



DATED

September 2022

HFI DISTRIBUTION LIMITED

TERMS AND CONDITIONS

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1. Terms and Conditions

1.1 The Terms and Conditions of HFI Distribution Limited are made up of the following:

- (a) These Conditions
- (b) The RHA Conditions
- (c) The BIFA Conditions

1.2 If there is any conflict or ambiguity between the terms of the documents listed in clause 1.1, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list.

2. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

2.1 Definitions:

Applicable Law: the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines, or industry codes which apply to the provision of the Services from time to time in force.

BIFA Conditions: means the British International Freight Association standard trading conditions 2021 edition (England).

Business Day: a day other than a Saturday, Sunday, or public holiday in England, when banks in London are open for business.

Carrier: HFI Distribution Limited registered in England and Wales with company number 07184468.

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 6.

Commencement Date: has the meaning given in clause 3.3.

Conditions: these terms and conditions as amended from time to time in accordance with clause 15.4.

Contract: the contract between the Carrier and the Customer for the supply of Services in accordance with these Conditions and the RHA Conditions.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

Customer: the person or firm who purchases Services from the Carrier.

Fixed Term Contract: any contract between the Carrier and the Customer for the ongoing supply of Services for a fixed term of 3 months or more, in accordance with these Conditions and the RHA Conditions

High Consequence Dangerous Goods: means goods including but not limited to explosives, desensitised explosives, flammable or toxic gasses or liquids, ammonium nitrate and corrosive substances.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: The Customer's order for Services as set out the Customer's written acceptance of a quotation by the Carrier.

RHA Conditions: means the 2020 edition of the Conditions of Carriage of the Road Haulage Association Limited.

Services: the services, supplied by the Carrier to the Customer as set out in the Specification.

Specification: the description or specification of the Services provided in writing by the Carrier to the Customer.

2.2 Definitions set out in the RHA Conditions shall also apply to this Contract.

2.3 Definitions set out in the BIFA Conditions shall also apply to this Contract.

2.4 Interpretation:

- (a) Unless expressly provided otherwise in this Contract, a reference to legislation or a legislative provision:
 - (i) is a reference to it as it is in force as at the date of this Contract; and
 - (ii) shall include all subordinate legislation made as at the date of this Contract under that legislation or legislative provision.
- (b) Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** includes fax and email.

3. Basis of contract

- 3.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 3.2 The Customer must provide full collection and delivery addresses, product descriptions and commodity specific details which may include questionnaires before an Order can be accepted by the Carrier.
- 3.3 The Order shall only be deemed to be accepted when the Carrier issues written acceptance of the Order at which point, and on which date the Contract shall come into existence (**Commencement Date**).
- 3.4 The Carrier reserves the right to refuse Orders for collections from or deliveries to residential addresses.
- 3.5 The Carrier shall not accept any Orders for the Carriage of High Consequence Dangerous Goods unless the Customer has completed the Carrier's High Consequence Dangerous Goods booking form, providing full details of the High Consequence Dangerous Goods and the Carrier reserves the right to refuse any such Order.
- 3.6 Any samples, drawings, descriptive matter, or advertising issued by the Carrier, and any descriptions or illustrations contained in the Carrier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 3.7 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice, or course of dealing.
- 3.8 Any quotation given by the Carrier shall not constitute an offer and is only valid for a period of 30 Business Days from its date of issue.

4. Supply of Services

- 4.1 The Carrier shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 4.2 The Carrier shall use all reasonable endeavours to meet any performance dates specified, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

4.3 The Carrier reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Carrier shall notify the Customer in any such event.

4.4 The Carrier warrants to the Customer that the Services will be provided using reasonable care and skill.

5. Obligations of the Customer

5.1 The Customer warrants that:

- (a) It is the owner of the products to be carried, or if not the owner, it has the consent of the owner for the purposes of the Contract.
- (b) None of the goods are or will be: High Consequence Dangerous Goods or contain substances of that nature; may cause pollution of the environment or harm to human health if they escape from their packaging; require any official consent or licence to handle, possess, deal with, or carry; will at any time whilst in the care or control of the Carrier constitute waste and that the goods by their nature can be legally transported in the United Kingdom;
- (c) The goods are fit and secure and properly packed and labelled for handling in carriage and in material compliance with any statutory or other requirement governing, carriage or handling. For avoidance of doubt, it is accepted that customer returns may not be properly packed. In such cases the Carrier will have no liability for damage or loss.
- (d) Before the Carrier assumes any responsibility for or by reference to the goods, the Customer will inform the Carrier in writing of any relevant matters; including any special precautions necessitated by the nature, weight, or condition of the goods and any statutory or other duties specific to the goods with which the Carrier may need to comply; and
- (e) It will comply and procure that any of its agents, employees or subcontractors comply, with any reasonable regulations of the Carrier relating to handling, health and safety and security which are notified from time to time.

5.2 The Customer shall:

- (a) Keep the Carrier informed in writing of any particular risk or likelihood of damage of a hazardous nature as may be caused by goods.
- (b) Provide the Carrier with all relevant information that is reasonably required as regards the goods.
- (c) Provide the Carrier with details of orders, rescheduling of deliveries and any additional services which may be required, with as much notice as is reasonably required for the Carrier to fulfil these obligations.

- (d) Reimburse the Carrier for direct losses arising from physical loss; damage; and personal injury to employees, that is suffered as a result of carrying out the Customer's instructions or which arises from any breach of the Customer's obligations as set out in this clause 5.

5.3 If the Carrier at any time suspects a breach of this clause 5 it may refuse to accept the goods, demand their immediate removal, or itself arrange the removal without notice at the Customer's cost.

6. Charges and payment

6.1 In consideration for the provision of the Services, the Customer shall pay the Carrier the Charges in accordance with this clause 6.

6.2 All amounts payable by the Customer exclude amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to the Carrier at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice.

6.3 The Customer shall pay invoices due and submitted to it by the Carrier, within 30 days from the date of invoice to a bank account nominated in writing by the Carrier.

6.4 If the Customer fails to make any payment due to the Carrier under the Contract by the due date for payment, then, without limiting any other remedies of the Carrier:

- (a) the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 6% a year above the Bank of England's base rate from time to time, but at 6% a year for any period when that base rate is below 0%.
- (b) the Customer may be liable for any debt collection associated charges incurred by the Carrier.
- (c) the Carrier may suspend all Services until payment has been made in full.

6.5 All amounts due under the Contract from the Customer to the Carrier shall be paid by in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6.6 Further Charges which may be payable by the Customer are outlined in Schedule 1.

6.7 Any queries relating to invoices should be raised within 7 days of receipt of the invoice by telephone on 01753 651 500 or by email to accounts@hfidistribution.co.uk.

7. Credit

7.1 Invoices are to be paid within 30 days from the date of the invoice.

8. Overnight Storage

- 8.1 Further Charges shall be payable by the Customer for overnight storage as outlined to the Customer from time to time.
- 8.2 Any goods or other items stored by the Carrier overnight are done so solely at the Customer's risk and should be insured by the Customer against any loss, damage, or theft.

9. Limitation of Liabilities (RHA & BIFA)

- 9.1 Clauses 23 to 27 (inclusive) of the BIFA Conditions (2021) shall apply.
- 9.2 Clauses 12 (inclusive) of the RHA Conditions (2020) shall apply.

10. Intellectual property rights

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Carrier.
- 10.2 The Customer grants the Carrier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to the Carrier for the term of the Contract for the purpose of providing the Services to the Customer.

11. Data protection

Definitions

Agreed Purposes: the performance of the contract by the Carrier and the Customer.

Controller, data controller, processor, data processor, data subject, personal data, processing and appropriate technical and organisational measures: as set out in the Data Protection Legislation in force at the time.

Data Protection Legislation: (i) the Data Protection Act 1998, until the effective date of its repeal (ii) the General Data Protection Regulation ((EU) 2016/679) (**GDPR**) and any national implementing laws, regulations, and secondary legislation, for so long as the GDPR is effective in the UK, and (iii) any successor legislation to the Data Protection Act 1998 and the GDPR, in particular the Data Protection Bill 2017-2019, once it becomes law.

Permitted Recipients: The parties to the Contract, the employees of each party and any third parties engaged to perform obligations in connection with the Contract.

Shared Personal Data: the personal data to be shared between the parties under clause 10.1 of these Conditions. Shared Personal Data shall include, but shall not be limited to, the following categories of information relevant to the following categories of data subject:

- a) Names.
- b) Geographical and email addresses; and
- c) Home and mobile telephone numbers.

11.1 **Shared Personal Data.** This clause sets out the framework for the sharing of personal data between the parties as data controllers. Each party acknowledges that one party (the Data Discloser) will regularly disclose to the other party (the Data Recipient) Shared Personal Data collected by the Data Discloser for the Agreed Purposes.

11.2 **Effect of non-compliance with Data Protection Legislation.** Each party shall comply with all the obligations imposed on a controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one party shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate the Contract with immediate effect.

11.3 **Particular obligations relating to data sharing.** Each party shall:

- (a) ensure that it has all necessary notices and consents in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes.
- (b) give full information to any data subject whose personal data may be processed under the Contract of the nature such processing. This includes giving notice that, on the termination of the Contract, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors, and assignees.
- (c) process the Shared Personal Data only for the Agreed Purposes.
- (d) not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients.
- (e) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by the Contract.
- (f) ensure that it has in place appropriate technical and organisational measures, reviewed, and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
- (g) not transfer any personal data received from the Data Discloser outside the EEA unless the transferor:
 - (i) complies with the provisions of Articles 26 of the GDPR (in the event the third party is a joint controller); and
 - (ii) ensures that (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 GDPR; (ii)

there are appropriate safeguards in place pursuant to Article 46 GDPR; or (iii) one of the derogations for specific situations in Article 49 GDPR applies to the transfer.

11.4 **Mutual assistance.** Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:

- (a) consult with the other party about any notices given to data subjects in relation to the Shared Personal Data.
- (b) promptly inform the other party about the receipt of any data subject access request.
- (c) provide the other party with reasonable assistance in complying with any data subject access request.
- (d) not disclose or release any Shared Personal Data in response to a data subject access request without first consulting the other party wherever possible.
- (e) assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators.
- (f) notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation.
- (g) at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of the Contract unless required by law to store the personal data.
- (h) use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers.
- (i) maintain complete and accurate records and information to demonstrate its compliance with this clause 5 and allow for audits by the other party or the other party's designated auditor; and
- (j) provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.

11.5 **Indemnity.** The Customer shall indemnify the Carrier against all liabilities, costs, expenses, damages, and losses (including but not limited to any direct, indirect, or consequential losses, loss of profit, loss of reputation and all interest, penalties, and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Carrier arising out of or in connection with the breach of the Data Protection Legislation by the Customer.

- 11.6 **Sub-processing.** In the event that the Carrier is deemed to be a data processor, and, for any reason whatsoever, the Carrier is required to sub-contract the Services to a sub-contractor, the Customer consents to the Carrier forwarding the Shared Personal Data to a sub-contractor for sub-processing. For the avoidance of doubt, sub-contractors shall form a class of sub-processors.

12. Termination and Cancellation

- 12.1 Without affecting any other right or remedy available to it, the Customer may terminate any Fixed Term Contract by giving the Carrier 3 months' written notice.
- 12.2 Orders may be cancelled by the Customer up to 15:30pm on the day prior to the commencement of the Services and for any Orders cancelled after that time a cancellation fee will apply in accordance with clause 12.
- 12.3 Without affecting any other right or remedy available to it, the Carrier may terminate provision of Services with immediate effect and without notice.
- 12.4 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so.
 - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 12.5 Without affecting any other right or remedy available to it, the Carrier may terminate the Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer fails to pay any amount due under the Contract on the due date for payment; or
 - (b) there is a change of control of the Customer.

- 12.6 Without affecting any other right or remedy available to it, the Carrier may suspend the supply of Services under the Contract or any other contract between the Customer and the Carrier if:
- (a) the Customer fails to pay any amount due under the Contract on the due date for payment.
 - (b) the Customer becomes subject to any of the events listed in clause 12.4(c) or clause 12.4(d), or the Carrier reasonably believes that the Customer is about to become subject to any of them; and
 - (c) the Carrier reasonably believes that the Customer is about to become subject to any of the events listed in clause 12.4(b).

13. Cancellation Fees

- 13.1 If the Contract or any other Order is cancelled by the Customer under clause 11.1 the Carrier reserves the right to charge a cancellation fee.
- 13.2 For any cancellations made by the Customer up to 15:30pm on the day prior to the commencement of the Services, a cancellation fee equal to 50% of the total Charges will be payable by the Customer.
- 13.3 For any cancellations made by the Customer after 15:30pm on the day prior to the commencement of the Services, a cancellation fee equal to 100% of the total Charges will be payable by the Customer.

14. Consequences of termination

- 14.1 On termination or expiry of the Contract:
- (a) the Customer shall immediately pay to the Carrier all of the Carrier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Carrier shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 14.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations, or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 14.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.
- 14.4 Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

15. General

15.1 Assignment and other dealings.

- (a) The Carrier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Carrier.

15.2 Confidentiality.

- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 15.2(b).
- (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, contractors, subcontractors, or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors, or advisers to whom it discloses the other party's confidential information comply with this clause 15.2; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

15.3 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations, and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on and shall have no remedies in respect of any statement, representation, assurance, or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

15.4 Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

15.5 Waiver. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

15.6 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part-provision of this Contract deleted under this clause 15.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

15.7 Notices.

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number or sent by email to the address provided from time to time.
- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address.
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - (iii) if sent by fax or email at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 15.7(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause 15.7 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

15.8 Third party rights.

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

Schedule 1 Further Charges

Fuel Surcharge

The Charges may be subject to a reasonable surcharge to reflect increased fuel costs (Fuel Surcharge).

The Fuel Surcharge shall be the amount calculated in accordance with the following formula:

The percentage increase from the Base Price to the Current Price and then divided by two. This shall be calculated weekly, and the Fuel Surcharge shall be the monthly average of this calculation.

Where:

Current Price is the fuel price (in pence) updated weekly as published by the 'Department for Business, Energy & Industrial Strategy': *Weekly road fuel prices - GOV.UK (www.gov.uk)*

Base Price is 114.94 pence per litre.

Waiting time Charges

Further Charges will be applied where the Carrier's drivers are kept waiting by the Customer. These Charges shall be applied for any cars waiting for over 30 minutes and for all other vehicles waiting over 60 minutes.

Pallet Charge

The Customer shall pay additional Charges for each pallet supplied by the Carrier. Pallet Charges are to be agreed between the parties from time to time.

Conditions acceptance in line with the following conditions of carriage, i.e., in the event of conflict between either set of conditions, the conditions which take precedent.

FAILURE TO SET OUT WHICH CONDITIONS ACCEPTANCE IS IN LINE WITH, THE DEFAULT POSITION WILL BE AS PER THE ORDER OF PRIORITY SET OUT IN CLAUSE 1.1]

RHA Conditions 2020

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BIFA Conditions 2021

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I hereby confirm I have received, read, and accept the following:

Insurance 'Indemnity Certificate' and accept product limits of liability, excluded territories, and any excluded goods.

Signed

Full Name.....

Position.....

Company.....

Date.....