

Security Air Express Limited & SAE Logistics Limited Terms and conditions of service

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these term and conditions (**Conditions**).

CMR: The Convention for the International Carriage of Goods by Road signed at Geneva on 19 May 1956.

Consignment: a consignment of the Goods identified in the Customer's order pursuant to Condition 2.2.

Contract: the contract between the Customer and the Supplier for the Services, which incorporates the Quotation or Rate Card (as the case may be) issued by the Supplier together with the Conditions and any relevant trading conditions as set out in clause 2 (as updated from time to time), and such items form a separate Contract between the parties in relation to each of the Customer's orders for the Services as are accepted by the Supplier in accordance with condition 2.2.

Customer: the person, firm or company who purchases Services from the Supplier (including in the case of transportation Services, any other carrier who gives a Consignment to the Supplier for carriage).

Customer's Equipment: any equipment, systems, or facilities provided by the Customer and used directly or indirectly in the supply of the Services.

Dangerous Goods: means:

(i) 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;

(ii) any weapons, drugs, poison, damaging articles or substance or any article or substance likely to encourage vermin or other pests or likely to cause infection;

(iii) any Goods which, although not included in (i) and (ii) above, in the sole opinion of the Supplier present a similar hazard (including but not limited to: chemicals, any substance which is hazardous, corrosive or inflammable, oil-based paints, thinners, white spirit, fuels (including but not limited to gas cylinders, petrol, diesel, or oil except for fuel inside locked fuel tanks on vehicles, machines, plant or machinery), and explosives (including but not limited to firearms, bullets or other ammunition, cartridges and detonators)).

Document: includes, without limitation, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

Goods: means goods, whether a single item or in bulk, or contained in one parcel, package or container as the case may be, or any number of separate items, parcels, packages or containers sent at one time in one load by or from the Customer from one address to another address (in the case of transportation Services) or stored by the Supplier (in the case of storage Services) in accordance with the Contract.

"in writing": includes, unless otherwise agreed, the transmission of information by electronic, optical or similar means of communication, including, but not limited to, facsimile, electronic mail or electronic data interchange (EDI), provided the information is readily accessible so as to be usable for subsequent reference.

Losses: any losses, claims, judgments, costs (including costs of enforcement and reasonable and properly incurred legal costs), damages, awards, charges, demands, customs duties taxes, proceedings, penalties, fines, expenses and/or any other liabilities incurred or sustained (including, in the case of the Supplier, loss of or any detrimental variation to its Goods Vehicle Operators Licence).

Quotation: the Quotation issued by the Supplier and referencing these Conditions which forms part of the Contract.

Rate Card: the Rate Card issued by the Supplier and referencing these Conditions which form part of the Contract.

Services: the services to be provided by the Supplier under the Contract as set out in the Quotation or the Rate Card (as the case may be), together with any other services which the Supplier provides, or agrees to provide, to the Customer.

Supplier: shall mean the entity which is providing the services, being either:

(a) Security Air Express Limited, a limited company registered in England and Wales with company number 2788444, whose registered office is at Coppermill Court, Coppermill Lane, West Hyde, Rickmansworth, Hertfordshire, WD3 9XS (trading under "SAE Logistics"); or

(b) SAE Logistics Limited, a limited company registered in England and Wales with company number 06797371 whose registered office is Coppermill Court, Coppermill Lane, West Hyde, Rickmansworth, Hertfordshire, WD3 9XS

Supplier's Equipment: any equipment, including tools, systems, or facilities, provided by the Supplier or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Customer.

Transport Unit: means, in the case of transportation Services, any device used for the carriage, transportation or storage of the Goods.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

1.2 Headings in these Conditions shall not affect their interpretation.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.5 Any obligation in these Conditions on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.

2. APPLICATION OF CONDITIONS

2.1 These Conditions (as may be relevant to the type of Services supplied by the Supplier to the Customer) apply to the Contract 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.

2.2 The Customer's order for the Services (or any of them) specified in the Quotation or Rate Card (as the case may be) constitutes an offer by the Customer to purchase the Services specified in it on these Conditions. No offer placed by the Customer shall be accepted by the Supplier other than:

(a) by a written acknowledgement issued and executed by the Supplier; or

(b) (if earlier) by the Supplier starting to provide the Services,

when a contract for the supply and purchase of the Services on these Conditions will be established.

2.3 Where the Quotation or the Rate Card (as the case may be) specify one or more of the Services referred to in conditions 2.3(a) to 2.3(c) inclusive, the trading conditions referred to in the relevant condition below shall apply to those Services in addition to these Conditions, and shall be incorporated in the Contract:

(a) International Distribution of the Customer's goods by road, rail, air or sea: The British International Freight Association Standard Trading Conditions 2005A Edition (England and Wales) (**BIFA Conditions**) (under which the Supplier shall be deemed to be the Company, as

defined in such conditions));

(b) Distribution of the Customer's goods by road within the United Kingdom: The Road Haulage Association Conditions of Carriage 2009;

(c) Warehousing services: The Road Haulage Association Conditions of Storage 2009 (under which the Supplier shall be deemed to be the Contractor, as defined in such conditions); in each case, as amended or updated from time to time and where there is any inconsistency between these Conditions and the conditions set out in this clause 2.3 then the terms of these Conditions will prevail.

2.4 If any International Convention (including CMR) applies to the Services supplied and such Convention does not contain any provisions relating to an aspect of the Contract or an issue between the Supplier and the Customer, then, insofar as any of these Conditions do not derogate from such Convention, these Conditions shall apply to that aspect or issue.

2.5 The Contract is also governed by any legislation compulsorily applicable and where there is any inconsistency between these Conditions and any applicable legislation, the terms of such legislation will prevail.

2.6 The Customer hereby acknowledges that, prior to the Contract being entered into, it has read a copy of the relevant trading conditions referred to in condition 2.3 (as can be located on the Supplier's website at <http://saelogistics.com/terms-and-conditions>) and the Customer hereby confirms acceptance of them.

2.7 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the catalogues or brochures of the Supplier, 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 Contract or have any contractual force.

2.8 Any quotation or rate card given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

3. COMMENCEMENT AND DURATION

3.1 The Services supplied under the Contract shall be provided by the Supplier to the Customer from the date of the Supplier's acceptance of the Customer's offer to purchase the Services, in accordance with condition 2.2.

3.2 Subject to condition 11, the Services supplied under the Contract shall continue to be supplied until the Contract is terminated by one of the parties giving to the other not less than one month's notice at any time.

4. SUPPLIER'S OBLIGATIONS

4.1 The Supplier shall use reasonable endeavours to provide the Services, in accordance, in all material respects, with the Quotation or the Rate Card (as the case may be).

4.2 The Supplier shall use reasonable endeavours to meet any performance dates specified in the Quotation or the Rate Card (as the case may be) or otherwise agreed, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

4.3 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

5. CUSTOMER'S OBLIGATIONS

5.1 The Customer shall:

(a) ensure that the details set out in the Quotation or Rate Card (as the case may be) are complete and accurate;

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

(c) provide the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with access to the Customer's premises, and other facilities as reasonably required by the Supplier;

(d) identify to the Supplier in writing the precise nature and value of the Goods;

(e) provide to the Supplier, in a timely manner, such information as the Supplier may reasonably require in relation to the Services and ensure that it is accurate in all material respects;

(f) be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services, including identifying, monitoring, removing and disposing of any hazardous materials from any of its premises in accordance with all applicable laws, before and during the supply of the Services at those premises, and informing the Supplier of all of the Customer's obligations and actions under this condition 5.1(f);

(g) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises;

(h) ensure that all Customer's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant United Kingdom standards or requirements;

(i) warrant that none of the Customer's Goods which are handled, stored, distributed, transported or otherwise dealt with by the Supplier in the course of providing the Services include goods which the Customer does not own, illegal substances, pornography, live animals, stolen goods, bullion, antiques, cashiers or travellers cheques, securities, currency, stamps, photographs, deeds, documents of title to property, valuables, jewellery, firearms, money orders, cigarettes, precious stones or metals, antiques, works of art, watches, furs, human remains, fuel, waste of any type, spirits, brittle/fragile/breakable articles, plains, produce, negotiable instruments in bearer form or any other item which the Supplier considers to present a hazard. The Supplier reserves the right without liability to the Customer to refuse to handle, store, transport or otherwise deal in any way with any goods which the Customer does not own, or with any of the prohibited items referred to in this condition 5.1(i) and the Supplier shall have no liability whatsoever for or in connection with the goods, howsoever arising;

(j) obtain and maintain all necessary licences, permissions and consents and comply with all relevant legislation in relation to the Services, the Supplier's Equipment and the use of the Customer's Equipment in relation to the Supplier's Equipment in all cases before the date on which the Services are to start;

(k) obtain and maintain at its own cost appropriate insurance cover and security arrangements in respect of any of the Customer's goods which are handled, stored, distributed, transported or otherwise dealt with by the Supplier in the course of providing the Services;

(l) ensure that any such goods are adequately packaged and protected so as to enable the Supplier to perform the Services and the Customer warrants that the packaging of any Consignment is sufficient to withstand the ordinary rigours of transit;

(m) notify the Supplier of the correct weight and volume of the Goods so that the correct number of operatives is booked;

(n) before the Supplier assumes any responsibility for or by reference to the Goods, inform the Supplier in writing of any relevant matters; including any special precautions necessitated by the nature, weight or conditions of the Goods and any statutory or other duties specific to the Goods with which the Supplier or others may need to comply; and will promptly after invoicing pay the Supplier's reasonable extra charges for complying;

(o) where the Services include alarm and/or keyholder services, ensure that adequate arrangements are in place to preserve the security of any keys and the confidentiality of any alarm codes, including without limitation ensuring that no copies are made of any keys, and that alarm codes are not divulged to any third parties. The Customer shall comply with any instructions or policies in relation to security or access issued by the Supplier from time to time;

(p) where the Services include storage Services, remove any of the Customer's property from the Supplier's premises within seven days of receipt of notice from the Supplier requesting it to do so, and leave the Supplier's premises in a clean, tidy and undamaged condition following such removal;

(q) not cause any damage to any materials, equipment, documents and other property of the Supplier (Supplier Property) and not dispose of or use the Supplier Property other than in accordance with the written instructions or authorisation of the Supplier; or

(r) ensure that, at the time of loading (where the Services involve transportation) or depositing

- (where the Services involve storage) of the Goods, any characteristics of the Goods (for example, temperature) or other matters of which the Supplier needs to be aware when planning and directing the delivery or storage of the Goods, are brought to the appropriate attention of the Supplier and, to the extent that the Supplier has the necessary resources and facilities to do so, the Supplier shall transport or store the Goods (as applicable) in an appropriate manner taking into account such characteristics or other matters subject to the Customer agreeing to pay the Supplier's reasonable extra charges of doing so;
- (s) ensure that the Goods shall be presented to the Supplier securely and properly packed in compliance with all applicable laws and shall, when presented, be in a condition to be safely handled, stored and/or carried and so as not to cause injury, damage, contamination or deterioration (or the possibility of them) to any person, premises, equipment or to any other items in any way; and
- (t) unless otherwise previously agreed the Customer will provide suitable facilities and equipment for, and will procure, safe and prompt loading and unloading of the Goods. The Supplier in respect of any loss, damage or liability resulting from such operations;
- 5.2 In relation to the loading and unloading of Goods:
- (a) the Supplier accepts no responsibility for the loading to and unloading of Goods from a Transport Unit at the place of collection and the place of delivery respectively, and no liability shall attach to the Supplier in respect of any loss or damage to the Goods during such operations;
- (b) the Customer shall at all times remain liable for the actions or omissions of its employees, servants or agents who are engaged in loading and unloading operations and will indemnify the Supplier in respect of any loss, damage or liability resulting from such operations;
- (c) the Customer warrants that any plant, power or labour required for loading or unloading the Goods shall be provided by the Customer or on the Customer's behalf;
- (d) for the avoidance of doubt, if the Supplier is instructed to load or unload the Goods, the Customer shall remain liable for any breach of any regulations and shall indemnify the Supplier in accordance with condition 5.2(g) below;
- (e) the Supplier shall not be required to provide service beyond the usual place of collection or delivery but if any such service is given by the Supplier it shall be at the sole risk of the Customer;
- (f) where the Supplier supplies to and leaves with the Customer a Transport Unit for the Customer to load the Customer will indemnify the Supplier in respect of any loss or damage sustained to or caused by the Transport Unit prior to collection of the Transport Unit by the Supplier from the Customer;
- (g) 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 Conditions 5.2(d) and such service as is referred to in of this Condition 5.2(e) had not been given.
- 5.3 Dangerous Goods must be disclosed by the Customer and if the Supplier in its absolute discretion, agrees to deal with such Dangerous Goods then:
- (a) such Dangerous Goods must be properly and safely packed, marked, labelled and documented in accordance with any legislation for the time being in force for the storage and carriage (as applicable) of such articles or substances and the Customer shall, whilst the Dangerous Goods remain with the Supplier, keep the Supplier informed of any statutory modification or re-enactment thereof or any rules or regulations made thereunder or rules or recommendations made by any relevant authority concerning the storage, handling or transportation (as applicable) thereof;
- (b) prior to receipt of the Dangerous Goods the Customer shall provide the Supplier with such information in writing as will enable the Supplier to know the identity of the Dangerous Goods, the nature of the hazards created thereby, and any action to be taken in an emergency. While the Dangerous Goods remain with the Supplier, the Customer shall keep the Supplier informed of its recommendations on the handling, storage and transportation of such Goods (including all health and safety recommendations). The Supplier shall be entitled to disclose the information supplied by the Customer to its servants, agents and other contractors and any relevant government department;
- (c) if such goods become a risk to other goods, property, life or health the Supplier shall, where reasonably practicable contact the Customer in order to require him to remove or otherwise deal with the goods, but reserves the right, in any event, to do so at the expense of the Customer; and
- (d) the applicable provisions of these Conditions will apply.
- 5.4 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees or failure by the Customer to perform any relevant obligation (Customer Default), the Supplier shall not be liable for any Losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.
- 5.5 The Supplier shall not be liable for any Losses sustained or incurred by the Customer arising directly or indirectly from:
- (a) rejected Goods in circumstances where the reason for such rejection is attributable to the Customer (including without limitation, where the Goods are at an incorrect temperature or have quality issues at the time they are loaded on to the Supplier's vehicle (in the case of transportation services), or deposited at the Supplier's premises (in the case of storage services); or
- (b) the nature of the Goods (including, but not limited to, temperature sensitive goods or inherent liability to natural deterioration or wastage and/or inherent defect) unless the Customer has, upon placing its order, given the Supplier written instructions with sufficient detail regarding any particular precautions or special treatment to be taken or provided for the Goods; or
- (c) carriage, storage or handling of Goods which are prohibited under these Conditions which are unknowingly and unwittingly carried, stored or handled by the Supplier by reason of a failure of the Customer to comply with the obligations set out in Condition 5.1(d)
- 5.6 The Customer shall be liable to pay to the Supplier, on demand, all Losses sustained or incurred by the Supplier (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence or Customer Default or arising from the Supplier carrying out the Customer's instructions, subject to the Supplier confirming such costs, charges and losses to the Customer in writing.
- 5.7 The Customer shall indemnify the Carrier against:-
- (a) all Losses incurred by the Supplier (including but not limited to loss of or damage to the carrying vehicle and to other goods carried) by reason of any error, omission, mis-statement or misrepresentation by the Customer or other owner of the Goods or by any servant or agent of either of them, insufficient or improper packing, labelling or addressing of the Goods; and
- (b) all Losses incurred by the Supplier or any claims or 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 or storage of Dangerous Goods (whether such goods were declared to the Supplier or not) and claims made upon the Supplier by H.M. Revenue and Customs in respect of dutiable goods consigned in bond) in respect of any loss or damage whatsoever to, or in connection with, or seizure or forfeiture of, the Goods 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 and/or as a result of the Supplier following any instructions given by the Customer in relation to Dangerous Goods or any other matter relating to this Contract.
- 5.8 If the performance by the Supplier of any of its obligations under the Contract is prevented or delayed by any Customer Default then 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 performance of the Supplier of any of its obligations.
- 5.9 Where the Supplier is unable to make delivery of all or part of a Consignment as requested by the Customer the Supplier shall take all reasonable steps to notify the Customer of non-delivery and seek the Customer's further instructions. Pending such instructions, the Supplier shall hold the Consignment (or the non-delivered part) at the sole risk and expense of the Customer and, where the BIFA Conditions apply to the Services, the provisions of clause 10 of the BIFA Conditions shall apply
- 5.10 The Customer shall not, without the prior written consent of the Supplier, at any time from the date of the Contract to the expiry of three months after the termination of the Contract, solicit or entice away from the Supplier or employ (or attempt to employ) any person who is, or has been, engaged as an employee or subcontractor of the Supplier in the provision of the Services.
- 5.11 Any consent given by the Supplier in accordance with condition 5.10 shall be subject to the Customer paying to the Supplier a sum equivalent to 15% of the then current annual remuneration of the Supplier's employee or subcontractor or, if higher, 15% of the annual remuneration to be paid by the Customer to that employee or subcontractor.
- 6. CHARGES AND PAYMENT**
- 6.1 The Supplier's charges for the Services undertaken shall be payable by the Customer without prejudice to the Supplier's rights against any owner of the Goods.
- 6.2 In consideration of the provision of the Services by the Supplier, the Customer shall pay the charges as set out in the Quotation or the Rate Card (as the case may be). Where the Supplier accepts a request from the Customer to provide the Services without a price having been quoted or agreed prior to performance of the Services, the Customer shall pay such price as the Supplier shall reasonably specify after performance of the Services, taking into account the Supplier's costs and expenses incurred in providing the Services, the Supplier's profit, and the urgency of the Customer's requirement.
- 6.3 The price for the Services set out in the Quotation or the Rate Card (as the case may be) or as otherwise determined in accordance with condition 6.2 shall be paid to the Supplier (without deduction or set-off) on the date set out in the Quotation or, if there is no such date specified in the Quotation or there is no Quotation, then, unless otherwise agreed between the Supplier and the Customer, within 30 days of the date of invoice to a bank account nominated in writing by the Supplier. The Supplier shall invoice the Customer for the price payable, together with VAT at the appropriate rate, at the end of the week or month in which the Services are provided, as notified from time to time.
- 6.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of VAT. Where any taxable supply for VAT purposes is made under the Contract 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.
- 6.5 The parties agree that the Supplier may review and increase the charges set out in the Quotation or the Rate Card in relation to Services not yet performed by the Supplier. The Supplier will give the Customer written notice of any such increase 30 days before the proposed date of the increase. If such increase is not acceptable to the Customer, it may, within 7 days of such notice being received or deemed to have been received in accordance with condition 20, terminate the Contract by giving 21 days written notice to the Supplier.
- 6.6 The parties agree that the Supplier may add a fuel surcharge to the charges set out in the Quotation or the Rate Card. In the event of a change in fuel prices, the Supplier may add or modify a surcharge by an amount it may reasonably consider to reflect the consequential increase in its direct operating costs. The current surcharge rates are published on the Supplier's website at <http://saelogistics.com/surcharge> and the Customer acknowledges and agrees that it is the Customer's responsibility to check such surcharges prior to ordering any Services.
- 6.7 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, 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.
- 6.8 In the event that the Supplier incurs increases in operating costs as a result of expenses incurred during transit, including as a result of:
- (a) legislation that may be in place in a particular country through which transit or collection/ delivery takes place, or changes or revisions to legislation in such countries; or
- (b) the introduction or variation of taxes that affect the transit;
- the Supplier will be entitled to invite the Customer to agree new rates. If an agreement on new rates cannot be reached within 14 days of an invitation in writing to agree new rates, the Supplier will be entitled to terminate the Contract with the Customer immediately.
- 6.9 The Customer shall be liable to pay demurrage for unreasonable detention of any vehicle or other equipment of the Supplier at the Supplier's current rates of demurrage but the rights of the Supplier against any other person on respect thereof shall remain unaffected.
- 6.10 The Supplier reserves the right to recover from the Customer on a full indemnity basis any Losses incurred by it in the event of an abortive or diverted load.
- 6.11 Any queries in respect of invoices should be brought to the Supplier's attention within seven (7) days of the date of the invoice. Where any dispute arises as to the contents of any invoice, the parties shall enter into good faith discussions to resolve such dispute but, for the avoidance of doubt, the Customer shall not be relieved of its obligation to pay the disputed invoice in full and on time.
- 6.12 Without prejudice to any other right or remedy that it may have, if the Customer becomes insolvent or fails to pay the Supplier any amount due under this Contract on the due date, the Supplier may:
- (a) charge interest on any overdue sums from the due date for payment at the annual rate of 4% above the base lending rate from time to time of National Westminster Bank PLC, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Customer shall pay the interest together with the overdue amount immediately on demand; and
- (b) suspend all Services until payment has been made in full (which for the avoidance of doubt, in the case of Services which include storage of the Customer's goods, entitles the Supplier to refuse the Customer access to its Goods whilst stored on the Supplier's premises); and
- (c) cancel any credit agreement made between the Supplier and the Customer with immediate effect and all sums due to the Supplier shall immediately become due and owing.
- 6.13 Time for payment by the Customer shall be of the essence of the Contract.
- 6.14 All sums payable to the Supplier under the Contract shall become due immediately on its termination, despite any other provision. This condition 6.14 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 6.15 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.
- 6.16 Where the Supplier exercises any power of sale of the Goods, the Supplier shall be entitled to sell on the basis of the best offer immediately available to it without obligation to investigate any specialist market in such type of merchandise.
- 7. CONFIDENTIALITY AND THE SUPPLIER'S PROPERTY**
- 7.1 The Customer 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 Customer by the Supplier, its employees, agents, consultants or sub contractors and any other confidential information concerning the Supplier's business, suppliers, customers or products or services which the Customer may obtain.
- 7.2 The Customer may disclose such information:
- (a) to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Customer's obligations under the Contract; and
- (b) as may be required by law, court order or any governmental or regulatory authority.
- 7.3 The Customer shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this condition 7.
- 7.4 The Customer shall not use any such information for any purpose other than to perform its obligations under the Contract.
- 7.5 All materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Customer (including the Supplier's Equipment) shall, at all times, be and remain the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.

8. **LIMITATION OF LIABILITY - THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION**
- 8.1 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 8.2 Nothing in these Conditions limits or excludes the liability of the Supplier:
- (a) for death or personal injury resulting from negligence; or
- (b) for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Supplier.
- 8.3 Subject to condition 8.1:
- (a) the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:
- (i) loss of profits; or
- (ii) loss of business; or
- (iii) depletion of goodwill and/or similar losses; or
- (iv) loss of anticipated savings; or
- (v) loss of contract; or
- (vi) loss of use; or
- (vii) loss of corruption of data or information; or
- (viii) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with this Contract whether in contract, tort (including negligence or breach of statutory duty), or otherwise shall be limited to the price paid by the Customer to the Supplier for the Services.
- 8.4 Where the Customer or a consignee signs a proof of delivery note (or note of a similar nature) without caveat then the Supplier shall under no circumstances whatever be liable to the Customer or the consignee (as the case may be) in respect of a claim for damage to the Consignment, and the Customer or the consignee (as the case may be) may not reject such Consignment on the basis of damage, where such damage was apparent on normal visual inspection.
9. **TIME LIMITS FOR CLAIMS - THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION**
- 9.1 The Supplier shall not be liable for damage to the whole or any part of the Goods or other items being transported by the Supplier, or physical loss, mis-delivery or non-delivery of the whole or any part of such Goods or items unless advised thereof in writing (faxes and emails are acceptable) by the Customer within 24 Working Hours of the date and time of delivery (or, in the event of mis-delivery or non-delivery, within 24 Working Hours of 5.00 pm on the due date for delivery), provided that if the Customer proves that:
- (a) it was not reasonably possible for the Customer to advise the Supplier within such time limit, and
- (b) such advice was made by the Customer as soon as practicable,
- the Supplier shall not have the benefit of the exclusion of liability afforded by this condition
- 9.2 For the purposes of this condition 9, a "Working Hour" is each hour between 9.00 am and 5.00 pm, Mondays to Fridays inclusive, other than bank holidays and public holidays in England and Wales.
10. **DATA PROTECTION**
- The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of the Supplier in connection with the Services and any request by the Customer for credit facilities.
11. **TERMINATION**
- 11.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other immediately on giving written notice to the other if:
- (a) the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment; or
- (b) the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- (c) the other party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract; or
- (d) the other party 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 a limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) 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
- (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company); or
- (h) a floating charge holder over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver; or
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or
- (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- (k) the other party (being an individual) is the subject of a bankruptcy petition order;
- (l) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 11.1(d) to condition 11.1(k) (inclusive); or
- (m) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (n) there is a change of control of the other party (as defined in section 574 of the Capital Allowances Act 2001); or
- (o) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (p) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 11.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in Condition 11.1(d) to 11.1(k) (inclusive), or the Supplier reasonably believes that the Customer is about to become subject to any of them.
- 11.3 On termination or expiry of the Contract 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 may submit an invoice, which shall be payable
- immediately on receipt;
- (b) the Customer shall, within a reasonable time, return all of the Supplier's Equipment and Supplier's property in its possession. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of it. Until the Supplier's Equipment has been returned or repossessed, the Customer shall be solely responsible for its safe keeping and will not use them for any purpose not connected with this Contract;
- (c) at the Supplier's request, any Goods of the Customer in the possession of the Supplier shall be removed by the Customer at the time agreed between the Parties, or if such agreement cannot be reached for any reason, the Supplier may at any time by notice in writing to the Customer require the removal of such goods within 3 days from the date of such notice. The Supplier is not responsible for any damage to the goods in the event the Customer fails to collect the same and such goods perish or develop a defect or quality issue as a result; and
- (d) the accrued rights and liabilities of the parties as at termination (including the right to claim damages in respect of any breach of the Contract which existed at or before the date of expiry or termination) and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.
- 11.4 On termination or expiry of the Contract (however arising), the following conditions shall survive and continue in full force and effect:
- (a) condition 7;
- (b) condition 8;
- (c) condition 9;
- (d) condition 11; and
- (e) condition 21.
12. **FORCE MAJEURE**
- 12.1 The Supplier shall have no liability to the Customer under the Contract if it is prevented from, or delayed in performing, its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) 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 (Force Majeure Event).
- 12.2 If the Force Majeure Event prevents the Supplier from providing any of the Services for more than 3 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.
13. **VARIATION**
- 13.1 The Supplier may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services.
- 13.2 Subject to condition 13.1, no variation of the Contract or these Conditions or of any of the documents referred to in them shall be valid unless it is in writing and signed by or on behalf of each of the parties.
14. **WAIVER**
- 14.1 A waiver of any right under the Contract or law is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.
- 14.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
15. **SEVERANCE**
- 15.1 If any provision or part-provision of 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 clause shall not affect the validity and enforceability of the rest of the Contract.
- 15.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Contract 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.
16. **ENTIRE AGREEMENT**
- 16.1 The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.
- 16.2 Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly provided in the Contract.
- 16.3 Nothing in this condition shall limit or exclude any liability for fraud.
17. **ASSIGNMENT**
- 17.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 17.2 The Supplier may at any time assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- 17.3 Each party that has rights under the Contract is acting on its own behalf and not for the benefit of another person.
18. **NO PARTNERSHIP OR AGENCY**
- Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
19. **RIGHTS OF THIRD PARTIES**
- A person who is not a party to the Contract shall not have any rights under or in connection with it.
20. **NOTICES**
- 20.1 Any notice or other communication required to be given by a party under the Contract shall be in writing and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery, by commercial courier, by fax or by email to the other party at the address specified in the Quotation or the Rate Card (as the case may be), or as otherwise specified by the relevant party by notice in writing to the other party or, if no such address is specified, at the relevant party's registered office, principle office or other place of business (in that order of precedence).
- 20.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address determined in accordance with condition 20.1 or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second business day after posting, or 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, one business day after transmission or, if sent by email, one hour after transmission.
- 20.3 This condition 20 shall not apply to the service of any in any proceedings or other documents in any legal action.
21. **GOVERNING LAW AND JURISDICTION**
- 21.1 The Contract, 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.
- 21.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract or its subject matter or formation (including non-contractual disputes or claims).