

TERMS AND CONDITIONS FOR THE SUPPLY OF LOGISTICS SERVICES

RECITALS

- (A) M F Transport is not a common carrier and only accepts goods for carriage and/or storage on that condition and upon the conditions set out below
- (B) Clause 11 of the RHA Conditions of Carriage and clause 11 of the RHA Conditions of Storage each limit and/or exclude the Company's liability. Such provisions have been included to relieve the customer of the additional amount that the company would need to charge to recover insurance costs (or an amount in lieu to reflect risk) were its liability not limited and/or excluded as provided for in such clauses

1 INTERPRETATION

1.1 Definitions

**Business Day:** a day other than a Saturday or Sunday or public holiday in England when banks in London are open for business.

**Business Hours:** 08.00am to 18.00pm on a Business Day

**Charges:** the charges payable by the Customer for the supply of the services

**Collection Point:** the collection point for Consignments in respect of which Distribution Services are to be provided

**Company:** MF Transport

**Conditions:** these terms and conditions as set out in clauses 1 to 12 (inclusive)

**Consignment:** has the meaning given to it in the RHA Conditions of Carriage

**Contract:** the contract between the Company and the Customer for the supply of the Services in accordance with these Conditions, any quotation provided by the Company and (i) the RHA Conditions of Carriage (to the extent that the Services (or part thereof) are Distribution services) and (ii) the RHA Conditions of Storage (to the extent that the Services (or part thereof) are not Distribution Services)

**Customer:** the person, firm or company who purchases the services from the Company

**Dangerous Goods:** has the meaning given to it in the RHA Conditions of Storage.

**Delivery Day:** has the meaning given to it in clause 5.1.

**Delivery Point:** the delivery point for Consignments in respect of which Distribution Services are to be provided.

**Distribution:** the process of delivering and/or collecting goods and, for the purposes of this definition: (i) Distribution shall commence and end as set out in clause 6 of the RHA Conditions of Carriage (as if references to "Transit" in such clause were references to Distribution); and (ii) Distribution shall not include any Storage nor any unloading or loading carried out by or on behalf of the Company.

**Distribution Services:** services which consist of (and to the extent that they consist of) Distribution

**Order:** the Customers order for services from the Company

**POD:** proof of delivery

**Portal:** the Company's online portal at [www.mftransport.co.uk](http://www.mftransport.co.uk) used for, amongst other things, the placing of orders for services with the Company.

**Rates Schedule:** the Company's schedule of rates for the Customer as amended, updated or varied from time to time.

**RHA:** the Road Haulage Association Limited.

**RHA Conditions of Carriage:** means the RHA Conditions of Carriage as amended, updated or varied from time to time, a copy of the current version of which is annexed hereto and/or included on the portal.

**RHA Conditions of Storage:** means the RHA Conditions of Storage as amended, updated or varied from time to time, a copy of the current version of which is annexed hereto and/or included on the portal.

**Services:** the services supplied by or on behalf of the Company to the Customer

**Storage:** has the meaning given to it in the RHA Conditions of Storage.

1.2 Interpretation

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (b) Any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms
- (c) A reference to **writing** or **written** includes e-mail but not fax

2 BASIS OF CONTRACT

- 2.1 The order constitutes an offer by the Customer to purchase the relevant services in accordance with these conditions.
- 2.2 The order shall only deemed to be accepted when the Company issues written acceptance of the Order or, if later, the relevant services are provided, at which point and on which date the contract shall come into existence.
- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Company, and any descriptions or illustrations contained in the Company's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These conditions and (i) the RHA Conditions of Carriage (to the extent that the Services (or part thereof) are Distribution Services) and (ii) the RHA Conditions of Storage (to the extent that the services (or part thereof) are not Distribution Services) apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any quotation given by the company shall not constitute an offer, and is only valid for a period of 14 days from its date of issue. The Company may withdraw any quotation at any time.

3 RHA CONDITIONS

- 3.1 The RHA Conditions of Carriage shall apply to all Services to the extent that such Services are Distribution Services and the Company shall be the "Carrier" for the purposes of (and as defined in) such conditions.
- 3.2 The RHA Conditions of Storage shall apply to all Services to the extent that such Services are not Distribution Services and the company shall be "the Contractor" for the purposes of (and as defined in) such conditions.
- 3.3 To the extent that there is a conflict between these Conditions and (i) the RHA Conditions of Carriage and/or (ii) the RHA Conditions of Storage, the provisions of these Conditions shall prevail in respect of such conflict.

4 DISTRIBUTION

- 4.1 The Customer acknowledges and agrees that no services will be provided by or on behalf of the Company in relation to Dangerous Goods and the Customer shall ensure that no goods in respect of which Services are provided shall be Dangerous Goods.
- 4.2 The Customer shall in the event that Distribution Services are to be provided by or on behalf of the Company
  - (a) ensure that all Consignments in respect of which Distribution Services are to be provided are:
    - (i) packed in suitable and adequate manner to withstand handling through a hub and spoke multi handling pallet system and transportation by road vehicle as a groupage consignment; and
    - (ii) clearly labelled with delivery name and address
  - (b) ensure that the Delivery Point and the Collection Point each have adequate and suitable access for Heavy Goods Vehicles (being, as a minimum, an 18 Tonne Rigid) and are each on hard roads
  - (c) at the time of placing the Order, notify the Company:
    - (i) if the Delivery Point and/ or the Collection Point has any parking or access restrictions. The Customer acknowledges and agrees that it shall be responsible for any fines or charges incurred as a result of any parking or access restrictions and shall reimburse the Company for any such fines or charges on demand;
    - (j) of any special delivery and/or collection requirements (including, without limitation, if any of these conditions in clause 4.3(a) cannot be satisfied in respect of the relevant Consignment.
  - (d) ensure that the correct goods are loaded at the Collection Point on to the delivery vehicle used in connection with the provision of the Distribution Services.

4.3 The Customer acknowledges and agrees that:

- (a) all Consignments in respect of which Distribution Services are to be provided by or on behalf of the Company and which require the use of a tail lift, must weigh less than 1,000 kilograms (gross) per pallet and be loaded on a four way entry pallet which has a minimum clearance of 12 centimetres to allow the use of a hand pallet truck.
- (b) in relation to Consignments in respect of which Distribution Services are to be provided by or on behalf of the Company:
  - (i) tail lift deliveries and collections will only take place on firm level ground, with no adverse gradients or gravel or shingle;
  - (ii) the goods cannot be left on the public highway;
  - (iii) the driver has the right to refuse making a delivery or collection if he feels that in doing so he will endanger himself or any member of the public.

## 5 DELIVERIES AND COLLECTIONS

- 5.1 A delivery day is from 09.00am to 17.00pm on a Business Day and 09.00am to 12.00 noon on a Saturday (which is not a public holiday), unless expressly agreed otherwise in writing by the Company (**Delivery Day**)
- 5.2 If an Order is received by the Company outside Business Hours, it shall be deemed to be received by the Company on the next Business Day.
- 5.3 All timed deliveries must be before 16.00pm Monday to Friday and before 11.00am on Saturdays, unless expressly agreed otherwise by the Company in writing.
- 5.4 Timed deliveries shall be deemed successful if the delivery vehicle arrives at the Delivery Point within 15 minutes of the relevant booked time save where the Delivery Point is located within the M25 corridor, in which case, the timed delivery shall be deemed successful if the delivery vehicle arrives at the Delivery Point within 30 minutes of the relevant booked time.
- 5.5 The Customer shall ensure that neither the Customer nor its customers delay any delivery of a Consignment in respect of which Distribution Services are to be provided by or on behalf of the Company and that an authorised person is present to accept delivery of the Consignment, check pallets for signs of tampering and/or damage and sign the delivery note relating to such Consignment.
- 5.6 The Customer acknowledges and agrees that, in relation to Consignments in respect of which Distribution Services are to be provided by or on behalf of the Company
  - (a) any manual handling that is required in relation to the collection or delivery of the Consignment (or part thereof) is at the driver's discretion and, if carried out, may be subject to additional charges;
  - (b) deliveries and/or collections which are unable to be made due to the Customer or (if different) the consignee being absent or unable to unload the vehicle will incur an additional delivery charge;
  - (c) the usual Delivery Point for domestic deliveries is the "kerb side" and the Company shall not be required to provide service beyond this usual Delivery Point for domestic deliveries but, if any service is given, it shall be at the sole risk of the customer;
  - (d) unless expressly agreed otherwise in writing by the Company, waiting time for any delivery or collection by or on behalf of the Company is restricted to 20 minutes. After this time, in case of deliveries, the Consignment will be returned to the Company's (or its agent or subcontractor's) depot and a further delivery charge will be payable by the Customer;
  - (e) all returned or refused Consignments will be charged in accordance with the Rates Schedule
  - (f) any re-directed Consignments will be subject to the Company's carriage forward charges calculated in accordance with the Rates Schedule;
  - (g) if any Consignment requires holding (and/or is held) at the Company's (or its agent's or subcontractor's) depot for more than three days, a storage charge of £2.50 per pallet per day will be payable by the Customer;
  - (h) the company is not responsible for removing any packaging from the Delivery Point and such packaging must be left at the Delivery Point;
  - (i) the company is not obliged to return empty pallets to the Customer unless the Customer has expressly requested such return in writing and has agreed to be responsible for the Company's charges relating to such return; and
  - (j) all claims for damage to the whole or part of any Consignment must be accompanied with colour photographs showing the full extent of any damage.

## 6 PROOF OF DELIVERY AND DELIVERY NOTES

- 6.1 The Customer acknowledges and agrees that, in relation to Consignments in respect of which Distribution Services are to be provided by or on behalf of the Company:
  - (a) if the Company is unable to produce a POD the Company may provide a letter of indemnity instead.
  - (b) the Company may from time to time use a delivery note other than that provided by the Customer:

and the provision of such letter of indemnity (in substitution for a POD) and/or the use of such delivery note shall not permit the Customer to withhold any sums due to the Company

- 6.2 The Company operates an electronic signature capture system which provides real time proof of delivery confirmation. The Customer acknowledges and agrees that signature on such electronic signature capture system provides proof that delivery of the relevant Consignment has been made by or on behalf of the Company
- 6.3 PODs may not always be available at the time of invoicing where the Delivery Point is outside mainland United Kingdom. The Customer acknowledges and agrees that the unavailability of a POD does not give the customer any right to withhold or delay payment of the relevant invoice until such time that POD becomes available.

## 7 PORTAL

- 7.1 The Customer agrees that the Company may provide the following to it via the Portal:
  - (a) PODs (or, as the case may be, letters of indemnity);
  - (b) invoices; and
  - (c) any acknowledgement and/or acceptance of Orders for Distribution Services;
- 7.2 The Customer agrees to submit all Orders to the Company for Distribution Services via the Portal.

## 8 CUSTOMER'S ADDITIONAL OBLIGATIONS AND CUSTOMER DEFAULT

- 8.1 The Customer shall:
  - (a) ensure that the terms of each order are complete and accurate;
  - (b) co-operate with the company in all matters relating to the services to be provided by or on behalf of the Company;
  - (c) provide the Company with such information as the Company may reasonably require in order to supply the services to be provided by or on behalf of the Company, and ensure that such information is accurate in all material respects;
- 8.2 If the Company's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation under the contract (**Customer Default**):
  - (a) the Company shall without limiting its other rights or other remedies have the right to suspend performance of the services to be provided by or on behalf of the Company until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Company's performance of any of its obligations.
  - (b) the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 8.2: and
  - (c) the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.

## 9 CHARGES AND PAYMENT

- 9.1 The Charges will be calculated in accordance with the Rates Schedule. The Company may vary the Rates Schedule from time to time by giving at least 1 month's notice in writing to the Customer.
- 9.2 The Customer acknowledges and agrees that the Company may present its invoices to the Customer by email to such email address(es) provided by the Customer to the Company from time to time (including, without limitation) any email address provided by the Customer on the account application form provided by the Company.

9.3 The Customer shall pay each invoice submitted by the Company in full and in cleared funds without set off or deduction within 30 days of the date of the invoice. Time for payment shall be of the essence of the Contract provided that nothing in this clause shall prejudice or otherwise affect that ability of the Company to cancel any credit terms as provided for under the RHA Conditions of Storage and/or the RHA Conditions of Carriage.

9.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Company to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

9.5 In the event that the Customer disputes any invoice, such dispute shall be made in writing by the Customer to the Company within 14 days of the date of the relevant invoice.

9.6 The Company may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.

## 10 TERMINATION

10.1 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 5 days of being notified in writing to do so;
- (b) the Customer enters into or takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on the business or, if the step or action is taken in another jurisdiction, the Customer enters into or becomes subject to any analogous procedure in the relevant jurisdiction;
- (c) the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the Customer's financial position deteriorates to such an extent that in the Company's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

10.2 Without limiting its other rights or remedies, the Company may suspend provision of the services to be provided by or on behalf of the Company under the Contract or any other Contract between the Customer and the Company if the Customer becomes subject to any of the events or procedures listed in clause 10.1 or the Company reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

## 11 CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- (b) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (c) clauses in these Conditions and/or the RHA Conditions of Carriage and/or the RHA Conditions of Storage which expressly or by implication survive termination shall continue in full force and effect.

## 12 GENERAL

12.1 **Force majeure.** Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

### 12.2 Assignment and other dealings.

- (a) the company may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) the customer shall not, without prior written consent of the Company, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract

## 12.3 Entire Agreement

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

12.4 **Variation.** No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

12.5 **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

- (a) waive that or any other right or remedy; or
- (b) prevent or restrict the further exercise of that or any other right or remedy.

12.6 **Severance.** If any provision or part provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part provision shall be deemed deleted. Any modification to or deletion of a provision or part provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

## 12.7 Notices.

- (a) Any notice given by the Customer to the Company under or in connection with the Contract shall be in writing, addressed to the Company at its registered office or such other address as the Company may have specified to the Customer in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service or commercial courier or email.
- (b) Any notice given by the Company to the Customer under or in connection with the Contract shall be in writing, addressed to the Customer at its registered office or such other address as the Customer may have specified to the Company in the account application form provided by the Company, or such other address as the customer may have specified to the Company in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, or email
- (c) A notice shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.7(a) or clause 12.7 (b) (as applicable); if sent by pre-paid first class post or other next working day delivery service, at 9.00am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.
- (d) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

12.8 **Third parties.** Save as provided otherwise in the RHA Conditions of Carriage or the RHA Conditions of Storage (if, and to the extent that, they apply to the Contract), no one other than a party to the Contract shall have any right to enforce any of its terms.

12.9 **Governing Law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England.

12.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.