

# Conditions of Carriage



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# Conditions Of Carriage

## CANDY CARRIERS LIMITED

(Hereinafter referred to as 'the Carrier') accepts goods for carriage upon the terms and subject to the conditions set out below (hereinafter referred to as 'the conditions'),

Unless otherwise agreed, in writing, by an officer of the Carrier, who has express authority to do so:

- (i) The conditions shall supersede any other terms and conditions appearing elsewhere and shall prevail over and exclude any terms or conditions stipulated or incorporated or referred to by the Trader, his agents, servants or any third party;
- (ii) It shall be a pre-condition of the Carrier accepting goods for carriage, that the same is subject to the conditions in all respects.  
No verbal, written, or other addition, variation or amendment to the condition shall be effective.

## DEFINITIONS

In the conditions the following expressions shall have the meaning hereby respectively assigned to them;

**'TRADER'** shall mean a customer who contracts with the Carrier for the Carrier's Services.

**'CONSIGNMENT'** shall mean goods in bulk or contained in one parcel or package or in any number of separate parcels or packages, in all cases sent at one time, in one load, from one address to one address.

**'CONTRACT'** shall mean the contract of carriage between the Trader and the Carrier.

**'CARRIER'** shall, where the context so admits, include the Carrier's officers, servants or agents and also any other carrier or sub-contracting party whom the Carrier is authorised and permitted to use or engage under these conditions.

## CARRIER IS NOT A COMMON CARRIER

The Carrier is not a common Carrier and will only accept goods for carriage on these conditions.

### 1) PARTIES AND SUB-CONTRACTING

- (i) Where the Trader is not the owner of some or all of the goods in any particular consignment, the Trader hereby warrants that it is for all purposes the lawful and duly authorised agent of the owner or owners thereof and that it hereby accepts the conditions for itself and for and on behalf of any other person having any interest in the consignment.
- (ii) The Carrier may employ and engage the services of any carrier for the purposes of fulfilling the contract and any such other carrier shall have the like power to sub-contract on the terms.
- (iii) The Carrier enters into the contract for and on behalf of itself and its officers, servants agents and sub-contractors, all of whom shall be fully entitled to the benefits of the contract and shall be under no liability whatsoever to the Trader or any one claiming through it in respect of a consignment save as herein provided for.

### 2) CARRIER'S CHARGES

- (i) The Carrier shall not accept any consignment under a contract of carriage unless either the Trader has opened an account with the Carrier and is not in breach of any of the conditions or credit limits applicable thereto or the consignment is a cash

transaction. Where the transaction is a cash transaction, payment will be required by the Carrier on collection or acceptance of the consignment unless otherwise agreed in writing. If the Trader has opened an account with the Carrier, the Carrier shall submit invoices to the Trader weekly and the Trader shall be obliged to settle such invoices within 21 days of the date when the invoice was first issued.

- (ii) The right to charge interest at the rate of 2% per month on any invoice not paid within the payment terms is reserved by the Carrier.
- (iii) The Carrier's charges for carriage and incidental services shall be payable by the Trader without prejudice to the Carrier's rights against the consignee or any other person. The Carrier shall only accept 'carriage forward' or 'paid on' consignments by prior written arrangement in which event 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.
- (iv) Where the Trader shall have any claim or counterclaim or any alleged claim or counterclaim this shall not entitle the Trader to defer or withhold payment of any money due or liabilities incurred to the Carrier and neither shall the Trader, under any circumstances, be entitled to any rights of set-off in relation thereto.
- (v) The Trader shall not be entitled to defer or withhold payment of monies due or liabilities incurred to the Carrier by reason of the absence of, or any discrepancy in, a signed delivery note.
- (vi) The Carrier shall have a first specific lien on the consignment for all the Carrier's charges referred to hereunder and shall have the same rights of sale in relation thereto as are set out hereafter under Condition 17.
- (vii) The Carrier may at times charge the Trader for additional expenses incurred whilst carrying out duties for the Trader. Such charges may include road tolls or fines incurred or the cost of previously unforeseen events and which may not have been included in the original quote.
- (viii) The account of the Trader shall lapse if for a period of 26 weeks no trading has taken place. The Trader can reapply for the account facilities to be reopened.
- (ix) Should a payment by the Trader fail to clear through normal banking procedures the Carrier's account facilities automatically cease. The Trader can reapply for the account facilities to be reopened.
- (x) Account facilities are not automatically transferable should the Trader's provided bankers account details change in any way.

### 3) VARIATION OF TERMS

The price at which the Carrier has agreed to deliver or procure the delivery of the consignment is based on:

- (i) The warranties and indemnities herein given and accepted on the part of the Trader
- (ii) The Carrier's costs of maintaining insurance cover against the liabilities of its part assumed thereunder, and
- (iii) The exclusions, limitations and restrictions of and on the Carrier's liability hereunder.
- (iv) Where the Trader required any variation or amendment to the terms of the Conditions then the Carrier may consider negotiating a different price.

# Conditions Of Carriage (2)

## 4) MONEY BACK GUARANTEE

- (i) Where the Trader has paid a surcharge for Saturday delivery or for overnight timed delivery and the Carrier fails to deliver on Saturday or by the specified time, as the case may be, then the Trader shall be entitled to a refund of the difference between the surcharge paid and the Carrier's standard delivery charge.
- (ii) The money back guarantee provided for hereunder shall not apply where the Carrier's failure to deliver on Saturday or by the specified time period, as the case may be, is caused by factors beyond its control as the same are specified in Condition 16, hereafter.

## 5) PACKAGING, LABELLING, SIZE AND DANGEROUS GOODS

- (i) The Trader warrants that each article comprised in the consignment has been properly described to the Carrier and that the consignment itself has been properly marked, addressed and packaged so as to ensure at all times safe storage and transportation with ordinary care and handling.
- (ii) The Trader shall address and label every consignment in accordance with the Carrier's requirements and it shall be accompanied by the Carrier's consignment note containing such particulars, as the Carrier shall reasonably request.
- (iii) If the Carrier agrees to accept dangerous goods for carriage, such goods must be accompanied by a full declaration of their nature and contents and be properly and safely packed in accordance with any statutory regulations for the time being in force in relation to all such goods and/or their transportation.
- (iv) The Trader shall indemnify the Carrier against all costs, losses, damages, expenses or other liability whatsoever arising out of the carriage of any dangerous goods (whether declared as such or not) save insofar as the same arise out of the Carrier's own negligence.

## 6) RECEIPTS FOR CONSIGNMENTS

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

## 7) LOADING AND UNLOADING

- (i) When collection or delivery shall take place other than at the Carrier's own premises, the Carrier's shall not be under any obligation, whatsoever, to provide power, labour or plant which, in addition to the Carrier's own drivers, is required for loading and unloading. Any such power, labour or plant shall be provided at the sole risk and cost of the Trader who shall indemnify and keep indemnified the Carrier against all losses, liabilities, costs, damages, expenses, claims or actions suffered or incurred by the Carrier in respect of the provision or use of the same or any other matter relating thereto.
- (ii) Goods requiring special appliances for unloading are accepted for carriage only on condition that the Trader has duly ascertained from the consignee that such appliances are available at the specified place of delivery.

## 8) UNREASONABLE DETENTION

The Trader shall be liable to the Carrier for all costs, damages or expenses suffered by the Carrier in respect of unreasonable, abnormal or unusual detention of the Carrier's vehicles, containers

and other things which arise as a result of the nature, state, or packaging of the consignment or any part thereof. Furthermore, any time spent at either the point of collection or point of delivery of the consignment in excess of one quarter of an hour shall at the discretion of the Carrier, be subject to an additional charge calculated at the Carrier's hourly rate levied for the operation of the particular vehicle, container or other thing involved.

## 9) ROUTE

Unless otherwise agreed in writing, the method and route of transit shall be at the absolute and sole discretion of the Carrier.

## 10) TRANSIT

- (i) Transit shall commence when the consignment is handed to the Carrier, whether at the point of collection, or at the Carrier's premises.
- (ii) Transit shall (unless otherwise previously terminated) end when the consignment is tendered at the specified place of delivery within the customary delivery hours in the district concerned or at such other times as may be agreed between the Carrier and the Trader provided that:
  - (a) If no safe and adequate access or no adequate unloading facilities exist at such place, then transit shall be deemed to end at the expiry of one clear day after notice, in writing, of the arrival of the consignment at the Carrier's premises in the relevant district, has been sent to the consignee: and
  - (b) Where for any other reason whatsoever the consignment cannot be delivered 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 then transit shall be deemed to end at the expiry one clear day after notice, in writing, of such fact has been sent to the consignee.

## 11) UNDELIVERED OR UNCLAIMED ITEMS

After termination of transit, unless otherwise agreed in writing, the Carrier will hold the consignment as warehousemen subject to its normal warehousing charges and conditions prevailing at the time and subject always to the Carrier's right of sale and lien provided for in Condition 4 and Condition 17 hereof.

## 12) COMPUTATION OF TIME

Where any period of seven days or less provided by these conditions is computed, such period shall not include any Sunday or Bank, or Public or other statutory Holiday.

## 13) LIABILITY OF THE CARRIER

The Carrier shall be liable for any loss or damage to goods occasioned during transit unless and to the extent that the same has been caused by, or has arisen from:

- (i) An act of God, force majeure or any other occurrence or cause beyond the control of the Carrier, including war, civil commotion, invasion, hostilities, riots and other like occurrences;
- (ii) Seizure, damage, confiscation, requisition or destruction under legal process or by or under the order of any governmental, local authority or other public body.
- (iii) Any act of omission of the Trader (or if not the Trader) the owner or owners of the goods comprised in a consignment (or part thereof) including their respective servants or agents and anything done by the Carrier at the express request or direction of them;

# Conditions Of Carriage (3)

- (iv) Inherent liability to wastage, either in bulk, weight or quality, any latent or inherent defects or natural deterioration of the goods;
- (v) Industrial disputes, lock-outs and general or partial stoppages or restraints of labour of whatsoever nature;
- (vi) Insufficient or improper packaging, labelling or addressing.
- (vii) Electrical, magnetic, erasure, injury, x-ray or other similar damage to electronic or photographic images or recording in any forms.
- (viii) Force Majeure.

## 14) GENERAL LIEN

The Carrier shall have a general lien against the Trader or the owner or owners of any goods comprised in any consignment for any monies and other liabilities whatsoever due from the Trader or such owner or owners to the Carrier. If any such monies or liabilities are not paid or satisfied within a reasonable time, the Carrier shall be at liberty in its absolute discretion to sell any or all such goods as agent for the owner or owners thereof and all the expenses of any such sale and the Carrier shall, upon accounting to the Trader for the balance remaining (if any) of such proceeds after such application, be discharged from all liability whatsoever, in respect of the consignment. Failure to deliver within the specified time period due to exercise of the Carrier's lien shall not entitle the Trader or such owner or owners to withhold payment of any of the Carrier's charges.

## 15) CONSEQUENTIAL LOSSES

The Carrier shall not be liable for any consequential losses caused by loss or damage to goods carried in excess of twice the carriage charges for the goods lost or damaged.

- (a) Lost or delayed consignments.
- (b) Use of Contents.
- (c) Lost Income, Interest, Investments, Profit.
- (d) Damage, or loss caused by damage.

These conditions are an example and by no means are a conclusive definition of the term.

## 16) LIMITATION OF LIABILITY

The Company shall perform its duties with a reasonable degree of care, diligence, skill and judgment. The Company shall be relieved of liability for any loss or damage if, and to the extent that, such loss or damage is caused by:

- (a) Strike, lock-out, stoppage or restraint of labour, the consequences of which the Company is unable to avoid by the exercise of reasonable diligence; or
- (b) Any cause or event which the Company is unable to avoid, and the consequences of which the company is unable to prevent by the exercise of reasonable diligence.

Except under special arrangements previously made in writing by an officer of the Company so authorised, the Company accepts no responsibility with regard to any failure to adhere to agreed departure or arrival dates of Goods.

Subject to the other terms of the Conditions the liability of the Carrier shall be limited to the following:

## EXPRESS DIRECT DELIVERIES UK & WESTERN EUROPE

All conveyances are carried under own conditions of carriage and are subject to the following:

- (a) Where loss or damage is in respect of the whole consignment, the carrier's Maximum liability shall be restricted to GBP 50,000 ( or actual value of the Consignment if less). Claims are limited to the invoice value(if it is sold) of lost or damaged property or (if not) the replacement cost to its owners at the commencement of the subject movement. Including HMRC duties or taxes payable, or the cost of repairing the damaged property.
- (b) Where Consignments are carried by a subcontractor the liability of the Carrier shall be limited to the subcontractors particular liability for loss or damage as defined in their conditions of carriage.
- (c) Where the customer (i) does not declare the value of the Consignment (ii) does not declare that the Consignment comprises Excluded Goods in whole or in part the total liability of the Carrier shall be limited to its cover for any one consignment.
- (d) The Carrier shall not be held responsible for any event beyond the reasonable control of the Carrier, which prevents it from performing its obligations under the relevant contract including, but not limited to:
  - (i) Acts, omissions or misrepresentations by the customer, owner of the Consignment, Consignee or independent contractor;
  - (ii) Natural deterioration or fragility of the Consignment (notwithstanding that it may be marked "Fragile"); and/or
  - (iii) Any unforeseen circumstances or causes beyond the Carrier's reasonable control, including but not limited to, act of God, war, riot, malicious damage, compliance with any law or government emergency procedure, accident, fire, flood, storm or industrial dispute, insufficient or improper packing, labelling or addressing, unless it is previously agreed in writing that the Carrier shall perform such task; or
  - (iv) Where goods packaged or palletised by the customer in advance of loading, the carrier bears no responsibility whereby the goods become detached or damaged due to insufficient care or appropriate packaging through the transit time.

## UK OVERNIGHT PARCEL DELIVERY

- (a) For goods carried within the British Isles, Northern Ireland, the Republic of Ireland and all islands off the coast of Great Britain, including the Channel Islands, we will pay the lower of :
- (b) Where the loss or damage is in respect of the whole consignment sent through Candy Carriers the standard limitation of liability for replacement or repair is £12 per kilo of actual gross weight to a maximum of £1000 per consignment.
- (c) Where the damage or loss is in respect of part of a consignment the portion of the sum ascertained in accordance with part (b) hereof which the actual weight of that part of the consignment bears to the actual weight of the whole of the consignment.
- (d) You must properly pack and label all goods, in particular:
- (e) You must pack the goods so that the Consignment or the contents of the Consignment or any other goods being carried by us will not be lost or damaged whilst being transported.

# Conditions Of Carriage (4)

- (f) If the Consignment has been pre-packed, for example, new goods in a display box, the requirement properly to pack the goods set out in Condition E (i) must include packing the consignment so that the packaging will not be damaged whilst being transported.
- (g) You must ensure that the labelling has the full postcodes of both the person or company sending the package and the person or company receiving it.
- (h) It is your responsibility to tell the receiver of the Consignment or the goods when they will be delivered. We may charge you for each wasted journey made in attempting to deliver the goods.

**We strongly recommend additional insurance on consignments with any reasonable value.**

## **WORLDWIDE AIR EXPRESS & CARGO SERVICES**

- (a) We limit our liability for any loss, damage or delay of your shipment or any part of it arising from carriage as follows:
- (b) If the carriage of your shipment is solely or partly by air and involves an ultimate destination or a stop in a country other than the country of departure the Warsaw Convention (1929), or the Warsaw Convention as amended by the Hague Protocol (1955) and/or Montreal Protocol No. 4 (1975), or the Montreal Convention (1999), whichever is compulsorily applicable will apply. These international treaties govern and limit our liability for loss, damage or delay to your shipment to 17 special drawing rights per kilo (approximately £13 per kilo although the rate of exchange is variable).
- (c) If we carry your shipment by road within, to or from a country that is a party to the convention on the contract for the International Carriage of Goods by Road 1956 (CMR) our liability for loss or damage to your shipment shall be governed by the CMR and thus limited to 8.33 special drawing rights per kilo (approximately £8 per kilo although the rate of exchange is variable). In the case of delay where you can show to us you have suffered loss our liability is limited to refunding to you the charge you paid us for carriage in respect of that shipment or the part which was delayed.
- (d) If none of the above conventions apply and we have a liability to you for whatever reason including breach of contract, negligence, wilful act or default our liability to you for loss, damage, misdelivery or non-delivery of your shipment or the part affected is limited to the lower of the market value of the shipment at the time of carriage or the cost of repair the shipment or the part affected with in each case an upper limit that does not exceed £13 per kilo limited to a maximum of £5,000 per shipment. In the case of delay where you can show to us you have suffered loss our liability is limited to refunding to you the charge you paid us for carriage in respect of that shipment or the part which was delayed.

## **EUROPEAN ROAD SERVICES**

If the goods are carried by road, the conditions of the Convention on the Contract for the International Carriage of Goods by Road (CMR) May 1956, Geneva and the Protocol of July 5th 1978, Geneva will apply.

## **UK PALLETISED SERVICES**

Goods carried in the United Kingdom are subject to conditions of carriage under RHA conditions.

## **REFRIGERATED VEHICLES**

- (a) The Trader warrants that refrigerated goods are supplied to the carrier at a temperature suitable for transport and /or storage
- (b) The trader shall in advance advise the carrier as to the correct temperature for the particular product to be carried.
- (c) Where the carriage of refrigerated goods is requested, the Trader shall notify the carrier in good time so that the carrier may prepare the vehicle to the correct temperature for the carriage of the product.
- (d) The Carrier shall be under no liability whatsoever for any loss, including financial and market loss, or damage to the goods arising from the customer's failure to deliver the Goods to the Carrier at the proper temperature.
- (e) The Carrier shall not be liable for loss, damage or delay in respect of the goods caused by matters beyond its control, including:
  - i. The manner in which the goods have been prepared or packed by anyone on behalf of the Trader for the carriage of the goods by the Carrier.
  - ii The suitability of the goods for carriage by the Carrier (including the height, width or weight of the goods).
  - iii The defective condition of the goods.
- (f) The Trader shall take delivery of the goods as soon as the carrier is ready to deliver them. If the consignee fails to take delivery of the goods, the carrier shall be deemed to have delivered the goods in accordance with this agreement if the goods are delivered to the person, entity, or place specified for delivery by the Trader. The Carrier may without notice unload the goods and/or store them in the open or under cover and with or without refrigeration.
- (g) If the Carrier is for any reason unable to deliver the goods, the Carrier may without notice return the goods to the Trader at the Trader's expense or store the goods and such return to the Trader or storage shall be deemed to constitute delivery and any responsibility that the Carrier has in respect of the goods shall cease and the Trader shall be liable to reimburse the Carrier for any additional carriage and/or storage costs incurred.

Any claim made by a Trader under this condition must be supported by such evidence of the value of the goods lost or damaged as the Carrier may require. In particular where the Trader has appointed the Carrier as its sub-contractor for carriage of goods which are the subject of a claim and the Trader has paid a sum to a third party in settlement of that claim, under no circumstances shall the sum payable by the Carrier to the Trader exceed the sum paid by the Trader, evidence of which shall be provided to the Carrier.

## **17) CLAIMS**

The Carrier shall not be liable for any loss or damage unless it receives a claim in writing within 14 days of the consignment delivery date or the anticipated delivery date.