

The Customer's attention is particularly drawn to the provisions of clause 15.

1. INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

Agreement the agreement between the Supplier and Customer for the supply of Services in accordance with these conditions and the Front Sheet;

Business Day a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;

Charges the charges payable by the Customer for the supply of the Services in accordance with clause 11;

Conditions these terms and conditions as amended from time to time in accordance with clause 27.7;

Consignee the person or company to whom the Supplier contract to deliver the Consignment to;

Consignment the consignments set out in each Order produced by the Supplier for the Customer;

Customer the person or firm who purchases Services from the Supplier;

Dangerous Goods those substances and articles the carriage of which is prohibited by the provisions of the European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR) as applied in the United Kingdom, or authorised only under the conditions prescribed in accordance therewith;

Delivery Note The Customer's written confirmation or email from the Supplier acknowledging that the Supplier completed their obligations under the Agreement;

Front Sheet annexed to the front of these terms and conditions;

Intellectual Property Rights patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or

extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

New Customer any Customer placing their first Order with the Supplier or their first Order within a 12 month period;

Order in the Customer's purchase order form, the Customer's written acceptance of a quotation by the Supplier, or Front Sheet, as the case may be;

Services the services, including the Consignment, supplied by the Supplier to the Customer as set out in the Front Sheet;

Supplier R F Bellis Haulage Limited registered in England and Wales with company number 04536183 whose registered address is Unit 4, Clywedog Road South, Wrexham Industrial Estate, Wrexham, Clwyd, LL13 9XS;

Trader the owner of the Consignment, any other person having an interest therein and anyone acting on behalf of such owner or other person, including, as the case may be, the Customer, sender and Consignee.

1.2 **Construction.** In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes faxes and e-mails.

2. BASIS OF AGREEMENT

2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Agreement shall come into existence (**Commencement Date**).

2.3 The Agreement constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Agreement.

2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Agreement or have any contractual force.

2.5 These Conditions apply to the Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.6 Any quotation or estimate given by the Supplier shall not constitute an offer, and is only valid for a period of 28 Business Days from its date of issue.

3. SUPPLY OF SERVICES

3.1 The Supplier shall supply the Services to the Customer in accordance with the Order in all material respects.

3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or

quality of the Services, and the Supplier shall notify the Customer in any such event.

- 3.4 The acceptance of Orders and supply of Services by the Supplier shall be conditional upon an initial credit risk check on the Customer by the Supplier and the Supplier reserves the right to make additional credit risk checks from time to time.
- 3.5 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 3.6 All Services provided by the Supplier within the United Kingdom, including delivery and positioning of goods to their final destination as specified by the Order, shall be subject to the Road Haulage Association Limited Conditions of Carriage 2009 (RHA Conditions) as amended (available on the Supplier's website: www.rfbellis.co.uk) and this Agreement.
- 3.7 In the event of any inconsistencies between the RHA Conditions and the Agreement, the Agreement shall take precedence.

4. DANGEROUS GOODS

Dangerous Goods must be disclosed by the Customer and if the Supplier agrees to accept them for carriage they must be classified, packed, marked, labelled and documented in accordance with the statutory regulations for the carriage by road of the substance declared.

5. PARTIES AND SUB-CONTRACTING

- 5.1 The Supplier and any other supplier employed by the Supplier may employ the services of any other supplier for the purposes of fulfilling the Agreement as a whole or in part and the name of every such carrier shall be provided to the Customer upon request.
- 5.2 The Supplier contracts for itself and as agents of and trustees for its servants and agents and all other suppliers referred in to clause 5.1 above and such other carriers' servants and agents and every reference in these Conditions to "the Supplier" shall be deemed to include every other such supplier, servant and agent with the intention that they shall have

the benefit of the Agreement and collectively and together with the Supplier be under no greater liability to the Customer or any other party than is the Supplier hereunder.

- 5.3 Notwithstanding clause 5.2, the carriage of any Consignment is arranged by the Supplier as agent of the Customer and shall be subject to the Conditions of the other supplier contracted to carry the Consignment. The Supplier shall be under no liability whatsoever to whomsoever and howsoever arising in respect of such carriage. Provided that where the Consignment are carried partly by road and partly by such other means of transport any loss, damage or delay shall be deemed to have occurred while the Consignment were being carried by road unless the contrary is proved by the Supplier.

6. LOADING AND UNLOADING

- 6.1 Unless the Supplier has agreed in writing to the contrary with the Customer:
- (a) The Supplier shall not be under any obligations to provide any plant, power or labour, other than that carried by the vehicle, required for loading or unloading the Consignment.
- (b) The Customer warrants that any plant, power or labour required for loading or unloading the Consignment which is not carried by the vehicle will be provided by the Customer or on the Customer's behalf.
- (c) The Supplier shall be under no liability whatsoever to the Customer to any damage whatsoever, howsoever caused. If the Supplier is instructed to load or unload any Consignment requiring plant, power or labour which, in breach of the warranty in 6.1(b) above, has not been provided by the Customer or on the Customer's behalf.
- (d) The Supplier shall not be required to provide service beyond the place of collection or deliver but if any such service is given by the Supplier it shall be at the sole risk of the Customer.
- 6.2 The Customer shall indemnify the Supplier against all claims

and demands whatsoever which could not have been made if such instructions as are referred to in 6.1(c) and such service as is referred to in 6.1(d) had not been given.

7. DELIVERY NOTE

- 7.1 The Customer or Consignee or Trader shall sign a Delivery Note prepared by the Supplier acknowledging receipt of the Consignment and full performance of the Agreement upon delivery of the Consignment.
- 7.2 In the event that a Delivery Note is not signed by the Customer or Supplier or any persons nominated by them, there will be deemed delivery of the Consignment. The Supplier shall email the Customer or any persons nominated by them confirming deemed delivery within 48 hours of delivery of the Consignment.
- 7.3 The Supplier shall, if so required, sign documents or electronic records prepared by the sender acknowledging the receipt of the Consignment but the burden of proving the conditions of the Consignment and its nature, quantity or weights at the time of collection shall rest with the Customer.

8. TRANSIT

- 8.1 Transit shall commence when the Supplier takes possession of the Consignment whether at the point of collection or at the Supplier's premises.
- 8.2 Transit shall (unless otherwise previously determined) end when the Consignment are tendered at the usual place of delivery at the Consignee's address within the customary cartage hours of the district: provided that:
- (a) if no safe and adequate access or no adequate unloading facilities there exist then transit shall be deemed to end at the expiry of one clear day after notice in writing (or by telephone if so previously agreed in writing) of the arrival of the Consignment at the Supplier's premises has been sent to the Consignee; and
- (b) when for any other reason whatsoever the Consignment cannot be delivered or when the Consignment are held by the Supplier 'to await order' or 'to be kept till called for' or

upon any like instructions and such instructions are not given or the Consignment are not called for and removed within a reasonable time, then transit shall also be deemed to end.

8.3 The Supplier shall not in any circumstances be liable for loss or damage arising after transit is deemed to have ended in accordance with clause 8.2.

9. UNDELIVERED OR UNCLAIMED CONSIGNMENT

9.1 Where the Supplier is unable for any reason to deliver the Consignment to the Consignee or as he may order, or where by virtue of the proviso to clause 8.2 hereof transit is deemed to be at an end, the Supplier may:

(a) store the Consignment at their premises and may at their discretion charge the Customer for storage;

(b) arrange re-delivery of the Consignment with the Customer at an additional charge to be arranged jointly between the Customer and Supplier; or

(c) sell the Consignment and payment of tender of the proceeds after deduction of all proper charges and expenses in relation hereto and of all outstanding charges in relation to the carriage and storage of the Consignment shall (without prejudice to any claim or right which the Customer may have against the Supplier otherwise arising under these Conditions) discharge the Supplier from all liability in respect of such Consignment, its carriage and consignments provided that:

(i) the Supplier shall do what is reasonable to obtain the value of the Consignment; and

(ii) the power of sale shall not be exercised where the name and address of the sender or of the Consignee is known unless the Supplier shall have done what is reasonable in the circumstances to give notice to the sender or, if the name and address of the sender is not known, to the Consignee that the Consignment will be sold unless within the time specified in such notice, being a reasonable time in the circumstances from the time from the giving of such notice,

the Consignment are taken away or instructions are given for their disposal.

10. CUSTOMER'S OBLIGATIONS

10.1 The Customer shall:

(a) ensure that the terms of the Order and any information it provides in the Front Sheet are complete and accurate;

(b) ensure that the Consignment is adequately insured with a reputable insurance company and shall on the Supplier's request produce both the insurance certificate giving details of cover and the receipt for the current year's premium;

(c) co-operate with the Supplier in all matters relating to the Services;

(d) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier;

(e) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;

(f) warrant that he is either the owner of the Consignment or is authorised by such owner to accept these Conditions on such owner's behalf;

(g) prepare the Customer's premises for the supply of the Services;

(h) ensure that the Consignment is:

(i) adequately packaged,

(ii) suitable for transit;

(iii) in compliance with all relevant health and safety legislation; and

(iv) in accordance with any instructions provided by the Supplier;

(i) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start; and

(j) keep and maintain all materials, equipment, documents and other property

of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.

10.2 If the Supplier's performance of any of its obligations under the Agreement is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

(a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

(b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 10.2; and

(c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

11. CHARGES AND PAYMENT

11.1 The Charges for the Services shall be as per the Front Sheet.

11.2 The Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, demurrage, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials. Demurrage is charged in line with our

demurrage policy which is available upon request.

11.3 The Supplier reserves the right to increase its standard fee rates, provided that such charges cannot be increased more than once in any 12 month period. The Supplier will give the Customer written notice of any such increase 1 months before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify the Supplier in writing within 2 weeks of the date of the Supplier's notice and the Supplier shall have the right without limiting its other rights or remedies to terminate the Agreement by giving 2 weeks' written notice to the Customer.

11.4 The Customer shall pay each invoice submitted by the Supplier:

- (a) within 30 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Agreement (**Credit Terms**).

11.5 The Credit Terms may be altered or amended by a current director of the Supplier only and requires written confirmation signed by both the Customer and the Supplier. Otherwise the Credit Terms set out in clause 11.4 shall be the default position.

11.6 Charges shall be payable when due without reduction or deferment on account of any claim, counterclaim or set-off. If the Customer becomes insolvent or any sums owed by the Customer on any invoice or account with the Supplier becomes overdue for payment, any Credit Terms shall be cancelled with immediate effect and all invoices or accounts issued by the Supplier shall immediately be deemed due for payment and thereupon becomes payable. The Late Payment of Commercial Debts (Interest) Act 1998, as amended, shall apply to all sums due from the Customer.

11.7 All amounts payable by the Customer under the Agreement are exclusive of amounts in respect of value

added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Agreement by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

11.8 If the Customer fails to make any payment due to the Supplier under the Agreement by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per cent per annum above Barclays Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

11.9 The Customer shall pay all amounts due under the Agreement in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

12. NEW CUSTOMERS

12.1 The Credit Terms shall not apply to the first Order placed with the Supplier by any New Customer. The New Customer shall pay the Charges for its first Order 1 day prior to the Commencement Date.

12.2 The New Customer shall, at the Supplier's sole discretion, be invoiced in accordance with clause 11.4 subject to a credit risk check on the Customer by the Supplier to the Supplier's satisfaction (**Credit Check**).

13. INTELLECTUAL PROPERTY RIGHTS

13.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.

13.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.

13.3 All Supplier Materials are the exclusive property of the Supplier.

14. CONFIDENTIALITY

A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Agreement, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Agreement. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 14 shall survive termination of the Agreement.

15. LIABILITY FOR LOSS AND DAMAGE

Subject to this Agreement, the Supplier shall be liable for physical loss, mis-delivery of or damage to living creatures, bullion, money, securities, stamps, precious metals or precious stones comprising the Consignment only if:

15.1 the Supplier has specifically agreed in writing to carry any such items;

15.2 the Customer has agreed in writing to reimburse the Supplier in respect of all additional costs which result from the carriage of the said items; and

15.3 the loss, mis-delivery or damage is occasioned during transit and is proved to be due to the negligence of the Supplier, its servants, agents or sub-contractors.

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

16.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

16.2 Subject to clause 16.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement for loss of use of corruption of software, data or information.

16.3 Subject to clauses 16.1 and 16.2, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall be limited to the lesser of:

- (a) the value of the goods actually lost or damaged; or
- (b) the cost of repairing any damage or of reconditioning the goods; or
- (c) a sum calculated at the rate of £1,300 Sterling per tonne on the gross weight of the goods actually lost, or damaged;

and the value of the goods actually lost or damaged shall be taken to be their invoice value if they have been sold and shall otherwise be taken to be the replacement cost thereof to the owner at the

commencement of transit provided that:

- (i) in the case of loss, mis-delivery of or damage to a part of the Consignment the weight to be taken into consideration in determining the amount to which the Supplier's liability is limited shall be only the gross weight of that part regardless of whether the loss, mis-delivery or damage affects the value of other parts of the Consignment;
- (ii) nothing in this clause shall limit the liability of the Supplier to less than the sum of £10.00;
- (iii) the Supplier shall be entitled to proof of the weight and value of the whole of the Consignment and of any part thereof lost, mis-delivered or damaged and
- (iv) the Customer shall be entitled to give to the Supplier notice in writing to be delivered at least seven days prior to commencement of transit requiring that the £1,300 per tonne limit in clause 1(c) be increased, but not so as to exceed the value of the Consignment, and in the event of such notice being given the Customer shall be required to agree with the Supplier an increase in the carriage charges in consideration of the increased limit, but if no such agreement can be reached the aforementioned £1,300 per tonne shall continue to apply.

16.4 The liability of the Supplier in respect of claims for any other loss whatsoever (including indirect or consequential loss or damage or loss of market), and howsoever arising in connection with the Consignment, shall not exceed the amount of the Charges in respect of the Consignment or the amount of the claimant's proved loss, whichever is the lesser; unless:

- (a) at the time of entering into the Agreement with the Supplier, the Customer declares to the Supplier a special interest in delivery in the event of physical loss, mis-delivery or damage or of an agreed time limit being exceeded and agrees to pay a surcharge calculated on the amount of that interest; and

- (b) at least seven days prior to the commencement of transit the Customer has delivered to the Supplier confirmation in writing of the special interest, agreed time limit and amount of the interest.

16.5 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement.

16.6 This clause 16 shall survive termination of the Agreement.

17. INDEMNITY TO THE CARRIER

The Customer shall indemnify the Supplier against:

- (a) all liabilities and costs incurred by the Supplier (including but not limited to claims, demands, proceedings, fines, penalties, damages, expenses and loss of or damages to the carrying vehicle and to other goods carried) by reason of any error, omission, mis-statement or misrepresentations by the Customer or other owner of the Consignment or by any servant or agent of either of them, insufficient or improper packing, labelling or addressing of the Consignment or fraud as in clause 24.
- (b) all claims and demands whatsoever (including for the avoidance of doubt claims alleging negligence), by whomsoever made and howsoever arising (including but not limited to claims caused by or arising out of the carriage of Dangerous Goods and claims made upon the carrier by H.M Revenue and Customs in respect of dutiable goods consigned in bond) in excess of the liability of the Supplier under these Conditions in respect of any loss or damage whatsoever to, or in connection with, the Consignment whether or not caused or contributed to directly or indirectly by any act, omission, neglect, default or other wrongdoing on the part of the Supplier, its servants, agents or sub-contractors.

18. TIME LIMITS FOR CLAIMS

18.1 The Supplier shall not be liable for:

- (a) damage to the whole or any part of the Consignment, or physical loss, mis-delivery or

non-delivery of part of the Consignment unless advised thereof in writing within 7 days, and the claim is made in writing within 14 days, after the termination of transit;

- (b) any other loss unless advised thereof in writing within 28 days, and the claim is made within 42 days, after the commencement of transit.

Provided that if the Customer proved that:

- (i) it was not reasonably possible for the Customer to advise the Supplier or make a claim in writing within the time limit applicable;
- (ii) the damage is occasioned during transit and due to the negligence or actions of the Supplier; and
- (iii) such advice or claim was given or made within a reasonable time

the Supplier shall not have the benefit of the exclusion of liability afforded by this clause.

18.2 The Supplier shall in any event be discharged from all liability whatsoever and howsoever arising in respect of the Consignment unless suit is brought and notice in writing thereof given to the Supplier within one year of the date when transit commenced.

18.3 In the computation of time where any period provided by this clause is 7 days or less, Saturdays, Sundays and all statutory public holidays shall be excluded.

19. LIEN

19.1 The Supplier shall have:

- (a) a particular lien of the Consignment, and
- (b) a general lien against the Trader for sums unpaid on any invoice, account or Agreement whatsoever.

If such lien, whether particular or general, is not satisfied within a reasonable time, the Supplier may sell the Consignment, or part thereof, as agent for the owner and apply the proceeds towards any sums unpaid and the expenses of the retention, insurance and sale of the Consignment and shall, upon accounting to the Customer

for any balance remaining, be discharged from all liability whatsoever in respect of the Consignment.

19.2 The Supplier may exercise its lien on its own behalf or as agent for any assignee of its invoices at any time and at any place at its sole discretion whether or not sums have become payable in accordance with clause 11.6 hereof and whether or not the contractual carriage has been completed and these conditions shall continue to apply during the period of exercise of such lien.

20. UNREASONABLE DETENTION

The Customer shall be liable to pay demurrage for unreasonable detention of any vehicle, trailer, container or other equipment at the Supplier's current rates of demurrage but the rights of the Supplier against any other person in respect thereof shall remain unaffected.

21. CHANGES TO ORDER OR TERMS

21.1 The Supplier may revise the terms of this Agreement (**Terms**) from time to time in the following circumstances:

- (a) changes in relevant law and regulatory requirements;
- (b) the Order or Front Sheet is amended by the Customer; or
- (c) the Customer has requested an increase in manpower or cost increment by the Supplier.

21.2 If the Supplier revises the Terms under clause 21.1, the Supplier shall provide the Customer with at least 1 months' written notice of any changes to these Terms before they take effect.

21.3 The Supplier has quoted or estimated the Services based on the information provided by the recipient of the quotation or estimate only. If any of the information, Consignment or Order changes, the Supplier reserves the right to provide a new quotation or decline the Order accordingly.

21.4 The Customer may make a change to the Order for Services within five calendar days of placing an Order by contacting the Supplier. Where this means a change in the total price of the Services,

the Supplier will notify the Customer of the amended price in writing.

22. CANCELLATION

22.1 The Customer has the following rights to cancel an Order for Services:

- (a) the Customer may cancel any order at any time before the Commencement Date by contacting the Supplier. The Supplier will confirm the cancellation in writing to the Customer;
- (b) if the Order is cancelled prior to 4.00pm on the day before the Commencement Date, the Customer shall pay 50 per cent of the Charges; or
- (c) if the Order is cancelled after 4.00pm on the day before the Commencement Date or the Commencement Date itself, the Customer shall pay the entirety of the Charges.

22.2 The Supplier has the rights to cancel an Order for Services immediately if the Customer is subject of a Credit Check in accordance with clause 12.2 which is determined by the Supplier to be insufficient.

23. TERMINATION

23.1 Without limiting its other rights or remedies, the Supplier may terminate the Agreement with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Agreement on the due date for payment and fails to pay all outstanding amounts within 14 days after being notified in writing to do so.

23.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Services under the Agreement or any other contract between the Customer and the Supplier if:

- (a) the Customer commits a material breach of any term of the Agreement and (if such a breach is remediable) fails to remedy that breach within 14 days of the Customer being notified in writing to do so;
- (b) the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts with the

meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or

- (c) the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Agreement on the due date for payment.

23.3 On termination of the Agreement for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier Materials and any Consignment which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Agreement;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication survive termination shall continue in full force and effect.

24. FRAUD

The Supplier shall not in any circumstances be liable in respect of the Consignment where there has been fraud on the part of the Customer or the owner, or the servants or agents of either, in respect of the Consignment, unless the

fraud has been contributed to by the complicity of the Supplier or of any servant of the Supplier acting in the course of his employment.

25. FORCE MAJEURE

25.1 For the purposes of this Agreement, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

25.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Agreement as a result of a Force Majeure Event.

25.3 If the Force Majeure Event prevents the Supplier from providing any of the Services for more than 2 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Agreement immediately by giving written notice to the Customer.

26. INSURANCE

26.1 The Supplier has and shall maintain professional and public indemnity insurances with a reputable insurance company of not less than £5,000,000 each provided that such insurance remains available at commercially reasonable rates.

26.2 The Supplier shall notify the Customer without delay should it be unable for any reason to maintain such insurance so that the parties may discuss means of best protecting their respective positions in the absence of such insurance.

27. GENERAL

27.1 **Assignment and other dealings.**

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the

Agreement and may subcontract or delegate in any manner any or all of its obligations under the Agreement to any third party or agent.

- (b) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Agreement.

27.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Agreement shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.

- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 27.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.

- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

27.3 Severance.

- (a) If any provision or part-provision of the Agreement 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 clause shall not affect the validity and

enforceability of the rest of the Agreement.

- (b) If one party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

27.4 Waiver. A waiver of any right under the Agreement or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

27.5 No partnership or agency. Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

27.6 Third parties. A person who is not a party to the Agreement shall not have any rights to enforce its terms.

27.7 Variation. Except as set out in these Conditions, no variation of the Agreement, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Supplier.

27.8 Governing law. This Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

27.9 Jurisdiction. Each party irrevocably agrees that the