;
- (b) any delay in the carriage of any goods in a Consignment arising from the negligence of the Carrier.

**9.2** The Carriers liability is restricted to the financial limits imposed under Clause 10 of these Conditions unless otherwise agreed in writing between the contracting parties prior to the transit commencing.

**9.3** The Carrier shall not be liable for whatsoever reason for loss of or damage to, or mis-delivery or loss arising from any delay in respect of: Bullion, Precious Metals, Precious Stones, Money (whether in note or coin form), Securities, Stamps, Legal or Business Documents, Living Creatures or anything of a similar nature unless:

- (i) the Carrier has agreed in writing to carry such goods at the specific request of the Customer prior to commencement of the transit;
- (ii) the Customer has agreed to reimburse the Carrier with all additional costs necessarily incurred as a direct result of the Carrier agreeing to carry such goods;
- (iii) the loss or damage or delay has been proved to have been caused by the negligence of the Carrier and/or his agents and/or his servants.

**9.4** The Carrier shall be relieved of all liability if such loss, damage or delay arises from the effect of:

- (a) act of God;
- (b) any consequence of war, act of foreign power, terrorism, requisition or destruction of or damage to property by or under the order of any government or public or local authority;
- (c) seizure or forfeiture under legal process;
- (d) error, act, omission, mis-statement or mis-representation by the Customer or other owner of the goods or by servants or agents of either of them;
- (e) inherent liability due to wastage in bulk or weight, latent defect or inherent defect, vice or natural deterioration of the goods;
- (f) any special handling requirements in respect of the goods which have not been notified to the Carrier;
- (g) insufficient or improper packaging, unless the Carrier has contracted to provide this service;
- (h) insufficient or improper labelling or addressing, unless the Carrier has contracted to provide this service;
- (i) riot, civil commotion, strike, lockout, general or partial stoppage or restraint of labour from whatever cause;
- (j) defect of any equipment supplied by the Customer under Condition 3.2 or any negligence of the Customer's agents or servant;
- (k) Delay in providing to the carrier safe and adequate access and/or delivering instructions in accordance with condition 6.4;
- (l) Fraud on the part of the Customer, Consignor, Consignee or owner or of their servants or agents in respect of all or any part of the consignment.

## **10. Limitation of Liability of Carrier**

### **Notes**

**10.1** Unless otherwise agreed in writing between the Customer and the Carrier prior to the commencement of carriage, the liability of the Carrier in respect of loss of or damage to goods whilst they are the responsibility of the Carrier in accordance with Conditions 6 and 9 hereof shall be limited as follows:

- (a) where the whole or part of a Consignment is lost or damaged to a maximum rate of £1,300 per tonne inclusive of all/any duties and/or taxes on the gross weight of the Consignment or that proportion by weight of lost or damaged property as stated on the consignment note referred to in Condition 5, or otherwise ascertained, or £500 for the total Consignment whichever is greater but not exceeding the actual value of the Consignment or part of the Consignment;
- (b) for the purpose of this Condition the value referred to is the valuation of the goods at the time they are accepted for carriage including all duties and taxes. Provided that no claim shall be accepted by the Carrier pending its receipt from the Customer of proof of the value of the Consignment or any part thereof.

**10.2** The Carrier's liability for any delay or consequential loss shall not exceed the amount of the claimant's bona fide loss or the amount of the carriage charges whichever shall be the smaller unless agreement has been made previously in writing between the Carrier and the Customer for a specific level of liability for such delay or consequential loss.

## **11. Customer's Indemnity to the Carrier**

### **Notes**

The Customer shall indemnify the Carrier against:

- 11.1** losses suffered by the Carrier arising from any negligent act, negligent omission, negligent misdirection or negligent misstatement by the Customer, Consignor or Consignee, its servants or agents;
- 11.2** claims of any nature for loss or damage resulting from the carriage of Dangerous Substances where the Customer's obligations in Condition 4 above have not been met;
- 11.3** claims and demands of any nature in respect of loss of or damage to the goods made by any Third Party additional to or in excess of the limits of liability of the Carrier set out in Condition 10 above;
- 11.4** any claims made or penalties imposed by the Commissioners of Customs and Excise in respect of dutiable goods;
- 11.5** claims and demands made by a Third Party attributable to lack of authority on the part of the Customer to enter into the Contract upon these Terms and Conditions.

## **12. Notification of Claims**

### **Notes**

- 12.1** The Carrier shall not be liable for:

- (a) loss or damage of the whole of the Consignment unless a claim specifying the general nature thereof is submitted by the Customer to the Carrier in writing within 14 days from the Carrier's responsibility for the Consignment having commenced in accordance with Condition 6.2 above and unless a detailed claim giving weight and value and date of collection are submitted by the Customer to the Carrier in writing within 14 days from the Carriers responsibility for the Consignment having ended or been deemed to have ended;
- (b) loss or damage of any part of a Consignment unless a claim specifying the general nature thereof is submitted by the Customer to the Carrier in writing within seven days from the Carriers responsibility for the Consignment having ended in accordance with Condition 6.3 above and a detailed claim specifying the weight, value and date of collection and date of delivery are submitted in writing within 14 days of the Carriers responsibility having ended;
- (c) damage of any description unless the damaged goods are made available to the Carrier's representative for inspection for a reasonable period following notification of the claim;
- (d) delay in delivery of whole or part of the Consignment unless the Carrier is informed in writing within three days of the date by which the delivery should have been made. For the avoidance of doubt where no date for delivery has been agreed notification should be given within 63 days of the Carrier's responsibility for the consignment having commenced.

**12.2** The Carrier shall not benefit from this exclusion of liability if the Customer provides evidence that:

- (a) in all the circumstances it was not reasonably possible so to advise the Carrier or make the damaged goods available for inspection within the specified time limits and;
- (b) such advice was given at the first reasonable opportunity.

### **13. Lien and Power of Sale**

#### **Notes**

- 13.1** All Consignments delivered to the Carrier for carriage are and will be received by the Carrier and held by it subject to a lien for all carriage charges due to the Carrier from the Customer for the carriage, storage rent and/or warehousing charge of the goods and other proper charges or expenses incurred in respect of or in connection with the carriage of the particular Consignment and all other goods which may have been carried by the Carrier for the Customer from time to time. If such a lien is not satisfied by payment within a reasonable time of the Carrier's demand for payment then the Carrier shall be entitled to invoke the power of sale set out in Condition 8 over the Customer's goods in the Carrier's possession. Such sale shall be subject to the provisions of Conditions 8.2 and 8.3 above.
- 13.2** The Carrier shall be entitled to charge to the Customer the cost of loading and unloading the goods whilst a lien is being exercised together with warehouse rent and any other expenses incurred during all periods during which the lien

on the Consignment or any part of the Consignment is being asserted and all these Conditions shall continue to apply whilst the lien is being exercised.

- 13.3** If the Consignment is not the property of the Customer; the customer warrants that he has the authority to grant to the carrier a particular lien against the owner. The Carrier may hold the goods against the owner for any unpaid monies applicable to those goods only, but he may not sell or dispose of the goods in any way without the express consent of the owner.

## **14. Detention of Carrier's Property**

### **Notes**

The Customer shall, except in the case of negligence by the Carrier, pay to the Carrier any cost or expense occasioned to it by the improper or excessive detention by the Consignor or Consignee of any vehicle, trailer, container or covering belonging to or under the custody or control of the Carrier without prejudice to any rights of the Carrier against any Third Party in respect of such detention.

## **15. Dispute Resolution**

### **Notes**

- 15.1** The parties will attempt, in good faith, to resolve any dispute or claim arising out of or relating to these Conditions promptly through negotiations between the respective representatives of the parties who have authority to settle the same.
- 15.2** If the matter is not resolved through negotiation the parties may attempt to resolve the dispute or claim through an Alternative Dispute Resolution (ADR) procedure as recommended to the parties by the Freight Transport Association or the Centre for Dispute Resolution.
- 15.3** If the matter is not resolved by an ADR procedure or if either party will not or ceases to participate in an ADR procedure, the dispute may be referred to the arbitration of a single arbitrator or to an arbitrator appointed at the request of the parties by the President for the time being of the Chartered Institute of Arbitrators. The apportionment of the cost of any such arbitration between the parties shall be in the discretion of the arbitrator. The arbitration shall, unless otherwise agreed, be held in the town wherein the Carrier has its main administrative office.

## **16. Governing Law**

### **Notes**

The parties shall agree the legal regime under which these Conditions shall be construed and interpreted and the courts which shall have jurisdiction. In the absence of such agreement, the contract shall be subject to and construed and interpreted in accordance with English law and shall be subject to the jurisdiction of the courts of England.

## **Notes on Specimen Conditions for the Carriage of Goods by Road in the United Kingdom 2002**

These notes do not form part of the specimen Conditions of Carriage 2002. They merely

seek to provide guidance to contracting parties.

A contract is a legal binding agreement between the parties who enter into it. Where that contract incorporates by specific reference or notice a set of Conditions of Carriage it is essential that :-

1. Each party understands fully its obligations under the contract.
2. Each party is able to fulfil its obligations contained in the contract.
3. The contract fully meets the requirements and expectations of the parties.
4. That the parties understand and accept the Conditions of Carriage incorporated into the contract.
5. The Freight Transport Association recognises the need for a set of specimen conditions of carriage which are fair to all contracting parties and which take account of underlying responsibilities which are either prescribed by statute, reflect current practices or are specifically agreed by the contracting parties.

The FTA has therefore prepared a specimen set of conditions which it is hoped will form the basis for all general road haulage work within the United Kingdom and thus bring about a better understanding of the basic obligations attached to the parties who contract for the carriage of goods.

The specimen conditions do not seek to define "haulage charges" which remain a matter for agreement between the parties.

To be enforceable the specimen conditions must be brought to the attention of, and agreed by, both parties before the contract is entered into.

Normally they will be introduced on the initiative of the carrier and it will be the carrier's responsibility to bring them to the attention of the customer preferably at the time of quoting for the work and certainly before any final agreement is reached between the parties.

This can conveniently be done by including on the front of the carrier's stationery a statement that "all contracts are subject to the specimen conditions of carriage 2002 issued by the Freight Transport Association Limited. These conditions are either printed upon the reverse of this document or are available upon request. Customers should satisfy themselves that the terms of these conditions are acceptable to them". Acceptance of any quotation by the customer will then imply acceptance of the specimen conditions. It is important to note that Courts take the view that it is for a party who seeks to rely upon exclusion and limitation clauses to demonstrate that the conditions were brought to the attention of the customer and that the exclusion and limitation clauses are valid and relevant.

These contract conditions are a template and those using them should modify them to meet their particular requirements.

In the event of your wishing to modify the terms and conditions we recommend that you take legal advice. If a carrier chooses to modify these special conditions in any way then any reference to the conditions should clearly state that they are "as amended" and this should be incorporated in any statement making reference to the conditions.

Since these are specimen conditions it is open to the parties to amend them in any way that is appropriate to the contractual relationship. It should be borne in mind, however, that such amendments should be legally sound, must be agreed by the parties to the contract and it is recommended that the changes should be communicated to and accepted by any insurer involved in covering the risks arising from the use of the specimen conditions. Care should also be taken to ensure that any amendment is compatible with the remaining

conditions.

In 1995 FTA and the Road Haulage Association (RHA) agreed a consignor-carrier-consignee accord. This sets out good practice in relationships between carriers and their customers and is compatible with FTA's 2002 specimen condition of carriage.

The terms of the Accord are reproduced as an appendix to these notes and further copies of the Accord are available from either organisation.

## **DEFINITIONS - CONDITION 1**

In drafting the conditions FTA has borne in mind that either the Consignor or the Consignee could be one of the parties to the contract in addition to the carrier. For this reason both Consignor and Consignee have been defined in a way which allows either to be the customer of the carrier. This has been done with a view to addressing a difficulty experienced in certain conditions in current use which have been drafted on the assumption that the Consignor is always the customer although because ownership of the goods may have changed the common law position might normally assume the Consignee to be the customer.

## **PRINCIPAL PARTIES AND SUB-CONTRACTORS – CONDITION 2**

A Carrier is permitted to sub-contract unless the customer specifically states in writing that sub-contracting is not permitted, the Carrier may sub-contract part or the whole of the carriage except in the case of dangerous goods.

The Carrier has the freedom to choose the sub-contractor however he should be prudent in making that choice.

If a customer insists before the contract is entered into that the carriage should not be sub-contracted then it is advisable that special arrangements should be made to cover emergency situations. For example if a vehicle carrying the goods breaks down or is involved in an accident, as a carrier may not always be able to provide its own replacement vehicle.

In the case of the carriage of dangerous goods the carriage cannot be sub-contracted unless the customer has agreed in writing before the sub-contracting takes place. This agreement may be given after the contract has been entered into but care should be taken to ensure that the agreement of the customer has been obtained in writing.

Generally the carrier will be liable (up to the limits of liability) set out in conditions 9 and 10 for any loss, damage or delay caused by a sub-contractor but where carriage has been sub-contracted to an air, sea or rail carrier often the carrier's liability is defined by statute or convention. The conditions make it clear that the carrier's liability for goods which are lost, damaged or delayed whilst in the hands of such a sub-contractor will not be greater than that provided for in the statute or convention or the conditions of carriage of that sub-contractor.

It sometimes occurs that a sub-contractor's limits of liability may be greater than the carrier's limits, however the conditions make it clear that the sub-contractor's liability to the customer should the customer seek to claim direct will not be greater than the liability of the carrier by virtue of condition 2.5. This clause is believed to be effective by virtue of the indemnity given by the customer in condition 11.3.

There would, however, need to be a similar indemnity given by the main contractor to the sub-contractor in the contract entered into between them. The effect of condition 2.4 and

the two indemnities is that the sub-contractor is relieved of all claims made against him as bailee of the goods which are beyond the limits set out in conditions 9 and 10.

It is suggested that the carrier should make it clear in any sub-contract that the sub-contractor is not in turn entitled to further sub-contract the carriage as there is a risk that protection given by the limits and exclusions of liability contained in these conditions will be lost to the carrier. The carrier should never sub-contract the carriage of dangerous goods without the written consent of the customer.

### **LOADING AND UNLOADING – CONDITION 3**

The purpose of this condition is to define the responsibilities as between the carrier and the customer relating to the provision of plant, facilities and labour for loading and unloading. Not only is this a common area of misunderstanding but the Health and Safety Executive are known to be concerned as to whether proper risk assessments have been carried out at collection and delivery addresses and unless the responsibilities are clearly defined it may be held that such responsibilities rest upon the carrier.

As the customer may not be either the Consignor or Consignee condition 3.2 places a responsibility upon the customer to make sure that proper arrangements have been made for loading and unloading at the respective addresses.

When loss damage or injury is caused during loading or unloading as a result of defective equipment other than the carrier's equipment or by employees other than the carrier's employees then the customer is bound to indemnify the carrier against any claim made.

### **DANGEROUS GOODS – CONDITION 4**

The potential risks and liabilities associated with the carriage of dangerous goods is great and this condition imposes upon the customer the duty to provide full information and comply with all regulations.

Carriers should ensure that they have received from customers all of the information set out in condition 4.1 and any other information which they consider necessary before they agree to carry the goods, particularly with reference to labelling and packaging. This is vital if the carrier and the customer are to comply with all statutory requirements applying to the goods being carried and to afford the carrier protection should, due to incorrect or inadequate labelling, inappropriate goods be mixed upon the vehicle.

### **CONSIGNMENT NOTES – RECEIPTS – CONDITION 5**

As a matter of good practice condition 5 requires that a receipt or consignment note acknowledging acceptance of the goods being carried should be signed by the carrier as requested and if requested he should obtain a signed receipt for delivery of the consignment from the consignee. The absence of such documents can complicate the resolution of any disputes. However, the absence of any such document would not negate the application of the specimen conditions generally.

Modern computerised systems and techniques installed by consignees or consignors have in many cases made the traditional signature on the document provided by the carrier inappropriate. Many companies issue computer printed receipt notes representing quantity and description of goods received and require these to be submitted by the company with its invoice for the goods. Failing to produce such a document can often result in disputes arising between the customer and the supplier regarding payment for the goods delivered.

However, unless expressly agreed to be part of the system the absence of such document does not prevent the carrier from claiming payment for the carriage. Frequently the attention of delivery drivers is not drawn to the importance of obtaining such documents before leaving a consignee's premises. Carriers would be well advised to ensure that their drivers are properly instructed in the documentary requirements.

Due to human error mistakes can occur in the preparation of such documentation and for this reason the condition makes it clear that such documents are not conclusive proof of either the description of the goods or of their condition.

## **CARRIERS RESPONSIBILITY – CONDITION 6**

Except where it has been agreed before the contract is entered into that the goods will be carried at "owners risk", the conditions have been written on the basis that the carrier will, subject to conditions 9 and 10 and to the specific responsibilities placed upon the customer as set out in conditions 11 and 12 be responsible for loss, damage or delay to the goods whilst they are in its care. The period during which the carrier has responsibility for the goods has been clearly defined.

With the advent of 24 hour, 7 days a week carriage, carriers should agree with the customer the hours which they both consider constitute normal business hours at the delivery address.

## **CARRIERS CHARGES – CONDITION 7**

This condition makes it clear that in the event of any claim or dispute relating to the carriage arising between the carrier and the customer, the customer remains responsible for paying the charges and the charges cannot be withheld on the basis of a set off, either as a result of a claim or against any charges which may be due from the carrier to the customer. This seeks to prevent the customer from prejudging the issue in dispute and unreasonably penalising the carrier.

Condition 7.1 also makes it clear that although a carrier may agree to try and recover its carried forward charges, this will not relieve the customer from responsibility for payment should the consignee fail to do so.

## **DISPOSAL OF THE GOODS BY THE CARRIER – CONDITION 8**

This condition explains how the carrier can dispose of goods in certain circumstances, however the carrier must act fairly towards the customer and the condition sets out the steps which are required to ensure that reasonable efforts are made to notify the customer of any difficulties and of the eventual intention to sell the goods.

The condition makes it clear that the carrier is under no duty to obtain any price for the goods beyond market value at the time and enables the carrier to dispose of the goods if he can establish that they have no market value.

The condition also deals with the difficult situation which may arise where the carrier is unable to effect delivery of dangerous goods which cannot be readily disposed of by sale.

## **LIABILITY FOR LOSS DAMAGE OR DELAY – CONDITION 9**

As explained under condition 6 the conditions have been drafted upon the basis that the carrier will be liable for loss damage or delay or unless liability is excluded by any of the

specific examples as set out in the conditions. Under the following condition 10 however that liability is limited and the limitation of liability is set out in that condition.

## **LIMITATION OF LIABILITY OF THE CARRIER – CONDITION 10**

In the absence of any agreement in writing to the contrary at the time that the contract is entered into, the carrier's liability is limited to £1,300 per tonne inclusive of all duties and taxes calculated by reference to the gross weight of the consignment or £500 for the entire consignment, whichever is the greater, not exceeding the actual value of the consignment.

The value of the goods includes all duties and taxes which may be attracted by the goods.

It is anticipated that in most cases where there is a ready market for the goods then the evidence of the valuation of the goods will be provided by the commercial invoice. Where there is no such sale it is anticipated that the valuation will be determined by reference to the market value of the goods.

In the event of delay and any losses other than the loss in value of the goods, the carrier's liability shall not be greater than the carriage charges unless any greater liability has been agreed in writing between the parties before the contract is entered into.

The carriers responsibility can be insured under a special policy drawn up for the purpose by FTA Insurance Service.

The customer can himself insure the goods for sums greater than the carrier's liability but that is a matter for the customer to decide. Should however, the carrier agree with the customer that he will accept a liability greater than those set out in the conditions, the carrier should ensure that his insurance company is aware of the levels of risk which he has accepted and this is particularly important if he agrees an increase in liability in respect of delay or consequential loss, for these items are frequently excluded from many goods-in-transit insurance policies.

These conditions no longer make it a term of the contract that the carrier should insure his liabilities under the contract, however carriers are strongly recommended to insure their liability and keep the insurance company aware of any change in the contracts that they enter into. A policy of insurance is available to FTA members which has been prepared to reflect carriers insurable responsibilities under these conditions.

## **CUSTOMERS INDEMNITY TO THE CARRIER – CONDITION 11**

Just as a carrier accepts responsibilities under the contract so the customer must accept responsibility for its own action and this condition provides that the customer will indemnify the carrier against any losses which the carrier suffers as a result of the customer's actions or where the carrier receives claims from third parties which although primarily the responsibility of the carrier should be the subject of an indemnity or contribution from the customer.

Condition 11.5 is particularly important for frequently the customer will not be the owner of the goods and the warranties made by the company that he has the authority of the owner of the goods to enter into the contract is very important.

## **NOTIFICATION OF CLAIMS – CONDITION 12**

These conditions set out the requirement and the time limit for notification of claims and these should be considered carefully when deciding whether the claim should be dealt with as a claim for delay in delivery or whether the goods should be deemed to have been lost.

## **LIEN AND POWER OF SALE – CONDITION 13**

This condition gives to the carrier a lien, that is a right to withhold the customer's property, against the goods for all monies due from the customer to the carrier not only in respect of the charges for the carriage of the actual goods in question but also any other charges which may be due and outstanding to the carrier or which may arise during the course of the carriage. This lien is wider than the common law lien, which permits goods only to be held in respect of the carriage charges due in respect of those particular goods. In practice the common law lien is of limited value to the carrier and hence a contractual lien is granted under these conditions. A lien can only be exercised, however, against the actual owner of the goods and this is why it is important that the customer gives the warranty that he has the authority of the owner of the goods to enter into the contract.

## **DETENTION OF CARRIER'S PROPERTY – CONDITION 14**

This condition enables the carrier to claim against the customer for any delay in release of the carrier's equipment whether it is a vehicle, trailer, pallet or storage of equipment generally described as "demurrage". It is recommended that the carrier should agree with the customer in advance what they consider to be excessive periods of delay and the rates that will be charged for the individual items of equipment should that delay occur.

## **DISPUTE RESOLUTION – CONDITION 15**

Dispute taken through the courts can prove costly to both parties and this is recognised by the encouragement given to use Alternative Dispute Resolution proceedings when disputes arise. This condition sets out steps, which it is recommended should be taken, rather than embarking upon costly court proceedings.

## **GOVERNING LAW – CONDITION 16**

It is for the carrier and the customer to agree on the legal regime, which shall be used for construing and interpreting the contract and these conditions and also the country that has jurisdiction for hearing any legal proceedings. Thus a carrier based in Scotland using the conditions may chose to modify them so that the law of Scotland applies and the courts in Scotland can deal with any dispute.

Where no specific agreement has been reached, this condition provides that English law shall apply and the English courts will have jurisdiction. Carriers should be aware that the law may be different in Scotland and in Northern Ireland, although it is believed that there are no significant differences of interpretation affecting these specimen conditions.

## **ADDITIONAL SCHEDULES**

These conditions do permit the parties to vary the conditions. However, it is important that where the conditions are varied, the variations should be evidenced in writing and signed

by the parties. It is suggested that those variations should be attached to the contract as a separate schedule. Matters that might be covered are: -

1. Specific agreement relating to sub-contracting.
2. Specific agreement relating to the provision of plant, facilities, labour and services at collection or delivery addresses (condition 3).
3. Specific agreement relating to carriage of dangerous goods (condition 4).
4. Specific agreement relating to the exclusions and/or limitations of liability of the carrier (conditions 9 & 10).
5. Specific agreement relating to time limits for notification of claims (condition 12).
6. Specific agreement relating to the charges to be raised where equipment is retained by the customer (condition 14).

## **AVAILABILITY AND USE OF FTA SPECIMEN CONDITIONS OF CARRIAGE 2002**

The conditions and these guidance are the copyright of FTA. FTA grants a licence, however, to both members and non-members to use and copy these conditions and guidance notes provided that acknowledgement of FTA's copyright is noted upon the conditions used and any guidance notes used.

## **THE FTA/RHA CONSIGNOR/CARRIER/CONSIGNEE ACCORD**

### **The contractual relationship**

One of the characteristics of the transport industry is the vast amount of legislative controls placed upon it. Whilst such issues are legally the responsibility of the carrier, both consignor and consignees also have a responsibility to ensure that all of the legal requirements placed upon the parties to the contract (and any sub-contractors that are hired) are met to ensure a successful conclusion. The Accord gives guidance on areas where conflict with the law is possible, and where all parties to the contract can help to ensure that the carrier meets all of its legal requirements.

After a contract has been concluded, it is in the best interests of all parties to that contract to ensure that it is completed successfully. However, whilst companies will often devote substantial resources to developing the original contract, they often fail to spend equivalent amounts of time considering the likely problems that may be encountered in physically executing it, causing problems to develop later. Such problems are often particularly acute in the distribution sector due to the widespread use of third parties by the consignor who are not privy to the original contract and who have little opportunity to discuss their needs with the consignee. As such, representatives from the UK's leading trade associations representing all parts of the distribution chain (the Freight Transport Association and the Road Haulage Association) have developed this Accord which outlines both parties' responsibilities to each other.

### **Legal aspects**

The overriding business imperative is compliance with the law; in this respect the carrier is required to:

1. hold a valid operator's licence;
2. operate a correctly taxed vehicle;

3. avoid overloading;
4. comply with drivers' hours regulations;
5. comply with all relevant health and safety regulations and, in particular, ensure the driver is trained and competent to carry out all the tasks required of him.

Whilst such issues are legally the responsibility of the carrier, it is clearly in the best interests of both carrier and consignor to work together to ensure that all legal requirements are met.

### **The business partnership**

It is in the interests of all parties to ensure that a contract is successfully concluded. Discussions between the parties regarding their responsibilities to each other are essential if difficulties which could raise costs and, at worse, break the law are to be avoided.

### **A good working partnership requires that:**

#### **The consignor should:**

1. provide the carrier with an accurate description of the consignment and any special handling requirements;
2. provide a declaration of the weight of the consignment;
3. provide appropriate facilities for drivers;
4. ensure, in co-operation with the driver, the proper loading of the vehicle and load safety;
5. make the consignment available for despatch at the stated time;
6. ensure that consignments are properly packaged and labelled;
7. advise the carrier of all driver's tasks;
8. expect the carrier to meet its legal requirements and hold an operator's licence.

#### **The carrier should:**

1. provide a vehicle suitable for the consignment and journey, along with a driver who has been trained for all the tasks he/she has to perform;
2. ensure that all legal requirements are met;
3. conform to all consignor and consignee routing requirements;
4. not sub-contract the journey or include the consignment in a groupage service without the consignor's approval.

#### **The consignee should:**

1. provide appropriate facilities for drivers;
2. ensure, in co-operation with the driver, the proper unloading of the vehicle and load safety;
3. advise the carrier of all driver's tasks;
4. consider, in conjunction with the consignor/carrier, the establishment of dedicated 'hotlines' for the development of delay contingency plans;
5. provide, where possible, a 'fast track' acceptance procedure for small deliveries;
6. consider establishing a local forum for trouble-shooting discussions involving the consignors/carriers.

However, there are also a number of commercial and practical considerations that parties to a contract must discuss with each other to again ensure a successful and profitable

outcome. All too often, once the contract has been agreed, the parties to it end their dialogue with each other until problems occur, by which time it may be too late to avoid losses. Other companies may also be brought into the operation yet have little opportunity to discuss their own operating circumstances and needs with their partners in the contract. This lack of dialogue sees inefficiencies developing in the chain that could be easily overcome, were all the parties to recognise their responsibilities to each other and each others problems. The Accord identifies areas where problems could develop, so that all parties concerned can make themselves aware of potential problem areas for their business partners.

The Accord has been developed to address these problems. Incorporation of the Accord's ideals will help to ensure that problems and difficulties do not occur. Only by working together and taking a partnership approach can all of those involved realise the full potential of the contract. Both FTA and RHA commend the Accord to all sectors of industry, believing that its incorporation will bring about numerous benefits to all who have an interest in developing more efficient distribution networks.

### **The Accord**

This Accord was reached following discussion between FTA and RHA members and was subsequently approved by all the key policy bodies of both organisations. As such it is commended as a framework for creating more efficient, legally compliant and environmentally beneficial arrangements between consignors, carriers and consignees of freight whether or not they are members of these associations.

© 2004 FTA

FTA Website: <http://www.fta.co.uk>