



# RHA CAR TRANSPORTERS GROUP

## CONDITIONS OF CARRIAGE

### 1 DEFINITIONS

In these conditions the following expressions shall have the meanings respectively assigned to them, that is to say:

“The Transporter(s)” (whether in regard to carriage or storage or otherwise) means the Member Company, its sub-contractors and their respective agents or servants.

“Trader” means any person or body sending or receiving, or desiring to send or receive, motor vehicle(s) by the services of the Transporter and includes, unless the context otherwise requires, their servants and agents.

“Sender” and “Consignee” include, unless the context otherwise requires, their respective servants and agents.

“Motor Vehicle(s)” means any mechanically propelled vehicle(s) designed for use on roads and whether fully assembled or not.

“Movement” means movement under own power.

“Contract of Transport” means any contract which is entered into between the Transporter and the Trader for the transport, movement and/or storage of the Traders motor vehicle(s) which shall only be accepted by the Transporter subject to these Conditions which shall be deemed to be incorporated in any such contract.

“Consignment” means one or more motor vehicle(s) sent or consigned at one time from one address by one sender to one address.

“Sub-Contractor” means any carrier engaged by the Transporter to carry motor vehicle(s) on their behalf.

### 2 PARTIES AND SUB-CONTRACTING

- (1) The Transporter may engage sub-contractors to perform the contract of carriage or any part thereof on their behalf.
- (2) The Transporter enters into the contract of transport for themselves and on behalf of their sub-contractors, agents and servants all of whom shall have the benefit of the contract and shall be under no liability to the Trader or anyone claiming through him in respect of the motor vehicle(s) greater than or in addition to that of the Transporter under the contract.
- (3) In the event of the Sender being a Carrier or Bailee of the consignment, he shall (without prejudice to Condition 4 (2) hereof) hold to the benefit of the Transporter any like conditions to those in Clauses 1 and 2 hereof, which obtain in his own contract with his own Sender or Bailor. Without prejudice to the foregoing, in the case of the Sender (being a Carrier or Bailee as aforesaid) contracting on behalf of the Transporter for the benefit of like conditions for the Transporter, the Transporter hereby ratifies his act in making such a contract if the Transporter has not authorised such act.

### 3 CONSIGNMENT NOTE

Every consignment shall, except as otherwise arranged, be accompanied by a consignment note containing such particulars as the Transporter may reasonably require. The Transporter 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 condition or of the correctness of the declared nature of the consignment at the time it is received by the Transporter.

### 4 WARRANTIES

- (1) In the absence of written notice to the contrary given to the Transporter at the time of delivery to them, all motor vehicles are warranted by the Sender to be fit to be carried or stored.
- (2) The Sender also warrants that if the motor vehicle(s) are not his own unencumbered property he has the authority of all persons owning or interested in the motor vehicle(s) to enter into the contract, and contracts on their behalf.

### 5 INDEMNITY

The Sender shall save harmless and keep the Transporter indemnified against all claims and demands of any kind whatsoever (including without prejudice to the generality of the foregoing claims or demands based on the alleged negligence by the Transporter) by whomsoever they are made, greater than, or in addition to, the liability of the Transporter under these Conditions.

### 6 LIABILITY FOR LOSS, MISDELIVERY, DAMAGE OR DELAY

- (A) Subject to these Conditions the Transporter shall be liable for:
  - (1) any loss or misdelivery of or damage to motor vehicles occasioned during transit as defined by these Conditions unless the Transporter shall prove that such loss, misdelivery or damage has arisen from:

- (a) Act of God;
- (b) any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power of confiscation, requisition, destruction of or damage to property by or under the order of any government or public or local authority;
- (c) seizure under legal process;
- (d) act or omission of the Trader;
- (e) latent or inherent defect in the motor vehicles or deterioration, leakage or deficiency of any component parts of a leaky nature;
- (f) riots, civil commotion, strikes, lockouts, stoppage or restraint of labour from whatever cause;
- (g) consignee not taking or accepting delivery within a reasonable time;
- (h) circumstances which the Transporter could not avoid and the consequences of which they were unable to prevent.

Provided that:

- (i) where loss, misdelivery or damage arises and the Transporter has failed to prove that they used all reasonable foresight and care in the transport or movement of the motor vehicles, the Transporter shall not be relieved from liability for such loss, misdelivery or damage;
  - (ii) the Transporter shall not incur liability of any kind in respect of the motor vehicles where there has been fraud on the part of the Trader.
- (2) loss proved by the Trader to have been caused by delay in the transport of motor vehicle(s) unless the Transporter prove that such delay has arisen without negligence on the part of the Transporter.
- (B) Second-hand or used motor vehicles are accepted by the Transporter for delivery at owner's risk, and the Transporter shall not be liable for any loss, or mis-delivery of, or damage or delay to the motor vehicles except upon proof by the Trader that same was caused by the wilful misconduct of the Transporter.

## 7 LIMIT OF LIABILITY

- (1) Subject to these Conditions, the liability of the Transporter under the proceeding Conditions shall in any case be limited to:
- (a) the cost of repairing or replacing a damaged or missing motor vehicle(s), article or component thereof; or
  - (b) the wholesale cost, less tax, of a motor vehicle(s), article or component part lost or damaged, whichever is the less.
- (2) The Transporter shall not in any case be liable for indirect or consequential loss.

## 8 LIMITS

- (A) If the Trader takes delivery of motor vehicle(s) and does not make reservations to the Transporter in regard to apparent loss or damage, giving a general description of the loss or damage on the Transporter's delivery documents at the time of delivery, the fact of the Trader taking delivery shall be prima facie evidence the Trader has received the motor vehicle(s) in the condition described on the consignment note and/or receipt given by the Transporter to the Sender.
- (B) The Transporter shall not be liable:
- (j) for damage, mis-delivery or delay unless they are advised thereof in writing and the claim be made in writing within seven clear days of the end of transit of the consignment, or the part of the consignment in respect of which the claim arises.
  - (ii) in the case of non-delivery of the whole of a consignment or any separate vehicle forming part of a consignment, the Transporter shall not be liable unless they are advised of the non-delivery in writing (other than on the Transporter's documentation) within twenty-eight days and the claim made within forty-two days after the consignment was handed to the Transporter by the Sender.  
Provided that if in any particular case a Trader proves that:
    - (a) it was not reasonably possible for the Trader to advise the Transporter in writing or to make his claim in writing within the aforesaid times and;
    - (b) such advice or claim was given or made within a reasonable time;
    - (c) there has been no prejudice to the Transporter thereby the Transporter shall not have the benefit of sub-clauses B(i) and (ii) of this Condition.
- (C) (i) The trader shall grant the Transporter facilities to inspect any damage within a reasonable time before repairs are affected; and
- (ii) in the case of loss and/or damage and/or other expense, unless the final account representing the claim for the cost of remedial work and/or loss or expense is submitted within sixty clear days of transit, the Transporter shall not be liable therefore.
- (D) (i) The Transporter shall in any event be discharged from all liability whatsoever in respect of the consignment unless suit is commenced within a period of time of one year from the termination of the transit or, in the case of loss, mis-delivery or non-delivery, of the whole of the consignment from the said twenty-eight days referred to in Condition 8B(ii) hereof.

- (ii) If not later than five days before the expiration of the said period, or any agreed extension thereof, the claimant requests an extension of the said one year period, the said time shall continue until the Transporter's reply. If the said request is refused, the said time shall continue for a further fourteen days after the day when the claimant has been advised of such refusal.

## **9 TRANSPORTER'S CHARGES**

- (1) The Transporter's charges shall be payable by the Sender without prejudice to the Transporter's rights against the Consignee or any other person.
- (2) Charges shall be payable upon delivery. Without prejudice to the foregoing the Trader may pay periodically, provided each and every invoice is paid within 21 days of the date thereon. In case of late payment the Transporter, in addition, is entitled to charge interest at 2% per month or part thereof.
- (3) A claim, counter-claim or set-off shall not be made the reason for deferring or withholding payment of monies otherwise due to the Transporter.
- (4) Where a charge or part thereof is deducted then the balance of the account MUST be remitted; details of deducted items, together with the reason for deduction, must be notified in writing to the Transporter's Credit Controller within the period of credit allowed in Clause 9-(2) hereof at the address shown on the account.
- (5) Prices charged by the Transporter shall be those ruling on the day of final delivery.
- (6) All previous Terms of Credit issued are hereby cancelled.

## **10 COLLECTION OF VEHICLES AT TRANSPORTER'S PREMISES**

The Transporter shall not be liable to hand over at their premises any motor vehicles unless:

- (a) the release note sent by the Transporter to the Trader, and
- (b) an order in writing signed by the Trader is produced. The Trader or his servant or agent shall, if the Transporter so requires, be present at the time of handing over the motor vehicle(s) and shall give a signature of receipt of the motor vehicle(s).

## **11 TRANSIT**

- (1) Transit begins when the motor vehicle(s) are handed to or collected by the Transporter for carriage.
- (2) Transit shall be suspended:
  - (a) when motor vehicles are held by the Transporter at some place other than the destination at the request or for the convenience of the Trader or because the Trader refuses or is unable to take delivery at the destination; or
  - (b) when the motor vehicle(s) are detained for customs purposes; and shall be resumed when the Transporter resumes the carriage of the motor vehicle(s).
- (3) Transit shall (unless otherwise previously determined) end:
  - (a) in the case of motor vehicles to be delivered by the Transporter, when they are tendered at the usual place of delivery within the customary cartage hours of the delivery district, or at such other times or places as may be agreed between the Transporter and the Trader.
  - (b) in the case of motor vehicles not to be delivered by the Transporter or to be retained by the Transporter awaiting order, at the expiration of one clear day after notice of arrival has been given either orally or in writing to the Consignee or Sender.

## **12 STORAGE OF MOTOR VEHICLES**

- (1) Motor vehicles held in store prior to despatch, and/or after termination, or during suspension of transit, as defined in Condition 11 hereof, will be held by the Transporter, as warehousemen, subject to their usual charges for warehousing and to the condition that the Transporter will not be liable for any loss or damage to the motor vehicles except upon proof that such loss or damage has been caused by the negligence of the Transporter, nor will the Transporter have liability for loss or damage caused directly or indirectly by fire or flood, howsoever arising.
- (2) The Transporter liability for any loss or damage to motor vehicles held by them as Warehousemen pursuant to this Condition shall in any case be subject to the exclusions in Condition 6 and to the limits and exclusions in Condition 7 of these Conditions.

## **13 MEANS OF TRANSPORT**

- (1) Motor vehicles accepted by the Transporter for carriage may be carried by such means of transport and by such route as the Transporter thinks fit and these Conditions shall apply by whatever means or route the motor vehicles are carried.
- (2) In the case of loss, misdelivery, damage or delay proved by the Transporter to have occurred at sea, the Trader shall have the same but no greater rights against the Transporter as the Transporter has in respect of loss, misdelivery, damage or delay under their contract of carriage pursuant to which the motor vehicle(s) were shipped on the vessel.

**14      LOADING AND UNLOADING**

- (1) On collection or delivery at a Trader's premises, the Transporter shall not be under any obligation to provide any plant, power or labour which in addition to the Transporter's carmen is required for loading or unloading at such premises.
- (2) The Transporter's servants have no authority to give assistance other than in loading or unloading at the usual place of collection or delivery and the Transporter shall not be liable for any loss or damage however caused by any such assistance being given.

**15      COMPUTATION OF TIME**

In the computation of time where the period provided by these Conditions is seven days or less, Saturdays, Sundays and Public Holidays shall not be included.

**16      LIEN**

Motor vehicles delivered to Member Companies will be received and held by them subject:

- (a) to a lien for monies due to them for the carriage of and other proper charges or expenses upon or in connection with such motor vehicles; and
- (b) to a general lien for any monies or charges due to them from the owners of such motor vehicles for any services rendered or accommodation provided in relation to the carriage or custody of such motor vehicles.

In the case any lien is not satisfied within a reasonable time from the date upon which the Transporter first gives notice of the exercise of their lien to the owners of the motor vehicles, the motor vehicles may be sold and the proceeds of sale applied in or towards the satisfaction of every such lien and all proper charges and expenses in relation thereto, and the Transporter shall account to the owners of the motor vehicles for any surplus.

The general lien conferred by this Condition shall not prejudice an unpaid vendor's rights of stoppage in transitu.

**17      OTHER PUBLISHED REGULATIONS**

Motor vehicles are carried subject also to any other published byelaws and regulations relating to the carriage of motor vehicles by the Transporter for the time being in force, and in the event of conflict between such byelaws and regulations and these Conditions, the said byelaws and regulations shall prevail.

**18      ADVICE OF CLAIMS**

- (1) Claims against a Transporter are to be made in writing to the Claims and Insurance Department at the Transporter's Head Office.
- (2) Service of a notice sent by post shall be deemed to have been made at the time when the notice would have been delivered in the ordinary course of post.