



Road Haulage Association Limited

CONDITIONS OF CARRIAGE 2009

EXPLANATORY NOTES

STATUS OF THE CONDITIONS

The RHA Conditions of Carriage 2009 result from a review of the RHA Conditions of Carriage 1998. They will take effect from 1st September 2009 and include amendments reflecting changes in the law and members' experience in using the RHA Conditions of Carriage 1998. Other specialist group conditions are in the process of revision to take account of the new RHA Conditions of Carriage and will be re-issued over the coming months.

The use of the RHA Conditions by members is not compulsory but members are recommended to use them as they are designed to enable a reasonable contractual balance to be struck between the interests of members as carriers and those of their customers. Members should always seek professional advice before making or agreeing any variation in the conditions to meet special circumstances.

The Conditions are the copyright of the RHA and may not be used by non-members. It is most important that members should arrange to have the printed forms stamped or overprinted with their details in the box provided at the top and with their membership number in the space provided as this will deter the use of the form by non-members. There have been instances in the past where non-members using the RHA Conditions have been prosecuted under the provisions of the Trades Descriptions Act.

TO USE THE CONDITIONS

A member who intends to trade under these Conditions, or any of the specialist group conditions, should take the following action:-

1. Refer the Conditions to his insurers or brokers and secure any necessary adjustments to existing insurance covers.
2. Inform existing customers in writing, preferably by Recorded Delivery, of the intention to trade subject to the new Conditions saying for example: "Please note that as from the _ day of _ 2009 goods will be accepted for carriage only subject to the RHA Conditions of Carriage 2009 a copy of which is attached/available free on request". If it is intended to use the specialist group conditions reference should instead be made to the relevant specialist conditions.
3. Inform existing sub-contractors in writing, preferably by Recorded Delivery, that as from the _ day of _ 2009 goods will be accepted for carriage and sub-contracted only subject to the RHA Conditions of Carriage 2009. If it is intended to use the specialist group conditions reference should instead be made to the relevant specialist conditions.
4. Retain Recorded Delivery receipts or, if the above letters are not sent by Recorded Delivery, maintain a permanent record of customers and sub-contractors and the dates on which letters were dispatched.
5. Print or overprint at the foot of all letterheads, quotation forms, fax forms, e-mailed documents, confirmation forms and notes, Consignment Notes and invoices etc: "Goods are accepted for carriage (and sub-contracted) only subject to the RHA Conditions of Carriage 2009 a copy of which is available free on request." If it is intended to use the specialist group conditions reference should instead be made to the relevant specialist conditions. If present letterheads, etc refer to the "current RHA Conditions of Carriage" this will probably suffice provided that all existing customers and sub-contractors have been informed in accordance with 2-4 above that you are now using the 2009 conditions.
6. Maintain a stock of the printed Conditions for issue to customers or sub-contractors as and when requested.
7. Specifically mention that the Conditions will apply during any telephone call in which the terms of the contract are first agreed verbally, and confirm this immediately afterwards to the customer by fax, e-mail, letter, note or memo at the same time as any quotation. Clear, simple, contemporary, dated and timed documents provide better proof than later conflicting oral evidence of recollections of conversations.

EFFECT OF THE CONDITIONS

The intention in revising the RHA family of Conditions has been to retain their familiar style, layout and content, wherever outside factors have not suggested changes, so that they retain their status as an industry standard. The principal amendments to the Conditions of Carriage are set out below:-

CONDITION 1: The definition of "Dangerous Goods" has been revised to take account of the application of the European Agreement Concerning the

International Carriage of Dangerous Goods by Road (ADR) as domestic law. A definition of what constitutes "writing" has been introduced to take account of the use of e-mail and similar means of communication. A definition of "Trader" has been introduced for use with the revised lien clause.

CONDITION 2: There are no substantive changes.

CONDITION 3: The use of TREMCARDS in the carriage of dangerous goods has been phased out since 1st July 2009 in favour of documentary provisions based around the ADR Agreement. The revised Condition 3 takes this into account. A separate guidance note for members is in preparation. Members are again reminded of the statutory requirement for specialist knowledge, training and equipment before undertaking most dangerous goods haulage.

CONDITION 4: References to "special appliances" have been replaced by references to "plant power or labour" throughout to achieve greater consistency across the clauses.

CONDITION 5: The wording has been simplified in the interests of greater clarity

CONDITION 6: There are no substantive changes.

CONDITION 7: There are no substantive changes.

CONDITION 8: The opportunity has been taken to introduce a provision to cancel credit terms immediately if a customer becomes insolvent or fails to pay invoices when due. This is intended to work with the revised lien clause to improve the position of carriers when faced with defaulting customers. Any overdue accounts are made specifically subject to the benefit of the whole of the Late Payment of Commercial Debts (Interest) Act 1998, as amended, in favour of the carrier. A separate guidance note for members on how to make best use of the Act if customers default is under preparation.

CONDITION 9: There are no substantive changes.

CONDITION 10: There are no substantive changes.

CONDITION 11: There are no substantive changes.

CONDITION 12: There are no substantive changes.

CONDITION 13: The working of the time period of one year within which legal proceedings must be brought against the carrier has been brought into line with some other conditions by requiring that written notice of any proceedings must be given within the one year period itself.

CONDITION 14: This Condition has been substantively revised for the first time since 1991 to reflect both the practical manner in which the exercise of liens has developed in recent years and the way in which courts have tended to validate a wider general lien for carriers when certain conditions have been met. The right of lien is potentially exercisable against a range of persons coming within the definition of "Trader" and the clauses have been re-written to widen and accelerate the potential circumstances in which a lien may be validly exercised at a time when carriers are facing increasing difficulties from defaulting customers. More detailed guidance is being separately developed for members on factors to take into account when seeking to exercise a lien. It should be emphasised that liens remain a contentious area of law and members should always seek clarification of their rights in specific circumstances from their legal advisers at the earliest opportunity to avoid possible later difficulties.

CONDITION 15: This now stipulates that demurrage will be due at the carrier's current rate of demurrage for unreasonable detention of any vehicle, trailer, container or other equipment such as pallets. Carriers must establish their own individual scales for demurrage based on their actual operating costs as competition law prevents the RHA from making any recommendations in this area. However, it is intended to provide members with information from which they can construct a framework for setting demurrage charges based on their own real-time costs of vehicle operation.

CONDITION 16: The law and jurisdiction clause introduced in the 1998 Conditions has been slightly modified to take account of international practice. It now states that English law applies to the contract and any dispute arising under it and that proceedings should be brought only in the English courts. As under the previous Conditions, carriers in Scotland and Northern Ireland may wish to vary the Condition to apply a local law and jurisdiction and separate guidance will be available to members on how to do so.