

# Notes on Conditions for the Carriage of Goods by Road in the United Kingdom 2006.

These notes do not form part of the Conditions of Carriage 2006. They merely seek to provide guidance to contracting parties.

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

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

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

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

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

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

This can conveniently be done by including on the front of the carrier's stationery a statement that "all contracts are subject to the conditions of carriage 2006 issued by Associated Transport Consultants Limited. These conditions are either printed upon the reverse of this document or are available upon request. Customers should satisfy themselves that the terms of these conditions are acceptable to them". Acceptance of any quotation by the customer will then imply acceptance of the specimen conditions. It is important to note that Courts take the view that it is for a party who seeks to rely upon exclusion and limitation clauses to demonstrate that the conditions were brought to the attention of the customer and that the exclusion and limitation clauses are valid and relevant.

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

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

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

## Definitions – Condition 1

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

## Principal Parties & Sub-Contractors – Condition 2

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

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

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

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

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

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

There would, however, need to be a similar indemnity given by the main contractor to the sub-contractor in the contract entered into between them. The effect of condition 2.4 and the two indemnities is that the sub-contractor is relieved of all claims made against him as bailee of the goods which are beyond the limits set out in conditions 9 and 10.

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

### **Loading & Unloading – Condition 3**

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

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

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

### **Dangerous Goods – Condition 4**

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

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

### **Consignment Notes/Receipts – Condition 5**

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

Modern computerised systems and techniques installed by consignees or consignors have in many cases made the traditional signature on the document provided by the carrier inappropriate. Many companies issue computer printed receipt notes representing quantity and description of goods received and require these to be submitted by the company with its invoice for the goods. Failing to produce such a document can often result in disputes arising between the customer and the supplier regarding payment for the goods delivered. However, unless expressly agreed to be part of the system the absence of such document does not prevent the carrier from claiming payment for the carriage. Frequently the attention of delivery drivers is not drawn to the importance of obtaining such documents before leaving a consignee's premises. Carriers would be well advised to ensure that their drivers are properly instructed in the documentary requirements.

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

### **Carriers Responsibility – Condition 6**

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

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

### **Carriers Charges – Condition 7**

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

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

### **Disposal of Goods by the Carrier – Condition 8**

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

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

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

### **Liability for Loss, Damage or Delay – Condition 9**

As explained under condition 6 the conditions have been drafted upon the basis that the carrier will be liable for loss damage or delay or unless liability is excluded by any of the specific examples as set out in the conditions. Under the following condition 10 however that liability is limited and the limitation of liability is set out in that condition.

### **Limitation of Liability of the Carrier – Condition 10**

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

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

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

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

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

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

These conditions no longer make it a term of the contract that the carrier should insure his liabilities under the contract, however carriers are strongly recommended to insure their liability and keep the insurance company aware of any change in the contracts that they enter into.

### **Customers Indemnity to the Carrier – Condition 11**

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

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

### **Notification of Claims – Condition 12**

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

### **Lien & Power of Sale – Condition 13**

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

### **Detention of Carrier's Property – Condition 14**

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

### **Dispute Resolution – Condition 15**

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

### **Governing Law – Condition 16**

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

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

### **Additional Schedules**

These conditions do permit the parties to vary the conditions. However, it is important that where the conditions are varied, the variations should be evidenced in writing and signed by the parties. It is suggested that those variations should be attached to the contract as a separate schedule. Matters that might be covered are: -

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

## Legal Aspects

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

- 1/. Hold a valid Operator's Licence.
- 2/. Operate a correctly taxed vehicle.
- 3/. Avoid overloading.
- 4/. Comply with drivers' hours regulations;
- 5/. Comply with all relevant health and safety regulations and, in particular, ensure the driver is trained and competent to carry out all the tasks required of him/her.

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

## The Business Partnership

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

### A Good Working Partnership Requires That:

The consignor should:

- 1/. Provide the carrier with an accurate description of the consignment and any special handling requirements.
- 2/. Provide a declaration of the weight of the consignment.
- 3/. Provide appropriate facilities for drivers.
- 4/. Ensure, in co-operation with the driver, the proper loading of the vehicle and load safety.
- 5/. Make the consignment available for despatch at the stated time.
- 6/. Ensure that consignments are properly packaged and labelled.
- 7/. Advise the carrier of all driver's tasks.
- 8/. Expect the carrier to meet its legal requirements and hold an Operator's Licence.

The carrier should:

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

The consignee should:

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

However, there are also a number of commercial and practical considerations that parties to a contract must discuss with each other to again ensure a successful and profitable outcome. All too often, once the contract has been agreed, the parties to it end their dialogue with each other until problems occur, by which time it may be too late to avoid losses. Other companies may also be brought into the operation yet have little opportunity to discuss their own operating circumstances and needs with their partners in the contract. This lack of dialogue sees inefficiencies developing in the chain that could be easily overcome, were all the parties to recognise their responsibilities to each other and each others problems. Therefore it is necessary to identify areas where problems could develop, so that all parties concerned can make themselves aware of potential problem areas for their business partners.