

# CARN LOGISTICS LTD

## TERMS AND CONDITIONS 2015



Please note that the customer will not in all circumstances be entitled to Compensation, or to full Compensation, for any loss and is therefore recommended to seek professional advice as to appropriate insurance cover to be maintained while consignments are in transit.

The Carrier (as defined below) is not a common Carrier and accepts goods for carriage only upon that condition and the Conditions set out below. No servant or agent of the Carrier is permitted to alter or vary these Conditions in any way unless expressly authorised in writing to do so by a Director of Carn Logistics Ltd. If any provision of these Conditions or of the contract becomes invalid, illegal, unenforceable or void in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired. For the avoidance of doubt, these are the Terms and Conditions of Carn Logistics Ltd.

### 1. DEFINITIONS

In these Terms and Conditions, unless the context otherwise permits or requires, the following expressions shall have the following meanings;

- "Carrier" means Carn Logistics Ltd (Company No. 07493002) and any trading name thereof and/or any networks that it acts on behalf of as an agent.
- "Customer" means any person or company requesting the Carrier to transport a Consignment and includes any servant agent or sub-contractor of the Customer.
- "Contract" means the contract of services between the Customer and the Carrier.
- "Consignee" means the company or person to whom the Carrier contract to deliver the Consignment
- "Consignment" means any data bag, parcel and/or package, pallet or other items contained in one data bag, parcel and/or package, pallet or any number of separate data bags, parcels and/or packages, or pallets sent at one time, in one load, at the request of the Customer from any one Collecting address and one Delivery address.
- "Collecting address" means the address at which any Consignment is to be collected or received by the Carrier.
- "Delivery address" means the address to which any Consignment is to be delivered by the Carrier including any alternative Delivery address specified by the Customer under Clause 4.2 below.
- "Dangerous goods" means those substances and articles the carriage of which is 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 authorised only under the conditions prescribed in accordance therewith.
- "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 the information is readily accessible so as to be usable for subsequent reference.

### 2. PARTIES AND SUB-CONTRACTING

- The Customer warrants that he is either the owner of the Consignment or is authorised by such owner to accept these Conditions on such owner's behalf.
- 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.
- The Carrier contracts for itself and as an agent of and trustee for its servants and agents and all other carriers referred to in point 2 above and such other carriers' servants and agents and every reference to the Conditions to 'the Carrier' shall be deemed to include every other such carrier, servant and agent with 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 or any other party than the Carrier hereunder
- Notwithstanding Clause 3 the carriage of any consignment by rail, sea, inland waterway or air is arranged by the Carrier

### 3. ACCEPTANCE OF TERMS AND CONDITIONS

- Any business undertaken by the Carrier or any information advice or service supplied by the Carrier, (whether charged for or not) is undertaken or provided subject to these Terms and Conditions which shall be the terms of any contract for delivery of Consignments between the Carrier and the Customer.
  - These Terms and Conditions subject to and together with any variation agreed in writing between the Carrier and the Customer shall constitute the entire contract between the Carrier and the Customer and shall override or supersede any previous agreement or arrangement between the Carrier and the Customer and in particular shall operate to the exclusion of any terms and conditions at any time imposed by the Customer. On acceptance by the Carrier of any Consignment the Customer shall be deemed to have accepted these Terms and Conditions.
  - The Customer acknowledges that it has not entered into this Agreement relying upon any representation made by or on behalf of the Carrier and without prejudice to the generalisation of the foregoing, the Customer has not relied upon any correspondence, statement or sales literature issued by or on behalf of the Carrier
- The Carrier is not a common Carrier and will only carry Consignments subject to these Terms and Conditions. The Carrier reserves the right to its absolute discretion to;
  - sub-contract any part or parts of a delivery;
  - refuse to accept any Consignment or part thereof for delivery
  - deliver the Consignment by any available route.
- Without prejudice to the provisions of Clause 2 above, the Customer acknowledges that the Carrier is under no obligation to accept Dangerous goods or any Consignment containing Dangerous goods for delivery.
- The Customer hereby warrants that:
  - The Consignment does not constitute or contain Dangerous goods or any substance the possession, storage or delivery of which is a criminal offence or a breach of the provisions of any relevant statute regulation or bylaw under the laws of any part of the United Kingdom or of any jurisdiction to or through which the Consignment is to be delivered or in which it may be stored;
  - The Customer has authority in respect of the Consignment to authorise collection and delivery by the Carrier from the Collecting address to the Delivery address.
- The Customer hereby agrees to indemnify the Carrier against and holds the Carrier harmless from any loss, damage claim, cost or expense which the Carrier, its employees', sub-contractors, or agents may incur directly or indirectly as a result of any breach of the warranty given in Clause 4(a) above.

### 4. DELIVERIES

- The Carrier shall use its reasonable endeavours to deliver the Consignment to the Delivery address within the time specified by the Customer but time of delivery shall not be of the essence unless agreed by the Carrier in writing prior to the placing of the Order.
  - The Carrier shall take all reasonable steps to obtain receipt from the consignee and such receipt shall be conclusive evidence of the date time and place of delivery.
- The Carrier shall make one attempt to deliver a Consignment to the Delivery address within the delivery time specified by the Customer. If the Consignment cannot be delivered the Carrier will have the option to either make a further attempt to deliver the Consignment to the Delivery address or to deliver the Consignment to any other Delivery address specified by the Customer, in either event at cost to the Customer.
  - If delivery does not take place under the provisions of Clause 4.2 other than by reason of any failure or default of the Carrier its employees agents or sub-contractors or if the Customer does not specify an alternative Delivery address within twenty four hours of being requested to do so by the Carrier, the Customer shall be liable to the Carrier for all storage charges incurred by the Carrier between the date on which delivery was first attempted and the date on which delivery is made under the provisions of Clause 4.2 above or the date of sale of the Consignment under the provisions of Clause 4.2(b) below.
  - If delivery does not take place under the provisions of Clause 4.2 the Carrier shall be entitled to dispose of the Consignment or any part thereof at any time after giving the Customer seven days written notice of its intention.
  - The Carrier shall be under no obligation to deliver a Consignment or Consignments as a whole at any one time and shall be free in its absolute discretion to make more than one delivery to deliver in parts.

### 5. LOADING AND UNLOADING

- The Carrier shall not be under any obligation to provide any plant, equipment, machinery, power or labour which may be required for loading or unloading the Consignment at the Collecting address or the Delivery address.
- Any Consignment or part thereof requiring any special appliance or equipment for loading onto and/or unloading from any vehicle is accepted for carriage only on the condition that the Customer has duly ascertained that such appliances are available at the Collection/Delivery address and the Customer shall be responsible for the provisions and cost of such Appliances or Equipment.
- Any assistance given by the Carrier beyond the usual act of collection or delivery (Including without prejudice to the generality of the foregoing the provision of plant, machinery, equipment, power or labour for loading or unloading at the Collection or Delivery address) shall be at the sole risk of the Customer who will save harmless and keep the Carrier indemnified against any damage, expense, loss, costs, claims or demands (including without limitations damage to the Consignment or to any property of the Customer, the Carrier, the consignee or any third party whether or not arising out of the negligence of the Carrier its employees agents or sub-contractors) arising directly or indirectly from the provision of such assistance.

### 6. LIABILITY FOR LOSS AND DAMAGE

- The customer shall be deemed to have elected to accept the terms 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 the Consignment however or whenever caused and whether or not caused or contributed to directly or indirectly by an act, omission, neglect, default or other wrongdoing on the part of the Carrier, its servants, agents or subcontractors.
- Subject to these Conditions the Carrier shall be liable for:
  - physical loss, mis-delivery of or damage to living creatures, perishables, bullion, money, cheques, money orders, securities, stamps, precious metals or precious stones, jewellery, works of art, antiques, watches, wines and spirits, furs, tobacco, firearms, glass, ceramics, pottery or plasma screens comprising the Consignment **only if:**
    - the Carrier has specifically agreed in writing to carry any such items: **and**

- the Customer has agreed in writing to reimburse the Carrier in respect of all additional costs which result from the carriage of said items; **and**
  - the loss, mis-delivery or damage is occasioned during transit and is proved to be due to the negligence of the Carrier, its servants, agents or sub-contractors;
- physical loss, mis-delivery of or damage to any other goods comprising the Consignment unless the same has arisen from, and the Carrier has used reasonable care to minimise the effects of:
    - Act of God;
    - any consequences of war, invasion, act of foreign enemy, hostilities (whether war or not), civil war, rebellion, insurrection, terrorist act, military or usurped power or confiscation, requisition, or destruction or damage by or under the order of any government or public or local authority;
    - seizure or forfeiture under legal process;
    - error, act, omission, mis-statement or mis-representation by the Customer or other owner of the Consignment or by servants or agents of either of them;
    - inherent liability to wastage in bulk or weight, faulty design, latent defect or inherent defect, vice or natural deterioration of the Consignment;
    - insufficient or improper packing;
    - insufficient or improper labelling or manifestation;
    - riot, civil commotion, strike, lockout, general or partial stoppage or restraint of labour from whatever cause;
    - Consignee not taking or accepting delivery within a reasonable time after the Consignment has been tendered.
- The Carrier shall not in any circumstances be liable for loss or damage arising after transit is deemed to have ended, 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.

### 7. LIMITATION OF LIABILITY

- Except 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:
  - the value of the goods actually lost, mis-delivered or damaged; or
  - the cost of repairing any damage or of reconditioning the goods, or
  - a sum calculated at the rate of £13 Sterling per kg (Parcel) or £1.30 Sterling per kg (Pallet) 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 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:
    - 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 Carriers 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;
    - 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;
    - the Customer shall be entitled to give the Carrier written notice prior to commencement of transit requesting that the £13 Sterling per kg (Parcel) or £1.30 Sterling per kg (Pallet) limit in Clause 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 may be offered Increased Liability Cover (ILC) at revised carriage charges in consideration of the increased limit, but if the offer is not acceptable to the customer, then the aforementioned limit(s) shall continue to apply;
    - in attempting to reach an agreement pursuant to sub-clause 1(c)(iii) above the Customer shall provide the Carrier with all such information regarding the Consignment as the Carrier shall need to assess any suggested new limit and charge;
- The liability of the Carrier in respect of claims for any other loss whatsoever (including indirect, economic or consequential loss or damage and loss of market), howsoever arising in connection with the Consignment, shall not exceed the amount of the carriage charges in respect of the Consignment or amount of the claimant's proved loss, whichever is the lesser, **unless:**
  - at the time of entering into the Contract with the Carrier the Customer declares to the Carrier a special interest in delivery in the event of physical loss mis-delivery or damage or of an agreed time limit being exceeded and agrees to pay a surcharge calculated on the amount of that interest, **and**
  - at least 7 days prior to the commencement of transit the Customer has delivered to the Carrier written confirmation of the special interest, agreed time limit and amount of the interest.
- Nothing in these Conditions shall make the Carrier responsible for the first £50 Sterling of each and every claim.
- In no circumstances shall the Carrier's liability be greater than the value declared by the Customer for that Consignment or £15,000 whichever is the lesser, but in the case of computer equipment, peripherals, software, mobile telephones and accessories, or other audio visual equipment, the Carrier's liability shall not be greater than £3,000 per Consignment.

### 8. INDEMNITY TO THE CARRIER

- The Customer shall indemnify the Carrier against:
- all liabilities and costs incurred by the Carrier (including but not limited to claims, demands, proceedings, fines, penalties, damages, expenses and loss of or damage to the carrying vehicle and to other goods carried) by reason of any error, omission, mis-statement or misrepresentation 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.
  - all claims and demands whatsoever (including for the avoidance of doubt claims alleging negligence), by whomsoever and howsoever arising (including but not limited to claims caused by or arising out of the carriage of Dangerous Goods 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 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.

### 9. CLAIMS

- The Carrier shall not be liable for:
  - damage to the whole or any part of the Consignment, or physical loss, mis-delivery or non-delivery of part of the Consignment unless advised thereof in writing within three working days, and the claim is made in writing within fourteen calendar days, after the termination of transit
  - any other loss unless advised thereof in writing within twenty-eight calendar days, and the claim is made in writing within forty-two calendar days, after the commencement of transit. Provided that if the Customer proves that,
    - it was not reasonably possible for the Customer to advise the Carrier or make a claim in writing within the time limit applicable, **and**
    - such advice or claim was given or made within a reasonable time; the Carrier shall not have the benefit of the exclusion of liability afforded by this Condition.
- The Carrier shall in any event be discharged from all liability whatsoever and howsoever arising in respect of the Consignment unless suit is brought within one year of the date when transit commenced.
- 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.

### 10. CHARGES

- The Customer shall in respect of delivery of any Consignment pay the Carrier's charges in accordance with the Carrier's current tariff of charges within thirty days from the date of the Carrier's invoice thereof. The Carrier reserves its right to increase its charges at any time. The tariff of charges lasts liable for inspection by the Customer, (and a copy will be provided on request) and the tariff shall be deemed to have been inspected by the Customer whether or not actually inspected.
  - The Carrier reserves its right to apply an administration charge of up to £10 per Consignment for insufficient or improper or incorrect labelling or manifestation;
  - No quotation or estimate of charges given by the Carrier shall bind the Carrier unless expressed in writing to be a fixed quotation with a date to which such fixed quotation shall be valid in which case the quotation or estimate must be accepted by the Customer and delivery must take place prior to that date.
  - The Customer shall in respect of queries raise these in writing with the Carrier within fourteen days of invoice date.
- The Customer shall pay to the Carrier VAT on all monies due to the Carrier at the appropriate rate in force from time to time.
- Overdue accounts may result in, without notice, account facilities being suspended and interest may be charged on the outstanding balance at 8% above the reference rate, in addition to a compensation fee, as per the 'Late Payment of Commercial Debts (Interest) Act 1998'.
- For the purpose of the Terms and Conditions, the price stated in the current tariff of charges of the Carrier shall be deemed to be a basic price and any other expenses incurred by the Carrier on the Customer's behalf shall be added to such sum with VAT (where applicable) at the appropriate rate.
- All monies due to the Carrier shall be payable in sterling in England.
- 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 whatever in respect of the Consignment.
  - Where the Customer 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 to dispose of, the Consignment in full monies due from the Customer in respect of the Consignment.
- 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.
- No payments due to the Carrier from the Customer shall be withheld by the Customer in respect of any claim or alleged claim by the Customer or the consignee against the Carrier howsoever arising and whether by way of setoff, counterclaim or otherwise.
- The Customer agrees to indemnify the Carrier for all costs and expenses including legal fees and expenses on a Solicitor and own Customer basis in respect of the recovery of any outstanding amounts due under the Contract.

### 11. LAW AND JURISDICTION

These Terms and conditions shall be construed in accordance with the laws of England and Wales and the Courts of England and Wales shall have exclusive jurisdiction in relation to any matters arising out of such.