

F S MACKENZIE GROUP LIMITED
CONDITIONS OF SUB-CONTRACTING FOR ROAD HAULAGE

1. DEFINITIONS

1.1 In these Conditions, the following definitions apply:

CMR	means the Convention on the Contract for the International Carriage of Goods by Road dated 19 May 1956 enacted in English law by the Carriage of Goods by Road Act 1965.
Conditions	these terms and conditions as amended from time to time in accordance with clause 13.6.
Company	means F. S. Mackenzie Limited and or any other company within the FS Mackenzie Group.
Group	means a company and its subsidiary undertakings and/or associated companies from time to time or any of them.
Supplier	means any person firm or company who enters into a contract with the Company for the carriage, transportation, forwarding or storage of goods or merchandise.
Transport Order	means any instruction issued by the Company to the Supplier in respect of the collection, handling storage, carriage and/or delivery of goods or merchandise in accordance with these Conditions.

1.2 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

1.3 a reference to **writing** or **written** includes faxes and e-mails.

2. BASIS OF CONTRACT

2.1 These Conditions apply to all contracts between the Company and the Supplier to the exclusion of any other terms that the Supplier or any other person seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 If any legislation (such as, but not limited to, international Conventions) is compulsorily applicable to any business undertaken, these Conditions shall, as regards such business be read as being subject to such compulsory legislation, then such part of these Conditions shall, as regards such business, be overridden to that extent but no further.

3. SUPPLY OF SERVICES

3.1 In providing the services, the Supplier shall:

3.1.1 co-operate with the Company in all matters relating to the contract, and comply with all instructions of the Company;

3.1.2 ensure that its personnel, employees, servants, agents and sub-contractors (where permitted) are suitably skilled and competent to perform tasks assigned to them and carry out the contract between the Supplier and the Company;

3.1.3 carry out all duties on behalf of the Company in accordance with the Transport Order and operating procedures issued by the Company to the Supplier from time to time and ensure that all relevant personnel have full knowledge of such information and strictly comply with it;

3.1.4 collect and deliver the goods to be carried at the time specified by the Company or, if no time has been so specified, within a reasonable time;

3.1.5 maintain a direct liaison with the Company (with the person or department from which they received their instructions) and inform the Company immediately by telephone, fax or e-mail of:

3.1.5.1 any unusual delay during transit, loading and/or unloading; and

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- 3.1.5.2 any complaints, problems or comments which they received from the Company's customer; or
- 3.1.6 inform the Company immediately in the event of loss, damage or misdelivery and supply and, at its own expense, provide full report if the Company so requires of the cause and circumstances together with any further information which the Company may require. In addition, if any loss is, or is suspected to be, due to theft or pilferage, immediately inform the police and take all reasonable steps to identify the guilty person and to trace and recover the relevant goods;
- 3.1.7 ensure that all drivers ensure that the condition of the goods, together with the number of items are correctly noted and signed for on the documentation and that the relevant drivers name is printed clearly against their signature together with the date and time of arrival at the premises;
- 3.1.8 email all delivery notices with shortages and/or damages to the Company at the relevant office within 24 hours of delivery; and
- 3.1.9 obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations.
- 3.2 For the avoidance of doubt, these Conditions do not create an obligation on the Supplier to perform work for the Company (even if offered) nor on the Company to provide work to you and there will be no mutuality of obligation between the parties.
- 3.3 The Supplier warrants that it shall, for a period of 6 months following the termination of any contract pursuant to these Conditions, canvass, solicit or otherwise seek the custom of any person who is a client or customer of the Company or any member of its Group with whom the Supplier has provided services on behalf of the Company.

4. SUB-CONTRACTING

- 4.1 The Supplier shall not subcontract all any or any part of the services to be performed by the Supplier on behalf of the Company without the prior written consent of the Company.
- 4.2 In the event that the Company does permit the Supplier to sub-contract any part of the services, the Supplier shall be directly liable to the Company for any act or omissions (including any loss or damage to the cargo or for liability due to delay or misdelivery of the cargo) of such persons engaged for the performance of the carriage as if he had performed the entire carriage themselves and the Supplier shall indemnify the Company against any loss, damage, claim, liability or expense arising from any act or omission of such sub-contractor.

5. HEALTH AND SAFETY

- 5.1 The Supplier shall:
 - 5.1.1 observe, and ensure that the Supplier's employees, agents and subcontractors observe, all health and safety rules and regulations in force and any other security requirements that apply at any sites at which they are located during performance of the service along with any additional instructions communicated to the Supplier by the Company;
 - 5.1.2 notify the Company immediately of any health and safety hazards, incidents, near-misses or other issues which arise in relation to the contract between the Company and the Supplier; and
 - 5.1.3 provide the Company with all relevant health and safety documentation upon reasonable request by the Company;
 - 5.1.4 obtain, and at all times maintain, all necessary licences and consents and comply with all relevant legislation and with good health and safety practice.
- 5.2 For the avoidance of doubt, where the Supplier subcontracts any of its obligations pursuant to these Conditions (where permitted in accordance with clause 4), the Supplier must ensure that any such subcontractors have adequate Health and Safety policies and procedures in place and shall communicate all relevant Health and Safety information to those subcontractors.

6. CHARGES AND PAYMENT

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- 6.1 The charges for the Supplier's services shall be set out in the Transport Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the services.
- 6.2 The Supplier shall invoice the Company within seven (7) days of completion of the relevant carriage. Each invoice shall include such supporting information required by the Company to verify the accuracy of the invoice, including but not limited to the Transport Order number and shall have attached the delivery or shipping notice duly signed by the party to whom the goods were consigned.
- 6.3 In consideration of the supply of the Services by the Supplier, the Company shall pay the invoiced amounts within [30] days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 6.4 All amounts payable by the Company under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Company, the Company shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 6.5 If the Company fails to pay any amount properly due and payable by it under these Conditions, the Supplier shall have the right to charge interest on the overdue amount at the rate of 2 per cent per annum above the base rate for the time being of the Bank of England accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment. This clause shall not apply to payments that the Company disputes in good faith.
- 6.6 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and shall allow the Company to inspect such records at all reasonable times on request.
- 6.7 The Company may, without limiting its other rights or remedies, set off any amount owed to it by the Supplier against any amount payable by the Company to the Supplier under any contract.
7. **NO RIGHT OF LIEN**
- 7.1 The Supplier shall have no right of lien against the Company.
8. **INDEMNITY**
- 8.1 The Supplier shall keep the Company indemnified in full in respect of any liability, customs, duties, fines, taxes or other charges incurred by the Company as a result of or in connection with the carriage of goods, save to the extent that any such obligation results directly from any act, error or omission on the part of the Company.
- 8.2 The Supplier shall indemnify the Company against all claims and demands caused by or arising out of the act, default, negligence of the Supplier or caused by or arising out of the act, default or negligence of any of the Supplier's employees, agents or any third party operator engaged by the Supplier in the performance of the Supplier's contract with the Company whether such persons are acting within or outside the scope of such employment.
- 8.3 Subject to the limitations referred to in clause 10, in the event of any loss or damage to any goods or any delay in delivery, indemnify the Company against any possible liability of the Company and the amount of all costs and expenses incurred by the Company in connection with such liability except where such loss, damage or delay has arisen out of the proven negligence of the Company.
9. **INSURANCE**
- 9.1 For the duration of any contract pursuant to these Conditions, the Supplier shall maintain in force, with a reputable insurance company goods in transit insurance of not less than £150,000 per consignment and public liability insurance to cover the liabilities that may arise under or in connection with these Conditions and shall, on the Company's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.
- 9.2 The Supplier's insurance must not include:
- 9.2.1 restrictions, warranties or other conditions in respect of parking and/or unattended vehicles; or

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- 9.2.2 exclusions of types of goods; or
- 9.2.3 restricted cover/limits (other than for money, stamps, precious stones, jewellery, bullion and processed tobaccos and tobacco products).

10. LIABILITY OF SUPPLIER

- 10.1 Unless otherwise agreed in writing, the Sub-Contractor shall be liable to the Company for loss or damage to or delay to or misdelivery of goods transported by the Supplier or its employees, servants, agents or sub-contractors in accordance with the following:
 - 10.1.1 The provisions of any mandatorily applicable International Convention or National legislation (including, but not limited to the CMR, CIM, Warsaw Convention or any relevant Convention for Carriage of Goods by Sea).
 - 10.1.2 Where no International Convention or National Legislation is mandatorily applicable, then the provisions of the CMR will apply voluntarily:
 - 10.1.2.1 to any domestic transport (i.e. wholly within the boundaries of a country) IF that domestic transport forms any part of an overall movement which is subject to the CMR; and/or
 - 10.1.2.2 to transport to which the CMR would apply if intermodal containers used on road/rail movements were included in the definition of "vehicles" for the purposes of Article 1.2 of the CMR.
- 10.2 Where clause 10.1.1 and clause 10.1.2 do not apply then the Supplier's liability shall be determined by these Conditions and shall be limited in the case of claims for loss or damage to goods, the value of any goods lost misdelivered or damaged OR the cost of repairing any damage or reconditioning the goods OR a sum calculated at the rate of £1,300 sterling per tonne of the gross weight of any goods lost or damaged (whichever shall be the lesser).
- 10.3 Where the CMR applies mandatorily or voluntarily, the Sub-Contractor and the Company agree that Clause 3 above amends Articles 37 and 38 of the CMR accordingly.
- 10.4 Unless otherwise agreed in writing (or mandatorily otherwise required by any national or Convention legislation), Article 32 of the CMR (which includes provisions on time bar and suspension of the period of limitation) will apply to all claims between the Sub-Contractor and the Company (even where the CMR does not apply mandatorily).

11. CONFIDENTIALITY

- 11.1 The Supplier shall keep in strict confidence all information concerning the Company's business or its services that has been disclosed to, or otherwise obtained by, the Supplier, its employees, agents or subcontractors as a result of entering into any contract with the Company and the Supplier may not disclose such information unless (i) required by law; (ii) the Company has given prior written consent to such disclosure; or (iii) the information has already come into the public domain at the time of disclosure through no fault of the Supplier.

12. ANTI-BRIBERY COMPLIANCE

- 12.1 The Supplier shall:
 - 12.1.1 comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the UK Bribery Act 2010;
 - 12.1.2 comply with the Company's Anti-bribery and Anti-corruption Policy as varied from time to time;
 - 12.1.3 have and shall maintain in place its own policies and procedures, including adequate procedures under the Bribery Act 2010 to ensure compliance with the Company's Anti-bribery and Anti-corruption Policy and the Bribery Act 2010 and will enforce them where appropriate;
 - 12.1.4 promptly report to the Company any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of the Supplier's contract with the Company.

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- 12.2 The Supplier shall ensure that any person associated with the Sub-Contractor who is performing services in connection with this agreement (including those sub-contractors approved in accordance with clause 4 above) does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 12. The Supplier shall be responsible for the observance and performance by such persons of this clause 12, and shall be directly liable to the Company for any breach by such persons.
13. **GENERAL**
- 13.1 **Cumulative remedies:** Each right or remedy of the Company under these Conditions is without prejudice to any other right or remedy of the Company whether under the contract or not.
- 13.2 **Waiver:** No failure or delay by the Company to exercise any right, power or remedy will operate as a waiver of it, nor will any partial exercise preclude any further exercise of the same, or of any other right, power or remedy.
- 13.3 **Severance:** If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Terms and the remainder of the clause in question will not be affected.
- 13.4 **No partnership:** Nothing in these Conditions is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 13.5 **Third parties:** A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 13.6 **Variation:** Any variation to these Conditions, including any additional terms and conditions to any contract shall only be binding when agreed in writing and signed by the Company
- 13.7 **Governing law and jurisdiction:** These Conditions and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.