

Advanced Supply Chain Group of Companies

Conditions of Contract

Important Note:

THE CUSTOMER'S ATTENTION IS DRAWN TO THESE CONDITIONS, which include Conditions that exclude or limit Company's liability (Conditions 1.4, 2, 7, 9, 11, 12, 21, 22 and 25) and define the time limits for bringing a claim (Condition 24). Any freight forwarding services undertaken by Advanced Forwarding Limited will be subject to the latest version of the BIFA Standard Trading Conditions.

1. Definitions and Interpretations

1.1 In these Conditions the following terms shall have the meaning assigned to them below:

"Commencement Date" means the Commencement Date defined in the Contract;

"Company" means the company within the Advanced Supply Chain group of companies which is supplying the Services (including its successors and assigns);

"Conditions" means these conditions of contract and 'Condition' shall be construed accordingly;

"Contract" means a contract between Company and the Customer relating to the provision of the Services incorporating these Conditions;

"Cost Price" means the price the Customer or owner of the Goods paid for the Goods or is liable to pay for the Goods, as evidenced by the invoice(s) issued to the Customer or owner of the Goods by its supplier or, if the Customer or owner made the Goods, the cost of manufacturing the Goods as evidenced to the reasonable satisfaction of Company and in each case exclusive of profit for the Customer or owner;

"Control" means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of management of a company;

"Customer" means any person or corporate body at whose request or on whose behalf the Company undertakes any business or provides advice or information or with whom Company contracts in respect of the performance of the Services;

"Dangerous Goods" means those substances and articles, the carriage of which is prohibited by the provisions of the European Agreement Concerning the International Carriage of Dangerous Goods by Road (as varied from time to time) ("ADR") as applied in the United Kingdom, or the carriage of which is authorised strictly in accordance with the conditions prescribed by the ADR;

"Forecast" means the Customer's estimate of its volume requirements for the Services in each rolling twelve (12) month period;

"Forecast Tolerance" means for each rolling twelve (12) month period:

- (i) months 1-3, the Forecast being 90% accurate versus actual volume;
- (ii) months 4-6, the Forecast being 85% accurate versus actual volume; and
- (iii) months 7-12, the Forecast being 75% accurate versus actual volume;

"Goods" means the goods in respect of which the Company agrees to provide the Services;

"Intellectual Property Rights" means all copyright and other intellectual property rights howsoever arising and in whatever media, whether or not registered, including (without limitation) patents, trademarks, service marks, trade names, database rights, registered designs, rights in any format or presentation (including its look, feel, visual or other non-literal elements) and any applications for the protection or registration of these rights and all renewals and extensions thereof throughout the world;

"KPI" means any key performance indicators described within the Contract;

"Notice Period" means any notice period set out in the Contract;

"Relevant Employees" means all persons who are wholly or substantially assigned to the organised grouping of employees which provides the Services and who are engaged by the Company under any contract of engagement or employment or other employment or collective agreement;

"Services" means the Transport Services and/or Warehousing Services which the Company agrees to provide to the Customer as referred to in the relevant Contract, and such other additional services as may be agreed between the parties in writing from time to time in accordance with Condition 14;

"Transferring Employees" means any person whose employment transfers to the Company on the Commencement Date pursuant to TUPE;

"Transport Services" means the carriage of Goods by road (and by sea and inland waterway when incidental to road transport) by the Company or its contractors or agents in accordance with these Conditions and the Customer's instructions. The Transport Services shall be deemed to begin at the start of loading of the Goods onto the carrying vehicle and shall end on completion of the unloading of the Goods from the carrying vehicle at the final destination or at any intermediate warehouse or for any purpose other than trans-shipment. Provided that if the loading or unloading is to be performed by the Customer or on the Customer's behalf, then the Transport Services shall begin on completion of the loading of the Goods onto the carrying vehicle and shall end at the start of unloading of the Goods from the carrying vehicle;

"TUPE" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended or re-enacted from time to time);

“Warehousing Services” means the storage of Goods by the Company or its contractors or agents and such additional, related services as Company and the Customer may agree in the Contract or otherwise in writing. Those additional services may include processing, boxing, finishing, hanging, tagging, steaming, picking, packing and palletising Goods or such other additional services as may be agreed between the parties in writing from time to time. The Warehousing Services shall be deemed to begin on the physical entry of the Goods into the warehouse facility and shall end at the start of loading of the Goods onto the carrying vehicle or other mode of transport; and

“Working Day” means a day other than a Saturday, Sunday or public holiday, on which clearing banks are open for non-automated commercial business in the City of London.

1.2 In these Conditions references to:

- 1.2.1 any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced from time to time;
- 1.2.2 any gender includes every gender and references to the singular include the plural and vice versa as the context requires;
- 1.2.3 headings will not affect the construction of these Conditions;
- 1.2.4 the terms **“including”, “include”, “in particular”** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- 1.2.5 each of the Customer and the Company shall be a ‘party’ and together the ‘parties.’

Conditions Paramount

- 1.3 The Company is not a common carrier, and undertakes all Services subject solely to these Conditions and any other provisions which the Company and the Customer expressly agree should form part of the relevant Contract (to the exclusion of all other terms and conditions). These Conditions can be varied only in writing by a board director of the Company. If a Customer’s acceptance document, purchase order or other similar documentation, received by the Company before or after notification of these Conditions, contains terms or conditions additional to, or at variance with these Conditions, then every such additional or varying term or condition shall be of no effect. Each request for the Services by the Customer from the Company shall be deemed to be an offer by the Customer for the Services subject to these Conditions and acceptance by the Company of such a request for the Services from the Customer whether in writing, orally or by commencement or performance of the Services shall be subject to these Conditions.
- 1.4 Without the prior written agreement of a board director of the Company, the Company will not accept or deal with goods that require special handling in respect of the performance of the Services, whether owing to their value or otherwise, including bullion, coins, precious stones, jewellery, valuables, antiques, pictures, works of art, human remains, livestock, pets or plants. Should the Customer nevertheless deliver any such goods to the Company or cause the Company to handle or deal with any such goods (otherwise than with such prior agreement) then the Company shall have no liability whatsoever for, or in connection with, such goods, howsoever arising.
- 1.5 The Company shall have no liability whatsoever and howsoever arising for, or in connection with, goods which the Customer places into the care or control of the Company or its contractors or agents and which are different in nature and/or quantity from those which the Company agreed to handle in the relevant Contract.

2. Forecasts

- 2.1 Where the Customer has agreed to provide the Company with Forecasts, the Customer shall provide the Forecast in writing at least five Working Days before the end of each calendar month. Time is of the essence.
- 2.2 If, in respect of any calendar month, any forecast provided by the Customer in the preceding twelve (12) month period shows a volume for that month which when compared to actual volume in that month, is outside of the Forecast Tolerance, then:
 - 2.2.1 if actual volume is less than the Forecast volume then the Customer shall be obliged to pay the charges for the Services as though actual volume was within the Forecast Tolerance; and
 - 2.2.2 if actual volume is more than the Forecast volume then the Company will use its reasonable endeavours to meet the actual volume but the KPIs shall not apply in that month and the Company shall not be liable for any failure to meet that part of the volume which exceeds the Forecast.
- 2.3 (Subject to Condition 2.2.2 and Condition 2.4) the Customer will be entitled to terminate the Contract if the Company fails to meet the same KPI in three (3) consecutive months or four (4) times in any six (6) month period (each month in which the KPI is not met being a **“Failure Period.”**).
- 2.4 The Customer shall not be entitled to terminate the Contract under Condition 2.3 if:
 - 2.4.1 the Customer has failed in the twelve (12) month period prior to a Failure Period to deliver any Forecast relating to that Failure Period in accordance with Condition 2.1; or
 - 2.4.2 the Customer has failed to notify the Company of any failure to meet a KPI within fourteen (14) days of the end of the relevant Failure Period; or
 - 2.4.3 the Company’s failure to meet the KPIs is caused or materially contributed to by an act or omission of the Customer.

3. Collection and Delivery

- 3.1 Unless the Company has agreed in writing to the contrary, the Company shall not be under any obligation to provide any plant, power, labour or equipment for the purposes of loading or unloading the Goods at any place other than at the Company's premises. The Customer confirms that any plant, power, labour or equipment required for the purposes of loading or unloading the Goods shall be provided by the Customer or on the Customer's behalf and Company shall have no liability whatsoever and howsoever arising, if the Company is instructed to load or unload the Goods without being provided with the appropriate plant, power, labour or equipment by the Customer or on behalf of the Customer.
- 3.2 The Company may choose the means, route and procedure to be followed in the performance of the Services.
- 3.3 The Goods may be carried, stored or handled with other compatible goods or transferred between stores or premises of the Company at any time and as determined by the Company.
- 3.4 The Company, its employees, agents or subcontractors shall, if required, sign a document or electronic record prepared by the Customer or sender acknowledging the receipt of the Goods but the burden of proving the condition of the Goods and their nature, quantity or weight at the time of collection or receipt shall rest with the Customer.
- 3.5 If for any reason the Customer or persons at the nominated destination refuse or fail to accept delivery of any of the Goods when they are tendered for delivery by the Company's employees, agents or subcontractors or if the Company's employees, agents or subcontractors are unable to deliver the Goods at the appropriate time because the Customer has not provided adequate instructions, documents, licences, authorisations or similar, then:
- 3.5.1 the Company shall be deemed to have performed the Transport Services and the Goods may be returned to Company's premises at the Customer's expense;
 - 3.5.2 the Company may store the Goods at the Customer's sole risk and the Customer shall be liable for all related costs and expenses (including any additional haulage, storage and insurance costs/expenses); and
 - 3.5.3 the Company shall be entitled to provide notice to the Customer at any time pursuant to Condition 5.9 and thereafter sell or otherwise dispose of the Goods in accordance with the terms of those Conditions.

4. Charges

- 4.1 The charges payable to the Company for the Services are set out in the Contract.
- 4.2 Invoices for the Services shall be raised weekly unless otherwise agreed between the parties.
- 4.3 Except as otherwise provided by the Company in writing, any price quoted by the Company is valid for acceptance by the Customer for a period of thirty (30) days.
- 4.4 Without prejudice to the generality of the foregoing and to the rights of the Company under this Condition 4, the Company shall have the right to charge the Customer the cost of any materials or services it purchases at the request of the Customer, together with a 15% uplift.
- 4.5 The Company reserves the right to increase the price of the Services at any time, but no more than once in any given period of twelve (12) months, upon written notice to the Customer, to reflect any increase in the cost of performing the Services to the Company, where such increase is beyond the reasonable control of the Company (including but not limited to any change in the rate of tax or duty, National Minimum Wage, National Living Wage or fuel or energy costs).
- 4.6 In the event of any change to the nature, quantity or weight of the Goods or any change to the instructions provided to the Company in respect of the performance of the Services or any delay caused by the Customer, then the Company shall be entitled to charge any additional or consequential costs or expenses, unless otherwise agreed in writing between the Customer and the Company.
- 4.7 All prices are exclusive of VAT, which shall be charged by the Company, and paid by the Customer, at the appropriate rate.
- 4.8 All Transport Services performed by the Company or its employees, contractors or agents are subject to a fuel surcharge, which is set by the Company in its absolute discretion. Full details of the current fuel surcharge are available from the Company upon request.
- 4.9 The Customer shall pay demurrage at the Company's standard rate (or a reasonable rate set by the Company if there is no standard rate) if the vehicle used by or on behalf of the Company to deliver the Goods is delayed for more than thirty (30) minutes beyond the time reasonably needed for loading and unloading; and demurrage and storage charges if delivery is refused.

5. Terms of Payment and Lien

- 5.1 Payment is due from the Customer in cleared funds within thirty (30) days of the date of the invoice or such other period agreed in writing between Company and the Customer. Time for payment shall be of the essence.
- 5.2 Where delivery of the Goods to the place of destination is not required by the Customer for fourteen (14) days or more from the start of the Services, the Company may invoice from the date of the Customer's order or instruction and the Customer will pay the invoice in accordance with Condition 5.1.
- 5.3 If Company has reasonable grounds to believe that the Customer may be experiencing financial difficulties or may not be able to pay for the Services in accordance with this Condition 5, the Company shall be entitled to suspend provision of the Services and/or require the Customer to pay for the Services immediately upon request.

- 5.4 The Company may accept or reject any request by the Customer for a credit account. Any credit account is subject to prior agreement in writing between the Company and the Customer and subject to such conditions as the Company may impose. The continuance of any credit account is at the discretion of the Company and the Company may cancel such arrangement immediately and without notice.
- 5.5 The Company may, upon notice in writing to the Customer, amend the terms of payment at any time. Except in respect of Condition 5.3, the Company shall only amend the terms of payment if such amendment is not detrimental to the Customer.
- 5.6 The Customer shall pay to the Company all sums when due, immediately and without reduction or deferment on account of any claim, counterclaim or set-off.
- 5.7 If the Customer fails to make payment on the due date, the Company may:
- 5.7.1 charge interest on the total outstanding amount from the due date of payment until the actual date of payment, at the rate of 5% above the base rate of Barclays Bank plc, calculated on a daily basis; and
 - 5.7.2 suspend or cancel any or all Services at any time in its absolute discretion and exercise a lien over the Goods in accordance with Condition 5.9; and
 - 5.7.3 demand payment for any other Services due in advance but without prejudice to any other remedies available to the Company.
- 5.8 The Company shall have a general lien upon all Goods and documents relating to Goods in its custody, control or possession for all sums due at any time from the Customer or owner of the Goods on any account whatsoever, whether relating to Goods belonging to or services provided by or on behalf of the Customer or owner of the Goods. Storage charges shall continue to accrue on any Goods detained under lien and the Company shall be entitled to payment of such storage charges and any other expenses reasonably incurred during the period in which the Goods are detained under lien.
- 5.9 Without prejudice to the generality of the foregoing, the Company may at any time upon giving not less than twenty eight (28) days' notice in writing to the Customer, require the Customer to remove the Goods from the custody, control or possession of the Company and to pay all sums due to Company. If the Customer fails to remove the Goods and to pay all sums due to the Company, then Company may sell or otherwise dispose of the whole or part of the Goods without further notice and may apply the proceeds of sale towards payment of all sums due to Company and any expenses incurred by reason of such sale or disposal. Any surplus will be paid to the Customer without interest. Company may sell all or any part of the Goods at any time once notice has been served and the prescribed time has expired.
- 5.10 When the Goods are liable to perish or deteriorate, Company's right to sell or dispose of or deal with the Goods shall arise immediately upon any sum becoming due to Company, subject only to Company taking reasonable steps to bring to the Customer's attention its intention to sell or dispose of the Goods before doing so.

6. Customer's Warranties and Indemnities

- 6.1 The Customer warrants and confirms that:
- 6.1.1 it is either the owner of the Goods or the authorised agent of the owner of the Goods and accepts these Conditions not only for itself, but also as agent for and on behalf of the owner of the Goods;
 - 6.1.2 when presented to the Company's employees, agents or subcontractors, the Goods shall be safe and free from defects and securely and properly packed in compliance with any statutory regulations or official or recognised standards and best practice and in such condition so as to be safely handled, stored or carried and so as to avoid any damage, deterioration or contamination being caused to the Goods themselves during the performance of the Services or any damage, contamination or injury or the likelihood of damage, contamination or injury to any property, persons or any other goods, howsoever arising;
 - 6.1.3 it shall inform the Company, in good time, of any special requirements for the handling, storage or transportation of the Goods. If the Customer fails to do so, the Company shall have no liability whatsoever in the event of any deterioration, loss or damage to the Goods arising from any such requirement. If the Customer shall, after the date of the Contract, request that any such special requirements for handling or storage or transportation are introduced, it shall be responsible for all additional costs and expenses incurred by the Company in complying with such requirements;
 - 6.1.4 it has paid all applicable duties, taxes and levies to the relevant authority whether in the United Kingdom or elsewhere, in relation to the Goods;
 - 6.1.5 it will fully reimburse the Company on demand for all duties and taxes that Company may be required to pay in respect of the Goods;
 - 6.1.6 any equipment that it provides to the Company to enable Company to provide the Services is fit for purpose, including that any pallets or other consolidation, transportation or storage device provided by the Customer for use by the Company are suitable for the handling, storage or transportation of the Goods in relation to the Services;
 - 6.1.7 any information provided by the Company to the Customer in connection with a Contract ("**Information**") is for the purposes of the Customer only. The Customer shall indemnify the Company against all claims, liability (whether arising in contract, tort, duty or otherwise), damage, loss (including direct, indirect and consequential loss), costs and expenses (including legal costs) made against or incurred by the Company arising out of any claims brought by a third party in connection with the provision by the Customer, to such third party, of any Information;
 - 6.1.8 proper and accurate instructions and information, required to enable the Company to properly perform the Services, are provided to the Company in a timely fashion;
 - 6.1.9 all Goods are properly labelled, addressed, stowed and packed to enable the Company to properly perform the Services and that the description of the Goods is full and accurate;

- 6.1.10** except to the extent previously notified in writing to, and confirmed and accepted in writing, by the Company, none of the Goods:
- (a) are hazardous or contaminated;
 - (b) may cause pollution of the environment or harm to human health if they escape from their packaging;
 - (c) require any official consent or licence to handle, transport, possess, or otherwise deal with or carry;
 - (d) will, at any time, while in the care or control of Company constitute hazardous waste;
 - (e) are flammable; or
 - (f) include living creatures, bullion, cash, bank notes, stamps, prepaid phone cards or similar, bonds treasury notes, securities or explosives, fine arts, specie, precious metals, precious stones, negotiable instruments; and

6.1.11 it will not make or pursue a claim against a director, employee, agents or subcontractor of the Company which imposes or attempts to impose upon such director, employee, agent or subcontractor any liability in connection with the Services or otherwise and if any such claim should nevertheless be made, then the Customer shall indemnify the Company against all consequences thereof.

6.2 The Customer shall indemnify the Company against all claims, liability (whether arising in contract, tort, statutory duty or otherwise), damage, loss (including direct, indirect and consequential loss), costs and expenses (including legal costs) made against or incurred by the Company arising out of:

- 6.2.1** any breach by the Customer of any of the warranties set out in Condition 6.1;
- 6.2.2** any breach of the Contract or negligence or breach of duty by the Customer;
- 6.2.3** the Company acting in accordance with the Customer's instructions; and
- 6.2.4** any customs, duties, taxes, penalties, storage charges or other expenses the Company incurs as a result of the actions of customs or other governmental authorities or the Customer's failure to provide proper and correct information and documentation for the carriage of goods regardless of whether the liability to pay them arises from or in connection with any breach of contract, negligence or breach of duty (or otherwise) of the Company, its employees, sub-contractors or agents.

6.3 If the Company reasonably suspects a breach of these Conditions, then it may demand the immediate removal of any of the Goods from the Company's premises, or arrange such removal without notice, at the Customer's expense, but without prejudice to any other remedy available to the Company whether under these Conditions or otherwise.

7. Dangerous Goods

7.1 If the Goods are Dangerous Goods, the Customer must disclose this to Company at or before the time of concluding the Contract or in any event at least five (5) days before the Goods are to be delivered to Company or collected by Company at the start of the performance of the Services. If the Company agrees in writing to accept such Goods for storage or carriage then they must be classified, packed, marked, labelled and documented by the Customer in accordance with the statutory regulations for the storage or carriage by road of the substance declared.

7.2 If the Customer consigns Dangerous Goods to the Company without the Company's knowledge, and the Company subsequently discovers the Dangerous Goods, the Company:

- 7.2.1** shall have no liability whatsoever for, or in connection with, the unauthorised Dangerous Goods, howsoever arising; and
- 7.2.2** may take such steps as it determines to deal with those Dangerous Goods and the Customer will indemnify Company in relation to any associated costs and liabilities.

8. Change of Customer

In respect of the Storage Services only, the Customer may give written authority for the Goods or any part thereof to be transferred by the Company to the account of another party on the strict condition that before the effective date of the transfer the other party notifies the Company in writing that it is to become the Customer for the purposes of the Services and is to be bound by these Conditions and any notice/instructions previously given by the Customer under Condition 9.4. The Customer agrees to continue to pay the Company's charges until receipt by the Company of the other party's written notification and acceptance of these Conditions and to pay all sums due to Company (whether outstanding or in the future).

9. Insurance

9.1 Except as provided by Condition 9.4, the Company shall be under no obligation to insure the Goods during the performance of the Services or otherwise and the Customer shall make arrangements to insure the Goods against all risks to the full insurable value thereof. The Goods are at the Customer's risk during the performance of the Services.

9.2 The Customer will ensure that such insurance policy names the Company as a co-assured and incorporates a term preventing insurers from pursuing any claim against the Company, whether under rights of subrogation, assignment or otherwise. Any failure on the part of the Customer to comply with this Condition 9.2 shall constitute a breach of these Conditions and the Company shall be relieved of all liability for any loss or damage to the Goods whatsoever and howsoever arising.

- 9.3** It is agreed by the Customer that the Company has no knowledge of the value of the Goods and it is further acknowledged by the Customer that the Company's charges are calculated on the basis that (i) insurance to cover the Customer's interest in the Goods during the performance of the Services is readily available and will be obtained by the Customer; and (ii) the Company is entitled to limit its liability in accordance with Condition 11.
- 9.4** Upon receipt of express written instructions from the Customer, to be received by the Company at least seven (7) days before the start of the Services, where agreed by a director of the Company, the Company may act as the Customer's agent to obtain appropriate insurance to cover the Customer's interest in the Goods during the performance of the Services, but strictly subject to the terms of such insurance policy, including all warranties, conditions and exceptions. The Customer's express written instructions must include details of the nature and value of the Goods to be insured, such value to include any applicable tax or duty.
- 9.5** It is the responsibility of the Customer to fully acquaint itself with the terms of any insurance obtained by the Company on behalf of the Customer in accordance with Condition 9.4, including all warranties, conditions and exceptions. The Customer is deemed to accept such policy terms.
- 9.6** Unless otherwise expressly agreed in writing, the Company shall not be under any obligation to obtain or arrange separate insurance cover in respect of the Goods but shall be at liberty to declare the Goods on any open or general policy held by the Company.

10. Communications

- 10.1** Each party shall appoint a representative who shall;
- 10.1.1** provide professional and prompt liaison with the other party; and
 - 10.1.2** have the necessary expertise and authority to commit the relevant party.
- 10.2** The representatives shall meet to review the performance of the Services and discuss matters including but not limited to overall performance, KPI's and Forecasting as regularly as the parties shall agree, but not less than once every three months.

11. Limitation of Liability

- 11.1** The liability of Company whatsoever and howsoever arising under and in relation to these Conditions and any Contract shall be as set out in the remaining provisions of this Condition 11.

Transport Services

- 11.2** Subject to Conditions 11.3 and 11.12, the Company's liability for loss, theft, destruction or damage to Goods howsoever and whenever arising during or in connection with the performance of the Transport Services shall not exceed the Cost Price of such lost, stolen, destroyed or damaged Goods.
- 11.3** Subject to Condition 11.12, the total liability for loss, theft, destruction or damage to Goods howsoever and whenever arising during or in connection with the performance of the Transport Services is limited to £80,000 (eighty thousand pounds) per vehicle load.
- 11.4** the Company shall have no liability whatsoever (whether arising in contract, tort or otherwise) for the late delivery of Goods or for any other delay whatsoever and howsoever arising. All collection and delivery times or dates provided by Company are estimates only and are provided solely as a guide to assist the Customer. The time for collection and delivery shall not be of the essence.

Warehousing Services

- 11.5** Subject to Condition 11.12, the Company's liability for loss, theft, destruction or damage to Goods howsoever and whenever arising during or in connection with the performance of the Warehousing Services shall not exceed the lower of:
- 11.5.1** the Cost Price of such lost, stolen, destroyed or damaged Goods;
 - 11.5.2** the cost of repairing any damage or of reconditioning the Goods; and
 - 11.5.3** the sum of £100 (one hundred pounds Sterling) per tonne on the gross weight of the Goods actually lost, stolen, destroyed or damaged.

Other Liability Provisions

- 11.6** In the case of loss, theft, destruction of or damage to part of the Goods the weight to be taken into consideration in determining the amount to which Company's liability is limited under Condition 11.5 shall be the gross weight of that part only regardless of whether the loss, theft, destruction or damage affects the value of other parts of the Goods.
- 11.7** Promptly following Company's request, the Customer will provide the Company with documentary evidence of the weight and value of the whole of the Goods and of any part thereof lost, stolen, destroyed or damaged.
- 11.9** All warranties, conditions and other terms implied by statute or common law that may otherwise apply to Company and/or any Contract are to the fullest extent permitted by law, excluded from the Contract.

- 11.10** The Company shall have no liability whatsoever (whether arising in contract, tort, for breach of statutory duty or otherwise) in respect of:
- 11.10.1** loss of profits;
 - 11.10.2** loss of agreements or contracts;
 - 11.10.3** loss of or damage to goodwill or reputation;
 - 11.10.4** loss of sale or business;
 - 11.10.5** loss or use or corruption of software, data or information;
 - 11.10.6** loss of anticipated savings; or
 - 11.10.7** any indirect or special or consequential loss or damage of any kind.
- 11.11** Without prejudice to the generality of the foregoing, and subject to Condition 11.12, the liability of the Company to the Customer whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited in respect of all claims (connected or unconnected) in any consecutive 12 (twelve) month period, to:
- 11.11.1** for closed book arrangements, an amount equal to ten (10) percent of the total charges paid by the Customer in respect of that period; and
 - 11.11.2** for open book arrangements, an amount equal to the management fee paid by the Customer in respect of that period.
- 11.12** Nothing in these Conditions shall exclude or limit Company's liability for fraud or fraudulent misrepresentation, for death or personal injury caused by its negligence or for any other liability which it is not lawfully permitted to exclude or limit.

12. Transfer of Employees

- 12.1** Where there is a transfer of Transferring Employees to the Company, the Customer will indemnify the Company against all liability and expense which the Company may incur in connection with:
- 12.1.1** the employment or the termination of employment of any Transferring Employee before the Commencement Date;
 - 12.1.2** any failure of the Customer to comply with its legal obligations in respect of any of the Transferring Employees;
 - 12.1.3** any claim or allegation by a person other than a Transferring Employee that his or her employment or engagement or any rights or obligations relating to it or its termination has transferred to the Company pursuant to TUPE other than those notified in writing to, and previously accepted by the Company prior to the Commencement Date;
 - 12.1.4** any act or omission of the Customer before, on or after the Commencement Date for which the Company becomes liable under TUPE; and
 - 12.1.5** the Customer's failure to comply with its obligations under regulation 13 of TUPE.

13. Safe Working

The Customer shall ensure that all of its premises and those of its suppliers, customers and agents which any of the Company's employees, agents or sub-contractors is to enter into in connection with the performance of the Services is safe for the performance of those Services. Notwithstanding any other provision of this Agreement, if the Company considers that any such premises are unsafe to perform the Services, then the Company may inform the Customer and may refuse to enter such premises or perform such part of the Services and Customer shall indemnify and keep indemnified the Company from any claim made by any of the Company's employees, agents or sub-contractors which arises in connection with any premises of Customer, its suppliers, customers or agents being unsafe or the performance of any part of the Services on any such premises being unsafe and any losses, damages, costs, expenses and liabilities incurred in connection with any such claim.

14. Change Control Procedure

- 14.1** The Company and the Customer shall discuss any change to the Contract ("**Change**") proposed by the other and such discussion shall result in a request for Change in writing ("**Change Request**").
- 14.2** Within fourteen (14) days of receipt of any Change Request from the Customer, or at the same time as the request for the Change in the case of a Change requested by the Company, the Company shall provide to the Customer a Change control note ("**CNN**") which includes details of:
- 14.2.1** the Change including any specifications;
 - 14.2.2** the reason(s) for the Change;
 - 14.2.3** any implications on the sums paid by the Company for the supply of Services;
 - 14.2.4** the likely impact if any, on aspects of the specifications, Services, charges or any other aspects of the Contract;
 - 14.2.5** the timetable for implementation of the Change;
 - 14.2.6** proposals for the method of implementing the Change;
 - 14.2.7** the date or expiry or validity of the CNN; and
 - 14.2.8** provision for signature by the Customer to denote acceptance.

- 14.3** For each CNN submitted, the Customer will within the period of validity of the CNN request further information, approve the CNN by signing two copies and providing these to the Company.
- 14.4** If either party requires a minor change (any change which both parties agree is a minor change) it shall not be required to go through the process described above and instead the parties shall endeavour to agree all the terms of the minor change verbally followed by writing by email. Condition 16.2 shall apply and all other costs or savings incurred by the Company as a result of the Change shall be shared between the parties in such proportions as they agree at the time of the Change being agreed.

15. Termination

- 15.1** Either party may terminate the Contract:
- 15.1.1** at any time by giving the other party notice in writing of not less than the Notice Period; or
- 15.1.2** where the other party commits a material breach of its obligations under the Contract and does not remedy such breach (or where such breach is not capable of remedy shall not have taken all reasonable steps to prevent its recurrence) within thirty (30) days of written notice given to it by the other specifying such breach and requiring its remedy. A breach shall be deemed to be capable of remedy if it can be remedied in all respects other than time of performance. For the avoidance of doubt a failure to meet the KPIs shall not constitute a material breach of the Contract.
- 15.2** The Company may terminate the Contract immediately if the Customer becomes or seeks to become the subject of a voluntary arrangement under section 1 Insolvency Act 1986; or is unable to pay its debts within the meaning of section 123 Insolvency Act 1986; or has a receiver, manager, administrator or administrative receiver appointed over all or any parts of its undertaking, assets or income; or has passed a resolution for its winding up; or has a petition presented to any court for its winding-up or for an administration order; or if any distraint, execution or other process is levied or enforced on any property of the other and is not paid out, withdrawn or discharged within seven (7) days.
- 15.3** The Customer may terminate the Contract in accordance with Condition 2.3 or Condition 25.2.

16. Consequences of Termination or Reduction in Service Volumes

- 16.1** On termination of the Contract for any reason:
- 16.1.1** the licence referred to in Condition 17.1 shall automatically terminate;
- 16.1.2** the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately upon receipt; and
- 16.1.3** Condition 16.4 (Exit Plan) shall apply.
- 16.2** Subject to Conditions 16.3 and 16.4 below, following termination of the Contract (whether by reason of expiry, breach, agreement of the parties or otherwise) or a reduction in requirements for the Services, the Company shall use its reasonable endeavours to redeploy elsewhere in its business any Relevant Employees and the other assets and resources used in providing the Services ("**Resources**") and the Customer shall pay to the Company, as soon as the same are ascertained, the following sums:
- 16.2.1** an amount equal to all severance, redundancy pay and other compensation payable to Relevant Employees arising out of the termination or transfer of their employment as a result of the termination of the Contract or reduction in requirements for the Services;
- 16.2.2** all relocation and disturbance payments made to Relevant Employees who are offered and accept employment in another capacity within the Company;
- 16.2.3** any hardware or software acquisition and/or development costs, and/or any other implementation costs relating to the Services incurred by the Company or any other costs (including capital investment) agreed by the Company and the Customer to be amortised and paid over the expected term of the Contract to the extent the same have not been fully recovered as part of the charges prior to the termination date;
- 16.2.4** all (a) rental/hire and associated charges (including maintenance charges) due from or payable by the Company during the remainder of the terms or hire periods (for whatever duration) under its lease/hire agreements for the Resources (other than those Resources (if any) the lease/hire agreement relating to which is actually assigned to the Customer or for which the Customer enters into a replacement lease), (b) penalty or additional costs or charges payable for early termination (which right shall be exercised at the Company's discretion) of such lease or hire arrangements and (c) the amount of any shortfall in the proceeds of sale (after deducting costs of sale) of Resources purchased by the Company;
- 16.2.5** all rent, rates and other charges, costs and outgoings incurred due or payable for the remainder of the term relating to the Company's premises (including on account of dilapidations or reinstatement - whether agreed, carried out or not in which case such sum shall be conclusively determined by the Company) including any premium and other costs or expenses incurred or payable by the Company whether directly or indirectly in connection with the surrender or termination of such lease(s), agreement(s) for lease and other agreements; and
- 16.2.6** the amount the Company would have been able to recover as Costs during the term of the Contract in relation to all outstanding insurance claims (including the amount of any deductibles or excesses); and
- 16.2.7** any other material costs incurred by the Company in connection with the Services and termination of the Contract which cannot be recovered.

- 16.3** If, on or following termination of the Contract or a reduction in requirements for the Services, the contracts of employment of any of the Relevant Employees are deemed to have been made between such Relevant Employees and the Customer or another service provider as a result of TUPE the parties will use all reasonable endeavours to facilitate and give effect to the same.
- 16.4** Within thirty (30) days following the termination of the Contract, the parties shall agree the terms of the removal of the Goods (including any equipment or other items remaining at the Company's premises which belong to the Customer) (the "Exit Plan"). The Exit Plan shall include details of the date, time and method of removal of the Goods. The Customer will only be entitled to remove the Goods from the custody or control of the Company provided that all sums due to the Company (including all costs or expenses incurred as a result of the termination) are paid by the Customer.
- 16.5** If an Exit Plan is not agreed within the timescale described in Condition 16.4, the Company will produce the Exit Plan, a copy of which will be sent to the Customer and will include details of the date, time and location where the Goods will be delivered along with the costs associated with the delivery.
- 16.6** If the Customer fails to pay sums due to the Company (including all costs or expenses incurred by the Company as a result of termination of the Contract), fails to collect the Goods in accordance with an Exit Plan agreed in accordance with Condition 16.4, or fails to accept delivery of the Goods in accordance with an Exit Plan prepared in accordance with Condition 16.5, the Company shall be entitled to exercise a lien over the Goods pursuant to Condition 5.8 or sell or otherwise dispose of the Goods pursuant to Conditions 5.9 or 5.10, as applicable.
- 16.7** All costs associated with the removal of the Goods from the control and custody of the Company in accordance with condition 16.4 and 16.5 will be payable by the Customer. Storage charges will continue to accrue until the Goods are removed from the custody or control of the Company.
- 16.8** The accrued rights and liabilities of the parties (including any rights in relation to breaches of contract) shall not be affected by termination of the Contract.
- 16.9** Notwithstanding the termination of the Contract, the following Conditions shall survive termination: Conditions 1, 11, 17, 18, 19, 21, 23, 24 and 27.

17. Intellectual Property

- 17.1** As between the Customer and the Company, all Intellectual Property Rights and all other rights in the software, data and materials which the Company uses in performance of the Services or developed by the Company in relation to the Services shall be owned by the Company. Subject to Condition 17.2, the Company licences all such rights to the Customer on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Services. If the Contract expires or is terminated in accordance with Condition 15, this licence will automatically terminate.
- 17.2** The Customer acknowledges that, where the Company does not own any of the software, data and materials used in performance of the Services, the Customer's use is conditional on the Company obtaining a written licence (or sub-licence) from the relevant licensor/licensors on such terms as will entitle the Company to licence such rights to the Customer.

18. Confidentiality

- 18.1** If either of the party receives confidential, secret or any proprietary information of the other party pursuant to the Contract, the receiving party shall keep it confidential and not at any time after such receipt disclose, divulge or communicate the same to any person other than its officers or employees and where necessary for performance of its obligations and in pursuance of its rights under the Contract and only use such confidential information for this purpose.
- 18.2** The obligations of confidentiality set out in Condition 18.1 shall not extend to information acquired by the receiving party which it can show:
- 18.2.1** at the time of its acquisition was in, or at a later date has come into, the public domain;
 - 18.2.2** it knew before the first disclosure to it by the disclosing party; or
 - 18.2.3** it received independently from a third party with the full right to disclose.

19. Anti-Bribery

- 19.1** Each party shall:
- 19.1.1** comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption ("**Relevant Requirements**"); and
 - 19.1.2** have and shall maintain in place throughout the Term its own policies and procedures, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate.

20. Dispute Resolution

- 20.1** If a dispute arises out of or in connection with any Contract or the performance, validity or enforceability of it (“**Dispute**”) then except as expressly provided in these Conditions, the parties shall follow the procedure set out in this Condition 20:
- 20.1.1** either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (“**Dispute Notice**”), together with relevant supporting documents;
- 20.1.2** on service of the Dispute Notice, the Customer and the Company’s account manager shall attempt in good faith to resolve the Dispute;
- 20.1.3** If the Customer and the Company’s account manager are for any reason unable to resolve the Dispute within fourteen (14) days of service of the Dispute Notice, the Dispute shall be referred to a board director of the Company and a board director of the Customer;
- 20.1.4** if the Dispute cannot be resolved within fourteen (14) days of referral to a board director of each of the parties, the Company shall be entitled to refer the Dispute to adjudication in accordance with Condition 20.2.
- 20.2** To initiate adjudication, the Company must serve notice in writing (the “**Notice**”) on the Customer. The parties may agree the appointment of the adjudicator, but where the appointment of the adjudicator is not agreed within five (5) days of the Notice being served by the Company, either party may apply to the President of the Chartered Institute of Arbitrators for the nomination of an adjudicator and the referral of the dispute within ten (10) days of the Notice.
- 20.3** The parties shall appoint the adjudicator with the following terms of reference:
- (i) the adjudicator shall reach a decision within twenty eight (28) days of referral or such longer period as is agreed by the parties after the Dispute has been referred;
 - (ii) the adjudicator may extend the period of twenty eight (28) days set out in Condition 20.3(i) by up to fourteen (14) days, with the consent of the Company;
 - (iii) the adjudicator shall act impartially;
 - (iv) the adjudicator may take the initiative in ascertaining the facts and the law;
 - (v) the decision of the adjudicator shall be binding upon the parties; and
 - (vi) the adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith, and any employee or agent of the adjudicator is similarly protected from liability.
- 20.4** Neither party shall commence or continue court proceedings in relation to a Dispute until the dispute resolution process described in Conditions 20.1 to 20.3 (inclusive) has been exhausted.

21. Sub-Contracting

- 21.1** Company may, in its absolute discretion, sub-contract or otherwise delegate the performance of the Services, whether in whole or in part.
- 21.2** The carriage of the Goods by rail, sea, inland waterway or air will be arranged by Company, either acting as principal or agent on behalf of the Customer, and shall be subject to the conditions of the rail, shipping, inland waterway or air carrier contracted to perform such carriage. Company shall have no liability whatsoever (whether arising in contract, tort or otherwise) in respect of the carriage of the Goods by rail, sea, inland waterway or air.
- 21.3** The Contract is personal to the Customer and the Customer shall not assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract.

22. General

- 22.1** Nothing in the Contract shall create, or be deemed to create, a partnership between the parties.
- 22.2** The Company may at any time without notice to the Customer set off any liability of the Customer to the Company against any sums owing from the Company to the Customer.
- 22.3** Each and every exclusion or limitation provision contained in these Conditions exists separately and cumulatively.
- 22.4** If at any time any Condition (or part thereof) is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable in any respect, that shall not affect or impair the legality, validity or enforceability of the remaining Conditions (or remaining parts thereof).
- 22.5** A person who is not a party to a Contract has no rights under the Contracts (Right of Third Parties) Act 1999 to enforce any term of the Contract or these Conditions, but this does not affect any right or remedy of a third party available other than under the Act.
- 22.6** Except as otherwise provided in these Conditions, the failure or delay by either party in exercising any right, power or remedy of that party under these Conditions and the relevant Contract shall not in any circumstances impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise by either party of any right, power or remedy under these Conditions and the relevant Contract shall not in any circumstances preclude any other or further exercise of it or the exercise of any other right, power or remedy. Any waiver of a breach of, or default under, any of the terms of these Conditions or the relevant Contract shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of these Conditions or the relevant Contract.

23. Notices

- 23.1** Any notice provided by one party to the other ("**Recipient**") shall be duly delivered if left at or sent by first class post to the last known address of the Recipient or by email to the last known email address. A notice shall:
- 23.1.1** if posted, be deemed to have been delivered two (2) Working Days after posting; or
 - 23.1.2** if sent/delivered by email or personally, be deemed to have been delivered the next Working Day.
- 23.2** Where a party provides a notice by email, it will also deliver to the Recipient a physical copy of the notice by hand or first class post in accordance with this Condition 23.1.

24. Time Limits

- 24.1** The Customer shall notify the Company, in writing, of its intention to bring a claim in respect of or arising out of the performance of the Transport Services within three (3) days of the date upon which the Customer becomes aware, or ought reasonably to have become aware of any event or occurrence alleged to give rise to such claim. Any claim not made and notified within the timeframe set out in this Condition 24.1 shall be deemed to be waived and absolutely time barred, except where the Customer can show that it was impossible for it to comply with this time limit, and that it notified the Company of the claim as soon as it was reasonably possible for it to do so.
- 24.2** The Customer shall notify the Company, in writing, of its intention to bring a claim in respect of or arising out of the performance of any Services (other than Transport Services) within fourteen (14) days of the date upon which the Customer becomes aware, or ought reasonably to have become aware of any event or occurrence alleged to give rise to such claim. Any claim not made and notified within the timeframe set out in this Condition 24.2 shall be deemed to be waived and absolutely time barred, except where the Customer can show that it was impossible for it to comply with this time limit, and that it notified the Company of the claim as soon as it was reasonably possible for it to do so.
- 24.3** Notwithstanding the provisions of Conditions 24.1 and 24.2, the Company shall, in any event, be discharged of all liability whatsoever and howsoever arising in respect of its performance of the Services, unless an action is commenced and written notice thereof is given by the Customer to the Company within thirty (30) days from the date of the event alleged to give rise to a cause of action against the Company.

25. Force Majeure

- 25.1** The Company shall not be deemed to be in breach of these Conditions or any Contract or incur any liability whatsoever to the Customer if the non-performance, part-performance or delay in the performance of the Services or failure to perform any obligation under these Conditions or any Contract is caused by an unforeseeable or unforeseen event beyond the reasonable control of the Company (a "**Force Majeure Event**"), including:
- 25.1.1** acts of God, natural or other disasters, explosion, flood, fire, inclement weather, adverse traffic or road accident;
 - 25.1.2** war, hostilities (whether declared or not), invasion, acts of foreign enemies;
 - 25.1.3** rebellion, revolution, insurrection, terrorist activity, military or usurped power;
 - 25.1.4** riot, civil commotion or disorder;
 - 25.1.5** acts, restrictions, regulations, by-laws, refusals to grant any licenses or permissions, prohibitions, or measures of any kind on the part of any governmental authority or agency;
 - 25.1.6** strikes, lock-outs, or other industrial actions or trade union disputes of whatever nature;
 - 25.1.7** seizure, arrest or forfeiture under legal process;
 - 25.1.8** import or export regulations or embargoes; or
 - 25.1.9** difficulty in obtaining raw materials, labour, fuel, parts or machinery.
- 25.2** Should the Force Majeure Event continue for a period in excess of ninety (90) days then the Customer may give Company written notice to terminate the relevant Contract.

26. Governing Law and Jurisdiction

- 26.1** The Conditions and any Contract to which they apply shall be governed by and construed in accordance with the laws of England and Wales.
- 26.2** All disputes and claims arising out of or in connection with these Conditions or any Contract to which they apply (including any non-contractual claims or disputes) shall be subject to the exclusive jurisdiction of the English courts.