

CONDITIONS

ASPRAY TRANSPORT LTD. AND ASSOCIATED COMPANIES (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 to do so.

1. Definitions.

In these Conditions:

"Trader" means the customer who contracts for the services of the Carrier.

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

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

"Dangerous Goods" means:

- (a) goods which are specified in the special classification of dangerous goods issued by the British Railways Board or which although not specified therein, are not acceptable to the British Railways Board for conveyance on the ground or their dangerous or hazardous nature. or
- (b) goods which, although not included in (a) above are of similar kind.

2. Parties and Sub-Contracting.

- (1) The Trader warrants that he is either the owner of the goods in any 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 such other carrier shall be provided to the Trader on request.
- (3) The Carrier contracts for itself as an agent of and trustees for its servants and agents and all other carriers referred to in (2) above and such other carrier's servants and agents and every reference in Conditions 3-17 inclusive hereof to "The Carrier" shall be deemed to include every such other 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 Trader or any other party than is the Carrier hereunder.

3. Dangerous goods.

If the Carrier agrees to accept Dangerous Goods for carriage such goods must be accompanied by a full declaration of their nature and be properly and safely packed and labelled in accordance with any statutory regulations for the time being in force for carriage by road.

4. Loading and Unloading.

- (1) When collection or delivery takes place at the Trader's premises the Carrier shall not be under any obligation to provide any plant, power, or labour in addition to the Carrier's carmen, required for loading or unloading at such premises.
- (2) 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 Trader who shall indemnify the Carrier against all claims and demands whatsoever which could not have been made if such service had not been given.
- (3) (a) Goods requiring special appliances for unloading from the vehicle by which they are carried are accepted for carriage only on condition that such appliances are made available by the Trader at destination.
(b) When the Carrier is, without prior arrangement in writing with the Trader, called upon to load or unload goods requiring special appliances for loading or unloading, the Carrier shall be under no liability whatever to the Trader for any damage whatever, however caused arising out of such loading or unloading and the Trader shall indemnify the Carrier against all claims and demands whatever which could not have been made if such assistance had not been given.

5. Consignment Notes.

The Carrier shall, if so required, sign a document prepared by the sender acknowledging the receipt of the Consignment but no such document shall be evidence of the condition or of the correctness of the declared nature, quantity, or weight of the Consignment at the time it is received by the Carrier.

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 and
 - (b) when for any other reason whatever a Consignment cannot be delivered or when a Consignment is held by the Carrier to await order 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 be deemed to end.

7. Undelivered or Unclaimed Goods

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 provision to Condition 6(2) hereof transit is deemed to be at an end, the Carrier may sell the goods 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 goods shall (without prejudice to any claim or right which the Trader may have against the Carrier otherwise arising under these Conditions) discharge the Carrier from all liability in respect of such goods, their carriage and storage.

Provided that:

- (a) the Carrier shall do what is reasonable to obtain the value of the Consignment and
- (b) the power of sale shall not be exercised where the name and address of the sender 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 goods will be sold unless within the time specified in the such notice, being a reasonable time in the circumstances from the giving of such notice, the goods are taken away or instructions are given for their disposal.

8. Carrier's Charges.

- (1) The Carrier's charges shall be payable by the Trader without prejudice against the consignee or any other person. Provided that when the goods are consigned 'carriage forward' the Trader 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) Except where a quotation states otherwise all quotations based on a tonnage rate shall apply to the gross weight unless:
 - (a) the goods exceed 3 cubic metres in measurement per tonne, in which case the tonnage rate shall be computed upon and apply to each measurement of 3 cubic metres or any part thereof, or
 - (b) the size or shape of the Consignment necessitates the use of a vehicle of greater carrying capacity than the weight of the consignment would otherwise require, in which case the tonnage rate shall be computed upon and apply to the carrying capacity of such vehicle as is reasonably required.
- (3) Charges shall be payable on the expiry of any time limit previously stipulated and the Carrier shall be entitled to interest at the average overdraft interest rates being charged at Lloyds Bank Limited and Barclays Bank Limited current at this time, calculated on a daily basis on all amounts overdue to the Carrier.

9. Liability for Loss or Damage.

- (1) The Trader shall be deemed to have elected to accept the terms set out in (2) of this Condition unless, before transit commences, the Trader has agreed in writing that the Carrier shall not be liable for any loss or mis-delivery of or damage to goods however or whenever or not caused or contributed to directly or indirectly by any act, omission, neglect, default or other wrongdoing on the part of the Carrier.
- (2) Subject to these Conditions the Carrier shall be liable for:
 - (i) loss or mis-delivery of or damage to livestock, bullion, money, securities, stamps, glass, liquids, chemicals, precious metals or precious stones only if
 - (a) the Carrier has specifically agreed in writing to carry any such items and
 - (b) the Trader has agreed in writing to reimburse the Carrier in respect of all additional costs which result from the carrying of the said items and
 - (c) the loss, mis-delivery or damage is occasioned during transit and results from negligent act or omission by the Carrier,
 - (ii) any loss or mis-delivery of or damage to any other goods occasioned during transit unless the same has arisen from and the Carrier has used reasonable care to minimise the effects of,
 - (a) an act of God;
 - (b) any consequences of war, invasion, act of foreign enemy, hostilities (whether war, or not), civil war, rebellion, insurrection, military or usurped power or confiscation, requisition, or destruction or damage to property by or under the order of any government or public or local authority;
 - (c) seizure or forfeiture under legal process;
 - (d) error, act, omission, mis-statement or mis-representation by the Trader or other owner of the goods or by servants or agents of either of them.
 - (e) inherent liability to wastage in bulk or weight, latent defect or inherent defect, vice or natural deterioration of the goods;
 - (f) insufficient or improper packing;
 - (g) insufficient or improper labelling or addressing;
 - (h) riot, civil commotion, strike, lockout, general or partial stoppage or restraint of labour from whatever cause;
- (3) The carrier shall not in any circumstances be liable for loss of or damage to goods after transit of such goods 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.

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 Trader or the owner of the goods or the servants or agents of either in respect of that Consignment, unless the fraud has been contributed 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 loss or mis-delivery of or damage to goods shall in all circumstances be limited as follows:
 - (a) where loss, mis-delivery or damage, however sustained, is in respect of the whole of the Consignment to a sum calculated at the rate of £15,000 per tonne on either the gross weight of the Consignment or, where applicable the tonnage computed in accordance with Condition 6(2) or (b) hereof.
 - (b) where loss, mis-delivery or damage, however sustained is in respect of part of the Consignment in the proportion of the sum ascertained in accordance with (1) (a) of this Condition which the actual value of that part of the Consignment bears to the actual value of the whole of the Consignment.
- Provided that:
 - (i) nothing in this Condition shall limit the liability of the Carrier to less than the sum of £15;
 - (ii) the Carrier shall be entitled to require proof of the value of the whole of the Consignment and any part thereof lost, mis-delivered or damaged;
 - (iii) the Trader shall be entitled at any time prior to commencement of transit to give seven days written notice to the Carrier requiring that the aforementioned £15,000 per tonne limit be increased but not so as to exceed the value of the Consignment and in the event of such notice being given to the Trader shall within the seven days agree with the Carrier an increase in the carriage charges in consideration of the said increase limit.
- (2) Notwithstanding 11(1) the liability of the Carrier in respect of the indirect or consequential loss or damage, however arising and including loss of market, shall not exceed the amount of the carriage charges in respect of the Consignment of the amount of the claimant's proved loss, whichever is the smallest, unless:
 - (a) at the time of entering into the Contract with the Carrier the Trader declares to the Carrier a special interest in delivery in the case of loss or damage or of an agreed time limit being exceeded and agrees to pay a surcharge calculated on the amount of that interest and;
 - (b) prior to commencement of the transit the Trader has delivered to the Carrier written confirmation of the special interest, agreed time limit and amount of the interest.

12. Indemnity to the Carrier.

The Trader shall indemnify the Carrier against:

- (1) all consequences suffered by the Carrier (including but not limited to claims, demands, proceedings, lines, penalties, damages, costs, expenses, and loss or damage to the carrying vehicle and to other goods carried), of any error, omission, mis-statement or misrepresentation by the Trader or other owner of the goods or by any servant or agent of either of them, insufficient or improper packing, labelling or addressing of the goods or fraud as in Condition 10.
- (2) all claims and demands whatever by whoever made in excess of the liability of the Carrier under these Conditions.
- (3) all losses suffered by and claims made against the Carrier in consequence of loss of or damage to property caused by or arising out of the carriage by the Carrier of Dangerous Goods whether or not declared by the Trader as such.
- (4) all claims made upon the Carrier by HM Customs and Excise in respect of dutiable goods consigned in bond whether or not transit has ended or been suspended.

13. Time limit for Claims.

The Carrier shall not be liable for:

- (1) loss from a parcel, package or container or from an unpacked Consignment or for damage to a Consignment or any part of a Consignment unless he is advised thereof in writing otherwise than upon a consignment note or delivery document within three days and the claim is made in writing within seven days after the termination of transit.
 - (2) loss, mis-delivery or non-delivery of the whole of the Consignment or of any separate parcel, package or container forming part of a Consignment unless he is advised of the loss, mis-delivery or non-delivery in writing otherwise than upon a consignment note or delivery document within twenty-eight days, and the claim is made in writing within forty-two days after the commencement of transit
- Provided that if the Trader proves that:
- (a) it was not reasonably possible for the Trader to advise the Carrier or make a claim in writing within the time limit applicable and
 - (b) 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 in this Condition.

14. General Lien.

The Carrier shall have a general lien against the owner of the goods for any monies whatever due from the Trader or such other owner to the Carrier. If any such lien is not satisfied within a reasonable time the Carrier may at his absolute discretion sell the goods or part thereof as agent for the owner and apply the proceeds towards the monies due and the expenses of the retention insurance and the sale of the goods and shall upon accounting to the Trader for any balance remaining be discharged from all liability whatever in respect of the goods.

15. Unreasonable Detention.

The Trader shall be liable for the cost of unreasonable detention of any vehicle trader container or sheet but the rights of the Carrier against any other person in respect thereof shall remain unaffected.

16. Computation of Time.

In the computation of time where any period provided by those Conditions in seven days or less Saturdays, Sundays and all statutory public holidays shall be excluded.

17. Impossibility of Performance.

The Carrier shall be relieved of its obligation to perform the Contract to the extent that the performance thereof is prevented by failure of the Trader, fire, weather conditions, industrial dispute, labour disturbance or cause beyond the reasonable control of the Carrier.
The aforementioned applicable as and from 1st January 1982.