

## BRITISH INTERNATIONAL FREIGHT ASSOCIATION (BIFA) STANDARD TRADING CONDITIONS

2005 EDITION, © BIFA 2004

**THE CUSTOMER'S ATTENTION IS DRAWN TO SPECIFIC CLAUSES  
HEREOF WHICH EXCLUDE OR LIMIT THE COMPANY'S LIABILITY  
AND THOSE WHICH REQUIRE THE CUSTOMER TO INDEMNIFY  
THE COMPANY IN CERTAIN CIRCUMSTANCES AND THOSE  
WHICH LIMIT TIME  
BEING CLAUSES 8, 10, 12-14 INCLUSIVE, 18-20 INCLUSIVE, AND  
24-27 INCLUSIVE**

**Insurance may only be effected by the Company under clause  
11(A) if so authorised by the Financial Services Authority or its  
successor**

All headings are indicative and do not form part of these conditions

### DEFINITIONS AND APPLICATION

1 In these conditions the following words shall have the following meanings:-  
"Company" the BIFA member trading under these conditions  
"Consignee" the Person to whom the goods are consigned  
"Customer" any Person at whose request or on whose behalf the  
Company undertakes any business or provides advice,  
information or services.

"Direct Representative" the Company acting in the name of and on behalf of the  
Customer and/or Owner with H.M. Revenue and Customs  
("HMRC") as defined by Council Regulation 2193/92 or as  
amended

"Goods" the cargo to which any business under these conditions relates.  
"Person" natural person(s) or any body or bodies corporate  
"SDR" are Special Drawing Rights as defined by the International  
Monetary Fund  
"Transport Unit" packing case, pallets, container, trailer, tanker, or any other  
device whatsoever for and in connection with the carriage of  
Goods by land, sea or air  
"Owner" the Owner of the Good or Transport Unit and any other  
Person who is or may become interested in them

2(A) Subject to sub-paragraph (B) below, all and any activities of the Company in  
the course of business, whether gratuitous or not, are undertaken  
subject to these conditions.

(B) If any legislation, to include regulations and directives, is compulsorily  
applicable to any business undertaken, these conditions shall, as regards  
such business, be read as subject to such legislation, and nothing in these  
conditions shall be construed as a surrender by the Company of any of its  
rights or immunities or as an increase of any of its responsibilities or liabilities  
under such legislation, and if any part of these conditions be repugnant to  
such legislation to any extent, such part shall as regards such business be  
overridden to that extent and no further.

3 The Customer warrants that he is either the Owner, or the authorised agent of  
the Owner and, also, that he is accepting these conditions not only for  
himself, but also as agent for and on behalf of the Owner.

### THE COMPANY

4(A) Subject to clauses 11 and 12 below, the Company shall be entitled to procure  
any or all of the services as an agent, or, to provide those services as a  
principal.

(B) The Company reserves to itself full liberty as to the means, route and  
procedure to be followed in the performance of any service provided in the  
course of business undertaken subject to these conditions.

5 When the Company contracts as a principal for any services, it shall have full  
liberty to perform such services itself, or, to subcontract on any terms  
whatsoever, the whole or any part of such services.

6(A) When the Company acts as an agent on behalf of the Customer, the  
Company shall be entitled, and the Customer hereby expressly authorises  
the Company, to enter into all and any contracts on behalf of the Customer  
as may be necessary or desirable to fulfil the Customer's instructions, and  
whether such contracts are subject to the trading conditions of the parties  
with whom such contracts are made, or otherwise.

(B) The Company shall, on demand by the Customer, provide evidence of any  
contract entered into as agent for the Customer. Insofar as the Company  
may be in default of the obligation to provide such evidence, it shall be  
deemed to have contracted with the Customer as a principal for the  
performance of the Customer's instructions.

7 In all and any dealings with HMRC for and on behalf of the Customer and/or  
Owner, the Company is deemed to be appointed, and acts as, Direct  
Representative only.

8(A) Subject to sub-clause (B) below,  
the Company:

(i) has a general lien on all Goods and documents relating to Goods in its  
possession, custody or control for all sums due at any time to the Company

from the Customer and/or Owner on any account whatsoever, whether  
relating to Goods belonging to, or services provided by or on behalf of the  
Company to the Customer or Owner. Storage charges shall continue to  
accrue on any Goods detained under lien;

(ii) shall be entitled, on at least 28 days notice in writing to the Customer, to sell or  
dispose of or deal with such Goods or documents as agent for, and at the  
expense of, the Customer and apply the proceeds in or towards the payment  
of such sums;

(iii) shall, upon accounting to the Customer for any balance remaining after  
payment of any sum due to the Company, and for the cost of sale and/or  
disposal and/or dealing, be discharged of any liability whatsoever in respect  
of the Goods or documents.

(B) When the Goods are liable to perish or deteriorate, the Company's right to sell  
or dispose of or deal with the Goods shall arise immediately upon any sum  
becoming due to the Company, subject only to the Company taking  
reasonable steps to bring to the Customer's attention its intention to sell or  
dispose of the Goods before doing so.

9 The Company shall be entitled to retain and be paid all brokerages,  
commissions, allowances and other remunerations customarily retained  
by, or paid to, freight forwarders.

10 (A) Should the Customer, Consignee or Owner of the Goods fail to take  
delivery at the appointed time and place when and where the company is  
entitled to deliver, the Company shall be entitled to store the Goods, or any  
part thereof, at the sole risk of the Customer or Consignee or Owner,  
whereupon the Company's liability in respect of the Goods, or that part  
thereof, stored as aforesaid, shall wholly cease. The Company's liability, if  
any, in relation to such storage, shall be governed by these conditions. All  
costs incurred by the Company as a result of the failure to take delivery  
shall be deemed as freight earned, and such costs shall, upon demand, be  
paid by the Customer.

(B) The Company shall be entitled at the expense of the Customer to dispose  
of or deal with (by sale or otherwise as may be reasonable in all the  
circumstances):-

(i) after at least 28 days notice in writing to the Customer, or (where the  
Customer cannot be traced and reasonable efforts have been made to  
contact any parties who may reasonably be supposed by the Company to  
have any interest in the Goods) without notice, any Goods which have  
been held by the Company for 90 days and which cannot be delivered as  
instructed; and

(ii) without prior notice, any Goods which have perished, deteriorated, or  
altered, or are in immediate prospect of doing so in a manner which has  
caused or may reasonably be expected to cause loss or damage to the  
Company, or third parties, or to contravene any applicable laws or  
regulations.

11 (A) No insurance will be effected except upon express instructions given in  
writing by the Customer and accepted in writing by the Company, and all  
insurances effected by the Company are subject to the usual exceptions  
and conditions of the policies of the insurers or underwriters taking the risk.  
Unless otherwise agreed in writing, the Company shall not be under any  
obligation to effect a separate insurance on the goods, but may declare it  
on any open or general policy held by the Company.

(B) Insofar as the Company agrees to effect insurance, the Company acts  
solely as agent for the Customer, and the limits of liability under clause  
26(A) (ii) of these conditions shall not apply to the Company's obligations  
under clause 11.

12 (A) Except under special arrangements previously made in writing by an  
officer of the Company so authorised, or made pursuant to or under the  
terms of a printed document signed by the Company, any instructions  
relating to the delivery or release of the Goods in specified circumstances  
(such as, but not limited to, against payment or against surrender of a  
particular document) are accepted by the Company, where the Company  
has to engage third parties to effect compliance with the instructions, only  
as agents for the Customer.

(B) Despite the acceptance by the Company of instructions from the Customer  
to collect freight, duties, charges, dues, or other expenses from the  
Consignee, or any other Person, on receipt of evidence of proper demand  
by the Company, and, in the absence of evidence of payment (for  
whatever reason) by such Consignee, or other Person, the Customer shall  
remain responsible for such freight, duties, charges, dues, or other  
expenses.

(C) The Company shall not be under any liability in respect of such  
arrangements as are referred to under sub-clause (A) and (B) hereof save  
where such arrangements are made in writing, and in any event, the  
Company's liability in respect of the performance of, or arranging the  
performance of, such instructions shall not exceed the limits set out in  
clause 26(A) (ii) of these conditions.

13 Advice and information, in whatever form it may be given, is provided by the  
Company for the Customer only. The Customer shall indemnify the Company  
against all loss and damage suffered as a consequence of passing such  
advice or information on to any third party.

14 Without prior agreement in writing by an officer of the Company so  
authorised, the Company will not accept or deal with Goods that require  
special handling regarding carriage, handling, or security whether owing to  
their thief attractive nature or otherwise including, but not limited to bullion,

coin, precious stones, jewellery, valuables, antiques, pictures, human remains, livestock, pets, plants.

Should any Customer nevertheless deliver any such goods to the Company, or cause the Company to handle or deal with any such goods, otherwise than under such prior agreement, the Company shall have no liability whatsoever for or in connection with the goods, howsoever arising.

- 15** Except pursuant to instructions previously received in writing and accepted in writing by the Company, the Company will not accept or deal with Goods of a dangerous or damaging nature, nor with Goods likely to harbour or encourage vermin or other pests, nor with Goods liable to taint or affect other Goods. If such Goods are accepted pursuant to a special arrangement, but, thereafter, and in the opinion of the Company, constitute a risk to other goods, property, life or health, the Company shall, where reasonably practicable, contact the Customer in order to require him to remove or otherwise deal with the goods, but reserves the right, in any event, to do so at the expense of the Customer.
- 16** Where there is a choice of rates according to the extent or degree of the liability assumed by the Company and/or third parties, no declaration of value will be made and/or treated as having been made except under special arrangements previously made in writing by an officer of the Company so authorised as referred to in clause 26(D).

## THE CUSTOMER

**17** The Customer warrants:

- (A) (i) that the description and particulars of any Goods or information furnished, or services required, by or on behalf of the Customer are full and accurate, and (ii) that any Transport Unit and/or equipment supplied by the Customer in relation to the performance of any requested service is fit for purpose, and
- (B) that all Goods have been properly and sufficiently prepared, packed, stowed, labelled and/or marked, and that the preparation, packing, stowage, labelling and marking are appropriate to any operations or transactions affecting the Goods and the characteristics of the Goods.
- (C) that where the Company receives the Goods from the Customer already stowed in or on a Transport Unit, the Transport Unit is in good condition, and is suitable for the carriage to the intended destination of the Goods loaded therein, or thereon, and
- (D) that where the Company provides the Transport Unit, on loading by the Customer, the Transport Unit is in good condition, and is suitable for the carriage to the intended destination of the Goods loaded therein, or thereon.
- 18** Without prejudice to any rights under clause 15, where the Customer delivers to the Company, or causes the Company to deal with or handle Goods of a dangerous or damaging nature, or Goods likely to harbour or encourage vermin or other pests, or Goods liable to taint or affect other goods, whether declared to the Company or not, he shall be liable for all loss or damage arising in connection with such Goods, and shall indemnify the Company against all penalties, claims, damages, costs and expenses whatsoever arising in connection therewith, and the Goods may be dealt with in such manner as the Company, or any other person in whose custody they may be at any relevant time, shall think fit.
- 19** The Customer undertakes that no claim shall be made against any director, servant, or employee of the Company which imposes, or attempts to impose, upon them any liability in connection with any services which are the subject of these conditions, and, if any such claim should nevertheless be made, to indemnify the Company against all consequences thereof.

- 20** The Customer shall save harmless and keep the Company indemnified from and against:-
- (A) all liability, loss, damage, costs and expenses whatsoever (including, without prejudice to the generality of the foregoing, all duties, taxes, imposts, levies, deposits and outlays of whatsoever nature levied by any authority in relation to the Goods) arising out of the Company acting in accordance with the Customer's instructions, or arising from any breach by the Customer of any warranty contained in these conditions, or from the negligence of the Customer, and
- (B) without derogation from sub-clause (A) above, any liability assumed, or incurred by the Company when, by reason of carrying out the Customer's instructions, the Company has become liable to any other party, and
- (C) all claims, costs and demands whatsoever and by whomsoever made or preferred, in excess of the liability of the Company under the terms of these conditions, regardless of whether such claims, costs, and/or demands arise from, or in connection with, the breach of contract, negligence or breach of duty of the Company, its servants, sub-contractors or agents, and
- (D) any claims of a general average nature which may be made on the Company.

- 21(A)** The Customer shall pay to the Company in cash, or as otherwise agreed, all sums when due, immediately and without reduction or deferment on account of any claim, counterclaim or set-off.
- B)** The Late Payment of Commercial Debts (Interest) Act 1998, as amended, shall apply to all sums due from the Customer

- 22** Where liability arises in respect of claims of a general average nature in connection with the Goods, the Customer shall promptly provide security to the Company, or to any other party designated by the Company, in a form acceptable to the Company.

## LIABILITY AND LIMITATION

- 23** The Company shall perform its duties with a reasonable degree of care, diligence, skill and judgment.
- 24** 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.
- 25** 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.
- 26(A)** Subject to clause 2(B) and 11(B) above and sub-clause (D) below, the Company's liability howsoever arising and, notwithstanding that the cause of loss or damage be unexplained, shall not exceed
- (i) in the case of claims for loss or damage to Goods:
- (a) the value of any loss or damage, or
- (b) a sum at the rate of 2 SDR per kilo of the gross weight of any Goods lost or damaged whichever shall be the lower.
- (ii) subject to (iii) below, in the case of all other claims:
- (a) the value of the subject Goods of the relevant transaction between the Company and its Customer, or
- (b) where the weight can be defined, a sum calculated at the rate of two SDR per kilo of the gross weight of the subject Goods of the said transaction, or
- (c) 75,000 SDR in respect of any one transaction, whichever shall be the least.

- (iii) in the case of an error and/or omission, or a series of errors and/or omissions which are repetitions of or represent the continuation of an original error, and/or omission
- (a) the loss incurred, or
- (b) 75,000 SDR in the aggregate of any one trading year commencing from the time of the making of the original error, and/or omission, whichever shall be the lower.

For the purposes of clause 26(A), the value of the Goods shall be their value when they were, or should have been, shipped. The value of SDR shall be calculated as at the date when the claim is received by the Company in writing.

- (B) Subject to clause 2(B) above and sub-clause (D) below, the Company's liability for loss or damage as a result of failure to deliver, or arrange delivery of goods, in a reasonable time, or (where there is a special arrangement under Clause 25) to adhere to agreed departure or arrival dates, shall not in any circumstances whatever exceed a sum equal to twice the amount of the Company's charges in respect of the relevant contract.
- (C) Save in respect of such loss or damage as is referred to at sub-clause (B), and subject to clause 2(B) above and Sub-Clause (D) below, the Company shall not in any circumstances whatsoever be liable for indirect or consequential loss such as (but not limited to) loss of profit, loss of market, or the consequences of delay or deviation, however caused.
- (D) On express instructions in writing declaring the commodity and its value, received from the Customer and accepted by the Company, the Company may accept liability in excess of the limits set out in sub-clauses (A) to (C) above upon the Customer agreeing to pay the Company's additional charges for accepting such increased liability. Details of the Company's additional charges will be provided upon request.

- 27(A)** Any claim by the Customer against the Company arising in respect of any service provided for the Customer, or which the Company has undertaken to provide, shall be made in writing and notified to the Company within 14 days of the date upon which the Customer became, or ought reasonably to have become, aware of any event or occurrence alleged to give rise to such claim, and any claim not made and notified as aforesaid shall be deemed to be waived and absolutely barred, except where the Customer can show that it was impossible for him to comply with this time limit, and that he has made the claim as soon as it was reasonably possible for him to do so.
- (B) Notwithstanding the provisions of sub-paragraph (A) above, the Company shall in any event be discharged of all liability whatsoever and howsoever arising in respect of any service provided for the Customer, or which the Company has undertaken to provide, unless suit be brought and written notice thereof given to the Company within nine months from the date of the event or occurrence alleged to give rise to a cause of action against the Company.

## JURISDICTION AND LAW

- 28** These conditions and any act or contract to which they apply shall be governed by English law and any dispute arising out of any act or contract to which these Conditions apply shall be subject to the exclusive jurisdiction of the English courts.