

BRITISH INTERNATIONAL FREIGHT ASSOCIATION (BIFA) – STANDARD TRADING CONDITIONS 2021 EDITION

THE CUSTOMER'S ATTENTION IS DRAWN TO SPECIFIC CLAUSES HEREOF WHICH EXCLUDE OR LIMIT THE COMPANY'S LIABILITY AND THOSE WHICH REQUIRE THE CUSTOMER TO INDEMNIFY THE COMPANY IN CERTAIN CIRCUMSTANCES AND THOSE WHICH LIMIT TIME AND THOSE WHICH DEAL WITH CONDITIONS OF ISSUING EFFECTIVE GOODS INSURANCE BEING CLAUSES 7, 8, 10, 11(A) AND 11(B) 12-14 INCLUSIVE, 18-20 INCLUSIVE, AND 24-27 INCLUSIVE. THE CUSTOMER'S ATTENTION IS ALSO DRAWN TO CLAUSE 28 WHICH PERMITS ARBITRATION IN CERTAIN CIRCUMSTANCES.

All headings are indicative and do not form part of these conditions

DEFINITIONS AND APPLICATION

1 In these conditions the following words shall have the following meanings:-

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| "Company" | the BIFA member trading under these conditions |
| "Consignee" | the Person to whom the goods are consigned |
| "Customer" | any Person at whose request or on whose behalf the Company undertakes any business or provides advice, information or services |
| "Direct Customs Agent" | the Company acting in the name of and on behalf of the Customer and/or Owner with H.M. Revenue and Customs ("HMRC") as defined by the Taxation (Cross Border Trade) Act 2018, Clause 211(a), or as amended the cargo to which any business under these conditions relates |
| "Goods" | natural person(s) or any body or bodies corporate |
| "Person" | the London Maritime Arbitrators Association |
| "LMAA" | are Special Drawing Rights as defined by the International Monetary Fund |
| "SDR" | packing case, pallets, container, trailer, tanker, or any other device used whatsoever for and in connection with the carriage of Goods by land, sea or air |
| "Transport Unit" | the Owner of the Goods or Transport Unit and any other Person who is or may become interested in them |
| "Owner" | |
- 2 (A) Subject to sub-paragraph (B) Whether gratuitous or not, are undertaken subject to these conditions.
(B) If any legislation, to include regulations and directives, is compulsorily applicable to any business undertaken, these conditions shall, as regards such business, be read as subject to such legislation, and nothing in these conditions shall be construed as a surrender by the Company of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation, and if any part of these conditions be repugnant to such legislation to any extent, such part shall as regards such business be overridden to that extent and no further.
- 3 The Customer warrants that he is either the Owner, or the authorised agent of the Owner and, also, that he is accepting these conditions not only for himself, but also as agent for and on behalf of the Owner.

THE COMPANY

- 4 (A) Subject to clauses 11 and 12 below, the Company shall be entitled to procure any or all of the services as an agent, or, to provide those services as a principal.
(B) The Company reserves to itself full liberty as to the means, route and procedure to be followed in the performance of any service provided in the course of business undertaken subject to these conditions.
- 5 When the Company contracts as a principal for any services, it shall have full liberty to perform such services itself, or to subcontract on any terms whatsoever, the whole or any part of such services.
- 6 (A) When the Company acts as an agent on behalf of the Customer, the Company shall be entitled, and the Customer hereby expressly authorises the Company, to enter into all and any contracts on behalf of the Customer as may be necessary or desirable to fulfil the Customer's instructions, and whether such contracts are subject to the trading conditions of the parties with whom such contracts are made, or otherwise.
(B) The Company shall, within 14 days' notice given by the Customer, provide evidence of any contract entered into as agent for the Customer. Insofar as the Company may be in default of the obligation to provide such evidence, it shall be deemed to have contracted with the Customer as a principal for the performance of the Customer's instructions.
- 7 In all and any dealings with HMRC, for and on behalf of the UK established Customer and/or Owner, the Company is deemed to be appointed and duly empowered to act as a Direct Customs Agent only, to make Customs declarations in the name of the Customer (Principal) as their "Direct Agent".
- 8 (A) Subject to sub-clause (B) below, the Company:
(i) has a general lien on all Goods and documents relating to Goods in its possession, custody or control for all sums due at any time to the Company from the Customer and/or Owner on any account whatsoever, whether relating to Goods belonging to, or services provided by or on behalf of the Company to the Customer or Owner. Storage charges shall continue to accrue on any Goods detained under lien.
(ii) shall be entitled, on at least 21 days' notice in writing to the Customer, to sell or dispose of or deal with such Goods or documents as agent for, and at the expense of, the Customer and apply the proceeds in or towards the payment of such sums;
(iii) shall, upon accounting to the Customer for any balance remaining after payment of any sum due to the Company, and for the cost of sale and/or disposal and/or dealing, be discharged of any liability whatsoever in respect of the Goods or documents.
(B) When the Goods are liable to perish or deteriorate, the Company's right to sell or dispose of or deal with the Goods shall arise immediately upon any sum becoming due to the Company, subject only to the Company taking reasonable steps to bring to the Customer's attention its intention to sell or dispose of the Goods before doing so.
- 9 The Company shall be entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by, or paid to, freight forwarders.
- 10 (A) Should the Customer, Consignee or Owner of the Goods fail to take delivery at the appointed time and place when and where the company is entitled to deliver, the Company shall be entitled to store the Goods, or any part thereof, at the sole risk of the Customer or Consignee or Owner, whereupon the Company's liability in respect of the Goods, or that part thereof, stored as aforesaid, shall wholly cease. The Company's liability, if any, in relation to such storage, shall be governed by these conditions. All costs incurred by the Company as a result of the failure to take delivery shall be deemed as freight earned, and such costs shall, upon demand, be paid by the Customer.
(B) The Company shall be entitled at the expense of the Customer to dispose of or deal with (by sale or otherwise as may be reasonable in all the circumstances):-
(i) after at least 21 days' notice in writing to the Customer, or (where the Customer cannot be traced and reasonable efforts have been made to contact any parties who may reasonably be supposed by the Company to have any interest in the Goods) without notice, any Goods which have been held by the Company for 60 days and which cannot be delivered as instructed; and
(ii) without prior notice, any Goods which have perished, deteriorated, or altered, or are in immediate prospect of doing so in a manner which has caused or may reasonably be expected to cause loss or damage to the Company, or third parties, or to contravene any applicable laws or regulations.

- 11 (A) No insurance will be effected except pursuant to and in accordance with clearly stated instructions given in writing by the Customer and accepted in writing by the Company, and all insurances effected by the Company are subject to the usual exceptions and conditions of the policies of the insurers or underwriters taking the risk. Unless otherwise agreed in writing, the Company shall not be under any obligation to effect a separate insurance on the Goods, but may declare it on any open or general policy held by the Company.
(B) Insofar as the Company agrees to effect insurance, the Company acts solely as agent for the Customer, and the limits of liability under clause 26(A) of these conditions shall not apply to the Company's obligations under clause 11.
- 12 (A) Except under special arrangements previously made in writing by an officer of the Company so authorised, or made pursuant to or under the terms of a printed document signed by the Company, any instructions relating to the delivery or release of the Goods in specified circumstances (such as, but not limited to, against payment or against surrender of a particular document) are accepted by the Company, where the Company has to engage third parties to effect compliance with the instructions, only as agents for the Customer.
(B) Despite the acceptance by the Company of instructions from the Customer to collect freight, duties, charges, dues, or other expenses from the Consignee, or any other Person, on receipt of evidence of proper demand by the Company, and, in the absence of evidence of payment (for whatever reason) by such Consignee, or other Person, the Customer shall remain responsible for such freight, duties, charges, dues, or other expenses.
(C) The Company shall not be under any liability in respect of such arrangements as are referred to under sub-clause (A) and (B) hereof save where such arrangements are made in writing, and in any event, the Company's liability in respect of the performance of, or arranging the performance of, such instructions shall not exceed the limits set out in clause 26(A) (ii) of these conditions.
- 13 Advice and information, in whatever form it may be given, is provided by the Company for the Customer only. The Customer shall indemnify the Company against all loss and damage suffered as a consequence of passing such advice or information on to any third party.
- 14 Without prior agreement in writing by an officer of the Company so authorised, the Company will not accept or deal with Goods that require special handling regarding carriage, handling, or security whether owing to their their attractive nature or otherwise including, but not limited to bullion, currency, securities, precious stones, jewellery, valuables, antiques, pictures, human remains, living creatures, plants. Should any Customer nevertheless deliver any such goods to the Company, or cause the Company to handle or deal with any such goods, otherwise than under such prior agreement, the Company shall have no liability whatsoever for or in connection with the goods, howsoever arising.
- 15 Except pursuant to instructions previously received in writing and accepted in writing by the Company, the Company will not accept or deal with Goods of a dangerous or damaging nature, nor with Goods likely to harbour or encourage vermin or other pests, nor with Goods liable to taint or affect other goods. If such Goods are accepted pursuant to a special arrangement, but, thereafter, and in the opinion of the Company, constitute a risk to other goods, property, life or health, the Company shall, where reasonably practicable, contact the Customer in order to require him to remove or otherwise deal with the goods, but reserves the right, in any event, to do so at the expense of the Customer.
- 16 Where there is a choice of rates according to the extent or degree of the liability assumed by the Company and/or third parties, no declaration of value will be made and/or treated as having been made except under special arrangements previously made in writing by an officer of the Company so authorised as referred to in clause 26(D).

THE CUSTOMER

- 17 The Customer warrants:
(A) (i) that the following (furnished by on or behalf of the Customer) are full and accurate: the description and particulars of any Goods; any information furnished (including but not limited to, the nature, gross weight, gross mass (including the verified actual gross mass of any container packed with packages and cargo items), and measurements of any Goods); and the

- description and particulars of any services required by or on behalf of the Customer are full and accurate, and
(ii) that any Transport Unit and/or equipment supplied by the Customer in relation to the performance of any requested service is fit for purpose.
- (B) that all Goods have been properly and sufficiently prepared, packed, stowed, labelled and/or marked, and that the preparation, packing, stowage, labelling and marking are appropriate to any operations or transactions affecting the Goods and the characteristics of the Goods.
- (C) that where the Company receives the Goods from the Customer already stowed in or on a Transport Unit, the Transport Unit is in good condition, and is suitable for the carriage to the intended destination of the Goods loaded therein, or thereon.
- (D) that where the Company provides the Transport Unit, on loading by the Customer, the Transport Unit is in good condition, and is suitable for the carriage to the intended destination of the Goods loaded therein, or thereon.
- 18 Without prejudice to any rights under clause 15, where the Customer delivers to the Company, or causes the Company to deal with or handle Goods of a dangerous or damaging nature, or Goods likely to harbour or encourage vermin or other pests, or Goods liable to taint or affect other goods, whether declared to the Company or not, he shall be liable for all loss or damage arising in connection with such Goods, and shall indemnify the Company against all penalties, claims, damages, costs and expenses whatsoever arising in connection therewith, and the Goods may be dealt with in such manner as the Company, or any other person in whose custody they may be at any relevant time, shall think fit.
- 19 The Customer undertakes that no claim shall be made against any director, servant, or employee of the Company which imposes, or attempts to impose, upon them any liability in connection with any services which are the subject of these conditions, and, if any such claim should nevertheless be made, to indemnify the Company against all consequences thereof.
- 20 The Customer shall save harmless and keep the Company indemnified from and against:
(A) all liability, loss, damage, costs and expenses whatsoever (including, without prejudice to the generality of the foregoing, all duties, taxes, imposts, levies, deposits and outlays of whatsoever nature levied by any authority in relation to the Goods) arising out of the Company acting in accordance with the Customer's instructions, or arising from any breach by the Customer of any warranty contained in these conditions, or from the negligence of the Customer;
(B) without derogation from sub-clause (A) above, any liability assumed, or incurred by the Company when, by reason of carrying out the Customer's instructions, the Company has become liable to any other party;
(C) all claims, costs and demands whatsoever and by whomsoever made or preferred, in excess of the liability of the Company under the terms of these conditions, regardless of whether such claims, costs, and/or demands arise from, or in connection with, the breach of contract, negligence or breach of duty of the Company, its servants, sub-contractors or agents;
(D) any claims of a general average nature which may be made on the Company.
- 21 (A) The punctual receipt in full of sums falling due from the Customer to the Company is critical to the operation of the Company's business and its performance of its obligations to the Customer. Accordingly the Customer shall pay to the Company in cash, or as otherwise agreed, all sums when due, immediately and without reduction or deferment on account of any claim, counterclaim or set-off. Time is of the essence of payment of all and any sums payable by the Customer to the Company.
(B) In the event of any failure by the Customer to make full and punctual payment of any sum payable to the Company (in accordance with clause 21(A) above):
(i) Any and all other sums properly earned by and/or otherwise due to the Company (but which, but for this clause 21(B), would otherwise not yet be payable by the Customer, whether by virtue of an agreed credit period or otherwise) shall become immediately payable in full; and
(ii) Any sum thereby becoming immediately payable shall be paid to the Company in cash, or as otherwise agreed, and without reduction or deferment on account of any claim, counterclaim or set-off.
(C) No omission to seek compensation for breach of 21(A) and (B) above by the Company shall constitute a waiver or release to the Customer from any liability under 21(A) and (B) above during the application of these terms unless agreed in writing by authorised officers of the Company and Customer.
(D) The Late Payment of Commercial Debts (Interest) Act 1998, as amended, shall apply to all sums due from the Customer.
- 22 Where liability arises in respect of claims of a general average nature in connection with the Goods, the Customer shall promptly provide security to the Company, or to any other party designated by the Company, in a form acceptable to the Company.

LIABILITY AND LIMITATION

- 23 The Company shall perform its duties with a reasonable degree of care, diligence, skill and judgment.
- 24 The Company shall be relieved of liability for any loss or damage if, and to the extent that, such loss or damage is caused by:- strike, lock-out, stoppage or restraint of labour, the consequences of which the Company is unable to avoid by the exercise of reasonable diligence, or
(B) any cause or event which the Company is unable to avoid, and the consequences of which the company is unable to prevent by the exercise of reasonable diligence.
- 25 Except under special arrangements previously made in writing by an officer of the Company so authorised, the Company accepts no responsibility with regard to any failure to adhere to agreed departure or arrival dates of Goods.
- 26 (A) Subject to clause 2(B) and 11(B) above and sub-clause (D) below, the Company's liability howsoever arising and, notwithstanding that the cause of loss or damage be unexplained, shall not exceed:
(i) in the case of claims for loss or damage to Goods:
(a) the value of any loss or damage; or
(b) a sum at the rate of 2 SDR per kilo of the gross weight of any Goods lost or damaged whichever shall be the lesser.
(ii) subject to (iii) below, in the case of all other claims:
(a) the value of the subject Goods of the relevant transaction between the Company and its Customer; or
(b) where the weight can be defined, a sum calculated at the rate of 2 SDR per kilo of the gross weight of the subject Goods of the said transaction; or
(c) 75,000 SDR in respect of any one transaction, whichever shall be the lesser.
(iii) in the case of an error and/or omission, or a series of errors and/or omissions which are repetitions of or represent the continuation of an original error and/or omission:
(a) the loss incurred; or
(b) 75,000 SDR in the aggregate of any one trading year commencing from the time of the making of the original error and/or omission, whichever shall be the lesser.
For the purposes of clause 26(A), the value of the Goods shall be their value when they were, or should have been, shipped. The value of SDR shall be calculated as at the date when the claim is received by the Company in writing.
(B) Subject to clause 2(B) above and sub-clause (D) below, the Company's liability for loss or damage as a result of failure to deliver, or arrange delivery of goods, in a reasonable time, or (where there is a special arrangement under Clause 25) to adhere to agreed departure or arrival dates, shall not in any circumstances whatever exceed a sum equal to twice the amount of the Company's charges in respect of the relevant contract.
(C) Save in respect of such loss or damage as is referred to at sub-clause (B), and subject to clause 2(B) above and sub-clause (D) below, the Company shall not in any circumstances whatsoever be liable for indirect or consequential loss such as (but not limited to) loss of profit, loss of market, or the consequences of delay or deviation, however caused.
(D) On clearly stated instructions in writing declaring the commodity and its value, received from the Customer and accepted by the Company, the Company may accept liability in excess of the limits set out in sub-clauses (A) to (C) above upon the Customer agreeing to pay the Company's additional charges for accepting such increased liability. Details of the Company's additional charges will be provided upon request.
- 27 (A) Any claim by the Customer against the Company arising in respect of any service provided for the Customer, or which the Company has undertaken to provide, shall be made in writing and notified to the Company within 14 days of the date upon which the Customer became, or ought reasonably to have become, aware of any event or occurrence alleged to give rise to such claim, and any claim not made and notified as aforesaid shall be deemed to be waived and absolutely barred, except where the Customer can show that it was impossible for him to comply with this time limit, and that he has made the claim as soon as it was reasonably possible for him to do so.
(B) Notwithstanding the provisions of sub-paragraph (A) above, the Company shall in any event be discharged of all liability whatsoever and howsoever arising in respect of any service provided for the Customer, or which the Company has undertaken to provide, unless suit be brought and written notice thereof given to the Company within nine months from the date of the event or occurrence alleged to give rise to a cause of action against the Company.

JURISDICTION AND LAW

- 28 (A) These conditions and any act or contract to which they apply shall be governed by English law.
(B) Any dispute arising out of any act or contract to which these Conditions apply shall, save as provided in (C) below, be subject to the exclusive jurisdiction of the English courts.
(C) Notwithstanding (B) above, the Company is entitled to require any dispute to be determined by arbitration.
(D) The Company may exercise its rights under (C) above either by itself commencing arbitration in respect of a dispute or by giving written notice to the Customer requiring a dispute to be determined by arbitration.
(E) In the event that the Company exercises its rights under (C) above, the corresponding arbitration shall be conducted as follows:
(i) Where the amount claimed by the claimant is less than £400,000, excluding interest, (or such other sum as the Company and Customer may agree, and subject to (iii) below), the reference shall be to a tribunal of three arbitrators and the arbitration shall be conducted in accordance with the LMAA Intermediate Claims Procedure applicable at the date of the commencement of the arbitration proceedings;
(ii) Where the amount claimed by the claimant is less than £100,000, excluding interest, (or such other sum as the Company and Customer may agree, and subject to (iii) below), the reference shall be to a sole arbitrator and the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure applicable at the date of the commencement of the arbitration proceedings;
(iii) In any case where neither of the LMAA Procedures referred to in (i) and/or (ii) above applies, the reference shall be to three arbitrators in accordance with the LMAA Terms applicable at the date of the commencement of the arbitration proceedings.



These conditions are copyright and reserved for use by current UKWA members.

The Company provides all items and services on the following Conditions which can be varied only in writing by an Officer of the Company.

The Company is a member of UKWA and is not a common carrier.

If a Customer's acceptance document, purchase order or other communication, received by the Company before or after notification of these Conditions, contains terms at variance with these Conditions, then every such term shall be of no effect.

IMPORTANT NOTE

CONDITION 3 LIMITS THE COMPANY'S LIABILITY. PLEASE READ IT CAREFULLY.

The Customer must insure the Goods. The Company does not insure Goods or underwrite their value; the rates charged reflect this. The limitation of liability in Condition 3 minimises the amount that the Company would otherwise need to charge to recover its insurance costs (or an amount in lieu to reflect risk).

THE COMPANY'S OBLIGATIONS

- 1.1. The Company will provide its services with reasonable skill and care. In the absence of written instruction to the Company given a reasonable time in advance with sufficient warning and detail, no particular precautions nor any special treatment need be taken or provided for the Goods by the Company or its subcontractors, nor shall time be of the essence for performance by the Company.
- 1.2. In the case of bulk Goods, unless the parties have agreed otherwise the Company may deal with and/or mix apparently similar goods consigned by or for the Customer without distinguishing between consignments.
- 1.3. In the case of carriage the Company's responsibility for the Goods starts when loading on the vehicle is complete and ends when the Goods are tendered for unloading. In the case of storage and / or processing it starts when they are accepted into store and ends when they are tendered by the Company or its subcontractors for collection, or the Company becomes aware of the grounds for their removal under Condition 2.2 or on the expiry of notice under Condition 7.1 or 7.2. Where the Company provides storage and carriage it shall also be responsible for the Goods while they are transferred from its vehicle into its store and vice versa. In the case of forwarding, the Company's responsibility is only to engage or propose apparently competent contractors and to give them adequate instructions (on the basis of matters known to the Company) in relation to the Goods; and in this case, or where the contract is for advice, it is not responsible for the Goods themselves.
- 1.4. The Company's duty is to the Customer only and not to any third party. Any advice given is for the Customer only and cannot be relied on by any other party.
- 1.5. Unless it states otherwise in writing, where the Company provides forwarding services it operates as the Customer's agent in dealing, or engaging others to deal, with the Goods.
- 1.6. For the purposes of the Fulfillment House Due Diligence Scheme and other matters relating to tax, excise, customs or duties, the Company acts as the direct representative of the Customer unless otherwise agreed in writing.

CUSTOMER'S UNDERTAKINGS

- 2.1. It is a condition of the contract, and the Customer represents, warrants and undertakes, that:-
 - 2.1.1 It is either the owner of the Goods, or is authorised by the owner to accept these Conditions on the owner's behalf.
 - 2.1.2 The Goods shall be presented to the Company (and/or anyone else dealing with them) securely and properly packed in compliance with any applicable statutory regulations, recognised standards and good practice, and that they and any Goods Transport Unit are and will remain in a condition to be safely handled, stored and/or carried and so as not to cause injury, damage, contamination or deterioration (or the possibility of them) to any person, premises, property, the environment, drains or watercourses, equipment or to any other items in any way. Where the Company is performing an operation or process on the Goods, they will be delivered to the Company in a condition where that operation or process can be done without further work (other than unpacking) by the Company.
 - 2.1.3 Before the Company assumes any responsibility for or by reference to the Goods, the Customer will inform the Company in writing of any relevant matters; including any special precautions necessitated by the nature, size or shape, weight, condition or potential for deterioration of the Goods and any statutory or other requirements relevant to the Goods with which the Company or others may need to comply; and will promptly after invoicing pay the Company's reasonable extra charges for complying.
 - 2.1.4 It will promptly after invoicing indemnify the Company against all duties, taxes and expenses that the Company has paid or may be required to pay in respect of the Goods; including where the liability to pay them is triggered by the fault, act or omission of the Company or its employees or sub-contractors.
 - 2.1.5 Except to the extent previously notified in detail to, and accepted by, the Company in writing none of the Goods; are or may become hazardous or contaminated; may cause pollution of the environment or harm to human health if they escape from their packaging; require any official consent or licence (or would be illegal for the Company) to handle, possess, deal with or carry; or will at any time whilst in the care or control of the Company constitute Waste.
 - 2.1.6 The Customer will provide a risk assessment and/or method statement appropriate for handling the Goods. Where the Company is carrying the Goods, then unless otherwise previously agreed in writing the Customer will provide suitable facilities, equipment and methods for, and will procure, safe and prompt loading and unloading of the Goods at, any location not occupied by the Company in which they are being handled.
 - 2.1.7 It will comply with any reasonable requirements of the Company relating to handling, packing, carriage, storage or forwarding of Goods (and ancillary matters) which are notified in writing from time to time.
 - 2.1.8 Information given by or on its behalf shall be correct and complete. The Customer will provide promptly when, and in a format, reasonably requested by or on behalf of the Company, any documentation, instructions or information which is relevant to the Goods, to any interest in them, to any services to be provided for the Customer, or to any actual or anticipated obligation of the Company related to either the Goods or the Customer.
 - 2.1.9 Unless otherwise agreed the Customer will be responsible for instructing the Company on the order of stock removals.
 - 2.2 The Customer will indemnify the Company against any expense, loss or damage it suffers as a result of the Customer's instructions (or failure to give instructions or information), or which is related to any breach of the Customer's obligations or the Customer's insolvency, or complying with the instructions of a competent authority in respect of the Goods, and will pay all costs and expenses (including professional fees) incurred in, and the Company's reasonable charges for, dealing with such matters and their consequences. The Customer will pay an extra charge equal to the amount of any fine or penalty payable by the Company wholly or partly as a consequence of compliance with the instructions, or of acts or omissions of the Customer. If the Company suspects a breach of Condition 2, it may refuse to accept the Goods, demand their immediate removal, or itself arrange their removal without notice, at the Customer's expense.

INSURANCE AND THE COMPANY'S LIABILITY

- 3.1 Unless expressly agreed, the Company does not insure the Goods and the Customer shall self-insure or make arrangements to cover the Goods against all insurable risks to their full insurable value (including all duties and taxes). The insurance referred to in Condition 3.5 is insurance against the Company's potential liability for breach of its obligations and not to cover the Goods themselves against loss, damage, etc.
- 3.2 Subject to Condition 3.3, the Company shall have no liability for Loss however arising.
- 3.3 If and to the extent that Loss is directly caused by negligence or wilful act or default of, or breach of duty owed to the Customer by, the Company, its employees (acting in furtherance of their duties as employees) or sub-contractors or agents (acting in furtherance of their duties as sub-contractors or agents) and subject to Conditions 3.4, 3.7 and 3.8, the Company will accept liability for Loss assessed on normal legal principles but not exceeding the Limit fixed by Condition 3.5. Any quantification of amount or value includes duties and taxes.
- 3.4 In no case shall the Company be liable for any lost profit, income or savings, wasted expenditure, liquidated damages, or indirect or consequential loss suffered by anyone.
- 3.5 In no case shall any liability of the Company (including inter alia any liability in respect of duties and taxes) exceed the Limit, fixed as follows:-
 - 3.5.1 Where potential Loss relates to Goods, the Customer may specify the Limit as an amount (in Sterling, US Dollars or Euros) per tonne weight of the Goods by notice in writing stating the Limit and the nature and maximum value of the Goods, including duty and taxes. The Limit so nominated by the Customer shall apply in respect of any cause of action arising after the Date and in the period in which the nomination remains in effect. It is a condition of the contract that the Customer pays within 7 days of receipt the Company's invoices for its costs in insuring against its potential liability up to the Limit, and/or to the extent that the Company elects to carry the risk itself, its extra charge equivalent to the estimated or likely cost of such insurance.
 - 3.5.2 If the Company having made reasonable efforts is unable to obtain insurance on reasonable terms to cover its liability up to the Limit nominated by the Customer, or if the Customer has not yet paid any invoice issued under Condition 3.5.1, the Company may give 3 working days written notice, and the Limit for causes of action arising after the giving of the Customer's notice under 3.5.1 shall be £100 sterling per tonne weight of the Goods.

- 3.5.3 Unless and until a higher Limit has been fixed under Condition 3.5.1 and continues in effect, the Limit shall be £100 sterling per tonne.
- 3.5.4 Where Loss does not relate directly to Goods (for example alleged negligent advice or data irregularities) the Limit applicable shall be £1000 per incident or series of connected incidents.
- 3.6 Without prejudice to the Company's rights under Condition 6 to be paid free from deduction or set-off, any limitation of liability on the part of the Company shall be applied to any claim by the Customer before any set off or counterclaim is asserted against money payable to the Company.
- 3.7.1 The Company shall not be liable for any claim unless:
it has received written notice of it within 10 days of the event giving rise to the claim coming to the knowledge of the Customer or consignee; and it has received, within 21 days of the event giving rise to the claim coming to the knowledge of the Customer or consignee, sufficient detail in writing to enable investigation. In the case of failure to deliver, time shall run from the second working day after the expected date of delivery.
- 3.7.2 No legal proceedings (including any counterclaim) may be brought against the Company unless they are issued and served within 9 months of the event giving rise to the claim.
- 3.8 The Company shall not be liable for any Loss to the extent that it is caused or contributed to by a breach of any of the Company's obligations, or by a person for whom the Company is not responsible, or by any of the circumstances by virtue of which the Company is relieved of its obligations under Condition 8.

EMPLOYEES, SUB-CONTRACTORS AND OTHERS

- 4.1 The Company shall be entitled to sub-contract on reasonable or industry standard terms all or any part of its obligations and in this event these Conditions shall continue to apply as between the Company and the Customer. However, except where urgent the Company will obtain the Customer's consent (not to be unreasonably withheld or delayed) before storage is subcontracted and will on request notify the Customer of the location of the Goods.
- 4.2 No Interested Party will make a claim or issue proceedings in respect of Loss against any Additional Party.
- 4.3 Without prejudice to Condition 4.2, if an Additional Party pays or is liable to make a payment to an Interested Party in connection with a claim for Loss, the Interested Party will fully indemnify the Company against any claim (including all costs and expenses) by the Additional Party against the Company for reimbursement of, contribution to or indemnity against that payment to the extent that the claim added to any direct liability of the Company, and payments made by it, to all Interested Parties exceeds the Limit applicable to the Loss giving rise to the claim.

CHANGE OF CUSTOMER

5. If the Customer wishes to transfer the Goods or any part to the account of another person it shall give prior written notice to the Company. The notice shall not be effective unless before the effective date of the transfer the proposed transferee notifies the Company in writing that it wishes to become a customer, is to be bound by these Conditions and by any notice given under Condition 3, endorses any information provided by the Customer and will pay the Company's charges for the period after the effective date. The Customer will pay the charges for the period until the later of the effective date, or acceptance by the Company of the notice and of the proposed transferee as a customer. In any event the Customer will remain jointly liable for charges and indemnities relating to Goods consigned by it to the Company. The Goods remain subject to any lien which applies at the time of transfer.

CHARGES, PAYMENTS AND LIEN

- 6.1 The Company's charges are subject to VAT and may be increased by prior notice to the Customer. The notice shall be at least 7 days for increases reflecting any rise in fuel costs and at least 21 days otherwise. If the Customer does not agree to the increase it shall notify the Company in writing and will remove the Goods within 21 days after receipt of the Company's notice. If the Goods are not so removed then the increased charges will apply from expiry of the Company's notice. The Company has the right to charge for storage of the Goods for so long as it has custody of or is responsible for them.
- 6.2 The Customer will 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 60 minutes beyond the time reasonably needed for loading or unloading, and demurrage and storage charges if delivery is refused.
- 6.3 The Company's charges shall be paid without deduction or set-off at such periodic intervals as may have been agreed between the parties and in any event on the earliest of (a) the expiry of any agreed period of credit (b) when any amount payable to the Company by the Customer becomes overdue and (c) the time immediately before any of the Goods cease to be in the Company's care or control. The Company shall be entitled to payment for carriage at the time the Goods are loaded onto the vehicle. Absence of a delivery note shall not justify a refusal by the Customer to pay.
- 6.4 Interest shall be paid on money overdue to the Company at the rate of 1.5% for each calendar month during all or part of which it is overdue.
- 6.5 The Company shall (on its own behalf and as agent for any assignee of its invoices) have a general and particular lien on the Goods (and any associated documentation or records) as security for payment of all sums (whether due or not) claimed by the Company from, or actually or prospectively payable to the Company by, the Customer or another Interested Party on any account (relating to the Goods or not), or otherwise claimed in respect of the Goods or other property of an Interested Party. Where a lien secures sums payable to or claimed by the Company, it shall continue to apply to Goods to cover those sums notwithstanding any transfer of ownership of Goods, or change of customer. Storage shall be charged for any goods detained under lien or where the Company is required by any competent authority to retain them.

REMOVAL AND DISPOSAL OF GOODS

- 7.1 The Goods shall be removed by the Customer at the time agreed between the parties. However the Company may at any time by notice in writing to the Customer require the removal of the Goods within 14 days from the date of such notice or, in the case of perishable goods, 3 days; or immediately in case of urgency.
- 7.2 Where the Customer fails to comply with Condition 7.1, or any payment from the Customer is overdue, the Company may, without prejudice to its other rights and remedies against the Customer, suspend activity and/or notify the Customer in writing that the Goods may be or are being sold or otherwise disposed of. If the notice is solely because of a failure to pay the Company will allow 14 days for payment from the date of such notice before it effects sale or disposal. If the notice is for any other reason there is no minimum period of notice. On expiry of the period, if such payment has not been made (or if applicable the Goods have not been so removed) the Company may sell or otherwise dispose of the Goods or any part at the Customer's entire risk and expense by such method and at such price (if any) as it considers appropriate. And the Company will account to the Customer for any proceeds of sale or disposal after deduction of all expenses and amounts claimed by the Company and any assignee of its invoices. The Company shall not be liable for any alleged failure to achieve a sufficient sale price for the Goods. The Company (and any person deriving title to Goods through it) shall be entitled to use under licence in connection with the disposal of Goods any copyright material or trade marks, and pass on any manufacturer's standard warranty, relating to them which would be available to an authorised retailer of the Goods.
- 7.3 Notice or action by the Company under this condition shall not in itself terminate the contract between the parties unless the Company expressly states so.
- 7.4 The time periods in this Condition may be extended by the Company in its discretion.

FORCE MAJEURE

8. The Company shall be relieved of its obligations to the extent that their performance is prevented or delayed by, or their non-performance results wholly or partly from, the act or omission of the Customer or anyone acting on its behalf or with its authority or an Interested Party or by storm, flood, fire, explosion, civil disturbance, governmental, regulatory or quasi-governmental action, breakdown or unavailability of premises, equipment or labour, or other cause beyond the reasonable control of the Company.

DATA AND CONFIDENTIALITY

- 9.1 Each party will observe its obligations under the General Data Protection Regulation and other applicable data protection legislation including the Data Protection Act 2018.
- 9.2 Unless otherwise agreed in writing the Company will be a data processor and the Customer will be the data controller of personal data relating to or supplied by the Customer or consignees of the Goods.
- 9.3 The Company will process personal data in accordance with the Customer's instructions. The Company may use data supplied by or on behalf of the Customer for purposes appropriate to the performance of the Company's obligations, the exercise of the Company's rights or for business planning by the Company. The Company may share data with a Subcontractor for the provision of the Company's services to the Customer, and with any government authority where appropriate.
- 9.4 Subject to the provisions of this clause and applicable legislation, the Company and the Customer shall each keep confidential information or data supplied by or on behalf of the other which is expressed to be confidential or which is of such a nature that it should clearly be regarded as confidential by a reasonable person.

TUPE AND SERVICE PROVISION CHANGE

- 10.1 Where there is an Inward TUPE Transfer, the Customer will indemnify the Company against all liability and expense which the Company may incur in connection with:
- 10.1.1 the employment or the termination of employment, before the Effective Time, of any Employee;
- 10.1.2 any failure by the Transferor to comply with its legal obligations in respect of any of the Employees;
- 10.1.3 the transfer to the Company, by virtue of TUPE or otherwise, of the employment of any person or the applicability of terms of employment, other than those previously notified to, and previously accepted by, the Company in writing;
- 10.1.4 any act or omission of the Transferor, on or before the Effective Time, for which the Company becomes liable by virtue of TUPE or otherwise; or
- 10.1.5 the Transferor's failure to comply with its obligations under regulation 13 of TUPE.
- 10.2 Where there is an Outward TUPE Transfer, the Customer will indemnify the Company against all liability and expense which the Company may incur in connection with the Transferee's failure to comply with its legal obligations, including without limitation those under regulation 13 of TUPE.

GENERAL

- 11.1 Each exclusion or limitation of liability in these Conditions exists separately and cumulatively.
- 11.2 Signature on behalf of a Customer or its consignee on a delivery note is evidence that the Goods have been received in apparently good order save as noted
- 11.3 The Company may open packaging or Goods Transport Units to inspect them or Goods they contain
- 11.4 Any notice shall be duly given if left at or sent by first class prepaid post to the last known address of the other party or by facsimile to the last notified number evidenced by a successful transmission record, or by email to the last address notified for the purpose of service. It shall be deemed to have been received: if posted 2 working days after posting (4 working days if sent abroad), and if sent by facsimile or email, one working day after sending subject to confirmation of successful transmission (fax) or delivery (email).
- 11.5 "Writing" includes email.
- 11.6 Delay or failure by either party to enforce its rights shall not be a waiver of them.

GOVERNING LAW

All contracts between the Company and the Customer and any claims relating to the Goods shall be governed by the law of England and disputes dealt with exclusively by the English courts.

DEFINITIONS

Terms used in these Conditions have the following meanings:

"**Additional Party**" means any employee, worker, agent or sub-contractor of the Company, or anyone entitled to an indemnity, reimbursement or contribution from the Company in respect of a claim by an Interested Party.

"**Company**" means the party agreeing to provide the services and/or items under the contract

"**Customer**" means the party requesting the services and/or items under the contract (and if different, also the person to whom they are supplied).

"**Date**" means the 10th working day after the relevant notice is actually received by the Company

"**Effective Time**" means the time at which the employment of any person (or liabilities relating to that person) are transferred to the Company under TUPE

"**Employee**" means a person employed or previously employed by the Transferor and who is, or whose rights are, affected by the TUPE Transfer

"**Goods**" means goods (including any associated documents, packaging, Goods Transport Unit(s) and equipment) to which the contract relates or which are in the possession of the Company.

"**Goods Transport Unit**" means any container, packaging, pallet or other platform used in connection with the transport of Goods

"**Interested Party**" means the Customer and/or anyone with an interest in the Goods; any obligation of the Interested Party is borne jointly and severally.

"**Inward TUPE Transfer**" means a situation where the Company is (or is expected to be) a transferee for the purposes of TUPE as a result of providing services to or for the benefit of the Customer (or intending to do so)

"**Limit**" means a limit per tonne gross weight of that part of the Goods in respect of which a claim arises.

"**Loss**" includes (without limitation) loss (including theft), destruction, damage, unavailability, contamination, deterioration, delay, non-delivery, mis-delivery, unauthorised delivery, non-compliance with instructions or obligations, incorrect advice or information, loss or corruption of data, breach of data protection or processing obligations, interference with or disruption of information technology systems, breach of duty, and any event giving rise to any liability of an Interested Party to any other person or authority.

"**Officer**" includes a Director or Company Secretary, General Manager, Partner, or member of a Limited Liability Partnership

"**Outward TUPE Transfer**" means a situation where the Company is (or is expected to be) a transferor for the purposes of TUPE as a result of the transfer of operations carried out for the Customer

"**Subcontractor**" means a party engaged at the behest of the Company to perform some or all of the Company's obligations

"**Transferee**" means a transferee as defined by TUPE

"**Transferor**" means a transferor as defined by TUPE

"**TUPE**" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (and any successor legislation) and also includes any other legislation under which employment or liabilities arising from employment transfer by operation of law

"**Waste**" bears its general meaning and also includes "Waste" and "Directive Waste" as defined legislatively.

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