

manx



Independent

CARRIERS

MANX INDEPENDENT CARRIERS LIMITED

Conditions of Carriage

(Revised July 2002) ©

MANX INDEPENDENT CARRIERS LIMITED (hereinafter referred to as “the Carrier”) accepts goods for carriage subject to the Conditions of Carriage (hereinafter referred to as “these conditions”) set out below. No agent, sub-contractor or employee of the Carrier is permitted to alter or vary these conditions in any way unless he or they are expressly authorised to do so.

1. Definitions - In these Conditions the following expressions shall have the meanings hereby respectively assigned to them, that is to say:-

"Client" shall mean the customer who contracts for the services of the carrier.

"Consignment" shall mean the goods in bulk or contained in one parcel, package, container or pallet, as the case may be or any number of separate parcels, packages, containers or pallets sent at one time in one load by or for the Client from one address to one address.

"Excluded and Dangerous Goods" shall mean:- (a) goods which are specified in the special classification of dangerous goods in the ICAO T.I., IATA DGR, IMDG-Code, ADR or other national or international regulations for surface transport of dangerous goods, or which are classified as dangerous goods by the Isle of Man Steam Packet Co. Ltd., or any other shipping line or agency operating to the Isle of Man, United Kingdom or Europe or goods which although are not specified therein are of a kindred nature: (b) any goods described in whatever form of words as being of a dangerous or hazardous nature in any law, statute or regulation; and (c) (i) firearms, weapons

ammunition (ii) explosives, radioactive material (iii) dangerous or controlled drugs (iv) living creatures, remains (v) cash, currently negotiable stocks or bonds, credit or subscription cards, jewelry, valuables, works of art, precious metals, or stones (vi) counterfeit goods (vii) defamatory, blasphemous, scandalous or obscene material (viii) any article, the possession of which in or the importation of which into any country through or to which the carriage is to take place is illegal or prohibited (ix) any other goods specified by the Carrier from time to time in any publication issued by the Carrier as being hazardous, dangerous or excluded.

“*Contract*” shall mean the contract of carriage between the Client and the Carrier.

“*Sub-contracting parties*” includes all persons (other than the Carrier and the Client) referred to in clause 4(3).

“*Carrier*” save in the expression Carrier/Contractor includes sub-contracting parties in clause 3(2), 5(2) and (3), and 12(proviso).

“*Carrier/Contractor*” means the Carrier and any other carrier within clause 4(2).

2. Carrier is not a Common Carrier - The Carrier is not a common carrier and will accept goods for carriage only on these conditions.

3. Dangerous Goods - (1) The Client warrants that each article comprised in the Consignment has been properly described to the Carrier, on the Carriers Consignment note and that the Consignment has been properly marked, addressed and packaged so as to ensure at all times safe storage and transportation with ordinary care and handling. (2) The Client shall not offer Excluded or Dangerous goods for carriage except with the express prior written consent of the Carrier. If the Carrier agrees to accept Excluded and Dangerous Goods for carriage such goods must be accompanied by a full declaration of their nature and contents and be properly and safely packed in accordance with any statutory regulations for the time being in force in relation to all such goods and/or their transportation by road and by sea (3) Transport Emergency Cards (Tremcards), Hazchem signs and/or information in writing in the manner required by the relevant statutory provisions must be provided by the Client in respect of each substance and must accompany the Consignments (4) The Client shall indemnify the Carrier against all costs, losses, damages, expenses or other liability whatsoever arising out of the carriage of any Excluded and Dangerous Goods

(whether declared as such or not) save insofar as the same arise out of the Carrier's own negligence.

4. Parties and Sub-Contracting - (1) Where the Client is not the owner of some or all of the goods in any consignment he shall be deemed for all purposes to be the agent of the owner or owners.

(2) The Carrier may employ the services of any other carrier for the purpose of fulfilling the Contract. Any such other Carrier shall have the like power to sub-contract on like terms.

(3) The Carrier enters into the Contract for and on behalf of himself and his servants, agents, and Sub-contractors, and his Sub-contractors servants, agents and sub-contractors; all of whom shall be entitled to the benefit of the Contract (including any limitation or exclusion of liability) and shall be under no liability whatsoever to the Client or anyone claiming through him in respect of the goods in addition to or separately from that of the Carrier under the Contract (except for death or injury caused by their negligence)

(4) The Client shall save harmless and keep the Carrier indemnified against all claims or demands whatsoever by whomsoever made in excess of the liability of the Carrier under these conditions in respect of any loss, damage or injury however caused, whether or not by the negligence of the Carrier, his servants, agents or sub-contractors.

5. Loading and Unloading - (1) When collection or delivery takes place at the Client's premises the Carrier/Contractor shall not be under any obligation to provide any plant, power or labour which, in addition to the Carrier/Contractor's driver is required for loading or unloading at such premises.

(2) Any assistance given by the Carrier beyond the usual place of collection or delivery shall be at the sole risk of the Client, who will save harmless and keep the Carrier indemnified against any claim or demand which could not have been made if such assistance had not been given.

(3) Consignments requiring special appliances for unloading from the vehicle are accepted for carriage only on condition that the sender has duly ascertained from the Consignee that such appliances are available at destination. Where the Carrier/Contractor is, without prior arrangement in writing with the Client, called

upon to load or unload such goods the Carrier shall be under no liability whatsoever to the Client for any damage however caused, whether or not by the negligence of the Carrier, and the Client shall save harmless and keep the Carrier indemnified against any claims or demand which could not have been made if such assistance had not been given.

6. Consignment Notes - The Carrier/Contractor 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, quantity, or weight of the consignment at the time it is received by the Carrier/Contractor and the burden of proving the condition of the Consignment on receipt by the Carrier and that the Consignment was of the nature, quantity or weight declared in the relevant document shall rest with the Client.

7. Transit - (1) Transit shall commence when the Consignment is handed over to the Carrier/Contractor whether at the point of collection or at the Carrier/Contractor's premises.

(2) Transit shall (unless otherwise previously determined) end when the Consignment is tendered at the usual place of delivery at the consignee's address within the customary business hours of the district. Provided: (a) that if no safe and adequate access or no adequate unloading facilities there exist then transit shall be deemed to end at the expiry of one clear day after notice in writing whether by letter, facsimile or e-mail of the arrival of the Consignment at the Carrier/Contractor's premises has been sent to the Consignee; and (b) that when for any other reason whatsoever a Consignment cannot be delivered or when a Consignment is held by the Carrier/Contractor 'to await order' or 'to be kept until 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 transit shall be deemed to end.

8. Undelivered or Unclaimed Goods - Where the Carrier/Contractor is unable for whatever reason to deliver a consignment to the consignee, or as he may order or where by virtue of the proviso to clause 7(2) hereof transit is deemed to be at an end the Carrier/Contractor may sell the Consignment and payment or tender of the proceeds after deduction of all proper charges and expenses in relation thereto and all outstanding charges in relation to the carriage and storage of the goods shall (without

prejudice to any claim or right which the Client may have against the Carrier otherwise arising under these conditions) discharge the Carrier/Contractor from all liability in respect of such goods, their carriage and storage. Provided that: (a) The Carrier/Contractor shall do what is reasonable to obtain the value of the consignment; and (b) the power of sale shall not be exercised where the name and address of the sender or of the consignee is known unless the Carrier/Contractor shall have done what is reasonable in the circumstances to give notice to the sender, or if the name and address of the sender is not known, to the consignee that the goods 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 are taken away or instructions are given for their disposal.

9. Carriers Charges - (1) The Carrier's charges for the carriage shall be payable by the Client without prejudice to the Carrier's rights against the Consignee or any other person. Provided that when any Consignment is consigned 'carriage forward' the Client shall not be required to pay such charges unless the Consignee fails to pay after a reasonable demand has been made by the Carrier/Contractor for payment thereof.

(2) Except where the quotation states otherwise all quotations based on a tonnage rate shall apply to the gross weight, unless the Consignment exceeds 3 cubic metres per tonne (3,000 cubic centimetres per kilo) all Consignments are charged at their actual gross weight unless a Consignment exceeds 3 cubic metres per tonne in which case the Carrier may calculate the charge on the basis of 3 cubic metres per tonne (3,000 cubic centimeters per kilo).

(3) A claim or counterclaim shall not be made the reason for deferring or withholding payment of moneys payable, or liabilities incurred to the Carrier.

(4) The Carriers charges are payable on or before the last day of the month following the date of the invoice.

(5) Charges shall be payable on the expiry of any time limit previously stipulated by the Carrier. Overdue accounts will be charged interest calculated on a daily basis at the rate of 8% above the Royal Bank of Scotland International Limited base rate from time to time.

10. Time Limit for Claims - The Carrier shall not be liable: (1) (a) for loss from a package or from an unpacked consignment; or (b) for damage, deviation, misdelivery,

delay or detention: unless he is advised thereof in writing otherwise than upon a Consignment note or delivery document within seven days and the claim be made in writing within fourteen days after the termination of transit;

(2) For loss or non-delivery of the whole of the consignment or of any separate package forming part of the Consignment unless he is advised of the loss or non-delivery in writing (other than upon a Consignment note or delivery document) within twenty eight days and the claim be made in writing within forty-two days after the commencement of transit.

The Carrier shall in any event be discharged of all liability whatsoever and howsoever arising in respect of the Consignment unless suit is brought within one year of the date when transit commenced.

11. General Lien - (1)The Carrier shall have a general lien against the Client where the Client is the owner of the Consignment, for any moneys whatsoever due from such owner to the Carrier. If any lien is not satisfied within a reasonable time the Carrier may at his absolute discretion sell the Consignment or part thereof as agents for the owner and apply the proceeds towards moneys due and expenses of the retention, insurance and sale of the Consignment, and shall, upon accounting to the Client for the balance remaining, if any, be discharged from all liability whatsoever in respect of the Consignment.

(2) Where the Client is not the owner of the Consignment, the carrier shall have a particular lien against the said owner, allowing the Carrier to retain possession, but not dispose of, the Consignment against monies due from the Client in respect of the Consignment.

12. Liability for Loss and Damage - Subject to these conditions the Carrier shall be liable for any loss, or misdelivery of or damage to goods occasioned during transit unless the Carrier shall prove that such loss, misdelivery or damage has arisen from (a) Act of God (b) any consequences of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), terrorist act, civil war, rebellion, insurrection, military or usurped power or 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 Client or owner of the goods or of the servants or agents of either; (e) inherent liability to wastage in bulk

or weight, latent defect or inherent defect, vice, natural deterioration or faulty design of the goods: (f) insufficient or improper packing; (g) insufficient or improper labelling or addressing; (h) riots, civil commotion, lockouts, industrial disputes, general or partial stoppage or restraint of labour from whatsoever cause; (i) consignee not taking or accepting delivery within a reasonable time; (j) fire, weather conditions or other cause of kindred nature beyond the reasonable control of the Carrier; (k) electrical, magnetic or x-ray erasure or damage or other similar damage to electronic or photographic images or recording in any form; (l) goods of a fragile nature, specifically glass, marble, pottery, ceramics or goods of a kindred nature. Provided that the Carrier shall not incur liability of any kind in respect of a Consignment where there has been fraud on the part of the Client or the owner of the goods or the servants or agents of either in respect of that consignment.

13. Limitations of Liability - The Carrier does not warrant that the Clients goods are insured to their full value and if cover is sought beyond the amounts described hereunder the Client must seek to arrange additional cover prior to commencement of transit.

Subject to these Conditions the liability of the Carrier in respect of any one Consignment shall in any case be limited: (1) Where the loss or damage however sustained is in respect of the whole of the consignment to a sum at the rate of £2000 per tonne on either the gross weight of the consignment as computed for the purpose of charges under clause 9 hereof or where no such computation has been made, the actual gross weight.

(2) Where loss or damage however sustained is in respect of part of a Consignment to the proportion of the sum ascertained in accordance with (1) of this condition which the actual value of that part of the Consignment bears to the actual value of the whole of the consignment.

Provided that: (a) nothing in this clause shall limit the Carrier's liability below the sum of £10 in respect of any one Consignment; (b) the Carrier shall not in any case be liable for indirect or consequential damages or for loss of a particular market whether held daily or at intervals; (c) the Carrier shall be entitled to require proof of the value of the whole of the Consignment; (d) the burden of proof as to the nature, quantity and size of the Consignment rests with the Client absolutely.

14. Unreasonable Detention - The Client shall be liable for the cost of unreasonable detention of vehicles, containers, and sheets but the Carriers/Contractor's rights against any other person shall remain unaffected.

15. Computation of Time - In the computation of time where the period provided by these conditions is seven days or less, the following days shall not be included:-

In the Isle of Man: Saturday, Sunday, Good Friday, Senior Race Day, Tynwald Day, Christmas Day or a Bank Holiday.

In England and Wales: Saturday, Sunday, Good Friday, Christmas Day or a Bank Holiday. *In Scotland:* Saturday, Sunday, 1st and 2nd January, Spring Holiday or Autumn Holiday or a Bank Holiday.

16. Law and Jurisdiction - These Conditions and any act or contract to which they apply, shall be governed by Manx Law, and any dispute or difference arising out of, or in connection with the Carriers business, save for claims in relation to freight charges, shall be determined exclusively by the Courts of the Isle of Man.

17. Impossibility of Performance - The Carrier shall be relieved of its obligation to perform the contract to the extent that the performance thereof is prevented by failure of the Client, fire, weather conditions, industrial dispute, labour disturbance or cause beyond the reasonable control of the Carriers.

18. Severance - If any of these conditions becomes invalid, illegal or unenforceable, the rest of the conditions shall remain valid and unaffected.