

Dear Customer

Terms of Business

Please note that all services provided by us will be provided under the Food Storage and Distribution Federation's Recommended Conditions For Storage Services (referred to in this letter as the "FSDF Terms") and the Road Haulage Association Limited Conditions of Carriage 2009 (referred to in this letter as the "RHA Terms") in both cases as amended as set out in this letter. Copies of both sets of terms are attached.

All services that we provide except Distribution (as defined in the FSDF terms) will be provided under the FSDF Terms amended as set out below. The RHA terms will apply to Distribution (as defined in the FSDF terms) amended as set out below.

The FSDF Terms are amended as follows:

The definition of Distribution is deleted and replaced with the following words "Distribution" means carriage of the Goods. Distribution commences when loading of the delivery or collection vehicle (as appropriate) is complete and ceases when transit ends as provided for in clause 6(2) of the Road Haulage Association Limited Conditions of Carriage 2009"

The definition of Distribution Conditions is deleted and replaced with the following words "Distribution Conditions" means the Road Haulage Association Limited's Conditions of Carriage 2009".

The RHA Terms are amended as follows:

Clause 6(1) is removed and replaced with the following words "Transit shall commence when loading of the Consignment onto the Carrier's vehicle is complete whether at the point of collection or the Carrier's premises".

In the event of any conflict between the RHA Terms and the FSDF Terms the FSDF Terms shall prevail.

If you have any questions please let me know.

Yours sincerely



Ben Price
Head of Commercial



The Food Storage and Distribution Federation

Recommended Conditions For Storage Services

The FSDF Recommended Conditions for Storage Services are for the use of FSDF Member Companies only. Enquiries from non-member companies that may wish to use the Conditions of

Business should be directed to the FSDF Chief Executive, tel: 0118 988 4468, fax: 0118 988 7035, e-mail: info@fsdf.org.uk

The Customer's attention is drawn specifically to conditions 4, 5, 7, 10, 11, 13, 14, 17, 19 and 21 which exclude or limit the Company's and the Company's subcontractors' liability or require the Customer to indemnify the Company and/or its sub-contractors in certain circumstances. There are also strict time limits within which claims for loss or damage must be notified and proceedings brought. Clause 15 entitles the Company to exercise a lien over goods consigned to it and provides for consequential rights.

To enable the Company to provide the Services to the Customer for the charges quoted the Company excludes and/or limits it's liability for certain types of loss and damage and places a limit on any liability to the Customer.

The Company will not insure the Goods and the Customer and/or the Owner are advised to check their own insurance arrangements having regard to the limitations on the Company's liability and the indemnities being given by the Customer in the Conditions

1. DEFINITIONS

In these Conditions:

the "Company" means the person, body or other entity (including but not limited to a sole trader, partnership, limited partnership, limited liability partnership or company including its servants, employees and agents) agreeing to undertake the Services;

the "Conditions " means these terms and conditions together with any schedule attached to them;

the "Contract" means any agreement by which the Company agrees to and / or does provide the Services;

the "Customer" means the person requesting Services from the Company (and if different, also the person to whom they are supplied) who may or may not also be the Owner of the Goods but contracts on his own behalf and as agent for such Owner and any person deriving title from such Owner;

"Distribution" means carriage of the Goods. Distribution commences when loading of the delivery or collection vehicle (as appropriate) is complete and ceases when the Goods (or that part thereof forming the particular consignment) are tendered for unloading.

"Distribution Conditions" means the Food Storage and Distribution Federation's Recommended Conditions for Distribution Services.

"Effective Time" means the time at which the employment of any person (or liabilities relating to that person) are transferred to the Company under TUPE;

"Employee" means a person employed or previously employed by the Transferor and who is, or whose rights are, affected by the TUPE Transfer;

the "Goods " means the goods and any part thereof (including packaging, pallets, palletainers, converters, associated documents and all other equipment provided with the Goods) to which the Contract relates or which are in the possession of the Company;

the "Owner" means the legal owner of the Goods (including any documents relating thereto, packaging, containers or equipment) and any other person who is or may become entitled to or claims any interest in the Goods including but not limited to possession of the Goods;

"Outside the Scope of the Services" means any treatment which is not capable of performance save with unreasonable inconvenience or extra cost to the Company;

the "Regulations" means the regulations and other literature (if any) published by the Company from time to time which describe the Services provided by the Company and regulate the provision of those Services and as notified to the Customer from time to time

in writing. Any changes in such Regulations will be a variation of the Contract and shall take effect as a variation of the Contract immediately upon receipt by the Customer. The Regulations shall form part of the Contract;

the "Services " means all services which the Company has agreed to provide or does provide for the Customer, except Distribution. Services includes but is not limited to loading and / or unloading that the Company has agreed to or does provide whether loading at the Company's premises, loading at a collection address, unloading at the Company's premises or unloading at the delivery address or elsewhere as directed by the Customer or as permitted under these conditions or the Distribution Conditions or as is otherwise appropriate;

"Transferor" means a transferor as defined by TUPE;

"TUPE" means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

"TUPE Transfer" means a situation where the Company is a transferee as defined by TUPE as a result of providing or agreeing to provide Services to or for the benefit of the Customer;

the "Value " means the cost of the Goods to the Customer, the Owner or the Customer's principal (if he, she or it is not the Owner) at the time of receipt of the Goods by the Company for the performance of the Services.

2. APPLICATION

2.1 These Conditions shall apply to every Contract for the provision of Services by the Company to the Customer to the exclusion of all other terms and conditions, including the Customer's own.

2.2

(a) The failure or delay by any party in exercising any right, power or remedy under these Conditions shall not in any circumstances impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise of any right power or remedy under these Conditions shall not in any circumstances preclude any other or further exercise of it or the exercise of any other right, power or remedy.

(b) Any waiver of a breach of, or default under any of the terms of these Conditions shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of these Conditions.

3. COMPANY'S RESPONSIBILITY FOR GOODS

3.1 The Company shall provide the Services subject to these Conditions and the Regulations.

3.2 The Company shall perform the Services with reasonable care and skill.

3.3 The Company's responsibilities and obligations in respect of the Goods shall commence as follows:

- (a) where the Company has agreed to unload the vehicle which delivers the goods to the Company, at the point at which unloading by the Company commences;
- (b) where the Company has not agreed to unload the vehicle which delivers the Goods to the Company, at the point at which all the Goods are unloaded from the delivery vehicle into the Company's loading bay.

3.4 The Company's responsibilities and obligations in respect of the Goods shall cease as follows:

- (a) where the Company has agreed to load the Goods onto the delivery vehicle, at the point at which the loading of the Goods (or that part thereof forming the particular consignment) is complete; or
 - (b) where the Company has not agreed to load the Goods onto the delivery vehicle and does not do so, at the point at which the Goods (or that part thereof forming the particular consignment) are tendered to the carrier for loading; or
 - (c) when notice is given requiring the Goods to be removed from the Company's possession, custody or control under these Conditions or otherwise as required or permitted by law.
- 3.5 where the Company agrees to or does undertake Distribution for the Customer, the Distribution Conditions shall apply to that Distribution.
- 3.6 Where the Company loads the Goods and is also responsible for Distribution, these conditions cease to apply at the point indicated in clause 3.4(a). Once loading is complete the Distribution Conditions apply and the Company's obligations in respect of the Goods are from that point determined under the Distribution Conditions. These Conditions will, however, apply to any unloading carried out by or on behalf of the Company at the delivery address or elsewhere

as directed by the Customer or as permitted by these Conditions or the Distribution Conditions or as is otherwise appropriate.

- 3.7 The Company's obligations are owed to the Customer only.
- 3.8 Acceptance of possession of the Goods or signature of any consignment note relating to the Goods confirming receipt of the same by the Company is not confirmation by the Company that the Goods are in satisfactory condition or are undamaged or that they are as described in the consignment note or confirmation of the accuracy of the documents accompanying the Goods.
- 3.9 Absence of a delivery or consignment note shall not justify a refusal by the Customer to pay any of the Company's charges.
- 3.10 Time shall not be of the essence as regards the performance of the Services.

4. **CUSTOMER'S OBLIGATIONS**

4.1 The Customer accepts these Conditions on its own behalf and as agent for and on behalf of the Owner and warrants to the Company that it has authority to bind such Owner to these conditions in all respects.

4.2 The Customer shall comply with the Regulations.

4.3 The Customer warrants that the Goods are as described to the Company in the consignment note or equivalent document particularly as regards to their nature, weight, quantity, condition and dimensions.

4.4 Without prejudice to Condition 7 below, the Customer warrants that the Goods (including any pallets) are:

- (a) in a wholesome condition;
- (b) properly packed for the performance of the Services;
- (c) in the form, and have at all material times been maintained at, the temperature as may be required by the minimum standards stipulated under the applicable statutory regime for goods of that type then in force;

- (d) not such as to require any special treatment Outside the Scope of the Services or as provided for in the Regulations or otherwise, for instance by virtue of the size, weight, nature or condition of the Goods;
- (e) in a condition where any operation or process to be carried out by the Company can be carried out without further work (other than unpacking) by the Company;
- (f) in (and will remain in) a condition in which they can be safely handled and stored without causing damage or injury to persons, premises, equipment or other goods; and
- (g) not hazardous or contaminated, do not require a license to handle and do not constitute waste as defined in all applicable legislation.

4.5 The Company shall be entitled to reject Goods that are not in the condition set out in Condition 4.4, are not as warranted in Condition 4.3, or where the Customer is in breach of Condition 4.6.

4.6 The Customer confirms as a condition of the Contract that all information provided by the Customer to the Company whether in relation to the Goods or otherwise will be materially accurate and complete.

4.7 The Company's duties and obligations, including but not limited to in relation to any advice given, are to the Customer only. No third party shall be entitled to rely on any advice given by the Company to the Customer.

4.8 The Customer shall indemnify the Company against any claims, losses, damages, costs, fines, liabilities, penalties, taxes and duties (and all costs and expenses reasonably incurred relating thereto) incurred by or made against the Company resulting wholly or in part from a claim against the Company by a third party who has relied on advice provided to the Customer by the Company.

5. **SPECIAL TREATMENT**

5.1 If Goods require special treatment (due to their size, weight, nature or condition or any other factor) or where the Goods require treatment that is otherwise Outside the Scope of the Services of the Company then the Customer shall contact the Company and obtain the Company's agreement in writing prior to presentation of the Goods. If this is not done and the Company does not agree in advance to provide such special treatment then the Company shall be entitled to refuse to take delivery of the Goods, or if it discovers the position after having taken delivery, to require the Customer to immediately collect the Goods and in any event the Company shall not be liable for any loss of or damage to the

Goods or any associated losses including but not limited to indirect loss, financial loss, consequential loss, loss of profits, loss of goodwill or loss of anticipated savings caused by failure to provide such special treatment.

5.2 The Customer shall indemnify the Company against any losses, damages, claims, fines, penalties, duties, taxes, costs or expenses incurred by or made against the Company as a result (wholly or in part) of the Goods requiring special treatment as envisaged by this clause.

5.3 In the event that the Company elects to provide Services in relation to the Goods notwithstanding the need for special treatment the Company shall be entitled to charge a reasonable sum for the provision of such special treatment over and above its other charges.

6. GOODS IN UNACCEPTABLE CONDITION

If the Company determines that the Goods are not in a condition as required by Condition 4.4 or are likely not to be in such condition and such failure may or is likely to cause damage to other goods or property then;

- (a) the Company shall be entitled either not to collect the Goods or to reject the Goods;
- (b) the Company shall be entitled to serve notice on the Customer and upon receipt of such notice the Customer shall remove the Goods forthwith; or
- (c) if the Company is unable to give such a notice for any reason or if in the Company's reasonable opinion the Goods require immediate removal to avoid or mitigate damage or if the Customer fails to remove the Goods as required under Condition 6(b) then the Company may at the Customer's expense and risk arrange for alternative storage, disposal or destruction of the Goods.

7. CUSTOMER INDEMNITY

7.1 In the event that a third party brings a claim against the Company in relation to the Goods and / or the Services and in respect of which these Conditions are held not to apply the Customer shall indemnify and hold harmless the Company and its employees, agents and subcontractors against all claims, losses, damages, costs, fines, liabilities, penalties, taxes and duties (and all costs and expenses reasonably incurred relating thereto) incurred by or made against the Company which exceed the liability and/or the

limits of liability that the Company would have incurred or which would have applied had these Conditions applied in respect of the Company's liability to the third party.

7.2 The Customer shall indemnify and hold harmless the Company, its employees, agents and sub-contractors against all claims, losses, damages, costs, fines, liabilities, penalties, taxes and duties (and all costs and expenses reasonably incurred relating thereto) incurred by or made against the Company relating wholly or in part to the nature or condition of the Goods save to the extent that the Company, its employees, agents or sub-contractors may be liable under these Conditions.

7.3 The Customer shall indemnify and hold harmless the Company, its employees, agents and subcontractors against all claims, losses, damages, costs, fines, liabilities, penalties, taxes and duties (and all costs and expenses reasonably incurred relating thereto) incurred by or made against the Company caused wholly or in part by any breach by the Customer of its obligations under the Contract or by the Company complying with the Customer's instructions.

7.4 The Customer shall indemnify the Company against any taxation or duty payable or paid by or demanded from the Company in relation to the Goods together with any costs and expenses which the Company reasonably incurs in connection with any such liability.

8. RIGHT OF EXAMINATION

The Company may, but shall not be obliged to, break bulk and open packages and examine the Goods when Goods are presented and at any time thereafter for the purposes of determining whether or not the Goods are in the condition required under Condition 4.4.

9. STORAGE

In the absence of agreement by the Company for any special treatment of the Goods pursuant to Condition 5, the Company:

9.1 may treat the Goods in such a way as in its opinion is best able to preserve them and the Company shall exercise reasonable skill and care in exercising its opinion.

9.2 Shall be entitled to store in bulk all Goods of apparently similar nature received from the same Customer and shall not be required to identify individual consignments of Goods so stored. If the Customer requires the Company not to store the Goods in bulk then the Company shall (if prepared to comply) be entitled to a reasonable upward adjustment of its charge for complying with such requirements.

10. **CHARGES**

10.1 The Company shall be entitled to payment of charges in accordance with rates agreed with the Customer, or in default thereof at its usual rates or a reasonable rate. The Company's charges are subject to VAT which shall be paid in addition to the Company's charges.

10.2 The Company may vary its charges at any time by giving written notice to the Customer.

10.3. The Company's charges shall be payable upon demand, by presentation of an invoice, unless otherwise agreed in writing. Where the Company agrees to provide a credit facility such facility shall always be provided on terms that the Company is entitled to withdraw the same with immediate effect in the event of the Customer's breach of the credit terms in respect of any one or more invoices or if the Customer is required or requested in accordance with these Conditions to remove the Goods or the Customer enters into any insolvency process or otherwise seeks to make arrangements with its creditors.

10.4 Where the Company has agreed to fix its charges for a stated period the Company shall nevertheless be entitled to vary such charges in the event that during the period in which the charges are fixed there is an increase in the unit cost to the Company of its energy supply (including but not limited to gas, electricity, diesel or other fuel) which exceeds 5%. In such event the Company shall be entitled to pass on to the Customer that part of the actual increase in the Company's energy costs that relates to or is reasonably apportioned by the Company to the Services. If requested by the Customer the Company shall provide evidence of the unit cost at the date that the charges were fixed and evidence of the increase since that date

10.5 Interest shall be payable in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended from time to time) save that interest calculated at the rates prescribed by the Act shall be payable on all overdue amounts both before and after judgement.

10.6 The Customer shall pay to the Company all the Company's charges to the Customer immediately when due (whether pursuant to any agreed credit period or as provided for in these Conditions or otherwise) without reduction, deferment on account of any claim, counterclaim or set-off.

10.7 The Customer will be charged a reasonable proportion, calculated by the Company, of any expenses necessarily incurred by the Company in complying with the Prevention of Damage by Pests Act 1949 (as amended or re-enacted from time to time)

or in complying with any other statutory duties imposed from time to time in relation to the Goods provided that if the Goods are the direct cause of introduction of pests into the store the Customer shall indemnify the Company against (or reimburse as may be the case) the whole of the expenses of complying with the said Act.

10.8 All the Company's charges, whether invoiced or not, shall become immediately due for payment prior to any Goods ceasing to be in the Company's care, control or possession irrespective of any previously agreed credit period.

10.9 Time shall be of the essence as regards payment of any sums due to or claimed by the Company.

11. LIMITATION OF LIABILITY

11.1 The Company shall not be liable for any loss or damage that occurs because of:

- a) acts or omissions by the Customer which directly or indirectly result in loss or damage;
- b) strike, lock out, industrial dispute or other labour disturbance;
- c) factors beyond its reasonable control including but not limited to act of God, earthquake, fire, storm, flood, ice or other inclement weather, war, explosion, actual or threatened acts of terrorism, strike, acts of any government or other lawful authority, riot, civil commotion, epidemic or trade embargo or any failure of electricity or other fuel or equipment;
- d) any cause or event over which the Company has no control and which the Company is unable to prevent with the exercise of reasonable care and effort;
- e) the Company complying with the Customer's or Owner's instructions;
- f) any breach by the Customer of its obligations under the Contract; and / or
- g) the actions of any person for whom the Company is not responsible.

11.2 The Company shall not be liable for any loss or damage that occurs other than because of the Company's negligence, breach of its obligations under the Contract or other duties as imposed by law, wilful misconduct or fraudulent act or omission.

11.3 In no event shall the Company be liable or responsible for indirect, incidental, special or consequential loss or damage, loss of profit, loss of revenue, loss of goodwill or loss of anticipated savings of the Customer or Owner or any other party, howsoever caused, whether or not the Company was aware or should have been aware that such loss or damage may arise.

11.4 The Company shall have no liability for any claim unless;

- a) the Company receives written notice of it within 10 days of the date upon which the Customer became aware of the event giving rise to such claim or would have become aware of the event had the Customer acted with reasonable diligence (*"the Date"*); and
- b) a detailed claim giving sufficient details of the claim and alleged loss to allow the Company to investigate the claim including but not limited to the weight, value and date of delivery into store is submitted to the Company in writing within 21 days of the Date.

11.5 The limitations and exclusions set out in these Conditions shall not apply to death or personal injury caused by the negligence of the Company or resulting from fraud by the Company.

11.6 Except as expressly provided in these Conditions (and except where a person within the United Kingdom deals as a consumer within the meaning of the Unfair Contract Terms Act 1977) all warranties, conditions and other terms implied by law are excluded.

11.7 In any event and subject to the rest of this Condition 11 and save where a higher limit is agreed pursuant to Condition 11.9, the Company's liability to the Customer, Owner or any other party with an interest in the Goods arising out of or in connection with the Services and / or the Goods whether based in contract, tort (including but not limited to negligence), bailment, restitution, equity, arising from statute or otherwise and including but not limited to in respect of loss (including theft), destruction, damage, unavailability, contamination, deterioration, delay, nondelivery, mis-delivery, unauthorised delivery, noncompliance with instructions or obligations, incorrect advice or information, loss or corruption of data, interference with or disruption of computer systems or any event giving rise to any liability of the Customer or Owner to any other person or authority shall never exceed:

- (a) the Value of the Goods or the part thereof that is lost or damaged; or

- (b) £250 per metric tonne of gross weight of that part of the Goods to which the claim relates;
whichever shall be the lesser.

11.8 The Company does not insure the Goods and the Customer shall be responsible for insuring

- (a) the Goods against all risks to their full insurable value and
- (b) any liabilities to the Company arising out of these Conditions or otherwise.

11.9 Where the Customer requires a higher limit of liability than that provided for in Condition 11.7 it must notify the Company in writing of the higher limit it requires and must pay the Company's costs and expenses of obtaining insurance against the Company's increased liabilities by virtue of that higher limit. The higher limit specified will take effect 21 days after receipt of the notice by the Company (and may cease to have effect if it has already taken effect in the circumstances set out in 11.9(a) below) unless:

- (a) the Company notifies the Customer that the Company is unable to obtain insurance cover for the higher limit specified by the Customer in relation to the Company's liabilities in connection with the Goods and / or Services on terms reasonably acceptable to the Company. In the event that the Company serves such notice the higher limit shall not come into effect if it has not already done so or, if it has come into effect, the higher limit shall cease immediately upon receipt of the notice by the Customer and shall revert to the limit set out in Condition 11.7;
- (b) the Customer has failed to pay the Company's costs and expenses of obtaining insurance for the higher limit of liability specified by the Customer within 7 days of receipt of the Company's invoice in respect of the same.

In either of the situations described in Condition 11.9(a) and 11.9(b) the limit of liability shall be as set out in Condition 11.7 and any increase or potential increase shall not be effective.

11.10 No legal proceedings may be brought against the Company whether by a claim, counterclaim, Part 20 claim or otherwise unless they are issued and/or served within nine months of the event giving rise to the claim.

11.11 Without prejudice to the Company's rights under Condition 10.6 to be paid free from deduction or set off, any limitation of the Company's liability shall be applied to any claim made against the Company by the Customer in determining the value of such claim before any set off or counterclaim is asserted against money due to the Company.

12. TRANSFER OF GOODS

12.1 Subject to Conditions 12.2 and 12.4 below the Company will transfer the Goods to another party ("Transferee") on receipt of written authorisation from the Owner or the Customer save that the Company shall be entitled to refuse such transfer until all sums due to or claimed by the Company from the Customer have been paid..

12.2 The transfer of the Goods will only occur when the Company has received from the Transferee a written notification of the Transferee's acceptance of these Conditions and the Regulations (together with any revised rate of charging referred to in the note to this Condition) and any other provisions of the Contract stating that the Transferee shall be bound as if he were the original Customer.

12.3 The Transferee or the Owner or the Customer shall pay to the Company the reasonable costs of transferring the Goods.

12.4 The Owner and / or Customer guarantees payment to the Company of any charges accruing in respect of the Goods and / or Services provided to the Transferee during the period of 14 days after the transfer and the Company shall be entitled to exercise and / or maintain any lien to which the Company was entitled prior to the transfer whether such lien had been exercised prior to the transfer or not.

12.5 Any transfer requested pursuant to Condition 12 shall constitute a removal of the Goods (or part thereof to which the requested transfer relates) under Condition 10.8.

(Note: Charges made to the Transferee will not necessarily be at the same rate as the charges to the original Customer).

13. SUB-CONTRACTORS

13.1 The Company may engage sub-contractors for the purpose of fulfilling the Contract in whole or in part and may transfer at its own expense any Goods between or within stores. The Company contracts for itself and as agent of and trustee for its

subcontractors and any such sub-contractors shall be entitled to the benefit of these Conditions and the Regulations and shall be under no greater liability than and in addition to that of the Company under the Conditions.

13.2 The Customer and the Owner agree not to bring any claim against any subcontractor, employee or agent.

13.3 If the Customer requests that the Company arranges for another party to perform for the Customer any services (including but not limited to the Services or any part thereof) any services arranged pursuant to such a request are arranged by the Company on the terms that the Company acts as the agent of the Customer and is in no way responsible for or liable to the Customer for the provision of the services so arranged.

13.4 The Customer and the Owner jointly and severally indemnify the Company against all claims, losses, damages, costs, fines, liabilities, penalties, taxes and duties (and all costs and expenses reasonably incurred relating thereto) incurred by or made against the Company arising as a result (wholly or in part) of:

- (a) a breach by the Customer or the Owner of Conditions 13.1, 13.2 or 13.3; or
- (b) a claim by a third party engaged pursuant to clause 13.3; or
- (c) a claim by a subcontractor, agent or employee against the Company in relation to the Contract and / or the Goods and / or the Services to the extent that such claim exceeds the amount for which the Company is liable under these Conditions.

14. REMOVAL AND DISPOSAL OF GOODS

14.1 The Company may at any time give not less than 14 days' written notice to the Customer requiring the Customer to remove the Goods. In the case of perishable goods, the Company shall only be required to give the Customer 3 days' written notice.

14.2 If the Goods are not so removed then the Company shall be entitled after the expiration of such notice (or with immediate effect if reasonably necessary) to give not less than 14 days' written notice (3 days in the case of perishable goods) of the Company's intention to sell or otherwise dispose of the Goods and deduct from any proceeds (if the Goods are sold) all outstanding charges, any interest due, and the cost of disposal and upon the expiration of such further notice, so to deal (accounting to the Customer for the net proceeds of sale, if any, after such deductions).

14.3 If the Goods are not removed (all sums due to or claimed by the Company from the Company having been paid in full in cleared funds) upon the expiry of the notice given under clause 14.2 then the Company may sell or otherwise dispose of the Goods.

14.4 Notice or action by the Company under this Condition shall not in itself terminate the Contract.

14.5 The Company's charges shall continue to accrue after the service of any notice under Condition 14 and shall continue to do so until the Goods are removed, whether by the Customer or pursuant to action by the Company under Condition 14.2. The Customer will pay the Company the costs of sale or other disposal of the Goods or any part thereof in addition.

14.6 For the avoidance of doubt, neither the Customer, the Owner or any other party will be entitled to remove the Goods until all sums due to or claimed by the Company from the Customer have been paid in full in cleared funds.

14.7 The Company shall also be entitled to sell the Goods where any tax or duty in relation to them or in relation to other Goods in the Company's possession pursuant to arrangements with the Customer and / or the Owner is claimed or demanded from or is paid or is payable by the Company and the Customer fails to pay the same within 7 days of being notified of the liability in writing.

14.8 The Company shall not be liable for any alleged failure to achieve a sufficient sale price for the Goods in the event that they are sold or otherwise disposed of by the Company. Any sale or disposal of the Goods or any part thereof pursuant to Condition 14 or as otherwise permitted by law shall be at the Customer's entire risk and expense and the Company is entitled to sell or dispose of the Goods or any part thereof in such manner, by such method and at such price (if a sale is appropriate and achievable in the Company's reasonable opinion as opposed to other forms of disposal) as the Company considers appropriate.

15. **LIEN**

15.1 The Company shall (on its own behalf and as agent for any assignee of its invoices) have a general and a particular lien on the Goods and any documents relating thereto for all sums (whether due or not) payable to or claimed by the Company from the Customer or the Owner on any account (whether relating to the Goods or not) or otherwise claimed in respect of the Goods or other property of the Owner.

15.2 When the Company accounts to the Customer for any balance remaining after payment of any sum due to the Company and the costs of sale or disposal the Company shall be discharged of any liability whatsoever in respect of the Goods.

15.3 Where a lien secures sums payable to or claimed by the Company it shall continue to apply in relation to those sums notwithstanding any transfer of ownership of the Goods or a change of customer.

15.4 Charges shall continue to accrue in respect of any Goods detained under a lien or where the Company is required to retain them by any competent authority.

16. **NOTICES**

Any notice given pursuant to the Contract or otherwise in relation to the Goods or Services shall be duly given if left at or sent by first class pre-paid post to the last known address of the other party or by facsimile to the last notified number evidenced by a successful transmission record, or by e-mail to the last address from which the other party corresponded; and shall if posted be deemed to have been given 2 working days after posting and if by facsimile or e-mail, one working day after sending.

17. **FORCE MAJEURE**

The Company shall not in any event be responsible for any delay in or failure to perform the Services which is caused (wholly or in part) by factors beyond its reasonable control including but not limited to act of God, earthquake, fire, storm, flood, ice or other inclement weather, war, explosion, actual or threatened acts of terrorism, strike, acts of any government or other lawful authority, riot, civil commotion, epidemic, defaults or omissions of the Customer or the Owner (or their agents, employees or subcontractors) or trade embargo or any failure of electricity or other fuel or equipment.

18. **DATA AND CONFIDENTIALITY**

18.1 The Company may use data supplied by or on behalf of the Customer for any purpose appropriate in connection with the performance of the Company's obligations or the exercise of the Company's rights or for business planning by the Company. The Company may share that data with any party providing services to the Company for the purposes of that provision, with any government authority where appropriate and as otherwise required or permitted by law.

18.2 Subject to 18.1, the Company and the Customer shall each keep confidential information or data supplied by or on behalf of the other which is expressed to be confidential or which is of such a nature that it would be regarded as confidential by a reasonable person, except as required by law or to the extent that such data or confidential information is already in the public domain otherwise than as a result of

a breach of this or any other obligation of confidentiality on the part of the disclosing party.

19. TUPE AND SERVICE PROVISION CHANGE

19.1 Where there is a TUPE Transfer, the Customer will indemnify the Company against all liability and expense which the Company may incur in connection with:

- (a) the employment or the termination of employment before the Effective Time of any Employee;
- (b) any failure by the Transferor to comply with its legal obligations in respect of any of the Employees;
- (c) the transfer to the Company by virtue of TUPE of the employment of any person or the applicability of terms of employment, other than those previously notified in writing to, and previously accepted by, the Company;
- (d) any act or omission of the Transferor on or before the Effective Time for which the Company becomes liable by virtue of TUPE; or
- (e) the Transferor's failure to comply with its obligations under regulation 13 of TUPE.

20. SEVERABILITY

If any part of these Conditions is judged by any competent court or Arbitration Tribunal to be invalid or unenforceable, the remaining part or parts shall continue in full force and effect.

21. ENTIRE AGREEMENT

21.1 These Conditions, the Regulations and any document in which the Company's charges or services are set out, quoted or agreed set out the entire agreement between the Company and the Customer in relation to the matters to which they relate and the Customer hereby acknowledges that it has not relied upon any oral or written representations made to it by the Company, any of its employees, representatives or agents and there are no agreements, understandings, promises or conditions between the parties other than as set out in these Conditions and the Regulations.

21.2 The Customer irrevocably and unconditionally waives, releases and discharges any right it may have to seek rescission or termination of the Contract or to claim damages for any misrepresentation whether or not contained in these Conditions or for breach of any warranty not contained in these Conditions unless such misrepresentation or warranty was made fraudulently.

22. **GOVERNING LAW**

These Conditions and any Contract to which they apply shall be governed by and construed in accordance with English law and any claim arising out of or relating to the Contract, the Services or the Goods shall be subject to the exclusive jurisdiction of the Courts where the Company has its principal place of business.

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Road Haulage Association Limited

CONDITIONS OF CARRIAGE 2009

Effective 1 September 2009

PLEASE NOTE THAT THE CUSTOMER WILL NOT IN ALL CIRCUMSTANCES BE ENTITLED TO COMPENSATION, OR TO FULL COMPENSATION, FOR ANY LOSS AND MAY BE SUBJECT TO CERTAIN OBLIGATIONS AND INDEMNITIES. THE CUSTOMER SHOULD THEREFORE SEEK PROFESSIONAL ADVICE AS TO APPROPRIATE INSURANCE COVER TO BE MAINTAINED WHILE CONSIGNMENTS ARE IN TRANSIT.

Company stamp or details

Agro Merchants Whitchurch Ltd
Whitchurch Business Park
Shakespeare Way
Whitchurch
Shropshire
SY13 1LJ

0006681-008

RHA membership number

(hereinafter referred to as "the Carrier") 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, Principal, Partner or other authorised person. If any legislation is compulsorily applicable to the Contract and any part of these Conditions is incompatible with such legislation, such part shall, as regards the Contract, be overridden to that extent and no further.

1. Definitions

In these Conditions:

"Customer" means the person or company who contracts for the services of the Carrier including any other carrier who gives a Consignment to the Carrier for carriage.

"Contract" means the contract of carriage between the Customer and the Carrier.

"Consignee" means the person or company to whom the Carrier contracts to deliver the Consignment.

"Consignment" means goods, whether a single item or in bulk or contained in one parcel, package or container, as the case may be, or any number of separate items, parcels, packages or containers sent at one time in one load by or for the Customer from one address to one address.

"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.

"Trader" means the owner of the Consignment, any other person having an interest therein and anyone acting on behalf of such owner or other person, including, as the case may be, the Customer, sender and Consignee.

2. Parties and Sub-Contracting

- (1) 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.
- (2) 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 and the name of every other such carrier shall be provided to the Customer upon request.
- (3) The Carrier contracts for itself and as agent of and trustee for its servants and agents and all other carriers referred to in (2) above and such other carriers' servants and agents and every reference in these 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 is the Carrier hereunder.
- (4) Notwithstanding Condition 2(3) the carriage of any Consignment by rail, sea, inland waterway or air is arranged by the Carrier as agent of the Customer and shall be subject to the Conditions of the rail, shipping, inland waterway or air carrier contracted to carry the Consignment. The Carrier shall be under no liability whatsoever to whomsoever and howsoever arising in respect of such carriage: Provided that where the Consignment is carried partly by road and partly by such other means of transport any loss, damage or delay shall be deemed to have occurred while the Consignment was being carried by road unless the contrary is proved by the Carrier.

3. Dangerous Goods

Dangerous Goods must be disclosed by the Customer and if the Carrier agrees to accept them for carriage they must be classified, packed, marked, labelled and documented in accordance with the statutory regulations for the carriage by road of the substance declared.

4. Loading and Unloading

- (1) Unless the Carrier has agreed in writing to the contrary with the Customer:
 - (a) The Carrier shall not be under any obligation to provide any plant, power or labour, other than that carried by the vehicle, required for loading or unloading the Consignment.
 - (b) The Customer warrants that any plant, power or labour required for loading or unloading the Consignment which is not carried by the vehicle will be provided by the Customer or on the Customer's behalf.
 - (c) The Carrier shall be under no liability whatsoever to the Customer for any damage whatsoever, howsoever caused, if the Carrier is instructed to load or unload any Consignment requiring plant, power or labour which, in breach of the warranty in (b) above, has not been provided by the Customer or on the Customer's behalf.
 - (d) The Carrier shall not be required to provide service beyond the usual place of collection or delivery but if any such service is given by the Carrier it shall be at the sole risk of the Customer.
- (2) The Customer shall indemnify the Carrier against all claims and demands whatsoever which could not have been made if such instructions as are referred to in (1)(c) of this Condition and such service as is referred to in (1)(d) of this Condition had not been given.

5. Signed Receipts

The Carrier shall, if so required, sign a document or electronic record prepared by the sender acknowledging the receipt of the Consignment but the burden of proving the condition of the Consignment and its nature, quantity or weight at the time of collection shall rest with the Customer.

6. Transit

- (1) Transit shall commence when the Carrier takes possession of the Consignment whether at the point of collection or at the Carrier'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 cartage hours of the district: Provided that:
 - (a) 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 (or by telephone if so previously agreed in writing) of the arrival of the Consignment at the Carrier's premises has been sent to the Consignee;
 - (b) when for any other reason whatsoever a Consignment cannot be delivered or when a Consignment is held by the Carrier 'to await order' or 'to be kept till 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 also be deemed to end.

7. Undelivered or Unclaimed Consignments

Where the Carrier is unable for any reason to deliver a Consignment to the Consignee or as he may order, or where by virtue of the proviso to Condition 6(2) hereof transit is deemed to be at an end, the Carrier may sell the Consignment and payment or tender of the proceeds after deduction of all proper charges and expenses in relation thereto and of all outstanding charges in relation to the carriage and storage of the Consignment shall (without prejudice to any claim or right which the Customer may have against the Carrier otherwise arising under these Conditions) discharge the Carrier from all liability in respect of such Consignment, its carriage and storage:

Provided that:

- (1) the Carrier shall do what is reasonable to obtain the value of the Consignment; and
- (2) 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 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 Consignment 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 is taken away or instructions are given for its disposal.

8. Carrier's Charges

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

- (2) Charges shall be payable when due without reduction or deferment on account of any claim, counterclaim or set-off. If the Customer becomes insolvent or any sums owed by the Customer on any invoice or account with the Carrier become overdue for payment, any credit terms shall be cancelled with immediate effect and all invoices or accounts issued by the Carrier shall immediately be deemed due for payment and thereupon become payable. The Late Payment of Commercial Debts (Interest) Act 1998, as amended, shall apply to all sums due from the Customer.

9. Liability for Loss and Damage

- (1) 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 howsoever or whensoever caused and 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.
- (2) Subject to these Conditions the Carrier shall be liable for:
- physical loss, mis-delivery of or damage to living creatures, bullion, money, securities, stamps, precious metals or precious stones 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 the 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 misrepresentation 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 addressing;
 - riot, civil commotion, strike, lockout, general or partial stoppage or restraint of labour howsoever caused;
 - Consignee not taking or accepting delivery within a reasonable time after the Consignment has been tendered.
- (3) The Carrier shall not in any circumstances be liable for loss or damage arising after transit is deemed to have ended within the meaning of Condition 6(2) hereof, 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.

10. Fraud

The Carrier shall not in any circumstances be liable in respect of a Consignment where there has been fraud on the part of the Customer or the owner, or the servants or agents of either, in respect of that Consignment, unless the fraud has been contributed to by the complicity of the Carrier or of any servant of the Carrier acting in the course of his employment.

11. Limitation of Liability

- (1) 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 £1,300 Sterling per tonne 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 Carrier's 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;
 - nothing in this Condition shall limit the liability of the Carrier to less than the sum of £10;
 - 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 to the Carrier notice in writing to be delivered at least seven days prior to commencement of transit requiring that the £1,300 per tonne limit in 11 (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 shall be required to agree with the Carrier an increase in the carriage charges in consideration of the increased limit, but if no such agreement can be reached the aforementioned £1,300 per tonne limit shall continue to apply.

- (2) The liability of the Carrier in respect of claims for any other loss whatsoever (including indirect or consequential loss or damage and loss of market), and howsoever arising in connection with the Consignment, shall not exceed the amount of the carriage charges in respect of the Consignment or the 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 confirmation in writing of the special interest, agreed time limit and amount of the interest.

12. 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 or fraud as in Condition 10;
- all claims and demands whatsoever (including for the avoidance of doubt claims alleging negligence), by whomsoever made 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 H.M. Revenue and Customs 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.

13. Time Limits for Claims

- (1) 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 seven days, and the claim is made in writing within fourteen days, after the termination of transit;
 - any other loss unless advised thereof in writing within twenty-eight days, and the claim is made in writing within forty-two 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.
- (2) The Carrier shall in any event be discharged from all liability whatsoever and howsoever arising in respect of the Consignment unless suit is brought and notice in writing thereof given to the Carrier within one year of the date when transit commenced.
- (3) 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.

14. Lien

- (1) The Carrier shall have:
- a particular lien on the Consignment, and
 - a general lien against the Trader for sums unpaid on any invoice, account or Contract whatsoever.
- If such lien, whether particular or general, is not satisfied within a reasonable time, the Carrier may sell the Consignment, or part thereof, as agent for the owner and apply the proceeds towards any sums unpaid 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 whatsoever in respect of the Consignment.
- (2) The Carrier may exercise its lien on its own behalf or as agent for any assignee of its invoices at any time and at any place at its sole discretion whether or not sums have become payable in accordance with Condition 8(2) hereof and whether or not the contractual carriage has been completed and these conditions shall continue to apply during the period of exercise of such lien.

15. Unreasonable Detention

The Customer shall be liable to pay demurrage for unreasonable detention of any vehicle, trailer, container or other equipment at the Carrier's current rates of demurrage but the rights of the Carrier against any other person in respect thereof shall remain unaffected.

16. Law and Jurisdiction

Unless otherwise agreed in writing, the Contract and any dispute arising thereunder shall be governed by English law and shall be subject to the jurisdiction of the English courts alone.

**THESE CONDITIONS MAY ONLY BE USED BY
MEMBERS OF THE ROAD HAULAGE ASSOCIATION**