

**October 2020**

**CONDITIONS FOR DISTRIBUTION SERVICES**

**Strata Logistics Ltd**

## 1. BACKGROUND

These are the Conditions for Storage and Distribution services used by the Company and apply to all Contracts unless explicitly specified otherwise. The acceptance of a booking by Strata Logistics Ltd is deemed acceptance of all the terms herein and overrule any other terms and conditions issued by the Customer including any terms held within a purchase order or booking confirmation.

**The Customer's attention is drawn specifically to conditions 4, 5, 6, 7, 8, 12, 14, 15, 16, 17, 19, 22 and 24 which exclude or limit the Company's and the Company's sub-contractors' liability or require the Customer to indemnify the Company and/or its sub-contractors in certain circumstances. There are also strict time limits within which claims for loss or damage must be notified and proceedings brought. Clause 17 entitles the Company to exercise a lien over goods consigned to it and provides for consequential rights.**

**To enable the Company to provide the Services to the Customer for the charges quoted, the Company excludes and/or limits its liability for certain types of loss and damage and places a limit on any liability to the Customer.**

**The Company will not insure the Goods and the Customer, and/or the Owner are advised to check their own insurance arrangements having regard to the limitations on the Company's liability and the indemnities being given by the Customer under these Conditions.**

## 2. INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions. Each term shall be read to adopt the meaning directly opposite.

### 2.1 Definitions:

#### **Applicable Laws**

the law of England and Wales and the laws, rules and regulations of the European Union insofar as they are applicable to the United Kingdom, and any other laws and regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services.

#### **Charges**

means the charges payable by the Customer to the Company for the supply of the Services in accordance with clause 11.1,

**Clandestine Entrant**

a person who hides in or on a vehicle as it travels across state borders, in a manner that

is illegal and/or without the requisite national, international or European documentation and/or authorisation for such an individual,

**Company**

means Strata Logistics Ltd incorporated under the laws of England and Wales under number 09043761 whose registered office is at 503 Broadway, Letchworth SG6 3PT and/or the person, body or other entity (including but not limited to a sole trader, partnership, limited partnership, limited liability partnership or company including its servants, employees and agents) agreeing to undertake the Services on Stratas behalf

**Conditions**

means these terms and conditions together with any schedule attached to them.

**Contract**

means any agreement by which the Company agrees to and/or does provide the Services,

**Customer**

means the person, body or entity requesting Services from the Company (and if different, also the person to whom they are supplied) who may or may not also be the Owner of the Goods but contracts on his own behalf and as agent for such Owner and any person deriving title from such Owner,

**Data Protection Legislation**

means the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications).

**Demurrage**

means any cost or expense the Company suffers as a result of the improper, excessive or unreasonable detention of any vehicle,

trailer, container or other equipment belonging to or under the control of the Company, inclusive of those charges, costs or expenses as outlined in clause 10,

**Distribution Services**

means carriage of the Goods.

**Effective Time**

means the time at which the employment of any person (or liabilities relating to that person) are transferred to or from the Company (as the case may be) 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,

**FTL Shipment**

shall mean a load, consignment or Goods provided by one consignor, Customer or Owner (if Customer and Owner are separate) the quantity of which meets the full carrying capacity of the vehicle the Customer has explicitly requested, or that the Company reasonably considered suitable for the Goods,

**Goods**

means the goods and any part thereof (including packaging, pallets, palletainers, converters, associated documents and all other equipment provided with the Goods) to which the Contract relates, or which are in the possession of the Company. Goods can also include but is not limited to a Trailer, where that Trailer is unaccompanied and provided by the Customer and which the Company has contracted to carry through the use of a Tractor Unit.,

**LTL Shipment**

shall mean a load, consignment or Goods provided by one consignor, Customer or Owner (if Customer and Owner are separate) the quantity of which does not meet the full carrying capacity of the vehicle the Customer

has explicitly requested, or that the Company reasonably considered suitable for the Goods,

**Outside the Scope of the Services**

means any treatment which is not capable of performance save with unreasonable inconvenience or extra cost to the Company,

**Owner**

means the legal owner of the Goods (including any documents relating thereto, packaging, containers or equipment) and any other person who is or may become entitled to or claims any interest in the Goods including but not limited to possession of the Goods,

**Perishable Goods**

means Goods with a quickly depreciating value where conditions as to their carriage are not met, those conditions being contained within the Agreement on the International Carriage of Perishable Foodstuffs and on the Special Equipment to be Used for Such Carriage (“the ATP”), or any such similar legislation, regulation or convention as amended from time to time,

**Regulations**

means the RHA Conditions of Carriage as amended from time to time, unless those terms contradict these Conditions in which case these Conditions shall have effect, as well as other regulations and other literature (if any) published by the Company from time to time which describe the Services provided by the Company and regulate the provision of those Services and as notified to the Customer from time to time in writing.

**Services**

means all services which the Company has agreed to provide or does provide for the Customer, including but not limited to the Distribution Services and the Storage Services. Services also includes but is not limited to any loading and/or unloading that the Company has specifically agreed to provide whether loading at the Company’s

premises, loading at a collection address, unloading at the Company's premises or unloading at the delivery address or elsewhere as directed by the Customer or as permitted under these Conditions, or as is otherwise appropriate,

**Storage Services**

means storage of the Goods,

**Tractor Unit**

shall mean a medium to heavy goods vehicle not on a rigid body type, to which a Trailer can be attached to the rear, usually but in no way limited to an articulated unit,

**Trailer(s)**

shall mean unaccompanied trailers which the Company has contracted with the Customer to transport through the use of a Tractor Unit,

**Transferee**

means a transferee as defined by TUPE,

**Transferor**

means a transferor as defined by TUPE,

**Transit**

shall begin once the vehicle carrying the Goods has left the place in which they were loaded and end once the vehicle carrying the Goods has arrived at the agreed point of delivery,

**TUPE**

means the Transfer of Undertakings (Protection of Employment) Regulations 2006,

**TUPE In Transfer**

means a situation where the Company is a transferee as defined by TUPE as a result of providing or agreeing to provide Services to or for the benefit of the Customer,

**TUPE Out Transfer**

means a situation where the Company is a transferor as defined by TUPE as a result of a termination (howsoever arising) of the provision of the Services to or for the benefit of the Customer,

## **UK Data Protection Legislation**

means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended,.

## **Value**

means the cost of the Goods to the Customer, the Owner or the Customer's principal (if he, she or it is not the Owner) at the time of receipt of the Goods by the Company for the performance of the Services.

### 2.2 Interpretation:

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** includes fax and email.

## **3. APPLICATION**

3.1 These Conditions shall apply to every Contract for the provision of Services by the Company to the Customer to the exclusion of all other terms and conditions, including the Customer's own, unless explicitly agreed otherwise and that agreement is in writing and signed by both parties.

3.2 The Company shall provide the Services subject to these Conditions and the Regulations. If there is any conflict or ambiguity between the Conditions and the Regulations, a term contained in the Conditions shall have priority over one contained in the Regulations.

3.3 The failure or delay by any party in exercising any right, power or remedy under these Conditions shall not in any circumstances impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise of any right, power or remedy under these Conditions shall not in any circumstances preclude any other or further exercise of it or the exercise of any other right, power or remedy.

3.4 Any waiver of a breach of, or default under any of the terms of these Conditions shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of these Conditions.

#### **4. COMPLIANCE**

4.1 The Customer warrants that their Trailers and other necessary equipment provided to the Company in performance of the Contract have been maintained, operated, insured, checked and licenced in accordance with the Applicable Laws of England and Wales, including but in no way limited to the requirement that Trailers are inspected in accordance with recognised and approved industry practices in the UK and receive the necessary approvals every 6 weeks.

4.2 The Customer warrants that in any Contract entered into with the Company, they have complied with all relevant Applicable Laws, statutes, regulations and codes from time to time in force.

4.3 The Company will provide the Services, or procure that they are provided, in accordance with all Applicable Laws, statutes, regulations and codes from time to time in force.

4.4 The Customer indemnifies the Company of any loss, costs, fines, surcharge, duties, penalties, taxes or fees that the Company may suffer as a consequence of a breach of Condition 4.1 above.

4.5 Without prejudice to the rest of this Condition 4, the Company shall use all reasonable endeavours to minimise any disruption caused by any changes in Applicable Laws introduced relevant to this Condition 4.

#### **5. COMPANY'S RESPONSIBILITIES FOR GOODS**

5.1 The Company shall perform the Services and/or Distribution with reasonable care and skill.

5.2 Unless specifically agreed in writing to the contrary, the Company's responsibilities and obligations for the Goods shall commence when loading is completed, either onto a vehicle or into the loading bay.

- 5.3 Unless specifically agreed in writing to the contrary, the Company's responsibilities and obligations for the Goods shall cease as follows:
- (a) if the Company is providing Distribution Services only, at the point at which the Goods (or that part thereof forming the particular consignment) are tendered for unloading;
  - (b) if the Company is providing Storage Services only:
    - (i) where the Company has agreed to load the Goods onto the delivery vehicle, at the point at which the loading of the Goods (or that part thereof forming the particular consignment) is complete; or
    - (ii) where the Company has not agreed to load the Goods onto the delivery vehicle and does not do so, at the point at which the Goods (or that part thereof forming the particular consignment) are tendered to the carrier for loading;
  - (c) if the Company is providing Storage Services and Distribution Services, at the point at which the Goods are tendered for unloading at the Customer's or the consignee's premises; or
  - (d) when notice is given requiring the Goods to be removed from the Company's possession, custody or control under these Conditions or otherwise as required or permitted by law.
- 5.4 Where the Company has agreed in writing to load or unload the Goods, the Company's obligations and responsibilities in respect of each distinct part of the Goods (for instance, each box or pallet) commences at the point at which that part of the Goods is first handled by the Company.
- 5.5 The Company will not be responsible for any loss or damage to the Goods arising from the loading or unloading or from any overloading or unsafe loading of the Goods.
- 5.6 Where the Company has not agreed in writing to load or unload the Goods, the Company may, at its sole discretion, through its servants and agents provide assistance in loading or unloading the Goods if requested to do so by the Customer or the consignee or the agents of either. The Customer shall indemnify the Company from and against all and any loss, damage, death or injury that may arise whilst the loading or unloading operations are taking place whether or not such loss, damage, death or injury is attributable to the negligence of the Company, its agents or servants.
- 5.7 The Company shall not be liable for any damage whatsoever or howsoever caused, if the Company's personnel are instructed by the Customer or the consignee or their servants or agents to provide any Services which have not been specifically agreed in writing, and whether or not such Services are against the recommendations of the

Company or the Company's personnel, and the Customer shall indemnify the Company against all claims, demands, losses and damage suffered or incurred (including but not limited to damage to the Company's vehicle) as a result of the Company's personnel complying with any instructions of the Customer or the consignee or their servants or agents.

- 5.8 Unless agreed otherwise in writing by the Company and the Customer, the Customer will provide (or will procure that the consignor or the consignee as appropriate will provide) suitable facilities and equipment for and will procure the safe and prompt loading and unloading of the Goods.
- 5.9 The following provisions apply:
- (a) the Company is not and does not contract as a common carrier.
  - (b) Where the Company is unable (or unwilling) to deliver the Goods because:
    - (i) there is nobody available to take delivery at the delivery address notified to the Company by the Customer; or
    - (ii) delivery is refused for any reason; or
    - (iii) it is not possible to make delivery at all or within a reasonable time because of the absence of appropriate facilities or equipment for unloading; or
    - (iv) the Customer has failed to remove the Goods from the Company's possession having been requested to do so under Condition 6;to the extent that the Company remains in possession of the Goods after an event referred to in this clause, the provisions of clause 15 shall apply.
  - (c) Notice or action by the Company under clause 15.1 shall not in itself terminate the Contract.
- 5.10 The Company's obligations are owed to the Customer only.
- 5.11 Acceptance of possession of the Goods or signature of any consignment note relating to the Goods confirming receipt of the same by the Company is not confirmation by the Company that the Goods are in satisfactory condition or are undamaged or that they are as described in the consignment note or confirmation of the accuracy of the documents accompanying the Goods.
- 5.12 Absence of a delivery or consignment note shall not justify a refusal by the Customer to pay any of the Company's Charges.
- 5.13 Time shall not be of the essence as regards the performance of Services.

## 6. CUSTOMER'S OBLIGATIONS

- 6.1 The Customer accepts these Conditions on its own behalf and as agent for and on behalf of the Owner and warrants to the Company that it has authority to bind such Owner to these conditions in all respects.
- 6.2 The Customer shall comply with the Regulations.
- 6.3 The Customer warrants and represents that the Goods are as described to the Company in the consignment note or equivalent document particularly as regards to their nature, weight, quantity, condition and dimensions.
- 6.4 Without prejudice to conditions 6.10 and 6.11 below, the Customer warrants that the Goods (including any pallets) are:
- (a) in a wholesome condition;
  - (b) properly packed for the performance of the Services;
  - (c) in the form, and have at all material times been maintained at, the temperature as may be required by the minimum standards stipulated under the applicable statutory regime for goods of that type then in force;
  - (d) not such as to require any special treatment Outside the Scope of the Services or as provided for in the Regulations or otherwise, for instance by virtue of the size, weight, nature or condition of the Goods;
  - (e) in a condition where any operation or process to be carried out by the Company can be carried out without further work (other than unpacking) by the Company;
  - (f) in (and will remain in) a condition in which they can be safely handled and stored without causing damage or injury to persons, premises, equipment or other goods; and
  - (g) not hazardous or contaminated, do not require a license to handle and do not constitute waste as defined in all applicable legislation.
- 6.5 If the Company determines that the Goods are not in a condition as required by Condition 6.4 or are likely not to be in such condition and such failure may or is likely to cause damage to other goods or property, then;
- (a) the Company shall be entitled either not to collect the Goods or to reject the Goods;
  - (b) the Company shall be entitled to serve notice on the Customer and upon receipt of such notice the Customer shall remove the Goods forthwith; or
  - (c) if the Company is unable to give such a notice for any reason or if in the Company's reasonable opinion, the Goods require immediate removal to avoid or mitigate damage or if the Customer fails to remove the Goods as

required under Condition 6.5(b), then the Company may at the Customer's expense and risk arrange for alternative storage, disposal or destruction of the Goods.

- 6.6 The Customer warrants and represents that all information provided by the Customer to the Company whether in relation to the Goods or otherwise will be materially accurate and complete.
- 6.7 The Customer warrants and represents that all information and/or paperwork relating to the Goods, provided to the requisite third-parties, is correct, complete and accurate, and accepts responsibility for that information and/or documentation
- 6.8 The Company shall be entitled to reject Goods that are not in the condition set out in Condition 6.4 or are not as warranted in Condition 6.3, 6.6 or 6.7.
- 6.9 The Company's duties and obligations, including but not limited to any advice given, are to the Customer only. No third party shall be entitled to rely on any advice given by the Company to the Customer.
- 6.10 The Customer shall indemnify the Company against any claims, losses, damages, costs, fines, liabilities, penalties, taxes and duties (and all costs and expenses reasonably incurred relating thereto) incurred by or made against the Company resulting wholly or in part from a claim against the Company by a third party who has relied on advice provided to the Customer by the Company.
- 6.11 The Customer shall indemnify the Company for any loss, damages, costs, fines, liabilities, penalties, taxes and duties incurred by the Company as a consequence of incomplete, inaccurate or incorrect paperwork, information, documentation or electronic entry provided by the Customer to a third-party.
- 6.12 The Customer shall take out the appropriate insurance to cover their load for any loss, damages, costs, fines, liabilities, penalties, taxes and duties incurred as a consequence of Clandestine Entrants being found onboard during carriage. In such instances, the Customer shall indemnify the Company for any amount over the limitation threshold as described and specified in clause 12.9(c).
- 6.13 The Company may, but shall not be obliged to, break bulk and open packages and examine the Goods when Goods are presented and at any time thereafter for the purposes of determining whether or not the Goods are in the condition required under Condition 6.4.

## **7. SPECIAL TREATMENT**

- 7.1 If Goods require special treatment (due to their size, weight, nature or condition or any other factor) or where the Goods require treatment that is otherwise Outside the Scope of the Services of the Company then the Customer shall contact the Company and obtain the Company's agreement in writing prior to presentation of the Goods. If this is not done and the Company does not agree in advance to provide such special treatment then the Company shall be entitled to refuse to take delivery of the Goods, or if it discovers the position after having taken delivery, to require the Customer to immediately collect the Goods and in any event the Company shall not be liable for any loss of or damage to the Goods or any associated losses including but not limited to indirect loss, financial loss, consequential loss, loss of profits, loss of goodwill or loss of anticipated savings caused by failure to provide such special treatment.
- 7.2 If, as a consequence of the United Kingdom's exit from the European Union, or through any other political event, the Goods, in particular the packaging and/or pallets, require specific treatment that is otherwise Outside the Scope of the Services of the Company as a result of the UK trading with the EU as a 'third country,' the Customer shall contact the Company and obtain the Company's agreement in writing prior to presentation of the Goods. If this is not done, then the Company shall be entitled to refuse to take delivery of the Goods, or if it discovers the position after having taken delivery, to require the Customer to immediately collect the Goods and, in any event, the Company shall not be liable for any loss, consequential loss, loss of profit or damage suffered by the Customer as a consequence of the Goods being carried on or in inadequately treated pallets or packaging, or as a consequence of there not being a sufficient number of EU-compliant pallets or packaging units available to the Company.
- 7.3 The Customer shall indemnify the Company against any losses, damages, claims, fines, penalties, duties, taxes, costs or expenses incurred by or made against the Company as a result (wholly or in part) of the Goods requiring special treatment as envisaged by this clause.
- 7.4 In the event that the Company elects to provide Services in relation to the Goods notwithstanding the need for special treatment the Company shall be entitled to charge a reasonable sum for the provision of such special treatment over and above its other charges.

## **8. CUSTOMER INDEMNITY**

- 8.1 In the event that a third party brings a claim against the Company in relation to the Goods and/or the Services and in respect of which these Conditions are held not to apply, the Customer shall indemnify and hold harmless the Company and its employees, agents and subcontractors against all claims, losses, damages, costs, fines, liabilities, penalties, taxes and duties (and all costs and expenses reasonably incurred

relating thereto) incurred by or made against the Company which exceed the liability and/or the limits of liability that the Company would have incurred or which would have applied had these Conditions applied in respect of the Company's liability to the third party.

- 8.2 The Customer shall indemnify and hold harmless the Company, its employees, agents and sub-contractors against all claims, losses, damages, costs, fines, liabilities, penalties, taxes and duties (and all costs and expenses reasonably incurred relating thereto) incurred by or made against the Company:
- (a) relating wholly or in part to the nature or condition of the Goods save to the extent that the Company, its employees, agents or sub-contractors may be liable under these Conditions;
  - (b) caused wholly or in part by any breach by the Customer of its obligations under the Contract or by the Company complying with the Customer's instructions; or
  - (c) any taxation or duty payable or paid by or demanded from the Company in relation to the Goods.

## **9. STORAGE**

- 9.1 In the absence of agreement by the Company for any special treatment of the Goods pursuant to Condition 7, the Company:
- (a) may treat the Goods in such a way as in its opinion is best able to preserve them and the Company shall exercise reasonable skill and care in exercising its opinion; and
  - (b) shall be entitled to store in bulk all Goods of apparently similar nature received from the same Customer and shall not be required to identify individual consignments of Goods so stored. If the Customer requires the Company not to store the Goods in bulk, then the Company shall (if prepared to comply) be entitled to a reasonable upward adjustment of its charge for complying with such requirements.

## **10. DEMURRAGE AND CANCELLATION**

- 10.1 The Customer agrees to pay Demurrage at the Company's standard rate if there is delay in the performance of the Contract as a consequence of;
- (a) incomplete, inaccurate or incorrect paperwork, information, documentation or electronic entry provided by the Customer to a third-party;
  - (b) the vehicle, employee, agent or officer of the Company becoming delayed, where the Company is providing Distribution Services only, during the loading and/or unloading of the Goods onto or from the vehicle;

- (c) the vehicle, employee, agent or officer of the Company becoming delayed, where the Company is providing Storage Services only, during the collection or delivery of the Goods at or from the agreed place of storage;
- (d) the Goods are rejected at the point of delivery for whatever reason and the Company is required to store or hold them;
- (e) some reason that can reasonably be considered not to be the fault of the Company, the result of which sees the Company required to store or hold the Goods;
- (f) some reason that can reasonably be considered not to be the fault of the Company, the result of which sees the Company's vehicle delayed or held in Transit.

10.2 Unless explicitly agreed otherwise in writing, Demurrage shall become chargeable for all shipments after 1 hour of delay.

10.3 Cancellations with less than 24 hours notice are chargeable at 50% of the agreed rate at time of booking, 65% if less than 12 hours notice and 100% if the vehicle is en route or at point of loading. Returns to sender are charged at 100% of the agreed rate plus £40 per 12 hour period if the goods have to remain in the care of the Company.

10.4 After the passing of the relevant time limits under 10.2, Demurrage shall be charged at a rate of £45.00 per hour up to 8 hours, after which a daily charge of £750.00 shall apply. Overnight storage of goods on trailer is charged at £15.00 per 24 hour period over and above 24 hours.

10.5

The Customer shall, if necessary obtain secure parking during any period of detention of a vehicle and any fees, fines, costs, losses or taxes paid in order to acquire such reasonably secure parking or parking required by court order, the Applicable Laws, additional regulation or statutory instrument shall be charged to the Customer along with the Demurrage charges.

10.6

The Company reserves the right to charge any fees or costs covered under this clause 10 on top of the price quoted at the outset of the Contract and invoice for that aggregate total.

## **11. CHARGES**

11.1 The Company shall be entitled to payment of the Charges in accordance with rates agreed with the Customer, or in default thereof at its usual rates. The Charges are subject to VAT which shall be paid in addition to the Charges.

11.2 The Company may vary the Charges at any time by giving written notice to the Customer.

11.3 The Charges shall be payable upon demand, by presentation of an invoice, unless otherwise agreed in writing. Where the Company agrees to provide a credit facility such facility shall always be provided on terms that the Company is entitled to vary or

withdraw the same with immediate effect in the event of the Customer's breach of the credit terms in respect of any one or more invoices or if the Customer is required or requested in accordance with these Conditions to remove the Goods or the Customer enters into any insolvency process or otherwise seeks to make arrangements with its creditors.

- 11.4 Where the Company has agreed to fix the Charges for a stated period, the Company shall nevertheless be entitled to vary the Charges in the event that during the period in which the Charges are fixed there is an increase in the unit cost to the Company of its energy supply (including but not limited to gas, electricity, diesel or other fuel) which exceeds 3%. In such event, the Company shall be entitled to pass on to the Customer the actual increase in the unit cost inclusive of the 3% and any amount over that threshold. If reasonably requested by the Customer and if it is practical for the Company to do so, the Company shall provide evidence of the unit cost at the date that the charges were fixed and evidence of the increase since that date.
- 11.5 Interest shall be payable in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended from time to time) save that interest calculated at the rates prescribed by the Act shall be payable on all overdue amounts both before and after judgement.
- 11.6 The Customer shall pay to the Company all the Charges immediately when due (whether pursuant to any agreed credit period or as provided for in these Conditions or otherwise) without reduction, deferment on account of any claim, counterclaim or set-off.
- 11.7 The Customer will be charged a reasonable proportion, calculated by the Company, of any expenses necessarily incurred by the Company in complying with the Prevention of Damage by Pests Act 1949 (as amended or re-enacted from time to time) or in complying with any other statutory duties imposed from time to time in relation to the Goods provided that if the Goods are the direct cause of introduction of pests into the store the Customer shall indemnify the Company against (or reimburse as may be the case) the whole of the expenses of complying with the said Act.
- 11.8 All the Company's charges, whether invoiced or not, shall become immediately due for payment prior to any Goods ceasing to be in the Company's care, control or possession irrespective of any previously agreed credit period.
- 11.9 Time shall be of the essence as regards payment of any sums due to or claimed by the Company.

**12. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS DRAWN PARTICULARLY TO THIS CLAUSE**

- 12.1 The Company shall not be liable for any loss or damage that occurs because of:
- (a) acts or omissions by the Customer which directly or indirectly result in loss or damage;
  - (b) strike, lock out, industrial dispute or other labour disturbance;
  - (c) factors beyond its reasonable control including but not limited to act of God, earthquake, fire, storm, flood, ice or other inclement weather, war, explosion, actual or threatened acts of terrorism, strike, acts of any government or other lawful authority, riot, civil commotion, epidemic or trade embargo or any failure of electricity or other fuel or equipment;
  - (d) any reasonably unanticipated traffic congestion caused either by disruptive traffic incident or otherwise;
  - (e) any cause or event over which the Company has no control and which the Company is unable to prevent with the exercise of reasonable care and effort;
  - (f) the Company complying with the Customer's or Owner's instructions;
  - (g) any breach by the Customer of its obligations under the Contract; and / or
  - (h) the actions of any person for whom the Company is not responsible.
- 12.2 The Company shall not be liable for any fine, penalty, tax or charge issued on the Customer as a consequence of the performance of the Services.
- 12.3 The Company shall not be liable for any damage or loss caused or arising from reasonably unanticipated delay, where the delay causes Perishable Goods to become commercial unsaleable and/or to be destroyed or rejected for the reason that they are in an unacceptable condition or otherwise.
- 12.4 The Company shall not be liable for any loss or damage that occurs other than because of the Company's negligence, breach of its obligations under the Contract or other duties as imposed by law, wilful misconduct or fraudulent act or omission.
- 12.5 In no event shall the Company be liable or responsible for indirect, incidental, special or consequential loss or damage, loss of profit, loss of revenue, loss of goodwill or loss of anticipated savings of the Customer or Owner or any other party, howsoever caused, whether or not the Company was aware or should have been aware that such loss or damage may arise.
- 12.6 The Company shall have no liability for any claim unless;

- (a) the Company receives written notice of it within 10 days of the date upon which the Customer became aware of the event giving rise to such claim or would have become aware of the event had the Customer acted with reasonable diligence (“the Date”); and
  - (b) a detailed claim giving sufficient details of the claim and alleged loss to allow the Company to investigate the claim including but not limited to the weight, value and date of delivery into store is submitted to the Company in writing within 21 days of the Date.
- 12.7 The limitations and exclusions set out in these Conditions shall not apply to death or personal injury caused by the negligence of the Company or resulting from fraud by the Company.
- 12.8 Except as expressly provided in these Conditions (and except where a person within the United Kingdom deals as a consumer within the meaning of the Consumers Rights Act 2015) all warranties, conditions and other terms implied by law are excluded.
- 12.9 In any event and subject to the rest of this Condition 12 and save where a higher limit is agreed pursuant to Condition 12.12, the Company's liability to the Customer, Owner or any other party with an interest in the Goods arising out of or in connection with the Services and/or the Goods whether based in contract, tort (including but not limited to negligence), bailment, restitution, equity, arising from statute or otherwise and including but not limited to in respect of 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, interference with or disruption of computer systems or any event giving rise to any liability of the Customer or Owner to any other person or authority shall never exceed the lower of:
  - (a) the Value of the Goods or the part thereof that is lost or damaged; or
  - (b) in relation to liability arising from the Storage Services, £250 per metric tonne of gross weight of that part of the Goods to which the claim relates; or
  - (c) in relation to liability arising from the Distribution Services, £2,000 per metric tonne of gross weight of the Goods or that part of the Goods to which the claim relates.
- 12.10 Subject to the rest of this Condition 12, the Company’s liability for loss or damage as a result of failure to deliver or arrange to deliver the Goods in a reasonable time shall never exceed the amount of the Charges in respect of the carriage in question.
- 12.11 The Company does not insure the Goods and the Customer shall be responsible for insuring:

- (a) the Goods against all risks to their full insurable value; and
- (b) any liabilities to the Company arising out of these Conditions or otherwise.

12.12 Where the Customer requires a higher limit of liability than that provided for in Condition 12.9 it must notify the Company in writing of the higher limit it requires and must pay the Company's costs and expenses of obtaining insurance against the Company's increased liabilities by virtue of that higher limit. The higher limit specified will take effect 21 days after receipt of the notice by the Company (and may cease to have effect if it has already taken effect in the circumstances set out in 12.12(a) below) unless:

- (a) the Company notifies the Customer that the Company is unable to obtain insurance cover for the higher limit specified by the Customer in relation to the Company's liabilities in connection with the Goods and/or Services on terms reasonably acceptable to the Company. In the event that the Company serves such notice the higher limit shall not come into effect if it has not already done so or, if it has come into effect, the higher limit shall cease immediately upon receipt of the notice by the Customer and shall revert to the limit set out in Condition 12.9;
- (b) the Customer has failed to pay the Company's costs and expenses of obtaining insurance for the higher limit of liability specified by the Customer within 7 days of receipt of the Company's invoice in respect of the same.

In either of the situations described in Condition 12.12(a) and/or 12.12(b) the limit of liability shall be as set out in Condition 12.9 and any increase or potential increase shall not be effective.

12.13 No legal proceedings may be brought against the Company whether by a claim, counterclaim, Part 20 claim or otherwise unless they are issued and/or served within nine months of the event giving rise to the claim.

12.14 Without prejudice to the Company's rights under Condition 11.5 to be paid free from deduction or set off, any limitation of the Company's liability shall be applied to any claim made against the Company by the Customer in determining the value of such claim before any set off or counterclaim is asserted against money due to the Company.

### 13. DATA PROTECTION

13.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause, **Applicable Laws** means (for so long as and to the extent that they apply to the Company) the law of the European Union, the law of any member state of the

European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.

- 13.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and the Company is the processor.
- 13.3 Without prejudice to the generality of Condition 13.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of any personal data to the Company for the duration and purposes of the Contract.
- 13.4 Without prejudice to the generality of Condition 13.1, the Company shall, in relation to any personal data processed in connection with the performance by the Company of its obligations under the Contract:
- (a) process that personal data only on the documented written instructions of the Customer unless the Company is required by Applicable Laws to otherwise process that personal data. Where the Company is relying on Applicable Laws as the basis for processing personal data, the Company shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Company from so notifying the Customer;
  - (b) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
  - (c) not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
    - (i) the Customer or the Company has provided appropriate safeguards in relation to the transfer;
    - (ii) the data subject has enforceable rights and effective legal remedies;
    - (iii) the Company complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
    - (iv) the Company complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
  - (d) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - (e) notify the Customer without undue delay on becoming aware of a personal data breach;

- (f) at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the personal data; and
- (g) maintain complete and accurate records and information to demonstrate its compliance with this clause and immediately inform the Customer if, in the opinion of the Company, an instruction infringes the Data Protection Legislation.

#### **14. SUB-CONTRACTORS**

- 14.1 The Company may engage sub-contractors for the purpose of fulfilling the Contract in whole or in part and may transfer at its own expense any Goods between or within stores. The Company contracts for itself and as agent of and trustee for its sub-contractors and any such sub-contractors shall be entitled to the benefit of these Conditions and the Regulations and shall be under no greater liability than and in addition to that of the Company under the Conditions.
- 14.2 The Customer and the Owner agree not to bring any claim against any sub-contractor, employee or agent additional to or in excess of the amount for which the Company is liable under these conditions.
- 14.3 If the Customer requests that the Company arranges for another party to perform for the Customer any services (including but not limited to the Services or any part thereof), any services so arranged pursuant to such a request are arranged by the Company on the terms that the Company acts as the agent of the Customer and is in no way responsible for or liable to the Customer for the provision of the services so arranged.
- 14.4 The Customer and the Owner jointly and severally indemnify the Company against all claims, losses, damages, costs, fines, liabilities, penalties, taxes and duties (and all costs and expenses reasonably incurred relating thereto) incurred by or made against the Company arising as a result (wholly or in part) of:
  - (a) a breach by the Customer or the Owner of Conditions 14.1, 14.2 or 14.3; or
  - (b) a claim by a third party engaged pursuant to clause 14.3; or
  - (c) a claim by a subcontractor, agent or employee against the Company in relation to the Contract and / or the Goods and / or the Services to the extent that such claim exceeds the amount for which the Company is liable under these Conditions.

#### **15. REMOVAL AND DISPOSAL OF GOODS**

- 15.1 The Company may at any time give not less than 14 days' written notice to the Customer requiring the Customer to remove the Goods and pay any outstanding fees,

including storage charges. In the case of Perishable Goods, the Company shall only be required to give the Customer 3 days' written notice.

- 15.2 If the Goods are not removed (all sums due to or claimed by the Company from the Customer having been paid in full in cleared funds) upon the expiry of the notice given under clause 15.1 then the Company may sell or otherwise dispose of the Goods and deduct from any proceeds (if the Goods are sold) all outstanding Charges, costs of storage, any interest due, and the cost of disposal and upon the expiration of such notice, so to deal (accounting to the Customer for the net proceeds of sale, if any, after such deductions).
- 15.3 Notice or action by the Company under this Condition shall not in itself terminate the Contract.
- 15.4 The Company's charges shall continue to accrue after the service of any notice under Condition 15 and shall continue to do so until the Goods are removed, whether by the Customer or pursuant to action by the Company under Condition 15.2. The Customer will pay the Company the costs of sale or other disposal of the Goods or any part thereof in addition.
- 15.5 For the avoidance of doubt, neither the Customer, the Owner or any other party will be entitled to remove the Goods until all sums due to or claimed by the Company from the Customer have been paid in full in cleared funds.
- 15.6 The Company shall also be entitled to sell the Goods where any tax, penalty, fine or duty in relation to them or in relation to other Goods in the Company's possession pursuant to arrangements with the Customer and/or the Owner is claimed or demanded from or is paid or is payable by the Company and the Customer fails to pay the same within 7 days of being notified of the liability in writing.
- 15.7 The Company shall not be liable for any alleged failure to achieve a sufficient sale price for the Goods in the event that they are sold or otherwise disposed of by the Company. Any sale or disposal of the Goods or any part thereof pursuant to Condition 15 or as otherwise permitted by law shall be at the Customer's entire risk and expense and the Company is entitled to sell or dispose of the Goods or any part thereof in such manner, by such method and at such price (if a sale is appropriate and achievable in the Company's reasonable opinion as opposed to other forms of disposal) as the Company considers appropriate.

## **16. TRANSFER OF GOODS**

- 16.1 Subject to Conditions 16.2 and 16.4 below the Company will transfer the Goods to another party ("Transferee" for the purpose of this clause) on receipt of written authorisation from the Owner or the Customer save that the Company shall be

entitled to refuse such transfer until all sums due to or claimed by the Company from the Customer have been paid.

- 16.2 The transfer of the Goods will only occur when the Company has received from the Transferee a written notification of the Transferee's acceptance of these Conditions and the Regulations (together with any revised rate of charging referred to in the note to this Condition) and any other provisions of the Contract stating that the Transferee shall be bound as if he were the original Customer.
- 16.3 The Transferee or the Owner or the Customer shall pay to the Company the reasonable costs of transferring the Goods.
- 16.4 The Owner and/or Customer guarantees payment to the Company of any charges accruing in respect of the Goods and/or Services and/or Distribution provided to the Transferee during the period of 14 days after the transfer and the Company shall be entitled to exercise and/or maintain any lien to which the Company was entitled prior to the transfer whether such lien had been exercised prior to the transfer or not.
- 16.5 Any transfer requested pursuant to Condition 16 shall constitute a removal of the Goods (or part thereof to which the requested transfer relates) under Condition 15.

(Note: Charges made to the Transferee will not necessarily be at the same rate as the charges to the original Customer).

## **17. LIEN**

- 17.1 The Company shall (on its own behalf and as agent for any assignee of its invoices) have a general and a particular lien on the Goods and any documents relating thereto for all sums (whether due or not) payable to or claimed by the Company from the Customer or the Owner on any account (whether relating to the Goods or not) or otherwise claimed in respect of the Goods or other property of the Owner.
- 17.2 When the Company accounts to the Customer for any balance remaining after payment of any sum due to the Company and the costs of sale or disposal the Company shall be discharged of any liability whatsoever in respect of the Goods.
- 17.3 Where a lien secures sums payable to or claimed by the Company it shall continue to apply in relation to those sums notwithstanding any transfer of ownership of the Goods or a change of customer.
- 17.4 Charges shall continue to accrue in respect of any Goods detained under a lien or where the Company is required to retain them by any competent authority.

17.5 The Company has the right to exercise the lien granted in accordance with Condition 17.1 by selling the Goods to recover all sums 14 days outstanding (3 days for Perishable Goods), payable to or claimed by the Company from the Customer or the Owner on any account (whether relating to the Goods or not) or otherwise claimed in respect of the Goods or other property of the Customer and/or the Owner, and such sale shall be considered a disposal in accordance with Condition 15 above, if relevant to that Condition.

17.6 If the Goods are not the property of the Customer, the Customer warrants and represents that it has the authority to grant to the Company a particular lien against the Owner and shall indemnify the Company for all claims and demands the Company may receive from the Owner.

## **18. CONSEQUENCES OF TERMINATION**

18.1 On termination of the Contract for whatever reason the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied or part supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt.

18.2 If the Contract is cancelled at any point the Customer shall pay the Company all costs and expenses which the Company has incurred prior to such cancellation.

18.3 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

18.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

## **19. TUPE AND SERVICE PROVISION CHANGE**

19.1 Where there is a TUPE In Transfer, the Customer will indemnify the Company against all liability and expense which the Company may incur in connection with:

- (a) the employment or the termination of employment before the Effective Time of any Employee;
- (b) any failure by the Transferor to comply with its legal obligations in respect of any of the Employees;

- (c) the transfer to the Company by virtue of TUPE of the employment of any person or the applicability of terms of employment, other than those previously notified in writing to, and previously accepted by, the Company;
- (d) any act or omission of the Transferor on or before the Effective Time for which the Company becomes liable by virtue of TUPE; or
- (e) the Transferor's failure to comply with its obligations under regulation 13 of TUPE.

19.2 Where there is a TUPE Out Transfer, the Customer will indemnify the Company against all liability and expense which the Company may incur in connection with:

- (a) the employment or the termination of employment after the Effective Time of any Employee;
- (b) any failure by the Transferee to comply with its legal obligations in respect of any of the Employees;
- (c) any act or omission of the Transferee on or after the Effective Time; or
- (d) the Transferor's failure to comply with its obligations under TUPE.

## **20. NOTICES**

20.1 Any notice given pursuant to the Contract or otherwise in relation to the Goods or Services and/or the Distribution shall be duly given if left at or sent by first class pre-paid 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 e-mail to the last address from which the other party corresponded; and shall if posted be deemed to have been given 2 working days after posting and if by facsimile or e-mail, one working day after sending.

## **21. FORCE MAJEURE**

21.1 The Company shall not in any event be responsible for any delay in or failure to perform the Services and/or the Distribution which is caused (wholly or in part) by factors beyond its reasonable control including but not limited to act of God, earthquake, fire, storm, flood, ice or other inclement weather, war, explosion, actual or threatened acts of terrorism, strike, acts of any government or other lawful authority, riot, civil commotion, epidemic, defaults or omissions of the Customer or the Owner (or their agents, employees or subcontractors) or trade embargo or any failure of electricity or other fuel or equipment or any reasonably unanticipated road congestion caused and/or not caused by disruptive incident.

**22. ASSIGNMENT AND OTHER DEALINGS.**

22.1 The Company may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

22.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Company.

**23. CONFIDENTIALITY**

23.1 Each party undertakes that it shall not at any time, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Condition 23.2.

23.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this Condition 23.2; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

23.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

**24. ENTIRE AGREEMENT.**

24.1 The Contract, these Conditions, the Regulations and any document in which the Company's charges or the Services are set out, quoted or agreed set out the entire agreement between the Company and the Customer in relation to the matters to which they relate and the Customer hereby acknowledges that it has not relied upon any oral or written representations made to it by the Company, any of its employees, representatives or agents and there are no agreements, understandings, promises or conditions between the parties other than as set out in these Conditions and the Regulations.

24.2 The Customer irrevocably and unconditionally waives, releases and discharges any right it may have to seek rescission or termination of the Contract or to claim damages for any misrepresentation whether or not contained in these Conditions or

for breach of any warranty not contained in these Conditions unless such misrepresentation or warranty was made fraudulently.

**25. VARIATION.**

25.1 Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**26. WAIVER.**

26.1 A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

**27. SEVERANCE.**

27.1 If any provision or part-provision of these Conditions or the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Condition 27.1 shall not affect the validity and enforceability of the rest of these Conditions or Contract.

**28. THIRD PARTY RIGHTS.**

28.1 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

28.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

**29. GOVERNING LAW.**

29.1 These Conditions and any Contract to which they apply shall be governed by and construed in accordance with English law and any claim arising out of or relating to the Contract, the Services or the Goods shall be subject to the exclusive jurisdiction of the Courts where the Company has its principal place of business.