



Please note that the customer will not in any circumstances be entitled to compensation, or to full compensation, for any loss and it is therefore recommended to seek professional advice as to appropriate insurance cover to be maintained during consignments. Mark Smithson trading as Mark Smithson Transport (here in after are referred to as "the carrier") is not a common carrier and accepts goods for carriage only upon that condition and the conditions are set out below. No servant or agent of the carrier is permitted to alter or vary these conditions in any way part of these conditions is incomplete with such legislation, such part shall, as regards the contract, be overridden to the extent and no further.

No terms or conditions put forward at any time by the customer shall form any part of the consignment.

Please note: **All Risks cover is limited to £150,000 maximum**

If extra cover is required it is the responsibility of the consignor to request it in writing, when booking the consignment, to enable extra cover to be arranged as necessary.

1. Definitions

In these conditions the following definitions shall apply.

"Customer" means the person or company who contracts for the service of the carrier including any other carrier who gives a consignment to the carrier for carriage.

"Contract" means the contract of carriage between the customers of the carrier.

"Consignee" means the person or company to who the carrier contracts to deliver the consignment.

"consignment" means goods, whether a single item or in bulk or contained in one parcel, package, or container (as the case might 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 another address.

"Dangerous goods" means goods names individually in the approve carriage list issued from one time to time by the health and safety commissions, explosives, radioactive materials and any other goods presenting a similar hazard.

2. Parties and sub contracting

- (1) The customer warrants that he/she is either the owner of the consignment or is authorised by such owner to accept these conditions on the owner's 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 under request
- (3) The carrier contracts itself as an agent of the trustee for its servants and agents and all other carriers referred to in (2) above and 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 either the intention that they shall have the benefit of the contract and collectively and together with the carrier be under no greater liability to the customer and any other party than its carrier hereunder.
- (4) Not with standing condition 2(3) the carrier of and consignment by rail, sea, inland waterway is arranged by the carrier as agent of the customer of the customer and shall be subject to the conditions of the rail, shipping, inland waterways or air carrier to carry the consignment, the carrier shall be under no liability whatever the whomsoever and however arising in respect of such carriage: provided 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 road unless the contrary is provided by the carrier.

3. Dangerous goods

Dangerous goods must be disclosed by the customer and if the carrier agrees to accept them for carriage they must be classified packed and labelled in accordance with the stator regulations for the carriage by road of the substance declared. Transport emergency cards (tremcards) or information in writing in the manner required by the relevant statutory provisions must be provided by the customer in respect of each substance and must accompany the consignment.

4. Loading and unloading

(a) Unless the carrier has agreed in writing to the contrary with the customer:

- (1) The carrier shall be under no obligation to provide and power, plant and labour, other than that carried by the vehicle, required for loading or unloading the consignment.
- (2) The customer warrants that any special applications required for loading and unloading the consignment which are not carried by the vehicle will be provided by the customer or on the customers behalf.
- (3) The carrier shall be under no liability whatsoever to the customer for any damage whatsoever, howsoever caused. If the carrier is instructed to load or unload any consignment requiring special appliances which breach of the warranty in (3) above has not been provided by the customer or on the customer's behalf.
- (4) The carrier shall not be required to provide beyond the usual place or collection or delivery but if any such service is given by the carrier it shall be done at sole risk of the customer.

(b) The customer shall indemnify the carrier against all claims and demands whatever which could not have been made if such instructions as are referred to in (a) (3) of this condition and such service as in referred to in (a) (4) of this condition had not been given

5. Signed reports

The carrier shall, if so required, sign a document prepared by the sender acknowledging the receipt of the consignment but no such document shall be evidence of the collection or of the correctness of the declared nature, quality or weight of the consignment at the time it is received by the carrier and the burden of providing the condition of the consignments on receipt by the carrier and that the consignment was the nature, quantity or weight declared in the relevant document shall rest with the customer.

6. Transit

- (1) Transit shall commence when the carrier takes possession of the consignment whether at the point of collection or at the carrier's premises.
- (2) Transit shall (unless previously determined) end when the consignment is tendered at the usual place of delivery at the consignee's address within the customary cartage hours of the district: provided that:
 - (a) If no safe and adequate access or no adequate unloading facilities there exist then the transit shall be deemed to end at the expiry of one clear day after a notice in writing (or by telephone if so previously agreed in writing) or at the arrival of the consignment at the carrier's permission has been to the consignee; and
 - (b) When for any other reason whenever a consignment cannot be delivered or when a consignment is held by the carrier "to await order" or "to be kept till called for" or upon any like instructions and such instructions are not given or the consignment is not called for and removed within a reasonable time, then the transit shall be deemed to end.

7. Undelivered or unclaimed consignments

Where the carrier for any reason to deliver the consignment to the consignee or as he may order, or where by virtue of the provision to condition (6)(2) hereof transit is deemed to be at an end, the carrier may sell the consignment, and payment to tender of the proceeds after deducting of all proper charges and expensive in relation thereto and of all outstanding charges in relation to the carriage and storage of the consignment shall (without prejudice to any claim or right which the customer may have against the carrier otherwise arising under these conditions) discharge the carrier from all liability in respect of such consignment, its carriage and storage: provided that:

- (1) The carrier shall do what is reasonable to obtain the value of the consignment
- (2) The power of sale shall not exercised where the name and address of the sender is not known unless the carrier shall have done what is reasonable in the circumstances to give notice of the sender of, if the name and address of the sender is not known, to the consignee will be sold unless within the time specified in such notice, being a reasonable time in the circumstances from the giving of such notice, the consignment is taken away or instructions are given for its disposal.



8. Carrier's charges

- (1) The carrier's charges shall be payable by the customer without prejudice to the carrier's rights against the consignee or any other person: provided that when and consignment is consigned "carriage forward" the customer shall not be required to pay such charges unless the consignee fails to pay after demand has been made by the carrier for payable thereof
- (2) Charges shall be payable when due without reduction or deferment on account of any claim, counterclaim or set-off. The carrier shall be entitled to interest at eight per cent above the Bank of England Base Rate prevailing at the date of the carrier invoice or account, calculated on a daily basis, on all amounts overdue to the carrier.

9. Liability and Loss

- (1) The customer shall be deemed to have elected to accept the terms and conditions set out in (2) of this condition unless, before the transit commences, the customer has agreed in writing that the carrier shall not be liable for any loss or mis-delivery of or damage to or in connection with their consignment howsoever or whenever caused and whether or not caused or contributed to directly or indirectly by any act, omission, neglect, default or other wrongdoing on the part of the carrier, its servants, agents or subcontractors.
- (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 stones comprising only if:
 - (i) The carrier has specifically agreed in writing to carry any such items;
 - (ii) The customer has agreed in writing to reimburse the carrier respect of all additional costs which will result from the carriage of due said items
 - (iii) The loss mis-delivery or damage is occurred during transit and proved to be due to neglect by the carrier, its servants, agents and subcontractors.
 - (b) Physical loss, mis-delivery of or damage to any goods comprising the consignment unless the same has arise from, and the carrier has used reasonable care to minimise the effects of
 - (i) Act of god
 - (ii) Any consequence of war, invasion, act of foreign enemy, hostiles (whether or not), Civil war, rebellion, insurrection act, military or usurped power or confiscation, requisition or destruction, damage by or under the order of government or public or local authority.
 - (iii) Seizure or forfeiture under legal process
 - (iv) Error, act, omission, mis-statement or misrepresentation by the customer or other owner of the consignment or by servants or agents or sub contractors
 - (v) Inherent liability to wastage in bulk or weight, faulty design, latent defect or inherent defect, vice or natural determination of the consignment
 - (vi) Insufficient or improper packaging
 - (vii) Insufficient or improper labelling or address
 - (viii) Riot, civil commotion, strike, lockout, general or partial stoppage or restraint of labour from whatever cause
 - (ix) Consignee not taking or accepting delivery within a reasonable time after the consignment has been tendered

10. Fraud

The carrier shall not in any circumstances be liable for loss or damage arising after transit is deemed to have ended within the meaning of condition (6)(2) hereof, whether or not caused or contributed to directly or indirectly by any act, omission, neglect, default or other wrongdoing on the part of the carrier, its servant, agents or sub-contractors

11. Limitation or Liability

- (1) Expert as otherwise provided in these conditions, the liability of the carrier in respect of claims for physical loss, mis-delivery of or damage to goods comprising the consignment, howsoever arising, shall in all circumstances be limited to the lesser of:
 - (a) The value of the goods actually lost, mis-delivered or damaged
 - (b) The cost of repairing any damage or of reconditioning the goods
 - (c) All Risks have a liability maximum limit of £150,000 and UK CMR has a liability maximum limit of £250,00 the sum calculated will depend on the gross weight of the goods actually lost, mis-delivery or damages; and the value of the good actually lost, mis-delivered or damages shall be taken to be their invoice value if they have been sold and shall otherwise be taken to be the replacement cost thereof to the owner at the commencement of transit, and in all cases shall be taken to include any customs and excise duties or taxes payable in respect of those goods: Provided that:
 - (i) In the case of loss, mis-delivery or any damage to a part of the consignment the weight to be taken into consideration in determine the amount of which the carriers liability is limited shall be only the gross weight of the part regardless of whether the loss, mis-delivery of or damage affects the value of the 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-delivery or damaged;
 - (iv) The customer shall be entitled to give the carrier written notice to be delivered at least seven days prior to commencement of transit requiring that the load exceeds the limit as stated in 11(1)(c) above be increased, but not so as to exceed the value of the consignment, and in the event of such notice being given the customer shall be required to agree with the carrier an increased limit, but if no such agreement can be reached the aforementioned in 11(1) (c) shall continue to apply
- (2) The liability of the carrier in respect of claims for any other loss whatsoever (including indirect or consequential loss or damage and loss of market), and however 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 claimants proved loss, whichever is the lesser unless:
 - (a) At the time of entering the contract with the carrier and the customer declares to the carrier a special interest in the delivery in the event of physical loss, mis-delivery or damage or of an agreed time limit being exceeded and agrees to pay a sub charge calculated on the amount of that interest
 - (b) At least seven days prior to the commencement of transit the customer has delivered to the carrier written confirmation of a special interest, agrees time limit and amount of the interest

12. Indemnity to the carrier

The customer shall indemnify the carrier against

- (1) All liabilities and costs incurred by the carrier (including but not limited to claims, demands, proceedings, fines, penalties, expenses and loss of or damage to the carrying vehicle and other good carried) by reason of an error, omission, mis-statement or misinterpretation by the customer or other owner of the consignment or by any servant or agent of either of them, insufficient or improper packing, labelling or addressing of the consignment or fraud as in condition 9
- (2) All claims and demands whatsoever (including for the avoidance of doubt claims alleging negligence), by whoever made and however arising (including but not limited to claims caused by or arising out of the carriage of Dangerous and claims made upon the carrier by HM Customs and excise in respect of dutiable goods consigned in bond) in excess of the liability of the carrier under these conditions in respect of any loss or damage whatsoever caused to or in connection with the consignment whether or not caused or contributed to directly or indirectly by any act, omission, neglect, default or other wrongdoing on the part of the carrier, its servants, agents or sub-contractors.

13. Time limits for claims

- (1) The carrier shall not be liable for:
 - (a) Damage to the whole or any part of the consignment, or physical loss, mis-delivery or non-delivery of the consignment unless advice thereof in writing within seven days, and the claim is made in writing within fourteen days after the termination of transit.
 - (b) Any other loss advised thereof in writing within twenty eight days, and the claim is made in writing within forty two days, after the commencement of transit: Provided that if the customer proves that:
 - (i) It was not reasonably possible for the customer to advise the carrier or make a claim in writing within the time limit applicable;
 - (ii) Such advice or claim was given or made within reasonable time, the carrier shall not have the benefit of the exclusion of liability afforded by this condition
- (2) The carrier shall in the event of a discharge from all liability whatsoever and however arising in respect of the consignment unless suit is brought within one year of the date when transit commenced
- (3) In the computation of time when any period prevented by these conditions is seven days or less, Saturdays, Sundays and all statutory public holidays shall be excluded.

14. Lien

- (1) The carrier shall have a general lien against the customer, where the customer is the owner of the consignment, for any monies whatever due from the customer to the carrier if such a lien is not satisfied within a reasonable time, the carrier may, at its absolute discretion, sell the consignment or part thereof as agent for the customer and apply the proceeds towards the monies due and the expenses of the retention, insurance and sale of the consignment and shall, upon accounting to the customer for any balance remaining, be discharged from all liability's whatever in respect of the consignment.
- (2) Where the customer is not the owner of the consignment, the carrier shall have particular lien against said owner, allowing the carrier to retain possession, but not to dispose of, the consignment against monies due from the customer in respect of the consignment.

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15. Unreasonable detention

The customer shall be liable to pay demurrage for unreasonable detention of any vehicle, trailer, container or other equipment but the rights of the carrier against any other person in respect thereof shall remain unaffected

16. Law and Justification

The contract shall be governed by English Law and United Kingdom courts alone shall have jurisdiction in any dispute between the carrier and the customer.