

## Barron Wood Distribution Limited

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bwd General Conditions of Sub-Contracting 2012 Version 9.3: August 2023

# Barron Wood Distribution Limited

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# Barron Wood Distribution Limited

## 1. Definitions

- 1.1 In This Agreement
- The Company:** means Barron Wood Distribution Limited.
- Contract:** means the Contract of Carriage / Freight.
- Customer:** means clients of The Company.
- This Agreement:** means the Conditions of Sub-Contracting of The Company printed therein and as varied from time to time.
- The Sub-Contractor:** means any person, firm, or company including The Sub-Contractors employees servants, agents and other persons employed or authorised by The Sub –Contractor who enters into a Contract with The Company for the carriage, transportation, forwarding, or storage of goods, whether loaded or unloaded, including sub contractors employed by The Company for the propose of fulfilling the Contract.
- Trailer :** means any device used for the carriage, transportation, or storage of Goods (whether loaded or unloaded) including any container, vehicle, trailer, or other equipment of any type.
- POD:** means Proof of Delivery – (Delivery Note) / a document proving receipt of freight by the delivery point.
- Goods:** means all Goods and merchandise which The Company agrees to carry for its customer(s)
- 1.2 The headings in This Agreement are for convenience only and shall not affect their interpretation.
- 1.3 The definitions in This Agreement shall bear the same meaning wherever they appear in This Agreement unless otherwise specified. The singular definition includes the plural and vice versa, the male gender includes the female and neutral genders.

## 2. Purpose

The Company Customers demand the highest standards and service levels from The Company and The Company expect those standards to be met by anyone representing The Company. The Company takes every possible precaution to ensure The Company only use the services of professional, experienced Sub Contractors.

### **3. Application**

This Agreement and any amendments thereto made Pursuant to clause 22 below hereof or by written agreement between the parties shall apply to all future sub-contracts between The Company and The Sub-Contractor (unless expressly otherwise agreed in writing by The Company as taking precedence over This Agreement in the particular circumstances).

### **4. Terms & Termination**

- 4.1 This Agreement shall be continually rolling from the date This Agreement has been signed by The Company and may be terminated by either party giving to the other not less than 30 days prior written notice.
- 4.2 This Agreement may be terminated by The Company forthwith upon written notice to The Sub-Contractor in the event that there is a breach by The Sub-Contractor to any terms within This Agreement"

### **5. Confidentiality**

The Sub-Contractor will treat as strictly confidential all information received or obtained as a result of entering into any Contract with The Company and may not disclose any information which would otherwise be confidential unless and to the extent: (i) required by law; (ii) The Company has given prior written consent to disclose; (iii) necessary in the provision of the Services, (iv) the information had already come into the public domain through no fault of The Sub-Contractor at the time of disclosure.

### **6. The Company Liability**

- 6.1 The Company shall have no obligation to ensure, or provide for, the safety, custody, or condition of any of The Sub-Contractor's vehicles, equipment, or property and no claims shall lie against The Company for any loss, damage, or injury to such vehicles, equipment, or property.
- 6.2 Unless expressly agreed otherwise in writing between the parties each Contract for the carriage, transportation or storage of Goods by The Sub-Contractor shall constitute a separate Contract subject to This Agreement and nothing herein shall be construed as a Contract for multiple sub-contracts or as a guarantee to The Sub-Contractor of any future sub-Contract work.

### **7. Further Sub-Contracting**

- 7.1 The Sub-Contractor may further sub-contract any service to be performed on behalf of The Company either in whole or in part but The Sub-Contractor shall be responsible for the acts or omissions of his agents, servants or sub-contractors or of any other persons of whose services he makes use for the performance of the carriage, when such agents, servants or other persons are acting within the

scope of their employment, as if such acts or omissions were his own.

- 7.2 Further sub-contracting pursuant to Condition 11.2 and 11.3 below is not allowed unless agreed in writing by The Company.
- 7.3 The Sub-Contractor must ensure The Sub-Contractor they employ has in place current Goods in Transit Policy covering their legal liability as set out in clauses 18 & 19 below.

## 8. Assignment

The Sub-Contractor shall not assign, transfer, or sub-Contract the benefit of This Agreement.

## 9. Performance of Sub-Contractor

- 9.1 The Sub-Contractor shall:
  - 9.1.2 Comply with all instructions of The Company.
  - 9.1.3 Ensure that when at The Company Customer's site, drivers should always be polite and helpful, and where possible, be present during loading/unloading of the trailer and refer any unreasonable requests to their traffic office.
  - 9.1.4 Ensure that his employees, servants, agents, sub-contractors (if permitted) and other persons employed or authorised by him are competent to carry out the Contract between The Company and the Sub-Contractor.
  - 9.1.5 Without prejudice to the generality of the foregoing, ensure that every such employee, servant, agent or sub-contractor (if permitted) is fully aware that they shall not, and have no authority to, accept for transportation (a) any Goods other than those properly and lawfully consigned (b) any persons other than those required for the transportation of the consigned goods.
  - 9.1.6 In the event of delays after 30 minutes at delivery or collection point inform The Company immediately by telephone, telex, e-mail, or facsimile transmission of the reason for the delay.
  - 9.1.7 Inform The Company immediately in the event of loss, damage or mis-delivery and supply, at its own expense, a full and detailed report ( not limited to driver statement) outlining the cause and circumstances together with any further information which The Company may require.
  - 9.1.8 If any loss is, or is suspected to be, due to theft or pilferage, in addition to action under sub clause 9.1.7 above Immediately inform the Police and take all reasonable steps to identify the guilty person and to trace and recover the goods.
  - 9.1.9 In the event of any loss or damage to the 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.

9.1.10 The Sub-Contractor must not undertake any service on behalf of The Company until they are in receipt of a fully authorised Confirmation. An E-Mailed copy will be issued at point of arranging the service.

9.1.11 Any additional work (e.g. return legs, re-deliveries, return of refused Goods etc.) must be authorised by The Company. Payment will not be made for unauthorised work.

## **10. Employees & Agents**

10.1 The Sub-Contractor hereby acknowledges that The Company has no day-to-day operational control (in the performance by The Sub-Contractor of the Contract with The Company) over employees, servants, sub-contractors and agents of The Sub-Contractor who shall at all times remain under the complete control (and be the sole responsibility) of The Sub-Contractor in all respects. This Contract does not create any agency or other relationship apart from a sub-Contract between The Company and The Sub-Contractor.

10.2 The Company shall not be liable to The Sub-Contractor (or any employee, servant, agent or subcontractor of The Sub-Contractor) for any loss, damage or personal injury (whether suffered by any employee, servant, agent or sub-contractor of This Agreement or by any other person) arising out of the performance by The Sub-Contractor of the Contract with The Company except where such loss damage or personal injury has been caused directly by the proven negligence of The Company.

10.3 The Sub-Contractor indemnifies The Company against all claims and demands caused by or arising out of the act, default, negligence of The Sub-Contractor or caused or arising out of the act, default or negligence of any of The Sub-Contractor's, employees, agents or sub-contractors or of any third party operator engaged by The Sub-Contractor in the performance of The Sub-Contractor's Contract with The Company.

## **11. Trailer**

11.1 The Sub-Contractor shall keep the Trailer in good and workable condition whilst any such units are in his possession or control (or that of any of his agents or sub-contractors).

11.2 Where the Sub-Contractor uses The Company approved rental providers The Sub-Contractor will be responsible for all physical loss and or damage to the Trailer) whilst in The sub-contractors custody, control and care (excluding normal wear and tear) including not limited to, all recovery and other costs, and any ongoing daily hire costs until the Trailer ) is accepted back by the rental providers or other interested Third Party.

- 11.3 In respect of Traction work The Sub-Contractor will be responsible for all physical loss and or damage to the Trailer) whilst in The Sub contractors custody, control and care (excluding normal wear and tear) including, not limited to, all recovery and other costs and any ongoing daily hire costs until the Trailer is accepted back by The Customer.
- 11.4 The Sub-Contractor when taking delivery of a Trailer any pre-existing damage or deficiency should be notified immediately by telephone to The Company, or if outside of office hours as soon as possible and in writing to both the rental providers of the Trailer and/or the Customer. In the absence of any written notification of pre-existing damage or deficiency the Sub-Contractor will be held fully responsible. Where The Sub-Contractor were the last user of a Trailer and a claim to the Trailer is notified after it has been returned the burden of proof rest with you to prove that any loss/damage/ deficiency was not your responsibility.
- 11.5 Trailer supplied by The Company is to be used only by The Sub-Contractor) or its permitted sub-contractor) and only for the purpose of performing the Contract with The Company unless otherwise authorised by The Company in writing. A Trailer shall remain at all times the unencumbered property of The Company or its Customer or any other third party (as the case may be) and where The Sub-Contractor employs – in turn – a Sub-Contractor, neither The Sub-Contractor nor its Sub-Contractor shall sell, charge or encumber it in any way or lease it or allow any lien to be created or exercise any lien over it.
- 11.6 The Sub-Contractor pursuant to clause 11.2 & 11.3 above agrees to indemnify The Company against all claims arising out of the use of such Trailer .

## **12. Security**

The Sub-Contractor must deliver to the address printed on the documentation only and must inform The Company immediately if requested by any person to deliver all or part of the load to a different location and only do so if instructed in writing by The Company.

## **13. Health & Safety**

- 13.1 This Sub-Contractor shall:-
- 13.1.1 Observe all safety requirements and site rules whilst on The Customer's premises and / or comply with any specific requirements as instructed by The Company.
- 13.1.2 Comply with your statutory H&SE legal requirements.

#### **14. O' Licence Requirements**

Notify The Company if your operator's license is either revoked or surrendered.

#### **15. Pallet Management**

Where agreed by The Company and the Sub-Contractor to collect pallets, The Sub-Contractor will remain responsible for any pallets collected and / or delivered until such a time as they are delivered to account nominated by The Company.

#### **16. Charges & Payments**

- 16.1 The Company will quote a rate to the Sub-Contractor on the written (emailed) job confirmation which must be charged for on an invoice with the POD, unless otherwise agreed in writing by The Company.
- 16.2 The Sub-Contractor will provide a legible and signed copy of the POD (clearly showing any clauses such as shortages, damages, refused items) and must be returned to The Company by email, uploaded or posted as soon as possible with the Sub-Contractor's invoice together with any relevant original documentation. Failure to comply with this instruction will result in the delay of payment.
- 16.3 No fuel surcharge can be charged unless agreed in writing by The Company.
- 16.4 The rates specified on The Company's job confirmation are exclusive of VAT.
- 16.5 The Sub-Contractor must ensure that invoices quote The Company job number. Payments will be made within an agreed period of receipt by The Company of a valid and correct VAT invoice.
- 16.6 Subject to complying with clause 16.2 above, The Company will settle the Sub – Contractors account 30 days following end of the month within which the invoice is raised, unless otherwise agreed.
- 16.7 Where preferential payments have been agreed between The Company and The Sub-Contractor and The Sub-Contractor no longer works for The Company, payment terms will revert to 30 days following the end of the month which the invoice was raised, subject to compliance 16.2 above.

#### **17. Demurrage & Cancelled Loads**

- 17.1 Charges for demurrage will not be accepted unless agreed in writing by The Company. Any demurrage charges submitted without written authorisation will be rejected. Any delays must be reported allowing The Company adequate time to resolve the situation before charges are discussed (i.e. before The Sub-Contractor incurs such costs).



- 17.2 In the event The Company has to cancel a service, The Company will endeavour to communicate this to the Sub-Contractor as soon as possible (An alternative load may be offered prior to any cancellation). In the event where a sub-contractor is en-route to undertake the service, The Company will accept reasonable charges incurred by the sub contractor.
- 17.3 All other claims will be rejected.

## **18. Insurance & Liability**

- 18.1 The Sub-Contractor shall take out and maintain at its own expense appropriate policies of insurance with a reputable insurer. The Sub-Contractor further agrees to indemnify the company against physical loss of, mis- delivery of or physical damage to the Goods. The Sub-Contractor shall have in place Goods in transit insurance at a level of no less than £6500 per tonne. In the event that The Company requires higher cover, the parties shall discuss and agree any such specific level of insurance and any price increases before a written agreement for the Services is concluded.
- 18.2 Where Regulation (EC) 1072/2009 applies or subsequent regulations replacing 1072/2009 (This Regulation applies to the national carriage of Goods by road undertaken on a temporary basis by a non-resident haulier) The Sub-Contractors insurance policy must be extended to cover such risks.
- 18.3 Where the Sub-Contractor is involved with the international carriage of Goods by road the Sub- Contractor must have in place an adequate insurance policy to the levels of compensation required by the CMR: contracts for the international carriage of goods by road.
- 18.4 Where The Sub-Contractor is a Freight Forwarder / Shipping Line / NVOCC and / or similar and operate under standard Trading conditions in the country The Sub-Contractor operates, they must have in place an adequate insurance policy to the levels of compensation under such Trading Conditions and applicable international conventions.
- 18.5 Pursuant to clause 11.2 above The Sub-Contractor shall arrange Comprehensive cover (physical loss and/ or damage) no less than £30,000 unless otherwise agreed in writing .
- 18.6 Pursuant to clause 11.3 above The Sub-Contractor shall arrange Comprehensive cover (physical loss and / or damage) no less than £125,000 unless otherwise agreed in writing.
- 18.7 Pursuant to clause 18.2 above The Sub-Contractor shall arrange insurance cover with a limit of liability no less than GBP250,000
- 18.8 Pursuant to clause 18.3 above The Sub-Contractor shall arrange insurance cover with a limit of liability no less than GBP250,000.

## **19. Insurance & Liability (All Sub-Contractors)**

- 19.1 Inspection by The Company of any insurance policies submitted to it by The Sub-Contractor shall not be considered as an admission or acceptance by The Company of the validity or sufficiency of such policies. Such validity and sufficiency shall at all times remain the absolute responsibility of The Sub-Contractor.
- 19.2 The Sub-Contractor shall maintain at their own expense a:-
  - 19.2.1 Third Party Injury and Property Damage Indemnity policy.
  - 19.2.2 Workers Compensation or employers liability and Automobile liability cover as required by Applicable law.

## **20. Severability**

If any of the provisions of This Agreement is found by a Court of competent jurisdiction to be void or unenforceable in whole or in part, such provision shall be deemed to be deleted from This Agreement and the remaining provisions of This Agreement shall continue in full force and effect.

## **21. Jurisdiction & Choice of Law**

Any claim of whatever nature arising out of or relating to This Agreement or breach thereof shall be governed by the laws of England. All claims or disputes shall be submitted to the jurisdiction of the English Courts.

## **22. Amendments to This Agreement**

The Company may alter and/or amend This Agreement at any time. Notice of any such alterations or amendments will be sent to The Sub-Contractor and all Contracts made between The Company and The Sub-Contractor subsequent to the date of any such alterations or amendment shall be subject to such alterations or amendments.

## Barron Wood Distribution Limited

This Agreement Contains 1 to 11 Pages

Signed by:  
For and on behalf of:-  
**Barron Wood Distribution Limited**  
John Fairbrother MD

*John Fairbrother*

Date:

Signed by: For and on behalf of The Sub-Contractor:-

(Company Name)

Signed

Print Name

Date:

Approved by:  
For and on behalf of  
**Barron Wood Distribution Limited**  
John Fairbrother MD

*John Fairbrother*

Date:

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