

# **P&O FERRYMASTERS LIMITED CARRIAGE OF GOODS Conditions of Sub-Contracting 2005**

## **1. DEFINITIONS**

### **1.1** In these conditions:

- “the Company”** means P&O Ferrymasters Limited and/or subsidiary and/or associated companies.
- “these Conditions”** means the Conditions of Sub-Contracting of the Company printed herein and as varied from time to time.
- BIFA** means the British International Freight Association
- CMR** The Convention on the Contract for the International Carriage of Goods by Road
- Receipt note** A document proving receipt of cargo by the delivery point; in the case of international transport by road (as defined in clause 13.1 hereunder), this shall be a consignment note as defined in CMR.
- “the Sub-Contractor”** means any person, firm or company who enters into a contract with the Company for the carriage, transportation, forwarding or storage of goods including liquids, gases, solids and powders, whether loaded or unloaded.
- “Transport Unit”** means any device used for the carriage, transportation or storage of goods (whether loaded or unloaded) including any container, tanker, vehicle, trailer, vessel, aircraft or other equipment of any type.

### **1.2** The headings in these Conditions are for convenience only and shall not affect their interpretation.

## **2. APPLICATION**

**2.1** These Conditions and any amendments thereto made pursuant to clause 15 hereof or by written agreement between the parties shall apply to all future sub-contracts between the Company and the Sub-Contractor (unless expressly otherwise agreed in writing by the Company as taking precedence over these Conditions in the particular circumstances).

**2.2** No servant or agent of the Company has the power to, or is permitted to, alter or vary these Conditions in any way unless expressly authorised in writing by a Director of the Company to do so. No unauthorised alteration or variation of these Conditions shall be binding upon the Company unless subsequently expressly agreed by the Company in writing signed by a Director of the Company.

### **2.3**

**2.3.1** If any legislation (such as, but not limited to, international Conventions) is compulsorily applicable to any business undertaken, these Conditions shall, as regards such business, be read as being subject to such legislation. If any part of these Conditions be repugnant to such compulsory legislation, then such part of these Conditions shall, as regards such business, be overridden to that extent but no further.

**2.3.2** For all business not covered by the provisions of Clause 2 and/or Clause 13 (or for any issue in relation to liability not covered by Clause 2 and/or 13 or by the Conventions referred to in Clause 13), THEN, in those circumstances, subject to Clause 13.6 as regards time limits, the Sub-Contractor's liability shall be determined in accordance with the BIFA Standard

Trading Conditions (being the BIFA Standard Trading Conditions current at the date the incident or failure (or alleged incident or failure) occurred).

### **3. FURTHER SUB-CONTRACTING**

- 3.1** The Sub-Contractor may not further sub-contract any service to be performed on behalf of the Company either in whole or in part without the prior written consent of the Company but the Sub-Contractor shall be responsible for the acts or omissions of his agents, servants or sub-contractors or of any other persons of whose services he makes use for the performance of the carriage, when such agents, servants or other persons are acting within the scope of their employment, as if such acts or omissions were his own.
- 3.2** If the Sub-Contractor is made bankrupt or winding up proceedings are commenced or if he makes any arrangement with creditors or if a receiver or an administrative receiver is appointed in respect of the whole or any part of the assets or undertaking of the Sub-Contractor (or any equivalent legal or judicial steps are taken in any jurisdiction to which the Sub-Contractor is subject), the Company may by written notice (and without payment) require the Sub-Contractor to assign any sub-contract entered into by the Sub-Contractor and all rights arising thereunder to the Company and the Sub-Contractor shall comply with such notice immediately it is given. This right shall be in addition to, and not in substitution for, the right of the Company to bring to an end forthwith this contract between the Company and the Sub-Contractor.

### **4. PERFORMANCE OF SUB-CONTRACTOR**

#### **4.1** The Sub-Contractor shall:

- 4.1.1** ensure that his employees, servants, agents, sub-contractors (if permitted) and other persons employed or authorised by him are competent to carry out the contract between the Company and the Sub-Contractor;
- 4.1.2** without prejudice to the generality of the foregoing, ensure that every such employee, servant, agent or sub-contractor (if permitted) is fully aware that they shall not, and have no authority to, accept for transportation (a) any goods other than those properly and lawfully consigned (b) any persons other than those required for the transportation of the consigned goods;
- 4.1.3** carry out all duties on behalf of the Company in accordance with the Company's operating procedures (including Drivers' Handbook where provided) issued by the Company to the Sub-Contractor from time to time and to ensure that all relevant personnel have full knowledge of such information and strictly comply with it;
- 4.1.4** collect and deliver the goods to be carried at the time specified by the Company or, if no time has been so specified, within a reasonable time and within normal working hours;
- 4.1.5** inform the Company immediately by telephone, telex, e-mail or facsimile transmission of any unusual delay;
- 4.1.6** inform the Company immediately in the event of loss, damage or misdelivery and supply at its own expense a full report if the Company so requires of the cause and circumstances together with any further information which the Company may require;
- 4.1.7** if any loss is, or is suspected to be, due to theft or pilferage, in addition to action under sub-clause 4.1.6, immediately inform the Police and take all reasonable steps to identify the guilty person and to trace and recover the goods;
- 4.1.8** where goods are consigned to carriage forward, unless otherwise directed by the Company, collect the charges due before parting with the goods and account daily for all monies so received. It is expressly agreed that in the event of breach by the Sub-Contractor of the

provisions of this sub-clause the Sub-Contractor shall upon demand pay to the Company a sum equivalent to all charges which should have been collected from the consignee;

**4.1.9** subject to the limitations referred to in Clause 13, in the event of any loss or damage to the goods or any delay in delivery, indemnify the Company against any possible liability of the Company and the amount of all costs and expenses incurred by the Company in connection with such liability except where such loss, damage or delay has arisen out of the proven negligence of the Company.

**4.2** If a vehicle breaks down or for any other reason the Sub-Contractor fails to or is unable to collect the goods or complete delivery in accordance with this clause, the Company may, either itself or by another sub-contractor, without prejudice to any other right it may have, recover the goods and carry them to their destination and the Sub-Contractor shall pay the Company's charge therefore.

## **5. EMPLOYEES AND AGENTS**

**5.1** The Sub-Contractor hereby acknowledges that the Company has no day-to-day operational control (in the performance by the Sub-Contractor of the contract with the Company) over employees, servants, sub-contractors and agents of the sub-contractor who shall at all times remain under the complete control (and be the sole responsibility) of the Sub-Contractor in all respects. This contract does not create any agency or other relationship apart from a sub-contract between the Company and the Sub-Contractor.

**5.2** The Company shall not be liable to the Sub-Contractor (or any employee, servant, agent or sub-contractor of the Sub-Contractor) for any loss, damage or personal injury (whether suffered by any employee, servant, agent or subcontractor of the Subcontractor or by any other person) arising out of the performance by the Sub-Contractor of the contract with the Company except where such loss damage or personal injury has been caused directly by the proven negligence of the Company.

**5.3** The Sub-Contractor indemnifies the Company against all claims and demands caused by or arising out of the act, default, negligence of the Sub-Contractor or caused or arising out of the act, default or negligence of any of the Sub-Contractor's employees, agents or sub-contractors or of any third-party operator engaged by the Sub-Contractor in the performance of the Sub-Contractor's contract with the Company.

## **6. TRANSPORT UNITS**

**6.1** As regards Transport Units whether belonging to the Sub-Contractor or the Company and/or to its customers or to other third parties, the Sub-Contractor shall keep such Transport Units in good and workable condition whilst any such units are in his possession or control (or that of any of his agents or sub-contractors). The Sub-Contractor shall be responsible for the loss of, or any damage to, any such unit sustained while in such possession or control (or that of his agents or sub-contractors). The Sub-Contractor shall indemnify the Company against the cost of making good such loss or damage to the Company's entire satisfaction. The Company has the right to require the Sub-Contractor to deliver equipment (at the Sub-Contractor's expense) to a location determined by the Company for inspection and repair (where necessary).

**6.2** If a Transport Unit (belonging to the Company and/or its customer and/or other third parties) appears to be damaged or deficient at any time during which it is in the possession or control of the Sub-Contractor or of any of his agents or sub-contractors the Sub-Contractor shall notify the Company immediately when the damage occurs or a deficiency is discovered and shall furnish written details to the Company as soon as practicable. If the Sub-Contractor's notice is not given immediately to the Company then the Company will be entitled to hold the Sub-Contractor responsible for the damage or deficiency and any loss or damage arising from such damage or deficiency in the equipment.

**6.3** A Transport Unit supplied by the Company is to be used only by the Sub-Contractor (or its permitted sub-contractor) and only for the purpose of performing the contract with the Company

unless otherwise authorised by a Director of the Company in writing. A Transport Unit shall remain at all times the unencumbered property of the Company or its customers or any other third party (as the case may be) and where the Sub-Contractor employs or in turn - a sub-contractor, neither the Sub-Contractor nor its sub-contractor shall sell, charge or encumber it in any way or lease it or allow any lien to be created or exercise any lien over it.

## **7. INDEMNITY**

**7.1** The Sub-Contractor will indemnify the Company against all claims and liability made against or incurred by the Company:

**7.1.1** arising from the unlawful or unauthorised use of any Transport Unit whilst it is in the possession, custody or control of the Sub-Contractor or his agent or sub-contractors; or

**7.1.2** arising from the death or injury to any person or damage to the property of any person, firm or company; or

**7.1.3** arising directly or indirectly:

**7.1.3.1** out of the presence, use or condition of any Transport Unit (including the Company's equipment) whilst it is in the possession, custody or control of the Sub-Contractor or his agents or sub-contractors;

**7.1.3.2** out of the performance, or failure of performance, by the Sub-Contractor of the contract with the Company (including any special requirements particular to the particular contract) or any breach thereof or of these Conditions; and

**7.1.3.3** out of any other act, neglect or default of the Sub-Contractor or any of his servants, agents or sub-contractors.

The indemnity referred to at clause 7.1 above shall not apply to the extent that (and only to the extent that) such claims have resulted from the proven negligence of the Company.

**7.2** Except where the Company and the Sub-Contractor agree in writing to the contrary, the Sub-Contractor shall be responsible for ensuring that the requirements of every statute, regulation and order from time to time in force (in any relevant country) relating in any way to drivers, motor vehicles, trailers and other vehicles and equipment used for carrying, loading and/or unloading goods shall at all times be strictly observed and all payments promptly made.

**7.3** Without in any way limiting the obligations of the Sub-Contractor under clause 7.2, it shall be the Sub-Contractor's duty to ensure that any vehicles used by him display in the manner required by law, all the necessary licence discs, permits, tax discs and other notices appropriate to the vehicle and to the country/countries of registration and of passage.

**7.4** The Sub-Contractor will fully and absolutely indemnify the Company against all claims, demands, loss, penalties, costs, expenses, actions and liability arising out of the failure by the Sub-Contractor to perform its obligations under these Conditions. For the avoidance of doubt, it shall be a breach of this indemnity whether or not the Sub-Contractor or its agents, employees or servants is/are knowingly or innocently in breach of its/their obligations. This statement, whilst of general application, is particularly relevant in the event of any breach in relation to the carriage of unauthorised persons or cargoes.

## **8. RECEIPTS, INVOICES AND STATEMENTS**

**8.1** All prices or quotations or estimates given by the Sub-Contractor to the Company shall include all VAT, TVA (or other taxes levied by any tax authority at the point of sale) unless otherwise expressly stated by the Sub-Contractor and agreed by the Company prior to the services being provided by the Sub-Contractor.

- 8.2** All receipt notes shall be the property of the Company and must be returned duly signed to the office from which the order for the work was issued within seven days of the delivery date together with the Sub-Contractor's invoice for the carriage.
- 8.3** Statements of account for work done during a month must be rendered to the Company in the first week of the following month and shall identify the work done, the corresponding invoice, and the office from which the order for the work was issued.
- 8.4** The Company shall be under no liability to the Sub-Contractor for any work in respect of which a duly signed receipt note has not been returned.
- 8.5** Subject to any mandatorily applicable legislation to the Contrary, the Company may set off against any sum due, or becoming due, to the Sub-Contractor (in respect of any contract between the Company and the Sub-Contractor) any sum due, or becoming due, to the Company from the Sub-Contractor on any account.

## **9. THE COMPANY'S LIABILITY**

- 9.1** The Company shall have no obligation to ensure, or provide for, the safety, custody or condition of any of the Sub-Contractor's vehicles, equipment or property and no claims shall lie against the Company for any loss, damage or injury to such vehicles, equipment or property.
- 9.2** Unless expressly agreed otherwise in writing between the parties each contract for the carriage, transportation or storage of goods by the Sub-Contractor shall constitute a separate contract subject to these Conditions and nothing herein shall be construed as a contract for multiple sub-contracts or as a guarantee to the Sub-Contractor of any future sub-contract work.

## **10. INSURANCE**

- 10.1** The Sub-Contractor shall take out in his own name such policies of insurance against his liabilities under these Conditions and under any contract with the Company as the Company may require and shall produce to the Company upon demand such policies and the receipts for the current premiums thereon. In the event of the Sub-Contractor failing so to insure, or failing to pay any premium, the Company shall be at liberty to do so itself and the Company may, at its sole option:

**10.1.1** recover on demand the full cost from the Sub-Contractor; or

**10.1.2** deduct the full cost from any money due, or thereafter becoming due, to the Sub-Contractor from the Company; or

**10.1.3** pay the Sub-Contractor's invoices at a reasonable discount to allow for the cost of the Company effecting such insurance or of carrying the risk of the Sub-Contractor's default itself.

- 10.2** Inspection by the Company of any insurance policies submitted to it by the Sub-Contractor shall not be considered as an admission or acceptance by the Company of the validity or sufficiency of such policies. Such validity and sufficiency shall at all times remain the absolute responsibility of the Sub-Contractor.

## **11. SEVERABILITY**

If any of the provisions of these Conditions is found by a Court of competent jurisdiction to be void or unenforceable in whole or in part, such provision shall be deemed to be deleted from these Conditions and the remaining provisions of these Conditions shall continue in full force and effect.

## **12. JURISDICTION AND CHOICE OF LAW**

**12.1** Any claim of whatever nature arising out of or relating to these Conditions or breach thereof shall be governed by the laws of England. All claims or disputes shall be submitted to the jurisdiction of the English Courts or, at the Company's sole option, either (a) to the jurisdiction of the Courts of the country of the principal domicile of the Sub-Contractor or (b) to the jurisdiction of the Courts of the country in which any asset (including any Transport Unit or bank account) of the Sub-Contractor is or might at the instigation of the Company be detained or frozen.

**12.2** The provisions of 12.1 shall only be subject to (a) any mandatory local law applying in the particular circumstances and (b) where relevant to the mandatory provisions of mandatorily applicable international conventions such as but not limited to the CMR Convention dated 19 May 1956.

## **13. THE SUB-CONTRACTOR'S LIABILITY**

Unless otherwise agreed in writing, the Sub-Contractor shall be liable to the Company for loss or damage to or delay to or misdelivery of goods transported by the Sub-Contractor or the Sub-Contractor's employees, servants, agents or sub-contractors in accordance with the following: -

**13.1** For international transport by road (to include movements which include both rail and road transport ó rail/road ó whether or not intermodal containers are used), CMR will apply by Convention in all respects. (The Sub-Contractor accepts ó in this context ó that intermodal containers used on road/rail movements are ÷vehiclesö for the purpose of Article 1.2 of CMR.)

**13.2** For domestic transport (i.e. transport wholly within the boundaries of any territory) by road or rail/road and also for any such traffic between the UK and Eire, the Sub-Contractor's liability shall be determined by these Conditions of Sub-Contracting and shall be limited as follows: -

**13.2.1** in the case of claims for loss or damage to goods, the value of any goods lost or damaged OR a sum equal to two (2) special drawing rights (SDRs) per kilo of the gross weight of any goods lost or damaged (whichever shall be the lesser);

**13.2.2** in the case of a failure to deliver or arrange delivery of goods in reasonable time or to adhere to agreed departure or arrival dates: a sum equal to twice the amount of the Company's charges to its Customers for the relevant transport undertaken (being for this purpose the whole of the Company's charges and not merely the charges for any part (if less) undertaken by the Sub-Contractor);

**13.3** for international carriage of goods by air, in accordance with the Warsaw Convention 1929 as amended by all subsequent protocols;

**13.4** for international carriage of goods by sea, in accordance with the Convention applicable to the particular voyage;

**13.5** for international carriage of goods by rail, in accordance with the C.I.M. Convention.

**13.6** Unless otherwise agreed in writing (or mandatorily otherwise required by any national or Convention legislation), the Company shall file with the Sub-Contractor any claim for loss or damage or delay within the time limits specified in the CMR Convention (even where such Convention does not apply mandatorily).

**13.7** For all business not covered by the provisions of this Clause 13 (or for any issue in relation to liability not covered by this Clause or the Conventions referred to in it), THEN, in those

circumstances, subject to 13.6 as regards time limits, the Sub-Contractor's liability shall be determined in accordance with the BIFA Standard Trading Conditions being the BIFA Standard Trading Conditions current at the date the incident or failure (or alleged incident or failure) occurred.

**14. CONFIDENTIALITY**

The Sub-contractor will treat as strictly confidential all information received or obtained as a result of entering into any contract with the Company and may not disclose any information which would otherwise be confidential unless and to the extent: (i) required by law; (ii) the Company has given prior written consent to disclose; (iii) necessary in the provision of the Services, (iv) the information had already come into the public domain through no fault of the Sub-contractor at the time of disclosure.

**15. AMENDMENTS TO THESE CONDITIONS**

The Company may alter and/or amend these Conditions at any time. Notice of any such alterations or amendments will be sent to the Sub-Contractor and all contracts made between the Company and the Sub-Contractor subsequent to the date of any such alterations or amendments shall be subject to such alterations or amendments.

Copies of the current version of the BIFA Standard Trading Conditions are available upon request.

I acknowledge that I have received a copy of these Conditions of Sub-Contracting and I agree to be bound by them.

Signed: .....

Duly authorised representative for and on behalf of  
*[print full name of Sub-Contractor]*

Date: .....