

P&O Ferries Freight Terms & Conditions of Carriage

1. DEFINITIONS

Except where expressly provided otherwise and/or where the context necessarily requires otherwise, the following definitions apply in these conditions -

"the Carrier" means either (i) P&O Short Sea Ferries Limited, if the Shipper is using the Dover Services; (ii) P&O North Sea Ferries Limited, if the Shipper is using the North Sea services; (iii) P&O European Ferries (Irish Sea) Limited, if the Shipper is using the Irish Sea services; (iv) P&O Ferries Thames Limited, if the Shipper is using the Thames services; or (v) P&O European Ferries (Portsmouth) Limited, if the Shipper is using the Western Channel services, trading as P&O Ferries or P&O Irish Sea, as the case may be, or alternatively the owner, charterer, manager or other operator of a vessel, together with (in each case) the Carrier's employees, agents, independent contractors and sub-contractors (including stevedores);

"vessel" means any vessel owned or operated by the Carrier for the carriage of goods by sea;

"the Shipper" means the person who enters into a contract with the Carrier for a shipment and/or who has control of the goods delivered to the Carrier for shipment and who is in any event liable for the payment of freight, but also includes where the context permits any other person with an interest in the goods or any part thereof;

"the Consignee" means any person designated and authorised by the Shipper to take delivery of the goods;

"freight document" means the document (if any) issued by the Carrier for the receipt and shipment of a consignment of goods and includes without limitation any sea waybill, ticket, and internal electronic record produced by the Carrier as evidence of such consignment having been received for shipment on a vessel;

"unit" means any vehicle inclusive of any trailer, container, transportable tank, flat pallet, package or other type of equipment used for carrying cargo;

"cargo" means the contents of a unit;

"dangerous cargo" means those materials and substances designated as dangerous by the rules of the International Maritime Organisation and by any other applicable legislation and regulations in force from time to time, but does not include petrol, diesel oil or other fuel present in reasonable quantities in the fuel tanks of vehicles;

"goods" means collectively a unit and any cargo, including dangerous cargo, as described on delivery to the Carrier and thereafter evidenced in the freight document;

"time of receipt" means the time at which goods are received by the Carrier at the port of loading as evidenced by the issue of a freight document or in the case of goods previously stored at the port, the time they are declared for shipment by the Shipper;

"shipment" means the carriage on board a vessel of goods and of any person accompanying the goods during their shipment;

"freight" means all charges due to the Carrier for or in connection with a shipment, including any associated charges and expenses and/or any storage charges and expenses incurred by the Carrier prior to loading and/or after discharge and/or any surcharges which the Carrier may levy pursuant to clause 3.2 below in respect of variations in currency exchange rates and/or fuel prices;

"redelivery" means the transfer of responsibility for goods at the port of discharge from the Carrier to the Shipper and/or Consignee;

"misdelivery" means delivery other than in accordance with clause 8 of these Conditions;

"loss" and "damage" include financial and consequential loss and damage (including loss of profit) as well as physical loss of and damage to goods and also include if necessary any liability for misdelivery and non-delivery of goods;

"financial consequences" means any and all liabilities, damages, costs (including legal costs), expenses, charges, fines, penalties and other monetary payments which the Carrier may incur or otherwise be obliged to pay;

"injury" includes loss of life;

"the Hague Visby Rules" means those rules set out in the Schedule to the Carriage of Goods by Sea Act 1971 as amended by the Merchant Shipping Acts 1981 and 1995 and as may be further amended from time to time;

"unit of account" has the meaning ascribed to it in the Hague Visby Rules;

"the Dover services" means the services of the Carrier between Dover and Calais or any other routes across or around the English Channel that may be operated by the Carrier;

"the Western Channel services" means the services of the Carrier between Portsmouth and Bilbao or any other routes across or around the Western Channel that may be operated by the Carrier;

"the North Sea services" means the services of the Carrier between Hull/Teesport/ Rotterdam/Zeebrugge or any other routes across or around the North Sea that may be operated by the Carrier;

"the Irish Sea services" means the services of the Carrier between Dublin/Liverpool/Larne/Troon/Larne/Cairnryan or any other routes across or around the Irish Sea that may be operated by the Carrier;

"the Thames Services" means the services of the Carrier between Tilbury and Zeebrugge or any other routes from the Thames area that may be operated by the Carrier;

2. THE CONTRACT

2.1 The contract is made on the terms of these conditions between the Carrier and the Shipper for the shipment of goods by the Carrier.

2.2 No person other than a director of the Carrier is authorised to waive or vary any provision of these conditions and any such waiver or variation shall not be effective unless and until issued in writing.

2.3 The contract shall be subject to the provisions of the Carriage of Goods by Sea Act 1992 and shall also be deemed to incorporate the description and identity of the goods, Shipper and Consignee contained in any notice issued by the Carrier confirming that the goods have been booked. NO BILL OF LADING NOR ANY OTHER DOCUMENT OF TITLE WILL BE ISSUED BY THE CARRIER in respect of any goods, whether or not one is requested by the Shipper or by any other person and irrespective of any custom, usage or practice to the contrary.

2.4 Save as otherwise expressly provided in these conditions, the contract expressly incorporates the provisions of the Hague Visby Rules. In the event of an inconsistency between these conditions and the Hague Visby Rules, these conditions shall prevail save to the extent that the Hague Visby Rules take mandatory precedence under any applicable law.

2.5 Carriage of any driver or other person accompanying the goods shall be governed by the provisions of the Athens Convention 1974 as set out at Schedule 6 to the Merchant Shipping Act 1995 (and as may subsequently be amended from time to time) and to any other legislation compulsorily applicable to the carriage of passengers by sea. To the extent that the Athens Convention is not applicable by law, its provisions are hereby expressly incorporated into the contract. A copy of the Athens Convention is available on request from the Carrier.

3. PAYMENT OF FREIGHT

3.1 Unless otherwise agreed in advance, the payment of freight to the Carrier in respect of a shipment is due from the Shipper before the goods are unloaded, but freight shall in any event be deemed earned immediately upon loading. Once paid or deemed earned, it shall not be repayable in any circumstances whatsoever and notwithstanding any agreement for freight to be paid by any other person, the Shipper shall at all times remain liable for payment.

3.2 The Carrier shall be entitled at any time prior to actual shipment to levy a surcharge in respect of variations in currency exchange rates, fuel prices, and any other relevant expense outside the Carrier's control.

3.3 Unless otherwise agreed in writing by the Carrier, all freight quoted by the Carrier in £ sterling but payable at a non-UK port must be paid in euros and shall be calculated at the highest £/euro rate of exchange on the last banking day prior to the vessel's arrival at the non-UK port.

3.4 Lien. The Carrier shall have both a particular lien and a general lien on all goods and documents in its possession or control for the payment of (i) any unpaid freight and any other sum whatsoever due from any person(s) with an interest in the goods, and whether or not such liability is joint or several, whether or not such liability is in respect of the goods subject to the exercise of the lien, and whether or not arising in respect of any other goods belonging to the person whose goods are subject to the exercise of the lien, and (ii) any other sums which may become due to the Carrier by reason of and pursuant to these conditions. The Carrier shall be entitled to sell such goods (or any part thereof) as may be necessary and to apply the proceeds of sale in settlement of any unpaid sum due, inclusive of all proper charges and expenses associated with such exercise of the lien and power of sale (including any legal costs and expenses reasonably incurred). The Carrier shall not be obliged to give notice to any person of the exercise of a lien nor of its intention to sell any goods as aforesaid, but - save in the case of perishable goods where the Carrier shall immediately become entitled to exercise its lien and power of sale at any time after discharge - the Carrier will not exercise such right of sale earlier than one month after the goods have been discharged from the vessel.

4. LAW, JURISDICTION AND CLAIMS

4.1 The contract shall be governed by English law and any dispute arising out of or in connection with the contract or otherwise in relation to the goods shall be subject to the exclusive jurisdiction of the High Court in London.

4.2 Removal of the goods from the port of destination shall be prima facie evidence of proper delivery unless either (i) a written acknowledgement of damage is obtained from the Carrier at the port of destination at the time of removal of the goods; or (ii) notice of loss or damage, including the general nature of the loss or damage, is given to the Carrier at the port of destination at the time of removal of the goods or, if the loss or damage is not apparent at such time, is notified to the Carrier in writing within 3 days of such removal.

4.3 The Carrier shall in any event have no liability in respect of any dispute arising out of the contract or otherwise in connection with a shipment unless suit is brought within one year of the date on which the goods were discharged or, if earlier, the date on which the goods should have been discharged.

5. SHIPPER'S WARRANTIES, INDEMNITIES AND RESPONSIBILITIES

5.1 By presenting goods for shipment, the Shipper agrees and warrants that

(i) he is authorised to contract and accept these conditions on behalf of himself, the Consignee and every person with an interest of any nature in the goods;

(ii) he is authorised to agree on behalf of any person holding a proprietary interest in the goods to the Carrier's rights as set out in these conditions;

(iii) the cargo has been properly packed and secured within the unit;

(iv) the goods are suitable and have been properly and adequately described and marked for the purposes of carriage by sea;

(v) the goods are lawful merchandise at the ports of loading and discharge;

(vi) any person accompanying the goods is properly authorised to do so and will comply with the requirements of all immigration and other regulations applicable at the ports of loading and discharge and with all lawful instructions given by the Carrier;

(vii) the Carrier is specifically authorised to take any reasonable steps for the purposes of inspecting or checking the goods where the Carrier reasonably believes that it is necessary to do so for any reason whatsoever or where the Carrier is asked or instructed to do so by any customs or other authority, whether at the ports of loading or discharging or elsewhere;

(viii) the Consignee is properly authorised to take delivery of the goods at the port of discharge.

5.2 Every person accompanying any goods must comply with the applicable law regarding the consumption of alcohol and drugs at all times whilst the goods are in the custody of the Carrier as provided by clause 8 below. In the event that the Carrier has any reason to believe that goods may be loaded on board a vessel whilst accompanied by any person under the improper influence of alcohol or drugs, the Carrier shall be entitled to refuse to carry those goods and the Carrier shall have no liability to any person as a result of such refusal.

5.3 The Shipper agrees to indemnify the Carrier against:

(i) any and all financial consequences of a breach of the Shipper's warranties as set out at clause 5.1 above and of any breach of clause 5.2 above;

(ii) any and all financial consequences resulting from the inaccuracy or inadequacy of the description, weight, number, measure, quantity, marks, value, condition, quality or content of goods and/or from defective loading and overloading of a unit and/or from the inadequate securing, packing, sealing or stuffing of goods;

(iii) generally, any and all liabilities which the Carrier may incur to any third party save insofar as the same arises out of the Carrier's own negligence;

(iv) any liabilities of the Carrier in excess of the limits under these conditions.

5.4 The Shipper shall be responsible at all times for ensuring that every person (whether or not authorised) travelling with a unit has all the documentation required by immigration, customs, health and other regulations and authorities and the Shipper shall be liable to indemnify the Carrier forthwith in respect of all financial consequences arising as a result of any such person failing to comply with such requirements.

5.5 The Shipper is advised that children under the age of 16 are not allowed to enter the Port of Tilbury even if they remain within the vehicle.

5.6 The Carrier's right of lien for unpaid freight as provided by clause 3.4 above shall extend to any financial consequences arising under this clause.

6. CARRIER'S RIGHTS AND RESPONSIBILITIES

6.1 According to the particular practice of the Carrier and/or the facilities available and always at the Carrier's sole option in any event, the condition of goods may (but without any obligation on the Carrier) be evidenced either by contemporaneous video recording or by a written condition report, and the same shall be conclusive evidence thereof.

6.2 The Carrier shall not be responsible for checking the seals or seal numbers on any container or other unit and shall not be obliged to carry out any check or to note a seal number on any document if asked to do so. Where the Carrier does nevertheless agree to note a seal number, this shall not amount to a representation by the Carrier as to the accuracy of the number nor to the condition of the seal and in no circumstances shall the Carrier have any liability for any consequences of agreeing to do so.

6.3 Upon written request by or on behalf of the Shipper, the Carrier will use all reasonable endeavours to provide and maintain a supply of power to any unit but in no circumstances whatsoever shall the Carrier be liable for any failure to do so or for any breakdown, interruption, inadequacy or unsuitability of the power so supplied.

6.4 Loading and discharging shall be at the expense of the Carrier but the Shipper shall indemnify the Carrier against all financial consequences for the Carrier, howsoever caused, of the breakdown of any unit during the course of loading or discharge, whether on board the vessel or ashore.

6.5 The Carrier shall be entitled to stow any goods either on deck or below deck at its sole option and these conditions shall apply regardless of whether the goods are stated to be carried on or below deck and/or are in fact carried on or below deck.

6.6 The Carrier shall at all times be entitled to refuse to carry, or to delay the carriage of:

(i) live animals;

(ii) new and second-hand trade vehicles;

(iii) any vehicle of unusual dimensions (including without limitation caravans and combine harvesters) and vehicles whose loads exceed the dimensions of the vehicle.

6.7 In any circumstance where the Carrier in its sole discretion deems it necessary or otherwise appropriate, the Carrier shall be at liberty:

(i) to carry the goods on any vessel;

(ii) to trans-ship goods on another vessel (whether or not owned or operated by the Carrier);

- (iii) to sub-contract the whole or any part of a shipment to any other carrier;
- (iv) to order a vessel to deviate en route in circumstances where the Carrier reasonably deems the same necessary for any purpose whatsoever;
- (v) to abandon the voyage or to proceed to any other port (including a return to the port of loading) and to take such steps in respect of the goods as are deemed appropriate where the Carrier reasonably believes that the vessel will, through no fault on the part of the Carrier but otherwise for any reason whatsoever, be unable to perform the voyage in accordance with the contract in any material respect;
- (vi) to open any unit or otherwise handle goods if directed or requested to do so by Customs or any other competent authority or if the Carrier in its sole discretion reasonably considers it necessary to do so, and any expense thereby incurred shall be for the Shipper's account.

In all of the aforesaid events, in no circumstances whatsoever shall the Carrier have any liability to any party for any consequences thereof.

7. DANGEROUS CARGO

- 7.1 The Carrier shall be under no obligation to receive or to carry dangerous cargo without having expressly agreed in advance to do so.
- 7.2 The Shipper shall provide the Carrier with all information required as to the necessary precautions to take in respect of dangerous cargo and shall affix to the relevant unit all necessary notices to comply with applicable regulations and legislation in order to indicate that the cargo is dangerous, in the absence of which the Carrier shall have an absolute right to refuse shipment.
- 7.3 The Shipper shall always be responsible for any injury, loss or damage resulting from such carriage. The Carrier shall be entitled at its sole discretion to disembark, destroy or otherwise render innocuous such cargo without liability to compensate the Shipper and/or any other person for any resulting loss, and in such event, the Shipper shall remain responsible for all freight and other charges due to the Carrier as well as for the costs and expenses incurred by the Carrier in taking such action.

8. DELIVERY AND CUSTODY

- 8.1 In respect of accompanied goods, the Carrier shall take delivery and custody of the goods pursuant to the contract of carriage from the time that the unit crosses the vessel's ramp or rail at the port of loading until the time that the unit passes across the vessel's ramp or rail at the port of discharge. Outside the period of the Carrier's responsibility as aforesaid, all such goods shall be at the sole risk of the Shipper and the Carrier shall have no responsibility whatsoever for any loss or damage howsoever arising.
- 8.2 In respect of unaccompanied goods, the Carrier shall take delivery and custody from the time of receipt through to redelivery and the Carrier's responsibility for the goods, whether pursuant to the contract of carriage and/or as bailee of the goods, shall at all times be subject to clause 9 below.
- 8.3 Where appropriate parking and storage of goods prior to loading and after discharge are subject to the rules and regulations of the relevant Port Authority and to such directions and instructions as the Port Authority may issue. As agent for the Port Authority, the Carrier shall permit the Shipper and/or the Consignee to make reasonable use of all available facilities. The Shipper and/or the Consignee shall be jointly and severally liable to indemnify the Carrier against any financial liabilities which the Carrier may incur to the Port Authority by reason of the use of such facilities. Neither the Carrier nor the Port Authority (including its employees and agents) shall be liable to the Shipper and/or the Consignee and/or any other person in respect of such use.
- 8.4 The Carrier shall be entitled to permit collection of goods by any person who reasonably appears authorised to do so and such collection shall constitute full and proper performance of the Carrier's obligations in this respect.
- 8.5 The Shipper and/or the Consignee shall ensure that all goods are collected promptly after their discharge from the vessel and shall in any event be jointly and severally liable to indemnify the Carrier against all expenses which the Carrier may incur both prior to taking delivery of the goods at the port of loading and after the goods have been discharged from the vessel, including any charges levied directly by the Carrier.
- 8.6 Without prejudice to the generality of clause 8.5 above, the Shipper and/or the Consignee shall ensure that unaccompanied goods are collected from the discharge port within seven days of the goods being discharged from the vessel, unless arranged otherwise in writing with the Carrier. In the event that such goods are not so collected and no other arrangements are made with the Carrier, then the Carrier shall have no liability for any loss or damage caused to such goods.

8.7 Local Dover Clause

Without prejudice to the generality of clause 8.3 above, harbour and temporary storage facilities at Dover are provided by the Carrier as agent for the Dover Harbour Board ("the Board") and are subject to the Board's conditions applicable at Eastern Docks from time to time as well as to these conditions. In particular, the Board shall have no liability for loss, damage or delay in respect of any goods unless this is due to the act or omission of any person for whom the Board may be vicariously liable, and such liability of the Board shall in any event be subject to the same provisions of these conditions which for this purpose shall be read by substituting "the Board" in place of "the Carrier". The Board shall not, however, be exempt from liability for death or personal injury caused by the negligence (as defined at section 1(1) of the Unfair Contract Terms Act 1977) of the Board or of any person for whom the Board may be vicariously liable.

9. LIABILITY OF THE CARRIER

- 9.1 Except with respect to Irish Sea services, the Carrier will receive, load, stow, carry, discharge and otherwise generally handle and keep the goods in accordance with the Hague Visby Rules, save that:
- (i) the goods shall be deemed to be a single package or unit for the purposes of Article IV Rule 5(a);
 - (ii) the Carrier's liability for any loss of or damage to or in connection with the goods shall in all circumstances and in every respect be limited to 1,592 units of account;
 - (iii) the following provisions shall not apply - Article I, Article III rules 3, 4, 7 and 8, Article IV rule 5(c), the proviso to the first paragraph and the third paragraph of Article VI, and Article X;
 - (iv) the Carrier shall not be liable for the first 120 units of account calculated at the exchange rate on the day of arrival at the discharge port or the scheduled day of arrival if goods are not actually discharged on the scheduled day of arrival;
 - (v) the Carrier shall not be liable for any loss or injury to live animals howsoever caused and the shipper/consignee shall be jointly and severally liable to indemnify the Carrier against all financial consequences that the Carrier may incur arising out of the shipment of the live animals.

The Carrier's right to limit liability in accordance with the Hague Visby Rules as provided above shall apply in respect of any liability of the Carrier in connection with goods, howsoever arising and whether arising within or outside the period of the Carrier's contractual responsibility for the goods as provided at clause 8 below and whether arising in contract and/or bailment and/or tort.

9.2 With respect to Irish Sea services, the Shipper agrees as follows:

- (i) Neither the Carrier nor the vessel shall be liable for loss damage delay or misdelivery whatsoever of or to or in connection with the goods howsoever caused even if caused or contributed to:
 - (a) by any act neglect or default of the Carrier; or
 - (b) by unseaworthiness of the vessel (including unfitness of the crew) either before or at the commencement of or during the voyage, whether or not but for this clause the Carrier or the vessel would be liable for the loss damage delay or misdelivery either in negligence or for breach of contract or otherwise.
 - (ii) Without prejudice to the generality of sub-paragraph (i) above, the Carrier and the vessel shall have the benefit of all statutory limitations of and exemptions from liability of carriers and ships which apply and are in force from time to time in the United Kingdom or in the Republic of Ireland or elsewhere.
 - (iii) If notwithstanding these Conditions the Carrier is liable for loss damage delay or misdelivery of or to or in connection with the goods such liability shall not in any circumstances whatsoever exceed £100.
- 9.3 In no circumstances shall the Carrier be liable for:
- (i) delay, howsoever and whensoever caused;
 - (ii) loss of use of the goods or any part thereof, or any other form of consequential loss or damage (including loss of profit);
 - (iii) misdelivery of the goods;

(iv) any deterioration in or damage to the bodywork (including canvas and any other covering material) or tyres of a unit during the period of the Carrier's custody which shall be presumed to be due to normal wear and tear unless proved to have been caused by the Carrier (except with respect to Irish Sea services, where such damage is dealt with by the terms of clause 9.2(i) above);

(v) any consequence for any person of an event or act of force majeure which term shall include (without limitation) Act of God, war or threat of war, terrorist activity, riot or other civil commotion, natural or nuclear disaster, fire, technical problems of any nature, closure of ports, strike or other industrial action, heavy weather or any other event outside the control of the Carrier.

9.4 The defences, exclusions and limits of liability in these conditions shall apply in any action against the Carrier and whether such action is founded in contract and/or in bailment and/or in tort.

9.5 The Carrier enters into the contract on its own behalf and on behalf of its employees, agents, independent contractors and sub-contractors (including stevedores) who shall all have the benefit of the defences, exclusions and limitations in these conditions as if the same were expressed to be for their benefit, and it is agreed for this purpose that the Carrier contracts with the Shipper as agent or trustee for all such persons.

10. GENERAL AVERAGE

General average shall be adjusted at any port or place at the Carrier's option and settled in accordance with the York Antwerp Rules 1974 (as amended 1990), but in no circumstances shall there be any recovery in respect of loss of or injury to livestock, whether by jettison or otherwise.

11. MISCELLANEOUS

11.1 No failure by the Carrier to enforce any provision of these conditions shall be construed as a waiver of such provision or shall affect the right of the Carrier to enforce any other provision of these conditions.

11.2 If any provision of these conditions shall be declared void or unenforceable by any tribunal or court of competent jurisdiction, then such invalidity or unenforceability shall not otherwise affect these conditions, which shall remain in full force and effect.

12. REGISTERED COMPANY

P&O Short Sea Ferries Limited
Registered Number: 03291852

P&O European Ferries (Irish Sea) Limited
Registered Number: 00318227

P&O North Sea Ferries Limited
Registered Number: 00809079

P&O European Ferries (Portsmouth) Limited
Registered Number: 00801658

P&O Ferries Thames Limited
Registered Number: 06860796

Registered office for all five companies:
Channel House
Channel View Road
Dover, CT17 9TJ

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