

# ***Condorferries***

**F R E I G H T**

## **CONDITIONS OF CARRIAGE OF GOODS BY SEA**

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## **CONDITIONS OF CARRIAGE OF PASSENGERS, THEIR ACCOMPANIED LUGGAGE AND ACCOMPANIED VEHICLES BY SEA**

**JANUARY 2004**

# CONDITIONS OF CARRIAGE OF GOODS BY SEA

## 1. Definitions and Interpretation

In these conditions unless the context otherwise requires:

“the Company” means Condor Ferries Freight Ltd (Trading as Condor Ferries).

“goods” includes animals, vehicles, trailers, containers, flats, packages or other equipment or goods declared for shipment together with their contents, if any, and personal property of any description whatsoever.

“Owners” includes the shipper, the consignee, the owner of the goods and all or any person having any property or interest in the goods, whose liabilities hereunder shall be joint or several.

“animals” includes livestock, domestic and wild animals, birds, fishes and reptiles other than small domestic animals (which shall be carried on the Company’s Conditions of Carriage of Passengers, Passengers Accompanied Luggage and Passengers’ Accompanied Vehicles).

“person” includes firms and corporations.

“container” includes containers, trailers, flats, pallets, packages or other similar units.

Headings are for convenience only and shall not affect the meaning of these Conditions. Save where the context otherwise requires the singular includes the plural and vice versa.

## 2. Passengers

Passengers and passengers’ accompanied luggage will be carried subject to the provisions of the

Company’s Conditions of Carriage of Passengers, their accompanied luggage and accompanied vehicles, shown later in this booklet, and is also available for inspection at the Company’s port offices.

## 3. Application of these conditions

The Company is not and does not hold itself out to be a common carrier. In particular the Company reserves the right in its absolute discretion to accept or to refuse any goods for carriage notwithstanding that it may have previously agreed to receive or ship the same and does not guarantee the sailing of any particular ship. NO BILL OF LADING, NOR ANY OTHER DOCUMENT OF TITLE, WILL BE ISSUED in respect of the goods or any part thereof whether or not one is

demanding by the shipper or by any other person, any custom, practice or usage or provision to the contrary notwithstanding.

By presenting goods for shipment, the Owners thereby accept these conditions on their own behalf and on behalf of the consignees, the Owners of the goods, and all persons having any property or interest in the goods, and warrants that he has authority to do so.

## 4. Liabilities of the Company

(1) The goods are received, loaded, stowed, carried, discharged and otherwise handled and kept by the Company under and subject to:

(a) the Hague-Visby Rules as set out in the Schedule to the Carriage of Goods by Sea Act 1971 save as follows:-

(i) each vehicle (whether consisting of a single unit, an articulated unit or a trailer or semi-trailer) together with any containers or other equipment and together with their respective contents (if any) shall be deemed to be one package or unit for the purposes of Article IV, para. 5(a) of the Hague-Visby Rules;

(ii) the Company shall be entitled to limit its liability to 666.67/Special Drawing Rights (SDRs) per package or unit; and Article IV, para. 5(a) of the Hague-Visby Rules shall read as though the words “or two units of account per kilogram of gross weight of the goods lost or damaged, whichever is the higher,” were deleted;

(iii) Article IV, para 5(C) of the Hague-Visby Rules shall be deleted.

(iv) as provided in Clause 3(2) of these conditions.

(b) all statutory limitations of and exemptions from liability of carriers and/or ships from time to time in force.

(c) the terms conditions and exceptions herein set out. In the event of inconsistency with the Hague-Visby Rules the terms conditions and exceptions herein shall prevail.

(2) The Company shall not be liable for:

- (a) delay, howsoever and when so ever caused;
- (b) loss or damage of any nature whatsoever (including death or sickness of or injury to

animals) which occurs before the goods cross the vessel’s ramp or rail during loading, or after the goods cross the vessel’s ramp or rail during discharge, or occurring in the course of loading or discharging, howsoever such loss or damage may be caused;

(c) mis-delivery if the goods are delivered in accordance with Clause 13(1) hereof;

(d) loss of use of any goods or other equipment or any item thereof

## 5. Liability of other persons

Any servant or agent of the Company, if sued in respect of any loss damage mis-delivery or delay of or to or in connection with the goods, shall have the benefit of all provisions contained or incorporated herein or applicable hereto which exclude or limit the liability of the Company for such loss damage mis-delivery or delay. This Clause constitutes an offer made by the Owners to the Company on its own behalf and as agents for all persons who are the Company’s servants or agents from time to time to confer on them the said benefit, and the Company shall be deemed to have accepted such offer on behalf of all such persons. Consideration for such offer and acceptance for any contract resulting there from shall be the provision or prospected provision by any servant or agent of the Company of any services for the benefit, whether direct or indirect, of the Owners. If notwithstanding this clause any such person is sued in respect of such loss, damage, mis-delivery or delay, then the Owners agree to indemnify the Company against any payment which the Company in its sole discretion may make to such person in respect of such proceedings and his liability, if any, therein. For the purpose of this clause “agents” includes all independent contractors or subcontractors employed by the Company, including the operators of vessels not owned or operated by the Company and their servants and agents.

## 6. Time of Sailing and Shipment

(1) No vessel is obliged to sail according to advertisement or notice and any vessel notwithstanding such advertisement or notice has liberty to sail on any other day or at any other hour and any sailing may be cancelled without notice notwithstanding any shipment or bookings previously made.

(2) The Company is at liberty to ship the goods on such day at such time in such order and in such

vessels as it may desire notwithstanding that the goods may have been booked for a sailing on or at a particular time and to carry the goods on more than one sailing and not all on the same day.

## 7. Variations

All vessels shall have liberty to:

(a) sail with or without a pilot, make trial trips, adjust compasses,

(b) tow and assist vessels in all situations,

(c) carry goods of all kinds, dangerous or otherwise;

(d) use any port or ports, in any order or rotation, for any purpose whatsoever, whether or not forming part of the route between the named termini for the carriage of the goods or the customary or advertised route;

(e) carry all or any of the goods to any port or ports beyond their port of destination, and/or discharge other goods there and to carry the goods back to the port of destination;

(f) tranship the goods or any of them for any purpose into (including on deck of) any vessels or craft to land and or store the goods or any of them at any port or place and/or to forward or carry the same to their port of destination by any vessel craft or conveyance either belonging to the Company or to others by any route however circuitous either by land or water; and

(g) dry dock any vessel or craft with the whole or part of the goods on board.

The Company is at liberty to load, stow and carry the goods or any of them on deck or in any part of the vessel or craft. These conditions shall apply regardless of whether the goods are stated to be or are in fact carried on or below deck.

## 8. Matters Affecting Performance

If at any time performance by the Company is or appears to the Company likely to be affected by any hindrance, risk, delay, or difficulty whatsoever which cannot be avoided by the exercise of due diligence, the Company (whether or not the circumstances giving rise thereto existed at the time the contract was made or the Goods received) may without notice to the

Owners treat the performance of the contract as terminated and place the Goods or any part of them at the Owners disposal at any place or port which the Company may deem safe and convenient whereupon the responsibility of the Company in respect of such Goods shall cease.

#### 9. Payment of freight

Freight is to be considered as earned and due on shipment and must be paid vessel and/or goods lost or not lost. Freight once earned shall not be repayable in any circumstances whatsoever. The Company shall be entitled to demand payment of freight before shipment. Freight is payable at the option of the Company on gross intaken or discharged weight, measurement or number. A freight surcharge of 2% per month will be levied on all outstanding accounts.

#### 10. Liens

- (1) The Company shall have a lien on the goods or any part thereof for all freight charges and all other sums whatsoever which are or become due to the Company in respect of the goods or under these conditions, and for all other sums and balances which are or become due to the Company from the Owner, whether in respect of previous shipments or on general account or otherwise howsoever. In this clause "sums" includes but is not limited to damages for breach of contract or other unliquidated claims and all previously unsatisfied debts whatsoever. The lien shall extend to include interest and all sums which are or after the lien is exercised become due aforesaid and costs and expenses incurred by the Company in exercising and maintaining the lien or in exercising the following rights of sale.
- (2) The Company shall be entitled (and is hereby authorised by or on behalf of the Owners) to sell the goods or any part thereof which are not delivered within 3 months after the date of discharge, whether or not any lien has been or might be exercised over such goods. The sale may be by public auction or otherwise and the proceeds may be applied in full or part settlement of the sums due to the Company, the Owner remaining liable to pay the balance, if any, of such sums to the Company. The Company will pay the balance, if any, of the proceeds of sale to or to the order of the Owners.
- (3) The Owner expressly warrant that he has authority to contract as above on behalf of the

Consignee, the Owners of the goods and all persons interested in the goods or any part thereof from time to time as well as on his own behalf and the Owner expressly agrees to indemnify the Company against all consequences and liabilities arising out of the exercise of such lien and power of sale if the exercise proves to be unlawful or ineffective as against the Owner of the goods or any other person.

#### 11. Costs and expenses not included

- (1) All carriage, lightage, cartage or rail haulage whether, before shipment on the vessel or after discharge will be entirely at the Owners risk and expense (unless otherwise agreed) and the Company accepts no responsibility whatsoever in respect of the same.

- (2) The Company will not be responsible for "charges forward" in respect of the goods if the goods are lost or refused by the consignee nor for failure to collect such charges in any case where either before or after delivery the person from whom such charges are to be collected fails to pay the same on demand.

- (3) If the goods are being carried or forwarded under a contract or through carriage and the Company shall pay to any proceeding carrier any freight or other charges which may be payable by the consignee on delivery of the goods but which the Company may for any reason fail to collect from the consignee then such proceeding carrier and the Owner shall be severally bound to repay to the Company the amount so paid.

- (4) All expenses and liabilities incurred by the Company in doing or procuring to be done anything which under these conditions is to be or may be done at the Owners' expense shall be a debt due by the Owners to the Company. The Owners shall be liable for all duties, taxes, imposts, levies, deposits or outlays of any kind levied by the authorities at any port or place for or in connection with the goods and for any payment, fine, expenses loss or damage whatsoever incurred or sustained by the Company in connection therewith. The Company is entitled to retain and be paid all brokerage, commissions, allowances and other remunerations.

#### 12. Valuable goods

Valuable goods, bullion, bank notes, negotiable securities, title deeds and the contents of any

package of more than £250 in value must be declared to the Company before shipment and freight thereon may be charged Ad Valorem, but in all respects such goods shall be subject to these conditions. Owners will be liable to double freight if a true declaration of value is not made before shipment.

#### 13. Dangerous goods

Hazardous, dangerous or radioactive goods according to the IMO (International Maritime Organisation) IMDG Code (International Maritime Dangerous Goods Code) shall all be identified, marked, labelled, documented and packed using such materials as to fully comply with the relevant IMO recommendations in force at the time of shipment. Goods not complying with these requirements may be destroyed or disposed of by the Company at any time without recompense or reference to the Owners at the Owners' full expense. The Owner agrees to indemnify the Company against all consequences and liabilities arising out of the shipment or acceptance of hazardous, dangerous or radioactive goods or substances forming part of the goods whether or not the nature thereof is known to the Company.

#### 14. Arrival, Discharge, Delivery and Removal of the Goods

- (1) The Owner authorises the Company to deliver the goods to the representative of the consignee or to any person whom the Company reasonably believes to be such representative and such delivery shall constitute due fulfilment of the Company's obligations to deliver the goods.

- (2) The Company does not undertake to give notice of the arrival or of the discharge of the goods.

- (3) All goods (excluding animals) shall be removed by the Owners from the quay as soon as landed from the vessel, if not so removed the Company shall be entitled to remove them and the Owners shall pay any expenses incurred thereby.

- (4) If the Owner neglects or refuses to take delivery of the goods or if the Company is unable to deliver the goods by reason of the Owner failing to supply any declaration, certificate or other document in connection therewith in accordance with any Customs, Government or Local Regulations or otherwise at the port of discharge the Company shall be at liberty to re-ship the goods if landed and to return the same to the port of shipment at the Owners' expense.

- (5) Any goods (excluding animals) not claimed on the day of discharge may be stored ashore or afloat wherever the Company may deem fit at the expense of the Owners without prejudice to the Company's lien.

- (6) The Company shall not be liable for loss or damage to goods so stored and without prejudice to the foregoing shall not in any event be liable for:

- (a) loss or damage due to fire, vermin or insect pests;
- (b) loss or damage to articles of a fragile or perishable nature;

- (c) indirect or consequential loss or damage;
- (d) loss of or damage to articles which are not acceptable for carriage but were nevertheless despatched as goods entrusted to the Company.

- (7) In cases where the Company is liable for loss or damage to goods so stored its liability shall be in any event limited to the limits referred to in Clause 3 above.

- (8) The Company may open and examine the contents of any goods or packages at any time and may without incurring any liability remove or destroy any portion thereof which in its opinion might cause injury or inconvenience to persons or damage to property.

- (9) The Company may in its discretion (but without any obligation to do so) sell any perishable articles contained in any package if they consider it advisable to do so in order to prevent loss damage or nuisance of any kind, in such case may deduct their charges and expenses from the proceeds of sale.

- (10) If any goods or articles are not removed within three months from the date on which they are received into storage the Company may sell the same and out of the proceeds of sale retain all monies due to it from the Owners thereof and all expenses incurred by it in relation thereto. If the Company is of the opinion that the value of the goods or articles will be insufficient to cover any monies due to it and/or the cost of sale the Company may dispose of the same as the Company thinks fit.

#### 15. Livestock

Livestock must be alongside two hours before the time of sailing and in the event of them not being so

alongside all charges paid shall be forfeited and the livestock will not be carried. If from any other cause, livestock are left behind without the Owners' fault the Company will return the charges paid in respect of such as have been so left behind or will, at the option of the owners, ship those left behind in some subsequent vessel on the terms of these conditions, in which case the Owners shall be responsible for all livestock left behind and all costs and expenses relating thereto until such subsequent shipment. Livestock must be accompanied by someone in charge appointed by the Owners.

### 16. Description and packing of goods

- (1) Any weight stated is shippers' weight. Weight, number, contents, condition, brand quality and measure of goods are unknown to the Company.
- (2) Where the Owners load the goods into a container the Company shall be under no liability whatsoever for any loss or damage to the goods caused directly or indirectly by the manner in which the goods have been packed or stowed in the container, any defects whatsoever in or insufficiency of packing materials or improper labelling or addressing, unsuitability of the goods for carriage by container or the shifting or movement of the goods within the container and the Owners shall indemnify the Company against injury, loss or damage of any kind whatsoever and against all consequences and liabilities arising directly or indirectly from:
  - (a) any of the above mentioned causes;
  - (b) any defects in or unsuitability of the container where such defect or unsuitability was reasonably discoverable upon a proper inspection being carried out immediately before the container was loaded with the goods;
  - (c) the failure of the Owners, their servants or agents properly to seal, close up or secure the fastenings of the container or any physical damage to the container; or
  - (d) any physical damage to the container whatsoever and howsoever caused while on the Owners' premises or those of his agents.
- (3) The Company shall be under no liability whatsoever for any loss of or damage to the goods caused by any defect in any container, motor vehicle or railway wagon in which the goods are conveyed.

### 17. Loading and discharge

- (1) Loading and discharging of the goods at the port of shipment and port of destination will be at the Company's expense. The Owners will indemnify the Company against all costs, expenses, liabilities and any other consequences of the breakdown of any vehicle, container or any other equipment during the course of loading or discharging whether on board the vessel or ashore.
- (2) Goods which require special appliances for loading or discharging are accepted for carriage only on condition that such appliances are made available by the Owners at the place of loading or discharging. Subject to express contrary agreement being made in writing, where the Company is called upon to load or discharge goods requiring special appliances for loading or discharging, the Company shall be under no liability to the Owners for any damage whatsoever or howsoever caused arising from such loading or discharging.

### 18. Opening of goods

The Company may open any vehicle, container or package and examine, remove or restore or otherwise handle the contents or any part thereof if directed or requested to do so by Customs or any other Civil or Military Authority or if the Company in its sole discretion considers it necessary to do so. The same shall be done at the Owner's risk and expense and the Company shall not be liable in any circumstances whatsoever for loss, damage or mis-delivery or delay caused by improper stowage or inadequate packing or for a mixture of contents howsoever and whensoever caused.

### 19. Owners' Warranty

- (1) The Owners warrant the goods as lawful merchandise at the ports of loading and discharge and will indemnify the Company against all costs, expenses, liabilities and any other consequences of the goods not being lawful merchandise at the said ports or any other ports or place where the goods may be.

- (2) The Owner agrees to indemnify the Company against all liability, loss and expense which the Company may incur if the goods when received by the Company contain (whether or not the Owner or any other person interested in or connected with the goods is aware of such fact) any person who is refused entry or permission to land at the port of discharge or whose entry or landing there is unlawful for any reason whatsoever.
- (3) The Company will not be responsible for any loss, damage, delay, detention, failure or refusal to carry or mis-delivery arising from detention of the Goods on account of the application of Customs, Government or other Local Regulations. During any such detention, the Company will hold the goods at the Owners' expense and risk.

### 20. Access to vehicles on board

No person shall have access to any vehicle after it has been loaded except with the express permission of the ship's Officers and provided he is accompanied by an authorised person.

### 21. Petrol and diesel fuel conveyed in tanks

The Owner shall ensure that petrol and diesel tanks of vehicles are not so full as to create the possibility of spillage and that the ignition is switched off. Petrol and diesel cans, whether full or empty, are not allowed to be carried except with the Company's prior authority.

### 22. Liquefied Petroleum Gas

Special application must be made in respect of vehicles propelled by liquefied petroleum gas.

### 23. Hydro-Carbon Gas

- (1) Vehicles may carry a small number of cylinders of liquefied hydro-carbon gas provided that:
  - (a) the cylinders must be declared to the vessel's officer in charge;
  - (b) the maximum number of cylinders carried in any vehicle should be three, except in the case of small expendable cartridges hermetically sealed and packed in an outer container, when up to twelve may be carried;
  - (c) all cylinders must be adequately secured in the vehicle against the movement of the vessel.
- (2) Any cylinder found to be leaking, inadequately

secured or inadequately connected to an appliance will not be accepted for shipment

### 24. General Average

General Average (if any) to be settled in London according to the York - Antwerp Rules 1974.

### 25. Claims

Any claim of whatsoever nature in respect of the goods must be made in writing to the Company, in the case of animals within 12 hours and in the case of other goods within 3 days from the time at which the same arrived or would in the ordinary course have arrived at their destination, otherwise all rights of action against the Company shall be absolutely barred.

### 26. Insurance of Cargo

Insurance cover may be arranged through the Company on such basis as the Company from time to time considers fit. The Company shall not be liable in any circumstances whatsoever for any loss howsoever, wheresoever or whatsoever arising directly or indirectly as a result of the inapplicability or inadequacy of any insurance cover so arranged.

### 27. Severability

All terms of these Conditions shall be regarded as severable and any provision of these Conditions prohibited by or unlawful or unenforceable under any applicable law shall (to the extent required by such law and/or to the extent necessary to preserve and maintain the remaining provisions of these Conditions) be deemed ineffective without modifying the remaining provisions of these Conditions such that these Conditions shall (save as aforesaid) be valid, binding and enforceable in accordance with their terms.

### 28. Law and jurisdiction

All contracts incorporating these conditions of carriage shall be governed by and construed in accordance with Guernsey law. Any dispute arising out of or in connection with this Contract or otherwise in relation to the goods shall be determined by the Courts of Guernsey to whose exclusive jurisdiction the Company and the Owners hereby irrevocably agree to submit.