

## **STANDARD TERMS AND CONDITIONS OF M&G TRANSPORT & TECHNICAL SERVICES LIMITED**

These terms and conditions are made up of the following:

- (a) These terms and conditions set out in clause 1 to clause 11 (inclusive)
- (b) The RHA Conditions of Carriage
- (c) The RHA Conditions of Storage

If there is any conflict or ambiguity between the terms of the documents listed above, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list.

### **1. DEFINITIONS**

In these terms:

**"Consignee"** means any individual, company or other legal entity (or agent thereof) including the Customer itself to whom the Contractor agrees with the Customer to deliver the Goods as part of the Services

**"Contract"** means a contract for the provision of the Services by the Contractor to a Customer formed pursuant to these terms

**"Contractor"** means M&G Transport & Technical Services Limited (registered in England and Wales under the number 06609351)

**"Course of Dealings"** means the trading relationship between the Contractor and the Customer whereby over time the Customer enters into more than one Contract with the Contractor for the provision of the Services

**"Customer"** means the company, partnership, sole trader, private individual, museum, gallery, government department or any other legal entity which contracts with the Contractor for the provision of the Services

**"Force Majeure"** means Act of God, explosion, flood, tempest, fire, accident, traffic congestion, war, threat of war, sabotage, insurrection, civil disturbance, strikes, lock-outs or other industrial action, shortage of labour, materials, fuel, parts or machinery, vehicle breakdown or any other matter beyond the reasonable control of the Contractor

**"Goods"** means the property or goods (including their packaging if provided by the Customer) in relation to which the Contractor has agreed to provide the Services and includes any individual component thereof

**"RHA Conditions of Carriage"** means the Road Haulage Association's Conditions of Carriage, as amended from time to time.

**"RHA Conditions of Storage"** means the Road Haulage Association's Conditions of Storage, as amended from time to time.

**"Services"** means the packing and/or handling and/or storage and transportation and/or technical services such as picture hanging and/or any other services whatsoever undertaken by the Contractor for the Customer under a contract

**"Terms"** means the standard terms and conditions of the Contractor set out in this document and (unless the context otherwise requires) includes any special terms agreed in writing between the Contractor and the Customer

**"Working Day"** means a day (other than a Saturday, Sunday or public holiday in England)

**"Writing"** and any similar expression, includes facsimile transmission and email or other forms of electronic communication

### **2. BASIS OF CONTRACT**

- a. The Contractor is under no circumstances a common carrier, and the Services are provided on these terms.
- b. A Contract may only be formed either by the Customer accepting the Contractor's Written estimate or by the Contractor accepting the Customer's written order and in no other circumstances, subject in either case to these Terms, which shall govern the Contract to the exclusion of any other terms subject to which any such estimate is accepted or purported to be accepted, or any such order is made or purported to be made, by the Customer.
- c. The Contractor enters into any Contract in reliance on and on the basis of information supplied by the Customer, including without limitation the information being warranted by the Customer under Clause 5 below and on the basis of freight charges, insurance premiums, fuel costs, sub-contractor costs, exchange rates, value added tax rates and all other expenses including the Contractor's administration charges in force upon the date the Contract is formed remaining current at the date upon which the Services are to be performed under the Contract. Should any of the charges or rates referred to increase between the date of formation of the Contract and the date upon which the Services are to be performed, the Contractor shall have the right to increase the Contract price to reflect such increase in charges or rates. Should the information supplied by the Customer prove to be incorrect or incomplete, the Contractor shall have the right either to increase the Contract price to reflect any corresponding increase in charges or rates or to cancel the Contract without liability on the part of the Contractor.
- d. The Customer may cancel the Contract by notice in Writing to the Contractor but if notice of cancellation by the Customer is received by the Contractor less than 14 days before the Services are due to commence, the Customer shall be liable to pay the Contractor a cancellation charge equivalent to 80% of the Contract price and such amount shall become payable immediately upon service of the notice of cancellation.
- e. These Terms supersede any earlier terms and conditions of the Contractor and, except where the Services are to be supplied to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), exclude so far as it is legally permissible all warranties, conditions or liability imposed or implied by common law, statute or custom of the trade, and also override any terms and conditions stipulated by the Customer.
- f. In any Course of Dealings, every Contract between the Customer and the Contractor subsequent to the first shall also be subject to these Terms and the Customer is deemed to have received notice of these Terms for the purpose of every such subsequent Contract with the Contractor.
- g. These Terms may only be waived or varied by the written confirmation of such waiver or variation by a director of the Contractor.

### **3. THE PARTIES AND SUB-CONTRACTORS**

- a. The Customer warrants that it is either the owner of the Goods or is acting on behalf of the owner of the Goods and is also authorised to accept these Terms on the owner's and the Consignee's behalf.
- b. The Contractor contracts for itself and as agent or trustee for its sub-contractors and other agents. All such sub-contractors or agents shall have the benefit of the Contract individually and collectively, and together with the Contractor shall be under no greater liability to the Customer than the Contractor under these Terms.

### **4. THE CONTRACTOR**

- a. The Contractor may from time to time engage sub-contractors and/or other agents to perform the Contract or any part thereof on its behalf and shall notify the Customer of any such engagement.
- b. The Contractor reserves to itself the right to determine the means, route and procedure to be followed in performing the Services or any part thereof. In the event that the Customer stipulates the means, route or procedure to be followed, the Customer will be liable for all the consequences thereof except in the event of any negligent act or omission by the Contractor or its servants or its agents.
- c. Where the Services are for, or include storage, the Contractor may refuse to deliver up to any person any goods deposited unless a delivery order in writing (identifying the goods to be delivered up and the person to whom they are to be delivered up) signed by the Customer shall have been given to the Contractor.
- d. Where the Services are for or include packing, handling or transporting, the Goods may be stored or otherwise held at any place at the sole discretion of the Contractor pending forwarding and/or delivery and the costs thereof shall be for the account of the Customer.
- e. The Contractor is entitled to retain and be paid all brokerage, commission, allowances and any other remunerations retained or paid by shipping and forwarding agents or freight forwarders and/or carriers and/or insurance brokers.

- f. The Contractor shall not be obliged to make any declarations to the nature or value of the Goods or as to any special interest in delivery unless required by law or expressly instructed by the Customer in writing prior to formation of the Contract.

## 5. THE CUSTOMER

- a. In addition to the warranty in Clause 3 a. the Customer warrants that at the time of the conclusion of the Contract:-
- (i) the Goods are not encumbered in any way and shall remain so during the period of the provision of the Services by the Contractor;
  - (ii) the Goods have been fully and accurately listed;
  - (iii) full and accurate disclosure in writing has been given to the Contractor of all matters relating to the Goods which might reasonably be expected to influence a Contractor in its decision whether to provide the Services and upon what terms. This disclosure shall include details of the market value of the Goods, the Goods' value for insurance purposes, any pre-existing damage or imperfections on the Goods; any precautions which might reasonably be expected to be required having regard to the nature of the Goods and the Services contemplated and all statutory duties which the Contractor may need to comply with in handling the Goods and in providing the Services generally;
- b. The Customer further warrants that when made available to the Contractor for the performance of the Services:-
- (i) the Goods shall not be of such a type or in such condition as is likely to cause damage or injury to any person or other property whatsoever;
  - (ii) the Goods (unless otherwise agreed by the Contractor as part of the Services) will be properly and securely packed, labelled and addressed and will be able to withstand the normal incidents of the Services. Such packing is to be to the standard generally required by a specialist packing service for the goods in question;
  - (iii) the Goods have been securely stored by the Customer prior to collection by the Contractor and no damage has been caused to the Goods save for that detailed on any condition report provided by the Customer to the Contractor pursuant to Clause 5 c.;
  - (iv) unless insured by the Contractor as part of the Services, the Goods are insured with reputable insurers on terms no less wide than all risks for the duration of the Services. In this connection it is required by the Contractor that the Customer shall ensure that the Contractor's interests is noted as co-assured in the insurance and the Customer, if so required by the Contractor, shall provide the Contractor with all relevant documents to evidence the insurance cover in place in respect of the Goods;
  - (v) the Customer shall be liable for all duties, taxes, imports, levies, dues, deposits or outlays of any kind whatsoever in connection with the Goods.
- c. Prior to collection of the Goods by the Contractor, the Customer shall supply to the Contractor (in a form acceptable to the Contractor) a condition report detailing any damage to or defects in the Goods or which are apparent on the face of the Goods (**Condition Report**).
- d. The Contractor will under no circumstances be liable for or in respect of any pre-existing damage or defect in the Goods detailed in the Condition Report or any damage to or defect in the Goods not detailed in the Condition Report but which the Customer ought reasonably to have been aware of, having carried out proper checks and having made appropriate enquiries prior to the Goods being made available for collection by the Contractor.
- e. Further to Clause 5 b. (ii), in the event that the Contractor is informed by the Customer that the Goods have been properly and securely packed, labelled and addressed but if in the Contractor's reasonable opinion, the Goods have not been so prepared, the Contractor may refuse to accept or deal with the Goods or if the Contractor chooses to accept the Goods, the Customer shall be responsible for all material and time costs incurred by the Contractor in repacking, labelling and addressing the Goods to the appropriate standard. If the Contractor exercises its right to refuse to accept or deal with the Goods, the Contract shall be deemed to have been cancelled without liability on the part of the Contractor and the Contractor shall be entitled to make a reasonable charge for the Services already performed up to cancellation including the reimbursement of any out of pocket expenses incurred.

## 6. PAYMENT AND LIEN

- a. Subject always to the provisions of Clause 2 c. above the Contractor's charges for the Services are payable in the amounts and when specified in the Contract. If nothing is specified in the Contract, the charges are payable in full at the time of the Services or each stage of the Services is completed by the Contractor or if due to circumstances beyond the Contractor's control the Services cannot be completed in full, then the charges fall due within 14 days of the Contractor notifying the Customer in writing of such circumstances. Any and all additional charges of whatsoever nature are payable by the Customer upon written demand by the Contractor.
- b. Where the Services are to be performed in stages, each stage shall constitute a separate Contract. Failure by the Contractor to perform any one or more of the stages in accordance with these Terms or any claim by the Customer in respect of any one or more stages shall not entitle the Customer to treat the Contract as a whole as repudiated.
- c. When the Goods are accepted or dealt with by the Contractor upon instructions from the Customer to collect freight, duties, charges, or any other expenses whatsoever from the Consignee or any other person, the Customer shall remain responsible and make payment for such expenses if and insofar as they are not paid by the Consignee or other person within 4 weeks of written demand for such expenses by the Contractor.
- d. In the event that any sums due to the Contractor are not paid upon the date that they become due, the Contractor may charge the Customer interest on such amounts under the Late Payment of Commercial Debts (Interest) Act 1998.
- e. If the Consignee fails to take delivery of the Goods or fails to give the Contractor adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Contractor's fault) then, without limiting any other right or remedy available to the Contractor, the Contractor:
- (i) shall have a general lien on the Goods and documentation relating to the Goods in its possession or under its control or the possession or control of its sub-contractors or agents for all amounts due or owing at any time to the Contractor by the Customer;
  - (ii) may at any time open and inspect any consignment of Goods without prior authorisation of the Customer;
  - (iii) may at any time arrange for the Goods to be returned to the Customer and charge the Customer for the reasonable costs of doing so; and
  - (iv) may store the Goods until actual delivery to the Consignee or return to the Customer and charge the Customer for the reasonable costs (including insurance) of storage.

## 7. CLAIMS, DAMAGES & LIMITATIONS OF LIABILITY

- a. The Consignee shall upon delivery examine the Goods and shall promptly (but in any event within three Working Days of delivery) notify the Contractor in Writing of any apparent damage to the Goods caused in transit or otherwise in the performance of the Services or of any defect or omission in the Services performed. In default of the written notification referred to in Clause 7 a. the Contractor shall be deemed conclusively to have properly performed its obligations under the Contract.
- b. In the event that the written notification referred to in Clause 7 a. is received by the Contractor, the Contractor may (but shall not be obliged to) arrange for an inspection of the Goods by a nominated representative of the Contractor. The Consignee hereby agrees to afford such inspection facility to the Contractor or its nominated representative and further agrees to co-operate as far as reasonably possible to enable the inspecting party to properly investigate and address the Consignee's particular queries.
- c. Except in respect of death or personal injury caused by the Contractor's negligence, or as expressly provided in these Terms, the Contractor shall not be liable to the Customer or the Consignee by reason of any loss, mis delivery or damage to the Goods, representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any loss of profit, loss of income, loss of business, loss of business reputation or any other indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of the Contractor, its servants or agents or otherwise) which arise out of or in connection with the provision of the Services or their use by the Customer or the Consignee, and the entire liability of the Contractor under or in connection with the Contract shall not exceed the amount of the Contractor's charges for the provision of the Services, except as otherwise expressly provided in these Terms.
- d. The Contractor shall not be liable to the Customer or the Consignee or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Contractor's obligations, if the delay or failure was due to Force Majeure.

- e. Where the Services are to be supplied under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by these Terms.

#### **8. INSURANCE**

- a. The Goods will not be insured by the Contractor unless expressly agreed in writing prior to commencement of the Services.
- b. At the written request of the Customer, the Contractor may agree to accept liability for any loss or damage to the Goods caused by the negligent acts or omissions of the Contractor, its servants, or agents, up to an amount agreed between the parties in writing prior to the commencement of the Services. The Contractor reserves the right to increase their charges to reflect any increased insurance premiums where any such request is made by the Customer under this clause 8b.
- c. Where the Contractor agrees to an increased level of liability in accordance with clause 8b, unless otherwise agreed in writing, this will be declared on the Contractor's existing general legal liability policy and the Contractor shall not be obliged to affect a separate insurance policy on the specific Goods, unless expressly agreed in writing in accordance with clause 8d below.
- d. At the written request of the Customer, the Contractor may agree to arrange a separate insurance policy to insure specific Goods, which shall note the Contractor's interest as co-assured. In arranging any such policy under this clause 8c, the Contractor acts solely as the Customer's agent and the policy will be arranged solely on the basis of information provided by the Customer. The Contractor shall not be liable for any incorrect information supplied by the Customer.

#### **9. WARRANTY AND INDEMNITY**

- a. The Contractor warrants to the Customer that the Services will be provided using reasonable care and skill and it shall use its reasonable endeavours to meet any delivery times and dates agreed in the Contract but time shall not be of the essence in relation to the Contractor's delivery obligations.
- b. The Contractor shall have no liability to the Customer and the Customer hereby indemnifies the Contractor against and for any loss, damage, costs, expenses or other claims for compensation arising from any instructions or information supplied by the Customer which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Customer.

#### **10. INSOLVENCY OF CUSTOMER**

This Clause 10 applies if:

- a. the Customer makes a composition or voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) enters administration or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction), or a moratorium comes into force in respect of the Customer (within the meaning of the Insolvency Act 1986) ; or
- b. an encumbrancer takes possession, or a receiver is appointed, or any of the property or assets of the Customer; or
- c. the Customer ceases, or threatens to cease, to carry on business; or
- d. the Contractor reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

If this Clause 10 applies then, without limiting any other right or remedy available to the Contractor, the Contractor may cancel the Contract or suspend any further performance of the Services under the Contract without any liability to the Customer, and if any Services have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary. If the Contractor cancels the Contract, it shall be entitled to make a cancellation charge to reflect any costs it has reasonably incurred under the Contract up to the time of cancellation and any out of pocket expenses.

#### **11. GENERAL**

- a. These Terms constitute the entire agreement between the parties in relation to the Contract and supersede any previous agreement or understanding between them relating to the Contract.
- b. A notice required or permitted to be given by either party to the other under these Terms shall be in Writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- c. No failure or delay by either party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.
- d. If any provision of these Terms is held by any court or other competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected.
- e. English law shall apply to the Contract and the parties agree to submit to the exclusive jurisdiction of the English courts.