

## **CONDITIONS OF CARRIAGE OF PASSENGERS AND CARGO**

### **GENERAL CONDITIONS:**

1. “The Company” means Orkney Ferries Ltd. “The Passenger” means every person (whether or not named in the ticket) travelling on a ticket issued by or on behalf of the Company. “Luggage” means any articles or packages carried under this Contract and accompanying the Passenger, including articles worn or carried on or by the Passenger. “Cargo” means any goods, vehicles or livestock carried under this Contract and not accompanying the Passenger.
2. The Company is not and does not hold itself out to be a common carrier, and the carriage of Passengers and their luggage and vehicles and the carriage of Cargo is undertaken subject to these Conditions which may not be varied except by a Director of the Company in writing.
3. It is intended, and the Passenger, Consignor and Consignee of Cargo, agrees that the Vessel, its Owner, Master and Crew and any Servant or Agent or independent Contractor of the Company, and any chartered or substitute Vessel, its Owner, Master and Crew, shall have the benefit of all rights, exemptions or limitations from liability, defences, indemnities and immunities of whatsoever nature referred to or implied in these Conditions. For this purpose the Company is or shall be deemed to be acting as Agent or Trustee of all persons who are, were or might at any time be such an Owner, Master, Member of the Crew, Servant or Agent or independent Contractor.
4. The Passenger, Consignor and Consignee of Cargo, agrees that his heirs, assignees, successors and personal representatives shall be bound by these Conditions.
5. Where one ticket is issued in respect of a number of Passengers, the person to whom the ticket is issued contracts with the Company as Agent for all the Passengers in respect of whom the ticket is issued such that all the Passengers will be bound by these Terms and Conditions, and the person to whom the ticket is issued warrants that he or she has authority so to contract on behalf of and by the Passengers.

### **VOYAGE**

6. The Company shall not be obliged to sail according to advertisements or notice. Any voyage may be cancelled or abandoned before or after the start of the voyage, and any route or port may be altered or omitted or times or dates changed for any cause which the Company or Master in their discretion shall consider to be reasonable.
7. For the purposes of security, the Passenger agrees to submit to any search of himself, his vehicle and/or luggage, as may be requested by the Master or other authorised Servant or Agent, or independent Contractor of the Company.
8. The Company reserves the right to carry vehicles and luggage on deck where appropriate and to carry goods of any kind, including dangerous Cargo authorised by the Regulations in force at the point of embarkation.
9. Passengers shall not bring or cause to be brought on board any dangerous goods or any articles which in the opinion of the Company or the Master are undesirable.
10. All Consignors, Consignees, or other persons shall be bound to disclose the nature of all goods consigned by them and the Company and Master reserve the right to decline to accept any Cargo which it is proposed be consigned.

## **VOYAGE CONTINUED...**

11. Petrol, fuel oil and liquefied hydrocarbon gas are carried subject to detailed regulations as set out on Annexe 1.

## **CARGO**

12. The Company are not bound to advise Consignees of the arrival of Cargo.
13. The Company are to be at liberty to ship all Cargo in such order, and at such time, as they see fit without reference to the order of booking and to carry part, although they cannot carry all the same day nor in the same vessel, and are not to be bound to carry any of the said Cargo on any particular day or by the first or any particular vessel. In regard to livestock it is specially provided in addition to the above provisions, that neither the Company nor their Agents or Servants are liable for any accidents to any such stock, while being landed or shipped in boats at any of the ports of call, nor for mortality of or injury to livestock from any cause whatsoever, whether due to the neglect or default of their Servants or other persons for whom the Company would otherwise be responsible, either at shipment, during the passage, whether on deck or in hold, at landing, or in cattle sheds or elsewhere. All livestock must be delivered at the Company's sheds or vessels.
14. All Cargo carried by or deposited with the Company is held by the Company subject to a lien thereon in favour of the Company not only for the freight and charges thereon, but for all debts due to the Company either by Consignor or Consignee. The freight and charges on all goods are due on landing from the vessels by which they are carried, unless at the Company's option by special Notice or Stipulation, freight and charges are declared to be payable in advance.
15. The Company will not be responsible for charges forward on goods and livestock if lost at sea or refused by the Consignee, nor for failure to collect such charges in any case where either before or after delivery the person from whom such charges are to be collected fails to pay the same after reasonable demands have been made for payment.
16. Owners of Cargo are liable for freight, irrespective of whether ship and/or Cargo is lost or not lost. Average, if any, is to be settled according to the York/Antwerp Rules 1974.
17. Freight on livestock is chargeable on the number shipped, notwithstanding mortality or loss through any cause while in the possession of the Company. In the case of livestock and perishable goods if the freight is not paid on the day of receipt at destination or if not then taken away or if addressed to be kept until called for or if consigned to order or is insufficiently or wrongly addressed or if refused by the party to whom or at the place to where directed, the Company (although they shall be under no obligation to do so) shall be entitled to sell the same forthwith either by public auction or privately without any Notice to the Consignor or Consignee, for the benefit of all concerned, and payment or tender of the net proceeds of any such sale, after deduction of freight, charges and expenses shall be held as equivalent to delivery. Without prejudice to the foregoing Conditions in the event of the person in care of livestock or the Owner or Consignee thereof not being ready on arrival to take charge of the same and to pay all freight and charges, the Company shall be at liberty, without incurring any liability, to send them to livery retaining a lien on them for freight, charges and the expenses of their care and livery. Cargo overcarried, save as above expressly provided, shall be returned to port of delivery by first convenient vessel, and all the above Conditions shall apply thereto. In the case of goods which lose weight in transit through drainage, evaporation or other cause, freight shall be payable on the weight at sending point.

## **CARGO CONTINUED...**

**18.** All Cargo must be booked and signed for, previous to shipment. Without prejudice to the foregoing generalities, matters for which the Company or their Agents or Servants are not accountable include weight, quantity, contents, inward conditions, inherent vice, or damage from contact with, or smell or evaporation from other goods, or from urine, manure, water or drainage from livestock; leakage or breakage, the incorrect delivery arising from any cause such as insufficiency of marks, numbers, addresses or otherwise; shippers and others interested being bound to see the proper delivery being obtained at the port of discharge of vessel.

## **LIABILITY**

**19.** The terms of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 1974 (hereinafter referred to as "Athens Convention") shall be deemed to be incorporated into and form part of these Conditions. Copies of the said Athens Convention are available on request from the Company's offices.

**20.** The Company shall not be liable in respect of:

(a) the death, personal injury or illness of any Passenger or in respect of the loss of or damage to any vehicle or luggage accompanying the Passenger unless the same is due to the negligence of the Company, its Servants or Agents or independent Contractors, in which event the Company's liability shall be limited to the amounts contained in Articles 7 and 8 of the Athens Convention.

(b) any loss suffered by the Passenger in respect of the loss of or damage to any vehicle or luggage whilst in the vicinity of the Vessel or on any premises used by the Company or in any conveyance, whether or not any such loss is caused by the negligence or fault of the Company, its Servants or Agents or independent Contractors.

(c) the loss of or damage to any valuables or other articles specified in Article 5 of the Athens Convention howsoever caused unless the same have been deposited at the Purser's or other authorised office for the agreed purpose of safekeeping in which case the Company shall only be liable up to the limit provided in Article 8(3) of the Athens Convention.

**21. (a)** Any damages payable by the Company shall be reduced in proportion to any contributory negligence by the Passenger in accordance with Article 6 of the Athens Convention.

(b) Any damages payable by the Company shall also be reduced by the maximum deductibles specified in Article 8(4) of the Athens Convention.

**22.** The Company shall in no circumstances be liable in respect of consequential loss or damage, cancellation, abandonment or variation of voyage, detention, delay or overcarriage howsoever caused.

**23.** The Passenger, Consignor or Consignee of Cargo shall be liable for and shall reimburse the Company for any damage to the Vessel and its furnishings and equipment or any other property of the Company caused by any wilful or negligent act or omission by the Passenger, Consignor or Consignee who shall further indemnify the Company, its Servants and Agents and independent Contractors against all liability whatsoever which the Company or its Servants or Agents or independent Contractors may incur towards any person in respect of any death, personal injury, illness, loss, damage, detention or delay caused directly or indirectly by any wilful or negligent act or omission on the part of the Passenger, Consignor or Consignee.

## **LIABILITY CONTINUED...**

- 24.** In the event that medical attention of any kind or ambulance assistance (shore, sea or air) may be necessary and is provided or ordered by the Company or the Vessel's Owner, Master or Crew, the Passenger (or the personal representative of the Passenger) for whom the service was obtained shall be liable for the full costs thereof.
- 25.** The Company shall have a general lien on all vehicles and luggage accompanying the Passenger and shall have the right to sell such vehicles and luggage by public auction or otherwise for all liabilities whatsoever of the Passenger under this Contract or otherwise and for the costs and expenses of enforcing such a lien and for such sale.

## **CLAIMS**

- 26.** Any action arising under the Athens Convention shall be time barred after a period of two years calculated in accordance with Article 16 thereof. Any claim which is not covered by the Athens Convention must be notified in writing to the Company within 28 days of disembarkation or of the date when the claimant first had knowledge of the material facts giving rise to the claim, whichever date is later, and any action thereon must be commenced within two years of such date. Unless these time limits are complied with the Company shall be under no liability to the Passenger whatsoever.
- 27.** Under Article 15 of the Athens Convention it is presumed that vehicles and luggage have been delivered undamaged unless written notice is given by the Passenger to the Company:
- (a)** in the case of apparent damage, before or at the time of disembarkation or re-delivery, or
  - (b)** in the case of damage which is not apparent or of loss, within 15 days from the date of disembarkation or re-delivery or from the time when such re-delivery should have taken place.
- 28.** This contract shall be governed by Scottish law and any dispute shall be determined in Scotland (subject to Article 17 of the Athens Convention).

# ANNEXE 1

## REGULATIONS FOR THE CONVEYANCE OF PETROL, FUEL OIL AND CYLINDERS OF LIQUEFIED HYDROCARBON GAS IN ACCOMPANIED MOTOR CARS, DORMOBILES, CARAVANS OR BAGGAGE TRAILERS CARRIED BY SEA

1. In these Regulations, "Vehicle" shall mean any motor car, dormobile, caravan, baggage trailer, motor cycle, motor cycle combination, motor scooter or moped.
2. No Vehicle shall be tendered for carriage by sea if it contains any gas or inflammable liquid (whether or not in separate containers) save that: -
  - (a) On all Vessels operating on the Company's routes the Vehicle may contain the quantity of petrol or fuel oil remaining in the main fuel tank; and
  - (b) Vehicles may carry cylinders of liquefied hydrocarbon gas (e.g. Bottogas, Calor Gas) provided that: -
    - (i) The Vehicle shall be at the port of shipment 30 minutes before the advertised latest time for motor cars.
    - (ii) The maximum number of cylinders carried in any vehicle shall be 3 except in the case of small expendable cartridges, hermetically sealed and packed in an outer container, when up to 12 may be carried.
    - (iii) All cylinders shall be adequately secured in the Vehicle by the owner against the movement of the Vessel.
    - (iv) All cylinders shall be declared in writing to the Shipping Officer before shipment. Cylinders with filling station seals intact, and unpierced expendable cartridges will not be subject to test. All unsealed cylinders (whether full, partially used or "empty") with valves closed shall be produced or be readily accessible for testing for leakage by a representative of the Company. No pierced expendable cartridge shall be carried in any Vehicle and any such cartridge must be discarded before shipment.
    - (v) Unsealed cylinders not of British manufacture, which may be of such construction that the recognized test cannot be applied, will be accepted for shipment if they are disconnected from the Vehicle and carried on the open deck of the ship, clear of passenger spaces. The owner's car registration number shall be chalked on each such cylinder, which must be claimed by the owner on disembarking.
    - (vi) Any cylinder found to be leaking will not be accepted for shipment.
    - (vii) After inspection or testing, and before shipment, all cylinders shall be re-secured in the Vehicle by the owner to the satisfaction of the Company's representative.
    - (viii) Passengers will NOT be allowed access to any Vehicle containing cylinders after loading except in the presence of a Ship's Officer or member of the Crew.
3. In the case of any Vehicle which, in accordance with these Regulations, may be tendered for carriage with petrol, fuel oil in the main fuel tank of the Vehicle:-
  - (a) the fuel supply shall be shut off:
    - (i) in the case of gravity feed by closing the cock; or
    - (ii) in the case of a pump feed by stopping the engine;
  - (b) the fuel tank shall not have been overfilled before loading.
4. No Vehicle shall be tendered for carriage loaded with another vehicle or motor boat which contains any gas or inflammable liquid whether in the fuel tank or elsewhere.