

## CARRIAGE OF FREIGHT CONDITIONS 2003

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### 1. APPLICATION AND COMMENCEMENT

These conditions are made by British Waterways under Section 43 Transport Act 1962 and under its bye-laws. They shall apply to any carriage of Goods by a Freight Vessel on a Waterway on or after 1st April 2003.

### 2. INTERPRETATION

2.1 In these conditions, unless the context requires otherwise:

<b>"British Waterways"</b>	means the British Waterways Board and its successors;
<b>"BW Offices"</b>	means the various offices of British Waterways detailed in the Operational Schedule;
<b>"Bye-laws"</b>	means the bye-laws of British Waterways;
<b>"Charges"</b>	means all tolls, dues or any other charges payable to British Waterways for or in relation to the carriage of Goods on a Waterway by or on behalf of a Freight Operator;
<b>"Dangerous Substances"</b>	means any substance defined as such in the Dangerous Substances in Harbour Areas Regulations 1987;
<b>"Environmental Damage"</b>	means any perceptible injury or damage to living organisms or property or any pollution or impairment of the environment (being air, water and land) resulting from the discharge, emission, escape or migration of any substance, energy, noise or vibration, other than any such injury or damage of a minor nature that is ordinarily incidental to the normal and well managed operation of a Freight Vessel by a competent person;

<b>"Freight Operator"</b>	means the person using or intending to use a Waterway for the carriage of Goods by a Freight Vessel whether as the Owner of a Freight Vessel or of the Goods or in any other capacity;
<b>"Freight Vessel"</b>	has the meaning given in the British Waterways Freight Vessel Conditions 2003;
<b>"Freight Vessel Conditions"</b>	means the British Waterways Freight Vessel Conditions 2003
<b>"Goods"</b>	means each and every cargo of any description whatsoever being transported by a Freight Vessel together with any package, case, pallet, container, vehicle or other thing which conveys, carries, contains, protects or supports cargo or is designed or made to do so;
<b>"Owner"</b>	means: <ul style="list-style-type: none"> <li>(1) in relation to Goods, the legal owner of the Goods or person, from time to time, in charge of and/or with physical possession of the Goods including, without limitation, a consignor, consignee, shipper, broker or the agents of any of the foregoing; and;</li> <li>(2) in relation to a Freight Vessel, the legal owner or any person, from time to time, in charge of, and/or operating, a Freight Vessel including without limitation, a Master, broker, charterer, hirer, mortgagee in possession or the agents of any of the foregoing;</li> </ul>
<b>"Operational Schedule"</b>	means the schedule of operational requirements (including details of the Freight Vessel and Waterway permitted to be used) agreed by British Waterways and the Freight Operator in respect of a particular carriage of Goods or a series of carriages of like nature;

<b>"Master"</b>	means the person for the time being having command, charge or management of a Freight Vessel;
<b>"Normal Working Hours"</b>	means the usual working hours of the waterway(s) identified in the Operational Schedule;
<b>"Waterway"</b>	means any canal or inland navigation belonging to or under the control of British Waterways and includes any works, land or premises belonging to or under the control of British Waterways and held or used by them in connection with such canal or inland navigation;
<b>"Week"</b>	means the 7 days running from Sunday to Saturday inclusive.

2.2 The headings in these conditions are for convenience only and shall not affect their interpretation.

2.3 Reference to any provision of any Act of Parliament or subordinate legislation (including bye-laws) shall be deemed to be a reference to such Act of Parliament, subordinate legislation or bye-laws as amended, modified re-enacted or replaced whether before or after the date hereof and any reference to any provision of any such Act or legislation shall also include where appropriate any provision of which it is a re-enactment (whether with or without modification).

2.4 Reference to the singular shall include the plural and vice versa.

### **3. GENERAL**

3.1 The carriage of Goods by a Freight Vessel on a Waterway shall be subject to these conditions and the terms of any Operational Schedule agreed from time to time.

3.2 Any Freight Operator intending to carry Goods on a Waterway by Freight Vessel shall first notify British Waterways. The notification shall be in such form and give such details as British Waterways may reasonably require, including without limitation, details of the nature or type of Goods intended to be carried, of the route intended to be taken and of the Freight Vessel to be used.

3.3 The agreement of an Operational Schedule shall be based on the information given in the notification. An Operational Schedule may be agreed for a particular carriage of Goods or for a series of carriages of like nature. British Waterways shall not be under any obligation to issue an Operational Schedule or otherwise permit the carriage of Goods by a Freight Operator. If British Waterways refuses to agree an Operational Schedule or otherwise to permit the carriage of Goods it shall give its reasons in writing.

- 3.4 These conditions, and the terms of any Operational Schedule, cannot be varied except in writing signed by an authorised officer of British Waterways.
- 3.5 The loading and/or unloading of Goods by or on behalf of a Freight Operator onto or over any land owned by or under the control of British Waterways (excluding land let to third parties) is not permitted under these conditions and shall require a separate agreement between British Waterways and the Freight Operator.

#### **4. USE OF WATERWAYS**

- 4.1 A Freight Operator may use those Waterways detailed in the Operational Schedule for the purposes of transporting Goods by Freight Vessel subject to the observance by the Freight Operator of these conditions, any requirements specified in the Operational Schedule and the bye-laws.
- 4.2 In the event of any serious or persistent failure by the Freight Operator to comply with any of the provisions of these conditions, the Operational Schedule or the bye-laws, British Waterways may withdraw its consent given under the terms of the Operational Schedule. The consent may be terminated immediately if safety or significant Waterway operational requirements are compromised. Otherwise the Freight Operator will be notified in writing and given a reasonable time to effect a remedy prior to the consent being terminated.

#### **5. DECLARATION OF GOODS**

- 5.1 To enable the correct calculation of charges and for similar purposes, the Freight Operator shall complete a declaration in writing in respect of all Goods transported on a Waterway in the form prescribed by British Waterways for this purpose from time to time.
- 5.2 The declaration shall be completed by or on behalf of the Freight Operator and submitted to the British Waterways Office prescribed on the Operational Schedule by post or facsimile within 7 days of the end of the Week in which the relevant Freight Vessel carrying the Goods arrives at its destination in a Waterway or leaves a Waterway for a destination other than one in a Waterway.
- 5.3 Compliance by the Freight Operator with Condition 5.1 above shall be deemed sufficient to satisfy the declaration requirements of the bye-laws.
- 5.4 Upon the reasonable request of British Waterways, the Freight Operator shall make available for inspection by an authorised officer of British Waterways or its nominated representative all relevant and/or material documentation relating to the loading, unloading and carriage of Goods by the Freight Operator on a Waterway.

## **6. CHARGES**

- 6.1 The Freight Operator shall pay to British Waterways the Charges applicable to the carriage of the Goods and such other charges as may be specified in the Operational Schedule.
- 6.2 The call-out service referred to in Condition 7.3 shall be provided by British Waterways at the Charges for individual Waterways set out in the Operational Schedule. Charges will be payable in respect of any call-out requested by or on behalf of a Freight Operator and subsequently not taken up by a Freight Operator.
- 6.3 Charges will be payable in respect of all emergency call-outs made by or on behalf of a Freight Operator except where the emergency call-out is attributable to the breakdown or malfunctioning of any of British Waterways' manned locks, moveable bridges and other operational structures provided for the purpose of navigating a Waterway which prevents or impedes the passage of a Freight Vessel by or on behalf of a Freight Operator.
- 6.4 Payment of all Charges shall be due 30 days from the date of invoice. All charges will be subject to VAT where applicable.
- 6.5 British Waterways reserves the right to charge interest on all overdue Charges. Such interest shall be calculated on a day to day basis on the amount outstanding at the rate of 3% above the base rate from time to time of National Westminster Bank Plc from due date (after as well as before judgement) until the outstanding amount is paid in full.

## **7. NAVIGATION**

- 7.1 Subject to Condition 7.2 below, the Waterways specified in the Operational Schedule shall be available for navigation by a Freight Operator provided that British Waterways shall be free to close all or any part of a Waterway where closure is necessary to carry out maintenance to a Waterway or in the case of an emergency. Except in the case of an emergency, notice will be given and closure will be kept as short as is reasonably practical.
- 7.2 Subject to Condition 7.3, manned locks and moveable bridges will normally be available for navigation by a Freight Operator during the normal working hours of such structures as indicated in the Operational Schedule.
- 7.3 Navigation of manned locks and moveable bridges will be possible outside the normal working hours of such structures on a callout basis provided that a minimum of 24 hours prior notice, or as otherwise agreed in the Operational Schedule, is given to the relevant local BW Office of the Freight Operator's desire to navigate through such structures outside its normal working hours. Such notice must be received by the relevant BW Office during the normal working hours of that BW Office indicated on the Operational Schedule.

## **8. FREIGHT OPERATORS OBLIGATIONS**

8.1 The Freight Operator shall:

- 8.1.1 ensure that all Freight Vessels used by the Freight operator, the Owners of such Freight Vessels and any of their agents, employees and sub-contractors comply with the provisions of the Freight Vessel Conditions, the bye-laws and any other legislation and/or regulations relevant to the movement of Goods and carriage of Dangerous Substances by a vessel on a Waterway; and
- 8.1.2 be responsible for the competency of the Master and crew of the Freight Vessel; and
- 8.1.3 be responsible for the condition of the Goods and the adequate and safe storage of the Goods on the Freight Vessel.
- 8.1.4 Without prejudice to the generality of the provisions of Condition 8.1 the Freight Operator shall not do or fail to do, or permit others to do or fail to do anything which may cause or result in any Environmental Damage.
- 8.1.5 The Freight Operator shall comply with any specific instruction of British Waterways with regard to the Freight Operator's use of a Waterway that may properly be given and which affects or is likely to affect performance of any health and safety duties of British Waterways.

**9. INDEMNITY**

9.1 Without prejudice to any other rights or remedies available to British Waterways, the Freight Operator shall indemnify British Waterways and keep it indemnified against all damages, losses, claims, proceedings, demands, liabilities, costs, orders and out of pocket expenses (including all costs incurred in investigating or defending any claim, proceedings, demand or order and any expenses incurred in preventing, avoiding or mitigating loss, liability or damage) including without limitation:

- 9.1.1 damage to a Waterway or loss of or damage to any other property of British Waterways;
- 9.1.2 loss of or damage to property of a third party;
- 9.1.3 death or personal injury of an employee and/or representative of British Waterways;
- 9.1.4 death or personal injury of any other person;
- 9.1.5 loss of or damage arising from Environmental Damage;

9.1.6 loss of profits, indirect, special or consequential losses;

incurred or suffered by or claimed against British Waterways as a result of the acts or omissions of the Freight Operator, its employees, servants, agents or sub-contractors including any failure by the Freight Operator, its employees, servants, agents or sub-contractors to comply with these terms and conditions.

9.1.7 British Waterways shall as soon as reasonable practicable inform the Freight Operator of any circumstances of which British Waterways is aware whereby British Waterways may seek to enforce the indemnity provided by condition 9.1.1 British Waterways shall not admit liability to, or settle any claims or proceeding brought by, any other party in respect of which it may seek to enforce the said indemnity without first consulting with the Freight Operator.

## **10. INSURANCE**

The Freight Operator shall at its own expense effect and maintain such insurance as required by any applicable law including (where it is the Owner of the Freight Vessel) in respect of its obligations under the Freight Vessel Conditions.

Where by reason of the nature of the Goods to be carried or by any other circumstances where British Waterways reasonably determines there to be additional risk, British Waterways may specify additional insurance requirements (as to nature or level of cover) to that referred to in condition 10.1, in the Operational Schedule.

The Freight Operator shall, upon request of British Waterways, supply a letter of confirmation from its insurers containing the details of its policy of insurance, policy number, amount and period of cover.

## **11. LIABILITY OF BRITISH WATERWAYS**

British Waterways shall be liable for damage to property caused by the negligence of British Waterways, its employees, servants or agents provided that the aggregate liability of British Waterways to the Freight Operator for damage to property arising out of any one incident shall not exceed:

- (i) in the case of loss of or damage to Goods, the cost of repairing, recovering or replacing such Goods; and

- (ii) in the case of damage to a Freight Vessel, the lesser of the cost of repairing such damaged Freight Vessel or in the case of total loss, replacing such damaged Freight Vessel.

But, the maximum aggregate liability of British Waterways under (i) and/or (ii) above arising out of any one incident shall not exceed £10 million.

Save for the provisions of Condition 11.1 and for liability for death or personal injury resulting from the negligence of British Waterways, British Waterways shall not be liable to the Freight Operator, its employees, servants, agents or subcontractors by reason of any representation (unless fraudulent), or any implied warranty, condition, or other term or any duty at statute or common law in contract or in tort for any damages, losses, liabilities, costs, expenses including any loss of profit or any indirect, special or consequential loss which arise out of or in connection with the use by the Freight Operator, its employees, servants, agents or sub-contractors of a Waterway.

British Waterways shall not be liable to the Freight Operator by reason of any non-availability of all or any part of a Waterway or any delay in the performance or failure to perform its obligations in relation to a Waterway if such delay or failure was due to any cause beyond British Waterways reasonable control.

## **12. ASSIGNMENT AND SUBCONTRACTING**

None of the consents or permissions given to the Freight Operator under these conditions by way of the Operational Schedule or otherwise may be assigned or transferred in whole or in part without the prior written consent of British Waterways.

## **13. NOTICES**

Any notice or other communication to be given by British Waterways under these conditions may be given in accordance with the provisions of section 17 of the British Waterways Act 1983.

## **14. INVALIDITY**

The invalidity, illegality or un-enforceability of any provision of these conditions shall not affect the other conditions.

## **15. LAW AND JURISDICTION**

These conditions (and any proceedings whereby one party might be entitled to join the other as a third party) shall be governed by and construed in all respects in accordance with English Law and the parties hereby submit to the exclusive jurisdiction of the English Courts.