

## WILLIAMS MARINE LUBRICANTS LIMITED

### TERMS AND CONDITIONS OF SUPPLY OF MARINE LUBRICANTS, GOODS AND SERVICES

#### 1 APPLICATION OF THESE TERMS

Unless otherwise agreed in writing these Conditions apply exclusively to each contract for the provision of Goods or Services by WML. All other terms are hereby excluded.

#### 2 INTERPRETATION

##### 2.1 Definitions:

- 2.1.1 **"Affiliate"** any entity that directly or indirectly controls, is controlled by, or is under common control with another entity whereby **"control"** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** is construed accordingly.
- 2.1.2 **"Business Day"** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
- 2.1.3 **"Conditions"** the terms and conditions set out in this document.
- 2.1.4 **"Consignee"** the person(s) to whom WML will deliver a Consignment, as identified in the relevant Order.
- 2.1.5 **"Consignment"** the goods to be delivered by WML to the Consignee pursuant to a Delivery Service.
- 2.1.6 **"Contract"** the contract between WML and the Customer for the sale and purchase of Goods or provision Services, in accordance with the terms of an Order and these Conditions.
- 2.1.7 **"Customer"** the person or firm who purchases Goods or Services from WML.
- 2.1.8 **"Delivery Location"** has the meaning given to it in clause 4.2.
- 2.1.9 **"Delivery Services"** any services provided by WML to the Customer under the terms of an Order consisting of the delivery of a Consignment to the Consignee.
- 2.1.10 **"Force Majeure Event"** an event or circumstance beyond a party's reasonable control, including adverse weather conditions, traffic accidents and delays, and vehicle breakdowns, provided such events are not attributable to WML's negligence or wilful default.
- 2.1.11 **"Goods"** any goods or equipment sold to the Customer under an Order.
- 2.1.12 **"Order"** means the Customer's order for the Goods or Services, being:
  - 2.1.12.1 any quotation issued by WML and accepted by the Customer;
  - 2.1.12.2 an order placed by the Customer that is accepted by WML; or
  - 2.1.12.3 any order confirmation or similar document issued by WML and accepted by the Customer.
- 2.1.13 **"RHA Terms"** the Road Haulage Association Limited Conditions of Carriage 2024 (in which references to the Carrier shall be references to WML), a copy of which is appended to these Conditions.
- 2.1.14 **"Services"** means any services to be provided by WML to the Customer under an Order including any Delivery Services, SmartMonitoring Services or Used Oil Analysis Services.

- 2.1.15 **“SmartMonitoring Addendum”** means WML's Addendum to these Conditions relating specifically to the supply of SmartMonitoring Equipment and SmartMonitoring Services.
- 2.1.16 **“SmartMonitoring Equipment”** means equipment purchased by the Customer from WML and installed by the Customer on its machinery for the purposes of taking periodic measurements of the condition of the oil in its machinery.
- 2.1.17 **“SmartMonitoring Services”** means any services provided by WML (or its subcontractors) consisting of the analysis of, and provision of data in relation to oil condition measurements captured using SmartMonitoring Equipment.
- 2.1.18 **"Spill"** has the meaning given to it in clause 8.1.
- 2.1.19 **“Used Oil Analysis Services”** means any services provided by WML (or its subcontractors) consisting of the analysis of, and provision of data in relation to, used oil samples provided by the Customer.
- 2.1.20 **"WML"** Williams Marine Lubricants Limited (registered in England and Wales with company number 03190482).

## 2.2 Interpretation:

- 2.2.1 a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or reenacted.
- 2.2.2 any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 2.2.3 a reference to **writing** or **written** includes emails.
- 2.2.4 unless otherwise stated or the context otherwise requires, all clauses in these Conditions apply to both the supply of Goods and the supply of the Delivery Service.

## 3 BASIS OF CONTRACT

- 3.1 Unless otherwise stated in the quotation, a quotation from WML shall only be valid for a period of 30 days from its date of issue.
- 3.2 All quotations and Orders are subject to these Conditions and, to the extent such terms are applicable and do not conflict with these Conditions (which shall always take precedence), the RHA Terms.
- 3.3 The Customer is responsible for ensuring that the terms of the Order are complete and accurate.
- 3.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 3.5 Should these Conditions conflict with the terms of WML's quotation, these Conditions shall prevail unless the conflicting provision in the Order expressly states that it is intended to override these Conditions and it is signed by a director of WML.

## 4 SALE OF LUBRICANTS AND PROVISION OF DELIVERY SERVICES

- 4.1 This clause 4 applies to both the sale of Goods consisting of oil and marine lubricants and to the supply of Delivery Services.
- 4.2 Subject to clause 9.5, WML shall deliver the Goods or Consignment to the location and at the date and time set out in the Order, or as otherwise agreed between the parties (the **"Delivery Location"**).

- 4.3 If WML is required to deliver any Goods or a Consignment to a vessel or a storage container in liquid form then:
- 4.3.1 it is the sole responsibility of the Customer to ensure (or to procure that its Consignee ensures) that the Goods or Consignment are correct and suitable before they are pumped into the applicable vessel or storage container(s); and
- 4.3.2 WML's sole responsibility shall be to provide reasonable assistance in the process of pumping the Goods or Consignment into the receiving vessel or storage once the receiving party's checks have been made.
- 4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. WML shall use reasonable endeavours to deliver the Goods/Consignment on the time and date agreed between the parties but shall not be liable for any delay beyond this requirement.
- 4.5 Deliveries are typically available between 8am and 5pm on Business Days. Weekend, bank holiday, out of hours and emergency deliveries may be available provided the Customer pays WML's applicable surcharge.
- 4.6 If the Customer or Consignee fails to take delivery of the Goods or Consignment at the Delivery Location within one hour of the agreed delivery time then:
- 4.6.1 the Customer shall pay WML's then-current demurrage charge in hourly increments (rounded up), unless otherwise stated in the Order, until such time as delivery takes place or the delivery attempt is aborted by WML. In the case of deliveries by vessel, demurrage accrues at the rate imposed on WML by the third party providing the vessel, such rate to be confirmed to the Customer in advance upon request;
- 4.6.2 if WML is unable to make the delivery because the Customer or Consignee is not ready, or if the Customer rearranges the delivery, then the Customer agrees to pay WML its then-current delivery cancellation fee and reimburse WML its reasonable costs (on a full indemnity basis) incurred in attempting to make the aborted delivery. A further charge will be made for the redelivery; and
- 4.6.3 unless such failure is caused by a Force Majeure Event or WML's breach of these Conditions delivery shall be deemed to have taken place at the agreed delivery time.
- 4.7 Without prejudice to clause 5.3, if WML delivers the wrong goods to the Customer or Consignee then the Customer's sole remedy shall be that WML will without undue delay replace the incorrect goods with the correct Goods at the same Delivery Location or (at the Customer's election) at the next mutually convenient port in the mainland United Kingdom, where supplies can responsibly be made available.

## 5 SALES OF GOODS

### Delivery

- 5.1 Risk in Goods sold shall pass to the Customer on completion of delivery, whether that is making the Goods available for collection from WML's premises or delivery to a destination agreed with the Customer in the Order.
- 5.2 Delivery of the Goods is completed when:
- 5.2.1 in the case of supplies to vessels or the Customer's storage, when the pumping of the Goods at the Delivery Location has finished.
- 5.2.2 in the case of all other goods, they are made available for unloading by the Customer at the Delivery Location (and for the avoidance of doubt it shall be the Customer's responsibility to unload such products from the vehicle); or

- 5.3 Title in the Goods shall pass on the later of receipt of payment for the Goods (in full and in cleared funds) and completion of delivery. Until title in the Goods has passed to the Customer, the Customer must:-
- 5.3.1 hold the Goods on a fiduciary basis as the Company's bailee;
  - 5.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;
  - 5.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 5.3.4 maintain the Goods in satisfactory condition insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company; and
  - 5.3.5 hold the proceeds of the insurance referred to in clause 5.3.4 on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 5.4 The Customer's right to possession of the Goods shall terminate immediately if any of the events referred to in clause 11.3.2 to 11.3.4 occurs in relation to the Company.
- 5.5 The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.
- 5.6 If WML fails to deliver the Goods then its liability (without prejudice to clause 12) shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. WML shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide WML with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.7 The Customer shall accept the quantity of Goods delivered is as measured by WML's measuring equipment. If WML delivers up to and including 5% more or less than the quantity of Goods ordered then the Customer may not reject them. Provided the Customer notifies WML strictly within 30 days of delivery, WML shall make a pro rata adjustment to WML's invoice (which may include a balancing payment).
- 5.8 WML may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

### **Warranty**

- 5.9 WML shall extend to the Customer, in relation to the Goods, the same warranties that WML receives from the manufacturer of the Goods. There are no guarantees or warranties by WML, express or implied, or merchantability or satisfactory quality, fitness or suitability of the Goods for any particular purpose or otherwise, which extend beyond the description and/or specifications of the Goods provided by the manufacturer and set forth in the manufacturer's product data sheets.
- 5.10 The warranty referred to in clause 5.9 is given instead of, and excludes, all other express or implied conditions, warranties or other contractual undertakings concerned with any of the following:
- 5.10.1 the condition or quality of the Goods;
  - 5.10.2 their fitness for any particular purpose; and
  - 5.10.3 their compliance with any description,

which might otherwise arise at common law or under any statute.

5.11 If the Goods are proven not to meet the specification set forth in the manufacturer's product data sheets WML may, at its option:

5.11.1 replace them at the next mutually convenient port in the mainland United Kingdom where supplies can reasonably be made available; or

5.11.2 refund any sums paid by the Customer in respect of the Goods,

and the Customer shall accept such replacement or repayment in satisfaction of all claims it may have in respect of the defects or non-compliance with specification.

5.12 These Conditions shall apply to any replacement Goods supplied by WML.

## 6 SERVICES

6.1 WML shall provide the Services with reasonable care and skill.

### **Delivery Services**

6.2 The Delivery Services shall be governed by the RHA Terms. To the extent that there is any conflict between these Conditions and the RHA Terms, these Conditions shall prevail.

### **SmartMonitoring Services**

6.3 The SmartMonitoring Services shall be subject to the additional terms set out in the SmartMonitoring Addendum. In the event of any conflict between the terms in the SmartMonitoring Addendum and any other term of these Conditions, the term(s) in the SmartMonitoring Addendum shall prevail. If not supplied with these Conditions or an Order, the SmartMonitoring Addendum is available from WML upon request.

### **Used Oil Analysis Services**

6.4 If WML has agreed to provide Used Oil Analysis Services, the Customer must supply WML (or WML's named subcontractor) with representative samples of the marine lubricant along with all the relevant equipment details relating to those samples. To allow WML (or its subcontractor) to make a meaningful inspection of the results, the Customer shall:

6.4.1 explain to WML (or its subcontractor) as fully as possible the type and nature of the mechanical equipment that the Customer uses;

6.4.2 inform WML (or its subcontractor) as soon as possible of any changes in the operation or maintenance of the equipment that may impact upon WML's evaluation;

6.4.3 only use the sampling materials and containers provided by WML (or its subcontractor);

6.4.4 be responsible for sampling in accordance with the procedure recommended by WML (or its subcontractor) and so as to prevent contamination of the samples; and

6.4.5 ensure that sample bottles are dispatched securely capped, correctly labelled and properly packaged in the envelopes that WML (or its subcontractor) has provided with all the appropriate fees and stamps paid.

6.5 If any samples sent to WML or its subcontractor have not, in the opinion of WML (or its subcontractor), been taken strictly in accordance with WML's (or its subcontractor's) recommendations, then WML (or its subcontractor) can reject such samples without incurring any liability to the Customer. WML will try to notify the Customer if this happens. Similarly WML shall not accept any liability to the Customer if the samples that the Customer provides to WML (or its subcontractor) have not been taken from their stated sampling point.

6.6 The Customer will be responsible for:

6.6.1 ensuring that it has adequate supplies of sampling materials and containers;

6.6.2 sending to the relevant analysis centre (by air mail, courier or ensuring that the vessel's agent sends to WML or its subcontractor) the packaged samples; and

- 6.6.3 taking the samples at the correct time. WML shall not send you any reminders to do so.
- 6.7 WML shall notify you of the analysis centres' addresses and any changes to them.
- 6.8 The Customer alone shall be responsible for carrying out any recommendations made by WML to the Customer and WML shall accept no liability for any consequences of such changes. WML promise to exercise reasonable skill and care in providing these services although WML do not give any other warranties or make any representations (express or implied) to the Customer in respect of them. WML shall not be responsible for any samples passed to the Customer's agents, affiliates or contractors for forwarding to WML.
- 6.9 WML shall not be under any obligation to continue to provide any Used Oil Analysis Services to the Customer: a) if WML have given the Customer at least thirty (30) days' written notice of its intention to stop providing the services; b) on receipt of at least thirty (30) days' written notice from the Customer to end the Used Oil Analysis Services; (c) if WML is no longer able to procure the necessary services from its subcontractor(s).

## **7 SAFETY**

- 7.1 The Customer shall (and in respect to the Delivery Service, shall procure that the Consignee shall) provide a safe environment and environmentally secure facilities for receiving delivery of any Goods.
- 7.2 If, at any time prior to or during delivery, WML reasonably determines that the environment for delivery is unsafe or has the potential for a Spill to occur then WML (and its outsourced delivery contractors) reserve the right not to commence delivery or to terminate delivery immediately. Such unsafe conditions include: unsafe working environments, practices and procedures; incorrect or unavailable tools/equipment; incompatible equipment configurations; and bad weather.
- 7.3 The Customer or Recipient (as applicable) shall be solely responsible for any loss or damage occurring on board or to the receiving vessel which results from its failure to comply with clause 7.1.

## **8 ENVIRONMENTAL PROTECTION**

- 8.1 If an escape, spillage or discharge of product (a "**Spill**") occurs whilst WML (or its agent) is making delivery to (as applicable) the Customer or Consignee, WML (or its agent) shall promptly take such action as it reasonably determines to be necessary to mitigate the environmental impact of the Spill.
- 8.2 The Customer agrees to cooperate with WML (or its agent) and provide reasonable assistance to mitigate the effect of the Spill and to document the event. Where the Spill has occurred in the course of the Delivery Service, the Customer shall at WML's request procure the same assistance of the Consignee.
- 8.3 Subject to clause 14, each party shall provide the other with such documentation relating to the Spill as might reasonably be requested.
- 8.4 Any expenses, damages costs, fines and penalties arising from the Spill shall be borne or paid by the Customer save to the extent caused by the negligent acts or omissions of WML prior to the completion of delivery.
- 8.5 The Customer shall indemnify WML against any loss, liability or cost incurred as a result of a breach by the Customer (or its Consignee) of their obligations under clause 7 or 8.

## **9 PRICE AND PAYMENT**

- 9.1 The prices of the Goods and the Services shall be the prices set out in the relevant Order, or, if no price is quoted, the price set out in WML's published price list in force as at the date of delivery.

- 9.2 WML may, by giving notice to the Customer at any time up to fourteen (14) days before delivery, increase the price of the Goods or Delivery Service to reflect any increase in cost that is due to:
- 9.2.1 any factor beyond WML's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - 9.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered or goods to be delivered; or
  - 9.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give WML adequate or accurate information or instructions.
- 9.3 Unless otherwise stated in the Order:
- 9.3.1 the price of the Goods and the Delivery Service exclude amounts in respect of value added tax ("**VAT**"), which the Customer shall additionally be liable to pay to WML at the prevailing rate, subject to the receipt of a valid VAT invoice; and
  - 9.3.2 the price of the Goods excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 9.4 WML may invoice the Customer on acceptance of the Order.
- 9.5 The Customer shall be required to pay for the Goods or the Delivery Service (as applicable) prior to delivery to the Customer or the Consignee (as applicable).
- 9.6 The Customer will provide WML with properly completed delivery notes upon receipt of the goods; and where export evidence is required to substantiate the VAT treatment of a sale, it is the responsibility of the Customer to provide the appropriate documentation where time is of the essence. If the Customer fails to provide the appropriate evidence, WML retains the right to re-assess the VAT treatment and issue an appropriate VAT invoice or credit note based upon available evidence at that time. The Customer will remain liable for any VAT due if the evidence is deemed at any stage to be insufficient.
- 9.7 Any queries on invoices should be notified to WML within three (3) days of receipt of the relevant invoice.
- 9.8 In exceptional cases, WML may agree to payment after delivery, in which case the Customer shall pay WML's invoice in pounds sterling (unless otherwise stated in WML's quotation) within thirty (30) days of the date of the invoice, and unless otherwise agreed in writing by both parties, all payments shall be Electronic Funds Transfer (EFT).
- 9.9 Payment shall be made to the bank account nominated in writing by WML in pounds sterling and in full and references to payment in this clause 9 means payment in cleared funds. Time for payment is of the essence.
- 9.10 If the Customer fails to make any payment due to WML under the Contract by the due date for payment, then all invoices or accounts issued by WML shall immediately be due for payment and the Customer shall pay interest on the overdue amount at the rate of four percent (4%) per annum above the Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 9.11 If WML instructs an outside agency to collect amounts owed by the Customer due to the Customer's failure to pay on time, the Customer shall pay all additional collection costs in addition to all other amounts due.
- 9.12 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). WML may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it or any member of its Group by the Customer against any amount payable by WML to the Customer.

## 10 COMPLIANCE WITH LAWS

In performing its obligations under the Contract, each party shall comply with all applicable laws, statutes, regulations from time to time in force, including those relating to anti-bribery and anti-corruption.

## 11 TERMINATION

11.1 If the Contract is for Delivery Services, either party may terminate the Contract at any time by giving the other party at least thirty (30) days' prior written notice.

11.2 If the Contract is for the sale of Goods, WML may terminate the Contract upon prior written notice to the Customer if it does not have the applicable Goods in stock and it is unable to source the applicable in the timescale required for delivery.

11.3 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other if:

11.3.1 the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within ten (10) Business Days of that party being notified in writing to do so;

11.3.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

11.3.3 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

11.3.4 the other party's financial position deteriorates to such an extent that in WML's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

11.4 Without limiting its other rights or remedies, WML may suspend provision of the Goods and/or Delivery Service if the Customer becomes subject to any of the events listed in clause 11.3.1 to clause 11.3.4, or WML reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under the Contract on the due date for payment.

11.5 Without limiting its other rights or remedies, if the Customer fails to pay any amount due under the Contract on the due date for payment then:

11.5.1 WML may suspend any outstanding supplies for Goods and Delivery Services; and

11.5.2 WML may at any time terminate the Contract with immediate effect by giving written notice to the Customer.

11.6 On termination of the Contract for any reason the Customer shall immediately pay to WML all of WML's outstanding unpaid invoices and interest.

11.7 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

11.8 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

## 12 LIMITATION OF LIABILITY

12.1 Nothing in these Conditions shall limit any liability which cannot legally be limited, including:

- 12.1.1 death or personal injury caused by negligence; or
- 12.1.2 fraud or fraudulent misrepresentation.
- 12.2 Subject to clause 12.1:
  - 12.2.1 the following types of loss are wholly excluded by the parties: (i) loss of profits; (ii) loss of sales or business; (iii) loss of agreements or contracts; (iv) loss of anticipated savings; (v) loss of use or corruption of software, data or information; (vi) loss of or damage to goodwill; (vii) indirect or consequential loss;
  - 12.2.2 WML shall have no liability for any loss, damage or demurrage due to any delay or failure in performance resulting from:
    - 12.2.2.1 the Customer's failure to comply with clause 4.3.1 or any other clause of these terms;
    - 12.2.2.2 compliance with any order or request of any court, government or other authority; or
    - 12.2.2.3 a Force Majeure Event;
- 12.3 Subject to clause 12.1, WML's total liability to the Customer in respect of all other losses arising under or in connection with a Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the following amounts:
  - 12.3.1 For liability arising under or in connection with a Contract for the sale of Goods, the lower of \$250,000 and the price paid for the Goods under the relevant Contract;
  - 12.3.2 For liability arising under or in connection with a Contract for the provision of a Delivery Service:
    - 12.3.2.1 the amount specified in the RHA Terms if the delivery is by road; or
    - 12.3.2.2 the price paid for the Delivery Service if the delivery is by any other means or by a combination of road and other means;
  - 12.3.3 For liability arising in connection with a Contract for the supply of SmartMonitoring Equipment or SmartMonitoring Services, the amount specified in the SmartMonitoring Addendum;
  - 12.3.4 For liability arising under or in connection with any UOA Services, the replacement cost of any lubricant for which it can be shown that the analysis or recommendation was in error and the repayment of the aggregate charges paid by the Customer for the services in relation to the particular item of machinery concerned;
  - 12.3.5 For liability arising under or in connection with a Contract for any other Services, the price paid for the relevant Services; and
  - 12.3.6 For liability arising under or in connection with a Contract or these terms which is not otherwise limited above, an amount of £50,000.
- 12.4 Without prejudice to any shorter notice periods specified elsewhere in these Conditions, unless the Customer notifies WML that it intends to make a claim in respect of an event within the notice period, WML shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred (as opposed to it becoming aware of its having grounds to make a claim in respect of it) and shall expire six (6) months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

### 13 **FORCE MAJEURE**

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force

Majeure Event. If the period of delay or non-performance continues for two months, the party not affected may terminate this Contract by giving two weeks written notice to the affected party.

## 14 **CONFIDENTIALITY**

14.1 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 clause 14.2.

14.2 Each party may disclose the other party's confidential information:

14.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 14; and

14.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

14.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

## 15 **GENERAL**

### **Assignment and other dealings.**

15.1 WML may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

15.2 The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of WML.

### **Entire agreement**

15.3 This Contract (which incorporates the RHA Terms) constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

15.4 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.

### **Notices**

15.5 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.

15.6 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.5; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.

15.7 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

- 15.8 **Intellectual property.** The Contract does not confer upon the Customer any right to use any trademarks trade dress or brand names of the WML or the manufacturers of the Goods.
- 15.9 **Language.** This agreement is drafted in the English language. If this agreement is translated into any other language, the English language version shall prevail.
- 15.10 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives) which in the case of WML shall be a director.
- 15.11 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 15.12 **Severance.** If any provision or part-provision of the Contract 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 the Contract.
- 15.13 **Third party rights.** No one other than a party to the Contract or an Affiliate, and their permitted assignees, shall have any right to enforce any of its terms. For the avoidance of doubt, the Consignee shall have no right to enforce the Contract or any of its terms.
- 15.14 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- 16 **JURISDICTION**
- 16.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.
- 16.2 Nothing in clause 16.1 shall limit the right of WML to take proceedings against the Customer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdiction preclude WML from taking proceedings in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

**APPENDIX 1**

**ROAD HAULAGE ASSOCIATION CONDITIONS OF CARRIAGE 2024**



# Road Haulage Association Limited

## CONDITIONS OF CARRIAGE 2024

Effective January 2024

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

Williams Shipping Transport Ltd  
Manor House Avenue  
Millbrook  
Southampton  
SO15 0LF

0 0 0 1 4 4 5 - 0 0 0 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 are taking place, or as a result of how the vehicle has been loaded, 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, are well maintained and are only operated by personnel who have been suitably trained on the use of such equipment. The Customer will indemnify the Carrier against any and all consequences of failure of, misuse 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, or where the Carrier has not been allowed reasonable opportunity to inspect a load which has been loaded by 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 and/or in relation to any equipment used in loading or unloading the vehicle. The responsibility for carrying out such risk assessments shall be that of the Customer and not of the Carrier. The Carrier may refuse to enter any site which the Carrier, at the Carrier's sole discretion, considers to be unsafe.

### 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, including but not limited to information relating to the weight and contents of the Consignment, and the Customer will ensure that such information is complete and accurate in all material respects.
- (4) The Customer shall, and shall procure that the Consignee shall, allow any employees or agents of the Carrier to access all welfare facilities available at their premises.
- (5) 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(5); 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. Receipts

The Carrier shall, if so required, provide 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. For the avoidance of doubt, the Customer shall not be entitled to withhold any of the Carrier's Charges where such receipt has not been provided.

## 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, together with such evidence as may reasonably be required to prove that the physical loss of, mis- or non-delivery of, or physical damage to goods was caused by the Carrier, 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 and has been given in accordance with Condition 9(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.