



# Road Haulage Association Limited

## CONDITIONS OF STORAGE 2021

### Explanatory Notes

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#### **BACKGROUND**

These terms and conditions are to be used by the members of the Road Haulage Association (RHA) with fully-paid up memberships and can be incorporated into contracts they have with their customers. They are a set of terms and conditions which – if incorporated correctly – will have contractual effect on both parties to an agreement as if they were part of the original contract. The manner in which they have been drafted tilts them in favour of the contractor and so it is naturally recommended that all RHA members incorporate these terms into all of their consignment contracts.

**Please note that these terms and conditions may only be used by RHA Members and cannot be used by anyone who does not pay their membership subscription, unless they are explicitly permitted to do so by someone within the RHA with the authority to authorise such a decision.**

In order to incorporate these terms, there are some considerations the member must have when quoting and invoicing their customers. These terms will not have contractual effect and will not bind the parties to an agreement unless the customer is aware at the time of agreement to contract that they are terms that the member uses. This means that an RHA Member hoping to use these terms must make it explicitly clear to their customers at the outset that they will be using these terms and conditions when carrying or storing goods. We recommend that a quote or some form of ticket or documentation be provided to the customer with the below wording explicitly and obviously displayed:

*'[COMPANY NAME] uses the Road Haulage Association Conditions of Storage as they may be amended from time to time, and these terms and conditions shall have effect to the exclusion of all other terms including the customer's own.'*

The method of giving the above statement is not necessarily important, however if written down, copies and records of the fact that the statement was given can be kept. We advise that the customer be made clear that these terms and conditions will be used at the time the RHA Member gives their quotes or terms of business to their customer, which means at the outset of contract, job or consignment discussions. We also recommend that throughout the performance of the contract, job or consignment, the terms and conditions are consistently referred to on the bottom of emails and on other correspondence exchanged with the customer, as well as being referenced on the final invoice once the work has been carried out. This makes it undeniably clear that the customer understands that the RHA Member operates under these terms and conditions and that these are the terms that apply to the contract.

## **DEFINITIONS**

There is little that has changed in terms of definitions between the newly issued Conditions of Storage and the previous conditions. Also, the definitions themselves operate to clarify the main body of the terms. Each word sits next to its definition. The following new terms has been introduced and defined which was not present before:

**'Force Majeure Event'** This definition is outlined in the newly introduced clause 10(c). The effect of this new definition is that an RHA Member using these terms and conditions cannot be found liable for an act of God, riots, civil commotion and a variety of other events that the member cannot reasonably be said to have anticipated at the time the contract was entered into.

## **PARTIES AND SUB-CONTRACTING**

There has been minimal addition to this section. The amendment to clause 2(1) including an additional sentence makes it explicitly clear that the RHA Member or provider under these terms has the right to assign and delegate (among other actions) their obligations and rights under the contract between the member and their customer to a third-party. Essentially, this makes clear that in certain circumstances, whilst the customer may be contracting with the RHA Member, it may be another individual (i.e. a sub-contractor) carrying out the work under these terms and conditions.

## **DANGEROUS GOODS**

Where the storage of dangerous goods is concerned, the contractor's safety and the safety of other members of the public is a top priority. In order to ensure that these are maintained, it is vital that the RHA Member is informed that they will be storing dangerous goods and that they have the right to rescind the contract if this is not disclosed to them explicitly in writing.

In furtherance of the above, the customer also agrees where the goods are dangerous, and this is communicated to the member, to categorise and mark at their own expense those goods.

## **PROCEDURE ON DELIVERY OR COLLECTION**

In the business of road transport and storage, it is important to know where your risks start and end. Under these terms and conditions, the default position is that the customer is responsible for loading the goods that they wish to be moved onto the vehicle of the RHA Member, or another consignee instructed by the RHA Member. The consignee is responsible for the unloading of those goods from that vehicle.

Under these terms, the RHA Member or contractor is excluded from being found liable for loss or damage done to goods that arise from the loading onto or unloading off the vehicle or from overloading the vehicle. Further to this, the customer indemnifies the contractor under these terms against any loss, damage, death or injury that might arise during loading and/or unloading. Whilst this is the default position, we acknowledge that in a lot of cases it may be the contractor who is actually responsible for loading and unloading, and this is fine provided it is agreed separately in writing, i.e. in the original quote or order acceptance.

In respect of the actual loading onto the vehicle, the customer is required to ensure that any necessary equipment to be used for such activities is in functional condition and the customer further indemnifies the contractor who in most cases will be the RHA Member against loss, damage or death that might come about due to faulty or inappropriate equipment.

There may be some circumstances where the goods are taken from storage and loaded onto a trailer that is owned and operated by a third party (it is likely this party will have been contracted to transit the good as a consignment) but stay on the premises for a protracted period of time (following Brexit this could become a common process while the goods are awaiting customs clearance). The RHA Member must be aware that the liability for any loss or damage to the goods whilst being loaded and stored on the trailer could fall to the RHA Member as the Conditions of Carriage (which the third party will likely be operating under) define transit as beginning when the consignment has left the premises.

To avoid dispute, in this circumstance we advise for the RHA Member to expressly agree, in writing, as a condition of the contract which party is responsible for loading the goods onto the trailer and which party liability falls to in the event loss/damage occurs during loading/storage on the trailer prior to departure from the premises.

We also recommend that the parties agree, in writing, which party is responsible for demurrage during the period of time described above.

These terms essentially seek to nail down the points in the loading and unloading process for which the customer indemnifies the RHA Member and which the RHA Member is not liable for, and also what the member may be considered liable for.

### **OBLIGATIONS OF THE CUSTOMER**

By virtue of this clause, the customer with whom the RHA Member is contracting warrants that the goods or consignment which they require storing will not pollute the environment or do harm to human health and make clear that it should not need official consent to be handled or stored by the RHA Member, in the sense that all licences and approvals should already have been acquired. The customer also warrants to provide the contractor with the necessary information and/or materials to comply with its legal obligations under domestic and – if applicable – EU legislation.

In the event that the contractor's performance is delayed as a consequence of the actions of the customer, then the member is entitled to suspend performance of its obligations until the situation is remedied by the customer. In doing so, the member or contractor will not be liable for costs of losses sustained or incurred, and the customer shall reimburse the member or contractor for their own incurred costs or losses.

### **CONTRACTOR'S CHARGES**

Any charges which the contractor issues to the customer shall be payable by the customer without prejudice to the contractor's rights against the consignee. These charges must be paid when due and there can be no attempts from the customer to set-off any other claim or outstanding amount that they may have accounted for against the contractor or RHA Member. This means that the customer must pay the charges and then only seek any other form of recoup for a separate matter at a latter point.

Where a contract is cancelled at any point during its performance, the customer has agreed under these terms to pay the contractor or member all costs and expenses incurred prior to the cancellation.

The new clause 9(5) sets out that the customer shall pay the contractor any additional storage charges incurred as a result of the contractor exercising its lien in accordance with clause 15.

### **LIMITATION OF LIABILITY**

This section pertains to more general liabilities which may arise under the contract with your customer, inclusive of but not limited to costs, taxes, fines or duties which might arise during the performance of the contract. That being said, in accordance with the tests of reasonableness and in consideration of legislation relating to the fairness of contracts, there are instances where we are not able to totally exclude or limit liability. For example, where it is deemed unfair to totally exclude liability for damage done to goods, the liability of the contractor or member is limited to the actual value of the goods, any reparation costs or a sum calculated at the rate of £100.00 per tonne on the gross weight of the goods lost or damaged. With respect to wholly excluded liabilities, these conditions exclude:

- loss of profits;
- loss of sales or business;
- loss of agreements or contracts
- loss of anticipated savings;
- loss of use or corruption of software, data or information;
- loss of or damage to goodwill; and
- indirect or consequential loss;
- any fines imposed on the Customer by the Consignee or its customer.

### **INDEMNITY TO THE CONTRACTOR**

This is essentially the method by which the customer agrees to indemnify and cover the contractor storing the goods or RHA Member, and by agreeing to the contract incorporating these terms and conditions the customer agrees to grant this indemnity. The coverage is for all liabilities and costs incurred by the contractor and/or member as a result of a breach of the conditions by the customer where that breach occurs through error, omission, mis-statement or misrepresentation. There is further coverage provided by the customer for all claims and demands in excess of the liability of the contractor or member under these conditions.

### **LIEN**

The lien is one of the most important tools under these conditions. It grants an explicit interest on behalf of the contractor and/or member in the goods in storage. The lien itself is activated where the customer has overdue amounts owed to the contractor or RHA Member and/or has accrued charges. The contractor or member can take control of the goods. There are two liens granted: 1) a particular lien against the goods, focusing on the charges outstanding in respect of the consignment storage of those goods, and 2) a general lien against the trader to whom the goods belong for all and any outstanding sums or unpaid invoices, not just those relating to the consignment.

If, having received notice and adequate time with which to respond, the customer still does not satisfy outstanding charges, then the contractor or member will be entitled to sell the goods or the relevant part of the goods to recover the amount owed to them. Any surplus to that amount should be returned to the customer.

The reason this lien is made explicitly clear is so that there is no doubt that the contractor or member has the right to hold the goods and sell them on. If this is not done, then the contractor or member leaves themselves vulnerable to litigation and other complaints from their customers or owners of the goods.

Whilst this clause and the contractual right it asserts is an incredibly useful tool for the contractor, it has to be exercised with caution to ensure the exercise of this right does not inadvertently create claims and liabilities against the contractor, particularly where the customer is not the owner of the consignment.

**It is therefore strongly advised that where the owner of the goods and the customer are not one and the same, specific legal advice should be obtained before exercising this right.**

## **CONFIDENTIALITY**

A reciprocal confidentiality clause has been added at clause 18 which sets out the general obligations on each party not to disclose the other party's confidential information unless permitted under clause 18(2).

## **CONCLUSION**

The above advice and explanatory notes should adequately explain the key mechanisms of the Road Haulage Association Conditions of Storage 2021 and the effect that they may have on commercial contracts between RHA Members and their customers. It is important to note that these terms are to be used when contracting for storage services and would offer little if the member were contracting for some other service that they may provide. They are drafted in favour of the contractor and so we would recommend that they are incorporated into every contract for transport or distribution as outlined at the beginning of these explanatory notes.