

Andersons Transport
Terms and Conditions of Carriage

AS THESE TERMS LIMIT OUR LIABILITY TO YOU IT IS RECOMMENDED THAT YOU SEEK INDEPENDENT PROFESSIONAL ADVICE AS TO THE APPROPRIATE LEVELS OF INSURANCE COVER THAT YOU WILL REQUIRE WHILST CONSIGNMENTS ARE COVERED BY THESE TERMS & CONDITIONS.

These terms and conditions apply between the parties in respect of each agreement for the carriage of goods comprising the Consignment and shall; supersede the Customer's own terms and conditions whether such terms and conditions are notified to the Carrier or not. The Carrier reserves the right to vary these terms and conditions at any time. Any such variation shall be expressly stated and notified in writing by the Carrier. For the avoidance of doubt, no employee, servant or agent of the Carrier is permitted to agree any alteration or variation to these terms and conditions unless expressly authorised in writing by a Director of the Carrier.

In submitting a request or placing an order for the carriage of the Consignment the Customer unequivocally agrees acceptance of the whole of the terms and conditions.

1. DEFINITIONS

In these "Terms and Conditions" unless the context otherwise permits or requires the following expressions shall have the following meanings.

The "Agreed Rate Schedule" means the schedule of charges agreed between the Carrier and the Customer on an annual basis

"**The Carrier**" means Andersons Transport, Blunham Road, Moggerhanger, Beds, MK44 3RA which is a trading name of "Be The Next Link.co.uk" registered in England – Registration Number 0511215

"**The Consignee**" means the company, firm, individual or organisation to whom the Consignment is delivered.

"**Consignment**" means the goods consigned to the Carrier for delivery by the Customer whether the goods are owned by the Customer or not.

"**Collection Point**" means the address at which any consignment is to be collected or received by the Carrier.

"**Delivery Point**" means the address to which any consignment is to be delivered by the carrier. Including any alternative Delivery Point specified by the client, under clause 7 (1) below.

"**Customer**" means the company, firm, individual or organisation who requests the Carrier to deliver the Consignment.

"**CC Trolley also known as a Danish Trolley or RTI**" means a trolley manufactured by Container Centralen being the recognised manufacturer of RTI (Returnable Transport Items)

"**Good Trade Practice**" means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

"**The Hub**" means a focal delivery point to receive / consolidate and load Consignments.

"**Hazardous Goods**" means any goods which are either not permitted to be carried or which may only be carried under prescribed conditions in accordance with the European Agreement covering the International Carriage of Dangerous Goods by Road or under any statute or other legislative provision including but not limited to goods identified by the Customer to the Carrier as being radioactive, explosive, harmful to others or is similarly hazardous.

"**RFID**" Radio Frequency Identification

"**Trader**" means the owner of the Consignment where the Customer is not the owner, or any other person having an interest therein and anyone acting on behalf of such owner or other person, including, as the case may be, the Customer, sender and Consignee.

"**Valid Item**" is a CC Trolley that contains a RFID chip in the tag and a CC Plate which is a metal tag attached to the base that can be assessed as authentic by an electronic reading device. A "valid item" shall also include CC Shelves and Posts which must meet the purpose of carrying horticultural product.

"**Trolley Exchange**" means the "like for like" exchange of a trolley at the point of delivery.

2. Parties, Sub-Contracting and Non-road Carriage

- (1) The Customer warrants that it is either the owner of the Consignment or is duly authorised by the owner to enter into the Contract on such owners behalf, subject to the whole of these Conditions.

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- (2) The Carrier shall be entitled to sub-contract the whole or any part of the delivery of any Consignment and every reference in these Conditions to “the Carrier” shall be deemed to include every other such carrier engaged to undertake delivery of the Consignment or Consignments.

3. ORDER BOOKING PROCEDURE

- (1) The Customer shall comply with the Order Booking Procedure set out in **Schedule A** to these terms and conditions.

4. CUSTOMERS CONSIGNMENT RESPONSIBILITIES AND TROLLEY MANAGEMENT

(1) The Carrier shall only engage in the carriage of CC Trolleys into Delivery Points that have a current Trolley Account with CC unless otherwise agreed by the Carrier in writing. The Carrier reserves the right to scan a Trolley or Trolleys comprising the Consignment in order to ascertain its authenticity and fitness for purpose and if there is any cause for concern whether with the Trolley or the contents, the Carrier may reject any Trolley, Trolleys or the Consignment. The Carrier will only accept re-loaded trolleys in its absolute discretion. The Carrier shall not be liable to the Customer for any financial loss as a result of rejecting a trolley. In the event that the carrier is unable to recover the trolley which should be exchanged at the point of delivery, The consignee shall remain responsible for the recovery of the trolley.

(2) The Carrier shall not be liable for any loss, damage or delay caused by the failure of any delivery due to the rejection of the Consignment at the delivery point and the Customer shall be liable to the Carrier for a surcharge calculated in accordance with the trolley rates set out in the Agreed rate Schedule. For the avoidance of doubt, the Carrier shall not be under any obligation to undertake any work or action to maintain or preserve any perishable items, specifically, but not restricted to flowers, plants, foliage and flora. This shall continue to apply whether the Carrier is undertaking carriage to a Delivery Point or elsewhere following failure of a delivery howsoever caused. The Customer hereby agrees to indemnify and keep indemnified the Carrier against all loss, damage and costs incurred in returning such Consignment to the Customer or otherwise handling the Consignment.

(3) The Customer shall ensure that all Trolleys comprising the Consignment are clearly and accurately labelled and identified by a number referenced to the total number of the Trolleys in the Consignment and the Customer shall take care to securely affix such labelling on the Trolley shelf at the steering end of each Trolley comprising the Consignment. The Customer is obliged to ensure that where relevant all labelling accurately carries the growers name and details and Customer delivery information including, as appropriate, the name of the organisation and full postal address including postal code.

(4) The Customer shall provide accurate details of each Consignment including a final Trolley count. If the number of Trolleys comprising the Consignment exceeds the count provided to the Carrier, the Carrier reserves the right to reject the additional Trolleys without any liability whatsoever.

(5) If the number of Trolleys comprising the Consignment is less than advised to the Carrier, the Carrier shall be entitled to submit an invoice for the full cost based on the Trolley Count submitted by the Customer and the Customer hereby undertakes to pay the same without any right to deduction or set off in any manner whatsoever.

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(6) The Customer shall ensure that every item comprising the Consignment is properly and adequately packaged so as to preserve and protect the integrity of the contents. This should include checking a trolley prior to loading to ensure that it is a Valid Item and free from any defects.

(7) The Customer shall ensure that three copies of the POD secured in a waterproof sleeve are attached to each Trolley. The documents are to be placed at the "steering" end of trolley 1.

(8) If the Customer fails, in the reasonable opinion of the Carrier, to properly and adequately shrink wrap the Plants to ensure that they are securely contained on the Trolley, the Carrier reserves the right to reject that Trolley without any liability but may, at its discretion, arrange to shrink wrap any such Trolley and shall be at liberty to charge the Customer the cost of doing so. In undertaking such additional work, and notwithstanding payment by the Customer for the same, the Carrier does not warrant the work in shrink wrapping the Consignment and does not accept any additional liability for the integrity of the Consignment.

(9) If the Customer fails to properly label each Trolley then the Carrier reserves the right to reject that Trolley, but may at its discretion and without prejudice, re-label each defective Trolley and shall be at liberty to charge the cost of doing so.

(10) The Customer shall comply with relevant legislation statutory instruments and regulations and to co-operate in the Carrier's compliance in respect of the same and shall indemnify and keep indemnified the Carrier against all liabilities, costs, claims, damages, expenses, consequential losses, loss of profit, penalties and fines in respect of any breach of this condition.

5. Hazardous Goods

The Carrier shall not be under any obligation to accept any hazardous goods for carriage and reserves the right to reject any such goods without any liability whatsoever. Notwithstanding this and without prejudice to the generality herein, the Customer must disclose and identify to the Carrier any such hazardous goods and if the Carrier agrees to accept them for carriage they must be classified, packed, marked, labelled and documented in accordance with the statutory regulations for the carriage by road of the substance declared. The Carrier shall not be under any obligation to arrange any insurance cover above and beyond the cover normally maintained and it shall be the sole responsibility of the Customer to effect and maintain any additional insurance cover required for the carriage of such hazardous goods.

6. Loading and Unloading

- (1) Unless the Carrier has agreed in writing to the contrary with the Customer:
- (a) The Carrier shall not be under any obligation to provide any plant, power or labour, other than that carried by the vehicle, required for loading or unloading the Consignment.
 - (b) The Customer warrants that any plant, power or labour required for loading or unloading the Consignment which is not carried by the vehicle will be provided by the Customer or on the Customer's behalf in a timely manner and hereby indemnifies the Carrier against any and all loss or damage including consequential loss and damage suffered by the Carrier by reason of failure on the part of the Customer to provide or arrange the provision of such plant, power or labour.
 - (c) The Carrier shall be under no liability whatsoever to the Customer for any damage whatsoever, howsoever caused, if the Carrier is instructed to load or unload any Consignment requiring plant, power or labour which, in breach of the warranty in (b) above, has not been provided by the Customer or on the Customer's behalf.
 - (d) The Carrier shall not be required to provide service beyond the usual place of collection or delivery but if any such service is given by the Carrier it shall be at the sole risk of the Customer.
 - (e) The Carrier shall not be liable to the Customer in respect of any loss of or damage to any of the Customers equipment.

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- (2) The Customer shall indemnify the Carrier against all claims and demands whatsoever which could not have been made if such instructions as are referred to in (1)(c) of this clause and such service as is referred to in (1)(d) of this Condition had not been given.

7. Signed Receipts

The Carrier shall if so required; sign a document or electronic record acknowledging receipt of the Consignment. The Carrier does not by any such signature warrant the nature, condition, quality or quantity of the Consignment the burden for which remains with the Customer.

8. Transit

- (1) Transit shall commence when the Carrier takes possession of the Consignment whether at the point of collection or at the Carrier's premises.
- (2) Transit shall (unless otherwise previously determined) end when the Consignment is tendered at the designated or usual place of delivery at the Consignee's address.
- (3) It shall be incumbent upon the Customer and the Consignee to ensure that authorised personnel are present to accept delivery of the Consignment and the Carrier shall not be liable for any delay that may occur as a result of any breach of this term by the Customer or Consignee.

Provided that:

- a) if no safe and adequate access or adequate unloading facilities there exist then transit shall be deemed to end at the expiry of one clear day after notice in writing (or by telephone if so previously agreed in writing) of the arrival of the Consignment at the Carrier's premises has been sent to the Consignee;
- (4) The Customer agrees that time is not of the essence unless it is agreed to the contrary in writing by the Carrier before Transit commences.
- (5) Notwithstanding (4) above if, having arrived at a relevant collection point within the permitted time frame, the Carrier suffers any delay in excess of 60 minutes in collecting the Consignment the Carrier shall be entitled to charge the sum of £45.50 per hour or part thereof in respect of the delay and if having arrived at a relevant delivery point within the permitted time frame the Carrier suffers any delay in excess of 30 minutes the Carrier shall be entitled to charge £5 per trolley and the Customer hereby agrees to pay all such charges without set off, deduction and /or counterclaim.

9. Undelivered or Unclaimed Consignments

Subject to the provisions above at 4(1), where the Carrier is unable for any reason to deliver a Consignment to the Consignee, or where by virtue of the proviso to Condition 8(2) hereof transit is deemed to be at an end, the Carrier may sell the Consignment and payment or tender of the proceeds after deduction of all proper charges and expenses in relation thereto and of all outstanding charges in relation to the carriage and storage of the Consignment shall (without prejudice to any claim or right which the Customer may have against the Carrier otherwise arising under these Conditions,) discharge the Carrier from all liability in respect of such Consignment, its carriage and storage and;

- (1) The Carrier shall do what is reasonable to obtain the value of the Consignment; and
- (2) The power of sale shall not be exercised where the name and address of the sender or of the Consignee is known unless the Carrier shall have done what is reasonable in the

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circumstances to give notice to the sender, if the name and address of the sender is not known, to the Consignee that Consignment will be sold unless within the time specified in such notice, being a reasonable time in the circumstances from the giving of such notice, the Consignment is taken away or instructions are given for its disposal.

10. Carrier's Charges

- (1) The Carrier's charges shall be payable by the Customer without prejudice to the Carrier's rights against the Consignee or any other person: Provided that when any consignment is consigned 'carriage forward' the Customer shall not be required to pay such charges unless the Consignee fails to pay after a reasonable demand has been made by the Carrier for payment thereof.
- (2) Charges shall be payable when due without reduction or deferment on account of any claim, counterclaim or set-off. If the Customer becomes insolvent or any sums owed by the Customer on any invoice or account with the Carrier become overdue for payment, any credit terms shall be cancelled with immediate effect and all invoices or accounts issued by the Carrier shall immediately be deemed due for payment and thereupon become payable. The Late Payment of Commercial Debts (interest) Act 1998, as amended, shall apply to all sums due from the Customer
- (3) Notwithstanding that the price for the services to be provided by the Carrier has been agreed by the parties, the Carrier shall be entitled to levy fuel surcharges on the Customer as applicable in accordance with the Agreed rate Schedule.
- (4) Provided that the Carrier evidences the fuel price increase in any manner deemed appropriate by the Carrier to the Customer, the Customer shall in addition to paying all other sums due, pay any charges raised by the Carrier in respect of the increase in fuel prices pursuant to this clause within the timescales specified by the Carrier without set off, counterclaim or any other such deduction

11. Liability for Loss and Damage

- (1) The Customer shall be deemed to have elected to accept the terms set out in (2) of this Condition unless, before the transit commences, the Customer has agreed in writing that the Carrier shall not be liable for any loss or mis-delivery of or damage to or in connection with the Consignment howsoever or whensoever caused and whether or not caused or contributed to directly or indirectly by an act, omission, neglect, default or other wrongdoing on the part of the Carrier, its servants, agents or sub-contractors.
- (2) Subject to these Conditions the Carrier shall be liable for:
 - a) physical loss, mis-delivery of or damage to living creatures, bullion, money, securities, stamps, precious metals or precious stones comprising the Consignment only if:
 - (i) the Carrier has specifically agreed in writing to carry any such items; and
 - (ii) the Customer has agreed in writing to reimburse the Carrier in respect of all additional costs which result from the carriage of the said items; and
 - (iii) the loss, mis-delivery or damage is occasioned during transit and is proved to be due to the negligence of the Carrier, its servants, agents or sub-contractors;
 - b) physical loss, mis-delivery or damage to any other goods comprising the Consignment unless the same has arisen from or is a consequence of:
 - (i) Act of God;
 - (ii) Any consequences of war, invasion, act of foreign enemy, hostilities (whether war or not), civil war, rebellion, insurrection, terrorist act, military or usurped power or confiscation, requisition, or destruction or damage by or under the order of any government or public or local authority;
 - (iii) Seizure or forfeiture under legal process;

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- (iv) Error, act, omission, mis-statement or misrepresentation by the Customer, or other owner of the Consignment or by servants or agents of either of them;
 - (v) Inherent liability to wastage in bulk or weight, faulty design, latent defect or inherent defect, vice or natural deterioration of the Consignment;
 - (vi) Insufficient or improper packaging;
 - (vii) Insufficient or improper labelling or addressing;
 - (viii) Riot, civil commotion, strike, lockout, general or partial stoppage or restraint of labour howsoever caused;
 - (ix) Consignee not taking or accepting delivery within a reasonable time after the Consignment has been tendered.
 - (x) Consignee rejecting the Consignment for any reason
 - (xi) Any consequences of broken or substandard Trolleys
 - (xii) RFID scanning failure
- (3) The Carrier shall not in any circumstances be liable for loss or damage arising after transit is deemed to have ended within the meaning of Condition 8(2) hereof, whether or not caused or contributed to directly or indirectly by any act, omission, neglect, default or other wrongdoing on the part of the Carrier, its servants, agents or sub-contractors.

12. Fraud

The Carrier shall not in any circumstances be liable in respect of a Consignment where there has been fraud on the part of the Customer or the owner, or the servants or agents of either, in respect of that Consignment, unless the fraud has been contributed to by the complicity of the Carrier or of any servant of the Carrier acting in the course of his employment.

13. Limitation of Liability

- (1) Except as otherwise provided in these Conditions, the liability of the carrier in respect of claims for physical loss, miss-delivery of or damage to goods comprising the Consignment, howsoever arising, shall in all circumstances be limited to the lesser of
- (a) the value of the goods actually lost, mis-delivered or damaged; or
 - (b) the cost of repairing any damage or of reconditioning the goods; or
 - (c) a sum calculated at the rate of £1,300 Sterling per tonne on the gross weight of the goods actually lost, mis-delivered or damaged;
- and the value of the goods actually lost, mis-delivered or damaged shall be taken to be the replacement cost thereof to the owner at the commencement of transit, and in all cases shall be taken to include any Customs and Excise duties or taxes payable in respect of those goods:

Provided that:

- (i) in the case of loss, mis-delivery of or damage to a part of the Consignment the weight to be taken into consideration in determining the amount to which the Carrier's liability is limited shall be only the gross weight of that part regardless of whether the loss, mis-delivery or damage affects the value of other parts of the Consignment;
- (ii) nothing in this Condition shall limit the liability of the Carrier to less than the sum of £10;
- (iii) the Carrier shall be entitled to proof of the weight and value of the whole of the Consignment and of any part thereof lost, mis-delivered or damaged;
- (iv) the Customer shall be entitled to give to the Carrier notice in writing to be delivered at least seven days prior to commencement of transit requiring that the £1,300 per tonne limit in 13 (1)(c) above be increased, but not so as to exceed the value of the Consignment, and in the event of such notice being given the Customer shall be required to agree with the Carrier an increase in the carriage charges in consideration of the increased aforementioned £1,300 per tonne limit and in the absence of such agreement the aforementioned £1,300 per tonne limit shall continue to apply.

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- (2) The liability of the Carrier in respect of claims for any other loss whatsoever (including indirect or consequential loss or damage and loss of market), and howsoever arising in connection with the Consignment, shall not exceed the amount of the carriage charges in respect of the Consignment or the amount of the claimant's proved loss, whichever is the lesser, unless:
 - (a) at the time of entering into the Contract with the Carrier the Customer declares to the Carrier a special interest in delivery in the event of physical loss, mis-delivery or damage or of an agreed time limit being exceeded and agrees to pay a surcharge calculated on the amount of that interest, and
 - (b) at least 7 days prior to the commencement of transit the Customer has delivered to the Carrier confirmation in writing of the special interest, agreed time limit and amount of the interest.

14. Indemnity to the Carrier

The Customer shall indemnify the Carrier against:

- (1) all liabilities and costs incurred by the Carrier (including but not limited to claims, demands, proceedings, fines, penalties, damages, expenses and loss of or damage to the carrying vehicle and to other goods carried) by reason of any error, omission, mis-statement or misrepresentation by the Customer or other owner of the Consignment or fraud as in Condition 12;
- (2) all claims and demands whatsoever (including for the avoidance of doubt claims alleging negligence), by whomsoever made the howsoever arising (including but not limited to claims caused by or arising out of the carriage of Dangerous Goods and claims made upon the Carrier by H.M. Revenue and Customs in respect of dutiable goods consigned in bond) in excess of the liability of the Carrier under these Conditions in respect of any loss or damage whatsoever to, or in connection with, the Consignment whether or not caused or contributed to directly or indirectly by any act, omission, neglect, default or other wrongdoing on the part of the Carrier its servants, agents or sub-contractors.

15. Time Limits for Claims

- (1) The Carrier shall not be liable for:
 - (a) damage to the whole or any part of the Consignment, or physical loss, mis-delivery or non-delivery of part of the Consignment unless advised by email (claims@trolley.net.co.uk) in the case of flower / plant distribution or claims@andersonstransport.com in the case of general haulage. Within 24 hours of the delivery time.

Provided that if the Customer proves that:

- (i) it was not reasonably possible for the Customer to advise the Carrier or make a claim in writing within the time limit applicable, and
 - (ii) such advice or claim was given or made within a reasonable time, the Carrier shall not have the benefit of the exclusion of liability afforded by this Condition.
- (2) The Carrier shall in any event be discharged from all liability whatsoever and howsoever arising in respect of the Consignment unless proceedings are issued and notice in writing thereof given to the Carrier within one year of the date when transit commenced.
 - (3) In the computation of time where any period provided by these Conditions is seven days or less, Saturdays, Sundays and all statutory public holidays shall be excluded.

16. Lien

- (1) The Carrier shall have:
 - (a) a particular lien on the Consignment, and
 - (b) a general lien against the Trader for sums unpaid on any invoice, account or Contract whatsoever.

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If such lien, whether particular or general, is not satisfied within a reasonable time, the Carrier may sell the Consignment, or part thereof, as agent for the owner and apply the proceeds towards any sums unpaid and the expenses of the retention, insurance and sale of the Consignment and shall, upon accounting to the Customer for any balance remaining, be discharged from all liability whatsoever in respect of the Consignment.

- (2) The Carrier may exercise its lien on its own behalf or as agent for any assignee of its invoices at any time and at any place at its sole discretion whether or not sums have become payable in accordance with Condition 8(2) hereof and whether or not the contractual carriage has been completed and these conditions shall continue to apply during the period of exercise of such lien.

17. Unreasonable Detention

The Customer shall be liable to pay demurrage for unreasonable detention of any vehicle, trailer, container or other equipment at the Carrier's current rates of demurrage but the rights of the Carrier against any other person in respect thereof shall remain unaffected. The aforementioned applies to both Collection and delivery points. We shall apply the demurrage rate after 60 mins of waiting time. The rate of Demurrage shall be £37.00 per hour.

18. Law and Jurisdiction

Unless otherwise agreed in writing, the contract and any dispute arising there under shall be governed by English law and shall be subject to the jurisdiction of the English Courts alone.

19. Third Party Rights

The parties to this agreement do not intend that any term of this agreement shall be enforceable solely by virtue of the Contract (Rights of Third parties) Act 1999 by any person who is not a party.