



THE RMS GROUP

# RMS Hull Limited

## GENERAL TRADING AND OPERATING CONDITIONS

Prefix: The Customer's attention is drawn to the Clauses hereof which exclude or limit the Company's liability and those which require the Customer to indemnify the company in certain circumstances. In view of these conditions the Customer is advised to effect its own insurance

### 1 Definition and Interpretation

In these conditions the "Conditions"; the following words and phrases shall have the meaning or meanings set out below:-

- (a) "Company" means "RMS Hull Limited" and includes, unless the context otherwise requires its successors, assigns, sub-contractors, agents and employees;
- (b) "Customer" means the contracting party for whom services are performed by the Company and, unless the context otherwise requires, shall include the owner, consignor, haulier, shipper and consignee of Goods in respect of which activities or services are carried out or provided by the Company and any other person having an interest therein and the agents of such persons;
- (c) "Contract" means the contract between the Company and the Customer for the performance of services and incorporating the Conditions;
- (d) "Goods" includes all cargo, containers, packing, trailers, vehicles, and other equipment connected with the transport of the cargo.
- (e) "Terminal" includes all docks, quays, wharfs, jetties, hardstandings, land and buildings forming part of or used in connection with the Terminal facility at Goole owned, leased and operated by the Company.

### 2 Scope of Contract

- (a) These Conditions apply in all services provided by the Company which involve the custody or handling of Goods by the Company or by its employees or agents at its Terminal at Goole.
- (b) The Conditions do not apply to freight forwarding services or to services of a general agency nature carried out by the Company, such services being carried out under separate conditions applicable only to those services.
- (c) The Company does not act as a carrier under this Contract and does not undertake any liability as such.

### 3 Content of Contract

By delivering the good to the Company, the Customer acknowledges that the Contract between the Customer and the Company shall be governed by these Conditions, which shall override and exclude any other terms and conditions stipulated or incorporated or referred to by the Customer and the Company. Any addition or variation to the Conditions must be made in writing and signed on behalf of the Company by the Managing Director.

### 4 Warranty of Authority by Customer

The customer expressly warrants to the Company that he is either the owner or the authorised agent of the owner of the goods the subject matter of the transaction and further warrants that he accepts these Conditions not only for himself but also as duly authorised agent for and on behalf of every other person, firm or corporation who is or may hereafter become interested in the goods. The Customer takes responsibility for bringing these conditions to the attention of any such owners or other persons referred to and who shall be liable.

### 5 Company's Discretion over Handling methods

Subject to specific written instructions given to the Company by the Customer and accepted by the Company in writing, the Company reserves to itself complete freedom in respect of the means and procedure to be employed in the receipt, collection, unitisation, stuffing, stripping, storage, packing, carrying, handling, tallying, loading, discharging or delivery up of goods. If in the Company's opinion the interests of safety so require, the Company may deviate from the Customers instructions (whether or not accepted by the Company) in any respect and any expenses reasonably incurred thereby shall be for the Customers account. Where the Company delivers or receives the goods directly between ship and road vehicles or barges, or visa versa, the person in charge of such vehicle or barge shall, in all respects, be responsible at his own risk for the stowing and unstowing of goods, and for the provision of dunnage and securing where required on or in the vehicle or barge. The Company shall not be responsible or liable for any loss or damage caused as a result of the weight of goods so stowed or unstowed being in excess of their stated weight.

### 6 Payment of Charges

- (a) Without prejudice to sub-condition (c) of this Condition, all charges, expenses or other sums which under these conditions fall due to be paid by the Customer to the Company shall be paid by the end of the calendar month following the month in which the Company submitted its account relating thereto, and any sums remaining unpaid at the expiry of such period shall bear interest thereafter, such interest to accrue from day-to-day at the rate of 2 per cent, per annum, above the base rate of National Westminster Bank Plc, after as well as before any judgement for such sums.
- (b) Charges for services shall be deemed to have been earned on receipt of goods by the Company or on the Customer's vessel berthing at the Terminal.
- (c) The Customer shall be liable for any duties, taxes, imposts, deposits or outlay of whatsoever nature levied by any authority for or in connection with the goods and for any payment, fine, expense, loss or damage whatsoever incurred or sustained by the Company in connection therewith.
- (d) The Company may at any time demand prepayment of the whole or part of its charges or expenses. If further charges or expenses are incurred as a result of any delay or default howsoever arising, the Customer shall forthwith on demand pay all such sums to the Company.

- (e) No undertaking by the Company to collect from a consignee or any other persons any sum payable to the Customer, and no demand by the Company on any such person, shall constitute a waiver or release by the Company of any rights against the Customer.

## **7 Description of Cargo**

On delivery of the goods to the custody of the Company the Customer shall ensure that the Company is given a full description of the cargo sufficient to identify it and in addition is given full particulars of the cargo and any hazards connected therewith and the Company shall be permitted by the Customer to give any such particulars to whomsoever the Company deems necessary. The Customer warrants that the description and particulars of any goods furnished by or on behalf of the Customer are full and accurate, including, but without prejudice to the generality of this clause, particulars as to the numbers, quantities or weight of goods so furnished to the Company for the purpose of identifying, the cargo or for Customs, or other purposes and undertakes to indemnify the Company against all losses, damages, expenses and fines arising directly or indirectly from the inaccuracy in or omission from the above particulars even if such inaccuracy or omission is not due to any negligence.

## **8 Fitness of Goods**

The Customer warrants that all goods have been correctly and sufficiently prepared and/or packed and/or marked in compliance with conditions and regulations as applicable and are in all respects in a fit condition for handling by the Company. Where the goods are carried in or on any transport unit the Customer warrants that the goods are suitable for carriage in the unit provided, and that the transport unit has been properly and competently loaded, and that the transport unit is in a suitable condition to carry the goods loaded therein (save to such extent as the Company has approved the suitability of the transport unit or where the Company accepted instructions from the Customer to load or unload the transport unit).

## **9 Company's Duties: Limitation of Scope**

- (a) The Company undertakes no responsibility for the maintenance or repair of any part of the goods nor for the provision of power, fuel or other supplies therefore nor for maintaining the same at any particular temperature or in any other particular state or condition.
- (b) Notwithstanding the foregoing, the Customer shall reimburse to the Company any expense reasonably incurred by the Company in taking any such action as aforesaid deemed necessary by the Company, together with a reasonable charge for so doing.

## **10 Company's Liability for Loss etc.: Neglect or Default to be Proved: No Liability for Consequential Loss**

- (a) The Company shall not be liable for loss of or damage to the goods or failure to ship the goods or make them available for collection punctually or at all unless it is proved that such loss or damage or failure was due to the neglect or default of the Company or its own servants.
- (b) The Company shall only be liable for any non-compliance or mis-compliance with the instructions given to it if it is proved that the instructions were given in writing and the non-compliance or mis-compliance was caused by the neglect or default of the Company or its own servants.
- (c) Save as aforesaid the Company shall be under no liability in connection with any goods or the handling thereof or provision of services, advice or information in connection therewith.

## **11 Company's Liability for Loss etc.: Monetary Limit**

In no case shall any liability of the Company howsoever arising and notwithstanding that the circumstances or cause of loss or damage may be unexplained exceed the following amounts:-

|                |                      |
|----------------|----------------------|
| Warehousing    | £ 100.00 per tonne   |
| Road Transport | £ 1,300.00 per tonne |
| Stevedoring    | £ 300.00 per tonne   |

## **12 Company's Liability for Loss etc.: Time Bar for Claims**

The Company shall not be liable for any claim unless it receives written notice within 7 days of the cause of the claim coming to the customer's knowledge or if the goods are being delivered by the Company to or to the use of the customer, within 7 days of the delivery being effected.

No legal proceedings (including any counter claim) may be brought against the Company unless they are issued and served within 9 months of the event giving rise to the claim

## **13 Customer's Liability against Claims in Excess of Company's Contractual Liability**

The Customer warrants and undertakes to the Company that the exclusions and limitations of liability conferred by the Contract for the benefit of the Company are and shall be binding upon all persons who have or acquire any interest in the goods and the Customer hereby agrees to hold harmless and indemnify the Company against all claims or demands whatsoever by whomsoever made in excess of the liability of the Company under these. Conditions in respect of any loss or damage however caused, whether or not caused by the negligence of the Company, its servants, agents, sub-agents or sub-contractors.

## **14 Company's Liability Limits Available to Third Parties**

By delivering the goods to the Company pursuant to the Contract, the Customer, shall be deemed to confer severally upon the employees and agents of the Company, and upon its or their independent contractors, and upon all other persons whether or not stevedores who may be required to render services in relation to the goods in connection with the Contract, the benefit of all the warranties, representations, limitations and exclusions of or exemptions from liability, indemnities, defences, amenities and rights herein provided for the benefit of the Company, upon any such person as aforesaid providing any services whether or not of a stevedoring nature in relation to the goods. This Condition also constitutes a separate contract made by the Company on its own behalf and as agents for all persons who are its servants or agents from time to time or any person whether or not as

stevedore providing services as aforesaid in relation to the goods. If notwithstanding this Condition any such person is sued in respect of such injury, loss, damage, delay or non-delivery the Customer agrees to indemnify the Company against any payment with the Company in its sole discretion may make to such person in respect of such proceedings and its liability if any therein.

### **15 Force Majeure**

- (a) Neither party shall be responsible for failure to fulfil their obligations if and to the extent that fulfilment has been prevented by force majeure as defined herein. Neither party shall be entitled to claim damages arising therefrom as a result of a breach or default of the other party arising from force majeure. Services and obligations of either party shall be resumed as soon as possible and during the continuance of the event or events preventing such obligations of parties resulting from force majeure which are no longer capable of being fulfilled shall be suspended.
- (b) The expression "force majeure" shall mean strike, picket lines, lockouts, blockage of maritime or land access to the harbour/terminal and any event or circumstances beyond the immediate control of either party including, without prejudice to the generality of the foregoing, riots, civil commotion or national or international emergency, destruction or damage due to natural causes, fires, explosions, storm, floods and compliance with the orders or request of any national or local authority.

### **16 Disposal of Undeliverable Cargo if Perishable**

Where the Company is in possession of perishable cargo of any nature which is not taken up immediately upon arrival or which is liable for any reason to perish before shipment or which, in the opinion of the Company, is insufficiently addressed or marked or is otherwise so unidentifiable that the Company cannot determine on what vessel it should be shipped or to whom it should be made for collection, the Company may sell or otherwise dispose of such cargo without any notice to the Customer, sender, owner or consignee of the cargo. All charges and expenses arising in connection with the sale or disposal of the cargo shall be paid by the Customer and, in event of a sale, payment or tender of the net proceeds of sale, after deductions of the aforesaid charges and expenses, and all other sums due to the Company under these Conditions, shall discharge all liability of the Company to any person, firm or corporation in respect of the goods.

### **17 Disposal of Undeliverable Goods**

The Company shall be entitled to sell or otherwise dispose of all non-perishable goods which, in the opinion of the Company, are insufficiently or incorrectly addressed or marked or are otherwise so unidentifiable that the Company cannot determine on what vessel they should be shipped or to whom they should be made available for collection or which are not collected or accepted by the consignee, upon giving 21 days notice in writing to the Customer. All charges and expenses arising in connection with the storage sale or disposal of the goods shall be paid by the Customer, and, in the event of a sale, payment or tender of the net proceeds of the sale, after deduction of the aforesaid charges and expenses, and all other sums due to the Company under these Conditions, shall discharge all liability of the Company to any person, firm or corporation in respect of the goods.

### **18 Destruction or Disposal of Hazardous Goods**

- (a) Where this condition applies the Company or the person in whose custody the goods then are shall be at liberty to destroy or otherwise deal with the goods as in its or his discretion may seem desirable for the purpose of rendering the goods harmless.
- (b) This Condition applies where any goods are or while in the custody of the Company or its employees, agents, independent contractors, sub-contractors or sub-agents become noxious, hazardous, inflammable, explosive or in any way dangerous or otherwise likely to cause damage (which includes goods which are infectious, disease or verminous or likely to harbour or encourage infection or disease or vermin or other pests) whether alone or in combination with other goods and whether or not by reason of the act or omission of any person other than the neglect or default of the Company's servants or agents.
- (c) Where this Condition applies the Customer shall indemnify the Company against all loss, damage, costs and expenses arising out of or in connection with the fact or matter by reason whereof this paragraph applies.

### **19 General Lien with Power of Sale**

All goods (and the documents of title thereto) in the possession of the Company pursuant to the Contract shall be subject to particular and general lien for all sums owed to the Company either in respect of such goods or otherwise, by the Customer or by the owner, consignor or consignee of the goods. Unless payment of all such sums is made, or security given thereof to the satisfaction of the Company within 21 days of notice that the goods are detained, the Company may sell the goods by auction or otherwise as it may in its discretion think fit and use the proceeds in or towards satisfaction of such particular and general lien after the expenses of the sale.

### **20 Working Hours**

The Company shall not be bound to do any work outside the hours 0800 hours to 1700 hours Monday to Friday unless otherwise agreed in writing by the Company, and shall be entitled to make an additional charge for any work done outside such hours at the Customer's request.

#### **21 Access to the Premises: Exclusion of Liability Indemnity**

- (a) All persons entering the Terminal or mooring vessels thereat shall do so only with the permission of the Company and the Company shall not be liable to the Customer in any way whatsoever for any injury to any such person or for any loss or damage suffered by them or by any vessels or property brought by them to the premises other than arising out of any negligence on the part of the Company or its servants or agents.
- (b) The Customer shall indemnify the Company against all loss, damage, claims, demands, actions, costs, charges or expenses arising out of any injury, loss or damage suffered or caused by any servant, agent or independent contractor of the Customer or any person for whom the Customer is an agent or by any property of such person.
- (c) All persons entering the Terminal shall obey the regulations, and instruction of the Company, which may at its sole discretion and without giving any reason refuse admission to any person and require any person to leave the premises at any time.
- (d) The Customer shall indemnify the Company against all loss, damage, claims, demands, actions, costs, charges, expenses arising out of any failure to obey the Company's regulations or instructions on the part of the Customer, his servants, agents, independent contractors, customers or persons for whom the Customer acts as agent.

#### **22 Arrival of Vessels and Vehicles**

The Company shall not be bound to admit vehicles to its premises or to allow vessels to berth there except by prior arrangement with the Customer.

#### **23 Sequences of Handling Vessels and Vehicles**

- (a) Vessels moored and vehicles arriving at the Company's premises will be dealt with in the order determined by the Company at its sole discretion.
- (b) The Company shall not be liable to pay or refund demurrage or any other compensation for the use of vessels or vehicles or for their not being ready in time, nor to make good any other loss or damage suffered as a result of delay or interruption in the handling of vessels or vehicles or in receiving goods into or delivering them out of the Company's premises.
- (c) The Customer further warrants and undertakes to the Company that any vessel it may procure for the purpose of loading and/or discharging shall vacate the Terminal by the tide and date agreed in writing with the Company or, if no such tide and date have been so agreed, by the first available tide (day or night) after completion of loading or discharging (as the case may be). Without prejudice to the foregoing, the Customer further undertakes that no such ship it may procure shall lay-by or be detained beyond such tide and date (in relation to which time shall be of essence) and the customer shall indemnify the Company in respect of any loss, damage, liability, cost and expense arising directly or indirectly from breach by the Customer of this condition.

#### **24 Health and Safety at Work**

The Customer shall supply to the Company in writing all such information relating to the goods as shall be necessary to enable the Company to comply with its duties under the Health and Safety at Work etc. Act 1974 and any regulations made thereunder, or made by or under any other enactment for securing or protecting the health or safety of persons or property or the prevention or reductions of damage to or pollution of the environment or its natural resources.

#### **25 The Opinion of the Company**

The Certificate of a Director or the Secretary of the Company for the time being shall be conclusive evidence as to the opinion of the Company where in these Conditions any matter is to be determined in accordance with such opinion.

#### **26 Unenforceable or Invalid Provisions**

In the event of any provision, or part provision contained in the Condition being held to be unenforceable or invalid for any reason, then such unenforceability or invalidity shall only be applicable to such provision or any part thereof as appropriate. The remaining provisions of the Conditions shall continue to be enforceable and valid as if such unenforceable or invalid provisions or part thereof were not contained herein.

#### **27 Giving of Notices**

Any notice required to be given hereunder shall be sufficiently given if sent by registered or recorded delivery post or left at the principal or registered office for the time being of the party to be served. Any such notice shall be deemed to be served at the time when the same is handed to or left at the address of the party to be served and if served by post on the third day (not being a Sunday or public holiday) following the day of posting.

#### **28 Headings**

The headings set out in these Conditions are provided only for the convenience, and they shall not limit, control or affect the meaning of the provisions to which they refer.

#### **29 English Law and Jurisdiction**

The Contract shall be governed by and interpreted in accordance with English law and the Customer submits to the jurisdiction of the High Court of Justice in England but the Company may enforce the Contract in any court of competent jurisdiction.

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