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## ROAD HAULAGE ASSOCIATION CONDITIONS OF CARRIAGE - SEPTEMBER 2020

The Road Haulage Association (RHA) has announced the publication of a new set of Conditions of Carriage, effective 1 September 2020. Whilst we are not yet in possession of a full specimen copy of the new conditions, changes from the 2009 to 2020 edition are described on the RHA's web site:

<https://www.rha.uk.net/membership/member-benefits/conditions-of-carriage-and-storage>

As with the current edition, the new conditions will be copyright.

They are effective from 1 September 2020 and the main amendments to the conditions are stated as below including:

- Clarity around definitions for '**demurrage**' and '**Force Majeure Event**'
- Revision to loading and unloading responsibilities
- New condition added that goods moved will not pollute the environment or do harm to human health
- Changes to payment terms and payment of fines / loss of profits added to Exclusions for members
- Revised provisions and clarification on lien and appropriate interest.

### In detail;

**Condition 1:** Two new terms have been introduced and defined which were not present before:

The definition of '**demurrage**' has been revised to take account of extra costs which members may wish to charge as a consequence of the detention of a vehicle or other object they own and to make clear what exactly demurrage is and the members' right to charge.

'**Force Majeure Event**' – whilst referenced now under the 'Definitions' section the explicit definition is outlined in the newly-introduced clause 10(c). The effect of these new definitions and clauses is that members cannot be found liable for an act of God, riots, civil commotion and a variety of other events that the member cannot reasonably be said to have anticipated at the time the contract was entered into.

**Condition 4:** This Condition has been substantively revised. Under these terms and conditions, the default position is that the customer is responsible for loading the goods that they wish to be moved onto the vehicle of the RHA Member, or another consignor instructed by the RHA Member. The consignee is responsible for the unloading of those goods from that vehicle. Under these terms, the RHA Member or carrier is excluded from being found liable for loss or damage done to goods that arise from the loading onto or unloading off the vehicle or from overloading the vehicle. Further to this, the customer indemnifies the carrier under these terms against any loss, damage, death or injury that might arise during loading and/or unloading. Whilst this is the default position, we acknowledge that in a lot of cases it may be the carrier who is actually responsible for loading and unloading, and this is fine provided it is agreed separately in writing, i.e. in the original quote or order acceptance.

**Condition 5:** By virtue of this new Condition, the customer warrants that the goods or consignment which they require moving will not pollute the environment or do harm to human health in the event that whatever is being transported escapes from its packaging and make clear that it should not need official consent to be moved by the RHA Member, in the sense that all licences and approvals should already have been acquired. The customer also warrants to provide the carrier with the necessary information and/or materials to comply with its legal obligations under domestic and, if applicable, EU legislation.

**Condition 9:** The opportunity has been taken to introduce a provision where a contract is cancelled at any point during its performance, the customer agrees under these terms to pay the carrier or member all costs and expenses incurred prior to the cancellation.

**Conditions 12:** No change to the general liabilities, however a list of excluded liabilities has been introduced, in particular any fines imposed on the Customer by the Consignee or its customer along with loss of profits and indirect or consequential loss.



**Condition 15:** The Lien is one of the most important tools under these conditions. It grants an explicit interest on behalf of the carrier and/or member in the consignment, load or goods. The lien itself is activated where the customer has overdue amounts owed to the carrier or RHA Member and/or has accrued charges. The clause has been made explicitly clear so that there is no doubt that the carrier or member has the right to hold the goods and sell them on. It should be emphasized that liens remain a contentious area of law and members should always seek clarification of their rights in specific circumstances from their legal advisers at the earliest opportunity to avoid possible later difficulties.

As with the current edition, the conditions will only apply when properly incorporated into the contract between the haulier and their customer and this will not be achieved simply by prior use/incorporation of an earlier edition.

#### **WHAT WE WILL DO**

The conditions are now published so for each policy providing cover for liability incurred under the 2009 (or earlier) edition of the RHA Conditions of Carriage:

- we will issue a schedule from the next renewal date extending the policy to cater for the 2020 edition of those conditions or
- where you advise us of the Insured's use of the new conditions prior to the next renewal date, we will update your schedule to extend the cover from the date of their adoption

In all cases:

- indemnity will continue to apply for existing contracts under the edition of the RHA Conditions of Carriage previously specified within the Schedule
- we will charge no additional premium for extending policies covering liability incurred under earlier editions of RHA Conditions of Carriage to cater for the 2020 edition

We will also treat the 2020 edition as covered under the policy (subject otherwise to its terms, limits, conditions and exclusions) where an Insured with a policy providing for use of the 2009 (or earlier) edition of RHA Conditions of Carriage adopts the 2020 edition and inadvertently fails to notify us prior to the next renewal date.

#### **WHAT YOU NEED TO DO**

- advise your clients of the publication of the new RHA Conditions of Carriage
- remind your clients of the need to:
  - properly advise their customers of their contract conditions
  - notify you if they propose to adopt the latest edition of the RHA Conditions of Carriage (or any other contract terms not previously disclosed to their insurers)
- advise us immediately if any of your clients wish to use the new Conditions of Carriage

If you have any queries or need further assistance on this or any other Marine insurance matter, please get in touch with your usual Marine contact at RSA.