



These terms and conditions apply to all services provided by the Company in respect of terminal operations and stevedoring business, whether evidenced by the issue of a document or not. These conditions do not apply to freight forwarding and haulage services or to services of a general agency nature. Such services are carried out under separate conditions applicable only to those services. Those separate conditions are British International Freight Association (BIFA) Standard Trading Conditions 2005 Edition Road Haulage Association Limited Conditions of Carriage 1998 and the Institute of Chartered Ship Brokers Standard Trading Conditions 2007 respectively. The Company does not act as a carrier under these terms and conditions and does not undertake any liability on this basis.

**THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THOSE CLAUSES BELOW WHICH EXCLUDE OR LIMIT THE COMPANY'S LIABILITY AND THOSE WHICH REQUIRE THE CUSTOMER OR SHIP TO INDEMNIFY THE COMPANY IN CERTAIN CIRCUMSTANCES, PARTICULARLY CLAUSES 4 e) h) 5 g) n), 9, 10, 11, 12 AND 15.**

## 1. INTERPRETATION

"Charges" means all charges expenses or other sums which are due to be paid by the Customer to the Company.

"Company" means Rix Shipping (Scotland) Limited whose registered office is at Meridian Street, Montrose, Angus, DD10 8DT and whose registered number is SC030733

"Customer" means the person, firm, company or statutory body at whose request the Company provides the Services in accordance with these terms and conditions.

"Contract" means a Contract for the supply of the Services in accordance with and incorporating these Terms and Conditions.

"Dangerous Goods" means any goods incorporating dangerous substances listed in the Health and Safety Dangerous Substance in Harbour Area Regulations 1987 and goods identified within the edition of the

International Maritime Dangerous Goods Code for the time being in force and any other substance of a similar nature or presenting a similar hazard.

"Goods" means any goods to be handled by the Company for the Customer including any article of transport which includes, unless otherwise indicated, any vehicle, container, flat, pallet, trailer, transportable tank, and any similar item used for the consolidation of Goods (which shall include, without limitation, stuffing, packing, loading, transshipping or securing of Goods on or within articles of transport) as well as mobile plant, timber and steel packages in which or on which the Goods are packed.

"including" means including without limitation.

"Services" means all and any services to be provided by the Company for the Customer subject to these terms and conditions including berthing, shifting, loading, discharging, transportation and warehousing services.

"Ship" means any vessel in respect of which the Company provides Services.

"Terminal" means the Company's terminal at which the Services are to be provided as agreed by the Company.

"Terms and Conditions" means the Standard Terminal Operators and Stevedores Conditions set out in this document and unless the context otherwise requires, any special terms and conditions agreed in writing between the Company and the Customer.

"SDR" means Special Drawing Rights as defined by the International Monetary Fund.

## 2. APPLICATION

a) The terms of each Contract shall incorporate these Terms and Conditions as are from time to time in force when the same are accepted pursuant to Clause 2(c).

b) All terms and conditions stipulated or referred to by the Customer (unless in writing and signed by a Director of the Company) or implied by any course of dealing between the Company and the Customer shall be excluded and shall not be

binding on the Company or form part of this Contract.

- c) In the absence of any other act constituting acceptance of these Terms and Conditions by the Customer, the Customer shall be deemed to accept that these Terms and Conditions are binding upon it when it delivers the Goods to the Company or authorises the Company to take control or possession of the Goods where the Goods are in the possession or control of a third party.
- d) These Terms and Conditions and any Special Conditions may be amended and reissued by the Company at any time in which case the amended and reissued terms and conditions shall apply to all Contracts coming into force thereafter.
- e) No variation of any Contract or these Terms and Conditions shall be effective unless in writing and signed by a Director of the Company.
- f) All and any Services, whether gratuitous or not, are subject to these Terms and Conditions.

### 3. PAYMENT OF CHARGES

- a) The Customer shall pay the Company such Charges for the Services as have been quoted in writing by the Company to the Customer or where no such quote has been provided or any quote given is no longer valid such Charges as are specified in the Company's standard schedule of Charges (which shall be accessible on the Company's website) in force on the date on which the Services are provided.
- b) Subject to these Terms and Conditions (and Clause 3 (f)) the Company shall invoice the Customer for the Charges on completion of the Services. All Charges shall be paid by the end of the calendar month following the month in which the Company submitted its invoice therefor. In default of payment within the time stipulated the Company shall have the right to charge interest in accordance with the legislation in the relevant UK jurisdiction governing interest due in respect of the late payment of commercial debts (such legislation at the time of issue of these terms and conditions includes the Late Payment of Commercial Debts (Interest) Act 1998 (as amended and supplemented by the Late Payment of Commercial Debt Regulations 2002) and in Scotland, The Late Payment of

Commercial Debts (Scotland) Regulations 2002, The Late Payment of Commercial Debts (Rate of Interest) (Scotland) Order 2002, The Late Payment of Commercial Debts (Interest) Act 1998 (Commencement No 6) (Scotland) Order 2002.

- c) Payment shall be made in the currency contained in the invoice and in full without deduction or set off (and free of bank charges).
- d) All Charges are exclusive of any Value Added Tax or similar tax that the Customer shall be liable to pay to the Company in addition to the Charges.
- e) Without prejudice to Clause 3 (d) unless otherwise agreed in writing by the Company the Customer shall be liable for any charges of any nature (including any duties or taxes) levied by any third party (including any governmental or other authority) in connection with the Goods and for payment of any fine, expense or loss incurred or sustained by the Company in connection therewith.
- f) The Company shall be entitled to vary its standard Schedule of Charges at any time without notice. In addition to varying the amount of the Charges the Company shall be entitled at any time at its sole discretion to vary the terms of payment including by imposing a requirement for prepayment of the whole or part of the Charges or the imposition of a fixed date for payment of the Charges even if the Goods have not been delivered to the Customer. Any error or omission in the Standard Charges or in any promotional literature quotation or invoice or other document issued by the Company shall be subject to correction without liability on the part of the Company. Such variation shall take effect from the date it is posted on the Company's website at address [www.rix.co.uk](http://www.rix.co.uk).
- g) Where Charges are based on the number, weight or volume of the Goods the Company may verify the same by its own measurements and the measurements taken by the Company shall be deemed to be conclusive save in the event of manifest error.

### 4. RIGHTS AND OBLIGATIONS OF THE COMPANY

- a) Subject to and in accordance with these Terms and Conditions:-

- i) the Company shall perform the Services with reasonable care and skill;
  - ii) where the Company is a custodian or bailee of the Goods pursuant to a Contract (unless the bailment or receipt by the Company of the Goods is involuntary) the Company shall take such care of the Goods as a reasonably competent custodian would take of equivalent Goods in similar circumstances; and
  - iii) without affecting the liability of the Company hereunder the Company may procure the Services are provided by another company within the group of companies of which the Company forms a part or by an assignee or sub-contractor of the Company.
- b) The Company shall have the right to deal with the Goods in whatsoever way it deems necessary in carrying out the Services to be provided under the Contract save where it has made an agreement in writing with the Customer to the contrary. Notwithstanding any such agreement if in the reasonable opinion of the Company, the interests of safety, compliance with the law, the preservation of life or property or the interests of the Customer so require, the Company may deviate from any such agreement in any respect and all expenses reasonably incurred thereby shall be the responsibility of the Customer.
- c) The Company accepts no responsibility for the maintenance or repair of any part of the Goods nor for the provision of power, fuel or other supplies thereto. If such maintenance or repair or the provision of power, fuel or other supplies is necessary to enable the Company to perform the Services the Company shall be entitled to suspend the performances of the Services (in which case it shall be entitled to invoice for the same as if the Services had been completed) or in its discretion pay for any maintenance and repair or power, fuel or other supplies necessary in which case the Customer shall reimburse the Company for all of its costs in taking any such action.
- d) In the absence of an agreement to the contrary in writing signed by a director of the Company (and subject in such case to the payment of any additional Charges referred to in the Company's standard Schedule of Charges), the working hours applicable to the Contract and the performance of the Services will be 9a.m. to 5p.m. Monday to Friday.
- e) The Company shall have the right to determine in its absolute discretion the order or method in which Ships are moored or vehicles arriving at the Terminal are loaded or unloaded and shall not be liable to any Customer, the Ship or other party for any loss expense or claim arising from the exercise of this right.
  - f) In the event of any movement of a Ship leading to a closure of the Terminal (or part thereof) to other Ships, the Company shall be entitled to impose an enhanced level of charge on the Ship whose movement has resulted in such closure.
  - g) Notwithstanding anything else to the contrary set out in these Terms and Conditions the Company reserves the right to refuse to provide the Services for any reason (including, without prejudice to the foregoing generality any weather conditions) or to provide the Services at such times and/or subject to such further conditions as the Company may in its sole discretion impose.
  - h)
    - i) Save where the Company pursuant to clause 4 h) ii) below has agreed to be responsible for the storage of Goods before or after the loading or unloading thereof the Company shall only be responsible for the Goods whilst they are in the course of being loaded or unloaded and shall have no responsibility for the Goods prior to the commencement of or after the completion of loading or unloading (as the case may be).
    - ii) Where the Company has agreed to be responsible for storage, the current edition of the United Kingdom Warehousing Association Contract Conditions for Logistics October 2006 shall apply to such operations, a copy of which is available on the Companies website at [www.rix.co.uk](http://www.rix.co.uk). For the avoidance of doubt, the period of 7 days envisaged in the Customer warranty in clause 5 k) ii) does not amount to agreement by the Company for the purposes of this clause 4 h) ii).
  - i) Without prejudice to Clauses 4(a) or 7 the Company shall be entitled in its discretion to:-

- i) open packages or other containers to inspect and ascertain the condition of the Goods before accepting the Goods for loading, unloading or storage or at any time during the course of the same; and
  - ii) where in the opinion of the Company following such an inspection the condition of the Goods is not suitable for loading, unloading or storage or does not comply with any relevant statute or regulation or is likely to cause damage to other Goods or property the Company shall be entitled to suspend any loading, unloading or storage operation and may serve notice on the Customer requiring the Customer to remove the Goods within such time as shall be specified in the notice being a reasonable time which shall not in any event be more than 72 hours.
- j) Where a Customer receives notice pursuant to Clause 4(i) and fails to remove the Goods within the time specified or where the removal of the Goods is not practical the Company may arrange for the removal, destruction or disposal of the same and the Customer shall be responsible for the costs thereof.

## 5. OBLIGATIONS OF THE CUSTOMER

- a) At least 72 hours before delivery of the Goods to the Company, the Customer will inform the Company in writing of any special precautions or instructions regarding the nature, weight or condition of the Goods and how they should be stored, handled, loaded or unloaded which are necessary or desirable for the Company to perform the Services and/or to comply with its legal duties (including those relating to health and safety and the environment) in doing so.
- b) The Customer warrants that, except as disclosed in writing to the Company pursuant to Clause 5 (a) in which case the Company may refuse the Goods or apply additional Charges in its discretion, the Goods will be in a normal condition and will not constitute Dangerous Goods or "environmental waste" within the terms of the Environmental Protection Act 1990, that none of the Goods will cause pollution of the environment or harm to human health, nor will they be toxic, hazardous or noxious and that all Dangerous Goods and toxic, hazardous or noxious cargo that are accepted by the Company after the required disclosure

will be properly sealed, packed and labelled in accordance with the law and best practice and that all Goods will be capable of safe handling without special clothing or equipment and without involving any activity which is unlawful or potentially unlawful. The Company shall be entitled to give any particulars about the Goods to whomsoever the Company deems necessary.

- c) On delivery of the Goods to the Company, the Customer shall ensure that the Company is given a full description of the Goods and such other information as is sufficient to identify them and handle them safely and in full compliance with all applicable laws and regulations.
- d) The Customer shall be bound by and deemed to warrant the accuracy of all descriptions, values and other particulars furnished to the Company including for the purpose of identifying the cargo or for Customs, Consular or other purposes.
- e) The Customer warrants that all Goods have been correctly and sufficiently prepared and packed in conformity with any applicable regulations and are in all respects in a fit condition for handling by the Company.
- f) The Customer warrants that it is either the owner of the Goods or the authorised agent of the owner and has authority on behalf of the owner to enter into the Contract and to deliver the Goods into the possession of the Company hereunder. Where the Customer is the agent of the owner the agent shall be jointly and severally liable with the owner at all times for all monies payable or liabilities arising under the Contract or for any breach thereof notwithstanding that the agent may have purported to enter into the Contract as agent only or in any other way purported to exclude personal liability.
- g) The Company does not insure the Goods. The Customer warrants that at all times while the Services are being performed the Goods will be fully insured and that such insurance will cover theft of the Goods and any loss of or damage to the Goods arising during or as a result of the performance of the Services with any right for the insurer to bring a subrogated claim against the Company being excluded.
- h) Where delivery of the Goods takes place at the Company's premises or at any premises where

the Goods are to be stored, the Customer shall be responsible for ensuring that any Ships, vehicles and personnel delivering Goods or arriving to take delivery of the Goods at all times act in conformity with all applicable rules and regulations of the Company and of any statutory or other competent authority having jurisdiction over the premises of the Company or the owner and/or occupier of any other premises where the Services are carried out (including all relevant health and safety and environmental rules and regulations whether or not such rules and regulations have been notified to the Customer).

- i) The Customer will obtain, at the Customer's expense, all import or other licenses and customs clearances relevant to the Goods in a timely manner so as not to delay any importation or exportation of the same. Without prejudice to Clause 5(h) the Customer shall be responsible for complying with good practice and with the provisions of any licence or permission granted to the Company from time to time in respect of the storage or handling of Goods that have been notified to the Customer and, in particular, for carrying out such temperature or other monitoring as may be necessary or desirable to prevent combustion, heating or other damage to the Goods.
- j) The Customer will make arrangements for the removal, destruction or other disposal of any damaged or quarantined Goods (or Goods to which Clause 4(j) applies) at the Customer's expense within a reasonable period of notification by the Company (subject to the provisions of Clause 4(j) where applicable) and shall pay Charges for the storage of such Goods until their removal, destruction or disposal in accordance with the Company's standard Schedule of Charges. The Company shall not bear any risk nor have any liability for loss or damage to such damaged or quarantined Goods at any time.
- k) The Customer warrants that:-
  - i) the Ship due to receive any Goods delivered to the Company for loading shall accept the Goods within a period of 7 days (or such other period as may be agreed in writing with the Company) of the receipt by the Company of the Goods; and

- ii) the Customer shall remove any Goods that have been unloaded by the Company on its behalf from the Terminal within 7 days (or such other period as may be agreed in writing with the Company) of the date on which the Goods were unloaded.

- l) The Customer will notify the Company at least 24 hours in advance of the time at which its Ship is expected to arrive at the Terminal. The Company will notify the Customer whether a berth is available at the Terminal. If a Ship is more than two hours late arriving at the Terminal the Customer shall be liable to the Company for the Company's standard charges for late arriving vessels/for any losses and expenses which the Company may suffer by reason of such late arrival.
- m) Without prejudice to Clause 5(h) the Customer shall procure that all Ships delivering Goods or arriving to take delivery of Goods and the owners thereof comply with all applicable rules and regulations regarding ship security including without limitation the Ship and Port Facility (Security) Regulations 2004 (implementing the ISPS Code) (and any rules or regulations that may amend, replace or supersede the same) and shall:-
  - i) pay any further Charges and indemnify the Company pursuant to Clause 5(n) for any further amounts arising as a result of any non-compliance with such rules and regulations or as a result of any Ship or the loading or unloading of any Goods being prevented, delayed, repeated or extended as a result of the operation of the same; and
  - ii) comply in full and in a timely manner with all instructions given by the Company pursuant to such rules and regulations.
- n) In the event of any breach by the Customer at any time of any of the obligations set out in this Clause or in the event of any of the warranties given by the Customer being misleading, inaccurate or incorrect in any respect:-
  - i) the Company shall be entitled to cancel the Contract and any other Contract that it may have with the same Customer and refuse to handle the Goods the subject thereof without any liability on the part of the Company and

without prejudice to the obligation of the Customer to pay Charges in respect of the Services performed; and

- ii) the Customer shall indemnify the Company and pay to the Company upon its first written demand all costs, losses, expenses, fines, charges and other damages incurred by the Company or its servants or agents as a result of such breach or as a result of the warranties or any of them being misleading, inaccurate or incorrect.

## 6. DELIVERY

- a) Unless otherwise agreed in writing time is not of the essence in the performance of the Services by the Company but the Company undertakes to use reasonable endeavours to complete the Services in a reasonable time. Any time or date for completion of the Services which may be given by the Company is an estimate only and the Company shall not be liable for the consequences of any delay or for the failure to ship the Goods or make them available for collection unless such loss or failure by the Company is the result of a deliberate act or the negligence of the Company or its employees or agents (in which case the exclusions and limitations of liability set out in Clause 9 shall apply).
- b) Where the Goods are to be delivered in instalments each delivery shall constitute a separate Contract and failure by the Company to deliver any one or more of the instalments in accordance with these Terms and Conditions or any claim by the Customer in respect of any one or more instalment shall not entitle the Customer to treat any Contract in respect of other instalments as repudiated.
- c) If:
  - i) the Goods delivered to the Company for loading are for any reason not accepted for loading within the period provided for in Clause 5(k)(i);
  - ii) the Customer for any reason fails to take delivery or procure the removal of unloaded Goods from the Terminal or give other adequate instructions acceptable to the Company in respect of such Goods within the period provided for in Clause 5(k)(ii);
  - iii) Goods are delivered to the Company in a condition which in the opinion of the

Company renders them unfit for shipment; or

- iv) Goods delivered to the Company are insufficiently addressed or marked so that the Company cannot determine on which Ship or vehicle the Goods are to be placed or the place of delivery to the Customer or the precise nature of the Goods, particularly those to which Clause 7 may apply

then without prejudice to any other right or remedy available to the Company, the Company shall give reasonable notice to the Customer thereof and from that point shall be treated as an involuntary bailee (or in Scotland a custodian) of the Goods and may, in its absolute discretion:

- v) store the Goods until actual delivery and charge the Customer for storage at its normal rates together with all costs associated with such storage. For the avoidance of doubt, under this clause 6. c) v), whatever the nature of the Goods, the Company will be under no obligation to store them inside or under cover; and/or
- vi) sell the Goods at the best price readily obtainable and (after deducting all storage charges due and selling expenses incurred ) account to the Customer for any difference between the monies required by the Company under the terms of the Contract (including all extra expenses incurred) and the proceeds of sale.

- d) If the proceeds of sale received by the Company pursuant to Clause 6 c) vi) above are not sufficient to pay all storage charges, selling expenses and other amounts due to the Company hereunder the Customer shall be liable to pay the amount of any deficit to the Company upon the Company's first written demand therefor.

## 7. CONDITION OF GOODS

- a) This condition applies where any Dangerous Goods whilst in the custody of the Company or its employees agents subcontractors or persons associated with such persons become noxious hazardous inflammable explosive or in any way dangerous or otherwise likely to cause damage (which includes Goods which may be infectious, diseased or verminous or likely to harbour or

encourage infection or disease or vermin or other pests) whether alone or in combination with other Goods and whether or not by reason of the act or omission of any person.

- b) Where this condition applies the Company or the person in whose custody the Goods are, shall be at liberty either on its own account or through the services of any third party to destroy or otherwise deal with any Dangerous Goods in any way for the purpose of rendering the Goods harmless or capable of safe handling.
- c) Other than in the case of the negligent act or default of the Company, its servants or agents, the Customer shall indemnify the Company against all costs, losses, liabilities, charges, claims, expenses and fines arising out of or in connection with the handling, destruction or other dealings with any Dangerous Goods pursuant to this Clause.

## 8. TERMINATION

- a) In the event that the Customer cancels the Services at any time before the same are fully performed the Company may recover from the Customer all charges due to it as if the Services had been performed in full or such lesser amount as the Company in its sole discretion may decide.
- b) If any of the following events occur:-
  - i) the Customer fails to pay any amount due to the Company under a Contract in full on the due date therefor;
  - ii) the Customer is in material, continued or persistent breach of any of its obligations under a Contract and the breach is irremediable or the breach can be remedied and the Customer fails to remedy the same within 7 days of notice in writing from the Company requiring the same to be remedied.
  - iii) a petition is presented in respect of the Customer, and is not dismissed within thirty days of presentation, or application is made for an administration order in respect of the Customer, or an order is made or an effective resolution is passed for the liquidation or winding up of the Customer;
  - iv) the Customer enters into any composition or arrangement for the

benefit of its creditors or a liquidator, an administrative receiver, administrator or a receiver or manager is appointed of all or substantially all of its assets or undertaking;

- v) the Customer ceases to carry on its business or substantially all of its business or disposes of all or substantially all of its undertaking or becomes unable or is deemed to be unable to pay its debts as they fall due within the meaning of section 123 of the Insolvency Act 1986;
- vi) the Customer (being an individual or partnership) becomes apparently insolvent, bankrupt, has a trustee appointed for the benefit of creditors or enters into any arrangement with their creditors;
- vii) the Customer is affected in any jurisdiction other than England and Wales or Scotland by any matter of substantially similar effect to any of the matters referred to in sub-clauses 8(a)(iii) to 8(a) (vi) inclusive above; and
- viii) the Customer is the subject of any action which in the reasonable opinion of the Company is prejudicial to the interests of the Company or is evidence that any of the above events is about to occur in relation to the Customer.

then, without prejudice to any other right or remedy available to the Company, the Company in its discretion may terminate the Contract (and each or any other Contract between the Customer and the Company) and cancel the Services or suspend any further Services to be provided thereunder without any liability to the Customer.

- c) The termination of any Contract shall be without prejudice to the rights and remedies of either party, which may have accrued up to the date of termination including damages for any breach of contract.
- d) All sums due to the Company by the Customer under any Contract (including any Charges in respect of any Services which have been provided but not paid for) shall become immediately due and payable upon termination thereof notwithstanding any previous

agreement or arrangement to the contrary and if the Customer fails to pay the sums so due the Company shall be entitled to exercise all or any of the remedies available to it pursuant to these Terms and Conditions (including the lien conferred by Clause 12 hereof) against the Customer or any trustee, supervisor, receiver, liquidator or administrator of the Company.

## 9. EXCLUSION AND LIMITATIONS OF LIABILITY

a) Risk in the Goods (including without limitation all risk of theft, loss or damage to the Goods) shall at all times remain with the Customer and the Company shall have no liability in respect of the same unless and to the extent the Company is in breach of its obligations hereunder.

b) Under no circumstances will the Company be in breach of the Contract or have any liability in respect of any delay, loss and/or damage arising out of any of the following:

- i) the wrongful act, omission and/or neglect or any breach of Contract of the Customer, its employees, agents or sub-contractors ;
- ii) its compliance with the instructions of the person entitled to give them;
- iii) the lack or insufficiency of, or the defective condition of or the packing of Goods which by their nature are liable to wastage or deterioration or to be damaged when not packed or not properly packed;
- iv) latent or inherent vice or defect of the Goods;
- v) insufficiency or inadequacy of marks, labelling or numbers on the Goods, incorrect delivery details or any failure by a consignee to accept delivery of Goods or for any losses where the Company has obtained proof of delivery acknowledging safe receipt of the Goods;
- vi) any information or advice given by the Company being incomplete or inaccurate where this incompleteness or inaccuracy cannot reasonably have been known to the Company at the time of the provision of the advice or information.

vii) any failure or inability of any Ship, shipowner or other persons (other than the Company) to comply with its obligations under all applicable rules and regulations regarding ship security including without limitation - the Ship and Port Facility (Security) Regulations 2004 (implementing the ISPS Code), the US Customs Regulations and the US Maritime Transportation Security Act 2004 or any rules and regulations that may amend, replace or supersede the same.

c) Where the Company is in breach of its obligations in respect of the Services or under any Contract or any duties it may have as a bailee or custodian of the Goods it shall have no liability to the Customer in contract, tort, delict, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by the Customer which is of an indirect or consequential nature including without limitation the following:-

- i) loss, or deferment, of profits;
- ii) loss, or deferment, of revenue;
- iii) loss of goodwill;
- iv) loss of business;
- v) loss, or deferment, of production or increased costs of production;
- vi) the liabilities of the Customer to any other party.

d) Without prejudice to Clause 9(c) where the Company is in breach of its obligations in respect of the Services or under any Contract its liability to the Customer in contract, tort, delict, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by the Customer and arising from any event or series of related events with a common cause shall not under any circumstances exceed:-

- i) in the case of any loss and/or damage to Goods the lower of:-
  - the value of the Goods lost and the diminution in value of any Goods damaged;
  - two (2) SDR's per kilogramme gross weight of the Goods lost and/or damaged; or



- one million pounds sterling (£1,000,000); and
  - ii) in any other case one million pounds sterling (£1,000,000).
- e) Nothing in this Clause or Clause 9 shall exclude or limit the liability of the Company for death or personal injury resulting from the Company's negligence.
- f) The express terms and conditions of the Contract are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom or otherwise all of which are hereby excluded to the fullest extent permitted by law.
- g) The Customer shall have no right to withhold, retain or set off the value of any claim it may assert against the Company against any sum which may be due and payable in accordance with the terms of the Contract.
- h) If the Customer does withhold, retain or set off the value of any claim it asserts against the Company against any sum that is due and payable in accordance with the terms of the contract then the Company shall, irrespective of whether the claim is legitimate:
- i) be entitled to recover any such unauthorised deduction in full.
  - ii) be entitled to charge interest on the full amount of the unauthorised deduction from the date that the deduction was made until it is repaid at a rate of 8% above the Bank of England base rate.
  - iii) be entitled to charge an administration fee up to but not exceeding GBP50.00 for each unauthorised deduction made.
  - iv) be entitled to recover any costs incurred by the Company in attempting to reclaim the unauthorised deduction, including but not limited to legal fees.

#### 10. TIME BAR FOR CLAIMS AND NOTICE OF LOSS

- a) Without prejudice to any exclusion or limitation of liability provided for in these Terms and Conditions, any claim by the Customer in respect of any alleged loss, damage, deviation, mis-delivery, delay, detention or other claim of any kind whatever shall be notified in writing to the Company, within 14 days:
- i) from, in the case of a claim for loss of or damage to the Goods, the date upon

which the Customer became or should have become aware of the alleged loss or damage

- ii) from, in the case of a claim for failure to ship or delay in delivery or non-delivery, the date when the Goods should have been shipped or have arrived at the Terminal in the case of delay in delivery or non-delivery
  - iii) from, in any other case, the date of the event giving rise to the claim.
- b) The Company shall have no liability for any physical loss or damage that would be evident from a visual inspection if such damage is not reported to the Company prior to collection of the Goods from the Terminal and if this report is not evidenced in writing and signed by an authorized employee of the Company.
- c) In such cases that a visual inspection would not reveal physical loss or damage to the Goods prior to collection from the Terminal, the Company shall have no liability for any physical loss or damage if the Company does not receive notification in writing of the physical loss and damage within 48 hours of the Goods leaving the Terminal.
- d) The Company shall have no liability for any physical loss or damage unless it shall have had the opportunity to inspect and verify the same where reasonably practical.
- e) Any claim shall be deemed to be waived, extinguished and absolutely barred if:-
- i) notice of the claim is not given to the Company in accordance with Clause 10(a); or
  - ii) legal proceedings in respect of the claim are not commenced against the Company within 12 months from when the Goods the subject of such claim were or should have been delivered to or at the Terminal.

#### 11. CUSTOMERS' INDEMNITIES

- a) The Customer warrants and undertakes to the Company that the exclusions and limitation of liability conferred by these Terms and Conditions and each Contract for the benefit of the Company are and shall be binding upon all persons who have or acquired any interest in the Goods and the Customer hereby agrees to hold harmless and indemnify the Company

against all claims and demands whatsoever by whomsoever made or alleged (other than the Customer) in respect of the liability of the Company under these Terms and Conditions and such Contract.

- b) The Customer shall indemnify the Company for any damage caused to the Company's equipment caused by the condition or quality of the Goods or any material within the Goods.

#### 12. GENERAL LIEN WITH POWER OF SALE

- a) The Company shall have a lien upon all Goods and other property of the Customer in its possession for any Charges due thereon and all other moneys owing by the Customer to the Company on any account, and in the event of any such Charges or other monies not being paid within 7 days of the due date for payment therefor, the Company may sell the Goods and other property and apply the proceeds towards the satisfaction of the amounts owing and also all charges and expenses arising during the exercise of any such lien (in such manner as the Company shall in its discretion determine). If the Customer has sold or shall sell the Goods or any property the subject of the lien the Company may, at its option, accept the proceeds of such sale or some interest or charge in or over such proceeds in substitution of its lien as a condition for releasing the Goods to the purchaser thereof.

#### 13. ACCESS TO THE TERMINAL

- a) All persons entering the premises of the Company shall do so at their own risk and the Company shall not be liable to the Customer or any employee, servant, agent or contractor of the Customer in any way whatsoever for any injury to any person or for any loss or damage suffered by them or by any vessel or property brought by them to such premises whether or not arising out of any negligence on the part of the Company or its servants or agents.
- b) The Customer shall indemnify the Company against all loss damages claims demands actions costs charges or expenses arising out of any injury loss or damage suffered or caused by any employee, servant, agent or independent contractor of the Customer or any person for whom the Customer is an agent or by any property of any such person.

- c) All persons entering the premises of the Company shall obey the regulations and instructions of the Company and the Company may at its sole discretion and without giving any reason refuse admission to any person and require any person to leave the premises at any time.

- d) The Customer shall indemnify the Company against all losses damages claims demands actions costs charges expenses arising out of any failure on the part of the Customer, its employees, servants, agents, independent contractors or persons for whom the Customer acts as agents to obey the Company's regulations or instructions.

#### 14. FORCE MAJEURE

- a) The Company shall not be liable to the Customer, or be deemed to be in breach of any Contract, by reason of any delay in performing, or any failure to perform or to perform properly, any of the Company's obligations in relation to the Services, if the delay or failure was due to any event which is beyond the reasonable control of the Company which, without prejudice to the generality of the foregoing, shall include but shall not be limited to the following:-

- i) any Act of God, inclement weather, epidemics, explosion, flood, tempest, fire or accident;
- ii) war (declared or undeclared) or threat of war, war-like actions, sabotage, terrorism, piracy, revolution, insurrection, riot or civil disturbance or requisition;
- iii) acts, restrictions, regulations, byelaws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- iv) import or export regulations or embargoes;
- v) strikes, lock-outs, or other industrial actions or trade disputes (whether involving employees of the Company or of a third party);
- vi) difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- vii) power failure or breakdown in machinery; or
- viii) pests, insects or vermin.

#### 15. GENERAL

- a) Neither party shall pledge the credit of the other party nor represent itself as being the agent, partner, employee or representative of the other party and neither party shall hold itself out as such nor as having any power or authority to incur any obligation of any nature, express or implied on behalf of the other party and nothing in the Contract shall create, or be deemed to create, a partnership or joint venture or relationship of employer and employee or principal and agent between the Parties.
- b) The rights and remedies of either party in respect of the Contract shall not be diminished, waived or extinguished by any delay by either party in exercising the same.
- c) The waiver by either party of any breach of the Contract shall not prevent the subsequent enforcement of that provision in relation to any other breach and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.
- d) If at any time any part of the Contract is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from the Contract and the validity and/or enforceability of the remaining provisions of the Contract shall not in any way be affected or impaired as a result of that omission.
- e) Subject to the specific limitations set out in the Contract, no remedy conferred by any provision of the Contract is intended to be exclusive of any other remedy except as expressly provided for in the Contract and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or existing at law or in equity, by statute or otherwise.
- f) The headings in these Terms and Conditions are for identification only and shall not be deemed to be part hereof or to be taken into consideration in the interpretation or construction of the same.
- g) Save where amended or supplemented in writing with the agreement of the Company these Terms and Conditions shall constitute the entire agreement of the parties with respect to the matters referred to herein and shall supersede any prior agreement between the parties.
- h) Any notice required to be given hereunder shall be sufficiently given if sent by registered or recorded delivery post or left at the principal or registered office for the time being of the party to be served. Any such notice shall be deemed to be served at the time when the same is handed to or left at the address of the party to be served and if served by post on the third day (not being a Sunday or public holiday) following the day of posting.
- i) No provision of the Contract is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise by any person who is not a party to it.
- j) This Contract shall be governed and interpreted in accordance with English law and the Customer submits to the non-exclusive jurisdiction of the High Court of Justice in England provided always that the Company (and the Customer) may commence proceedings and may enforce the Contract in any other courts of competent jurisdiction.