

**BRITISH INTERNATIONAL FREIGHT ASSOCIATION (BIFA)  
FRANCK & TOBIESEN (UK) LIMITED (FATUK)  
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 FATUK 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: -
- |                         |  |
|-------------------------|--|
| "FATUK"                 | 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 FATUK undertakes any business or provides advice, information or services   |
| "DIRECT REPRESENTATIVE" | FATUK 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 used whatsoever for and in connection with the carriage of Goods by land, sea or air           |
| "OWNER"                 | The Owner of the Goods 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 FATUK 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 FATUK 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 (FATUK)**

- 4 (A) Subject to clauses 11 and 12 below, FATUK shall be entitled to procure any or all of the services as an agent, or, to provide those services as a principal.
- (B) FATUK reserves to itself full liberty as to the means, routes and procedures to be followed in the performance of any service provided in the course of business undertaken subject to these conditions.
- 5 When FATUK 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 FATUK acts as an agent on behalf of the Customer, FATUK shall be entitled, and the Customer hereby expressly authorises FATUK, 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) FATUK shall, on demand by the Customer, provide evidence of any contract entered into as agent for the Customer. Insofar as FATUK 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, FATUK is deemed to be appointed, and acts as, Direct Representative only.
- 8 (A) Subject to sub-clause (B) below, FATUK:
- (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 FATUK from the Customer and/or Owner on any account whatsoever, whether relating to Goods belonging to, or services provided by on behalf of FATUK 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 FATUK, 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 deteriorated, FATUK's right to sell or dispose of or deal with the Goods shall arise immediately upon any sum becoming due to FATUK, subject only to FATUK taking reasonable steps to bring to the Customer's attention its intention to sell or dispose of the Goods before doing so.
- 9 FATUK 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 and when and where

- FATUK is entitled to deliver, FATUK shall be entitled to store the goods, or any part thereof, at the sole risk of the Customer or Consignee or Owner, whereupon FATUK's liability in respect of the goods, or that part thereof, stored as aforesaid, shall wholly cease. FATUK's liability, if any, in relation to such storage, shall be governed by these conditions. All costs incurred by FATUK 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) FATUK 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 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 FATUK to have any interest in the Goods) without notice, any Goods which have been held by FATUK 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 FATUK, 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 FATUK, and all insurances effected by FATUK are subject to the usual exceptions and conditions of the policies of the insurers or underwriters taking the risk. Unless otherwise agreed in writing, FATUK 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 FATUK.
- (B) Insofar as FATUK agrees to effect insurance, FATUK acts solely as agent for the Customer and limits of liability under clause 26(A) (ii) of these conditions shall not apply to FATUK's obligations under clause 11.
- 12(A) Except under special arrangements previously made in writing by an officer of FATUK so authorised, or made pursuant to or under the terms of a printed document signed by FATUK, 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 FATUK, where FATUK has to engage third parties to effect compliance with the instructions, only as agents for the Customer.
- (B) Despite the acceptance by FATUK 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 FATUK, 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) FATUK 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, FATUK'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 FATUK for the Customer only. The Customer shall indemnify FATUK 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 office of FATUK so authorised, FATUK 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 or plants. Should any Customer nevertheless deliver any such goods to FATUK, or cause FATUK to handle or deal with any such goods, otherwise than under such prior agreement, FATUK 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 FATUK, FATUK 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, not 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 FATUK, constitute a risk to other goods, property, life or health, FATUK 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 FATUK 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 FATUK 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 FATUK receive 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 FATUK 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 FATUK, or causes FATUK 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 FATUK or not, he shall be liable for all loss or damage arising in connection with such Goods, and shall indemnify FATUK against all penalties, claims, damages, costs and expenses whatsoever arising in connection therewith, and the Goods may be dealt with in such a manner as FATUK, 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 FATUK 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 FATUK against all consequences thereof.
- 20 The Customer shall save harmless and keep FATUK 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 FATUK 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 FATUK when, by reason of carrying out the

- Customer's instructions, FATUK 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 FATUK 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 FATUK, its servants, sub-contractors or agents, and
- (D) Any claims of a general average nature which may be made on FATUK.
- 21(A) The Customer shall pay to FATUK 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 FATUK, or to any other party designated by FATUK, in a form acceptable to FATUK.

#### LIABILITY AND LIMITATION

- 23 FATUK shall perform its duties with a reasonable degree of care, diligence, skill and judgment.
- 24 FATUK 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 FATUK is unable to avoid by the exercise of reasonable diligence; or
- (B) Any cause or event which FATUK is unable to avoid, and the consequences of which FATUK is unable to prevent by the exercise of reasonable diligence.
- 25 Except under special arrangements previously made in writing by an officer of FATUK so authorised, FATUK 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, FATUK'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 TWO 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 FATUK 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 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 FATUK in writing.

- (B) Subject to clause 2(B) above and sub-clause (D) below, FATUK'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 FATUK'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, FATUK 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 FATUK, FATUK may accept liability in excess of the limits set out in sub-clause (A) to (C) above upon the Customer agreeing to pay FATUK's additional charges for accepting such increased liability. Details of FATUK's additional charges will be provided upon request.
- 27(A) Any claim by the Customer against FATUK arising in respect of any service provided for the Customer, or which FATUK has undertaken to provide, shall be made in writing and notified to FATUK 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, FATUK shall in any event be discharged of all liability whatsoever and howsoever arising in respect of any service provided for the Customer, or which FATUK has undertaken to provide, unless suit be brought and written notice thereof given to FATUK within nine months from the date of the event or occurrence alleged to give rise to a cause of action against FATUK.

#### 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.