Rix Cargo Solutions

# TERMS & CONDITIONS 2023

**Rix Cargo Solutions** is a trading style of
**Rix Shipping Scotland Limited**

**Rix Cargo Solutions** adhere to the
UKWA Contract Conditions for Logistics

*See from page 15 onwards.*

Rix Cargo Solutions

**Rix Shipping (Scotland) Ltd**
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DD10 8DS

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**Facsimilie:** +44 (0) 167 467 2827
**Email:** scotland.agency@rix.co.uk
**Web:** www.cargosolutions.co.uk

**Standard Terms For Stevedoring And Terminal Operations**

These terms and conditions apply to all services supplied by the Company (as defined below) in respect of terminal operations and stevedoring business, whether evidenced by the issue of a document or not. They do not apply to any other services supplied by the Company. Any services of the nature set out in the table below which are supplied by the Company shall be supplied subject to the current version in issue from time to time of the relevant set of standard terms as indicated in the table:

| | |
|---|---|
| Warehousing | United Kingdom Warehousing Association Contract Conditions for Logistics |
| Freight forwarding | British International Freight Association (BIFA) Standard Trading Conditions |
| Haulage services | Road Haulage Association Limited Conditions of Carriage |
| Services of a general agency nature | Institute of Chartered Ship Brokers Standard Trading Conditions |

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 OWNER TO INDEMNIFY THE COMPANY IN CERTAIN CIRCUMSTANCES, PARTICULARLY CLAUSES 4(f), 4(h), 5(n), 9, 10, 11 AND 13(c)..**

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 Company Limited whose registered office is at 2 Humber Quays, Wellington Street West, Hull, HU1 2BN and whose registered number is 05094504.

"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 induding any article of transport which indudes, unless otherwise indicated, any vehide, container, flat, pallet, trailer, transportable tank, and any similar item used for the consolidation of Goods (which shall include, without limitation, stuffing, packing, loading, trans-shipping or securing of Goods on or within artides of transport) as well as mobile plant, timber and steel packages in which or on which the Goods are packed.

"Group" means, in relation to a company, that company, any subsidiary or any holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company. Each company in a Group is a member of the Group. A **Holding company** or **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 and for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), a company shall be treated as a member of another company even if its shares in that other company are registered in the name of:

(a) another person (or its nominee), by way of security or in connection with the taking of security; or
(b) its nominee.

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"including" means including without limitation.

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

"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 and transportation but not including the services set out in the table above.

"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 terms and 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.

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, where the Goods are in the possession or control of a third party, when it authorises the Company to take control or possession of the Goods.

d) These Terms and Conditions and any special or supplementary 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 of 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 supplied 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 in force on the date on which the Services are provided.

b) Subject to these Terms and Conditions (and Clause 3(e)) the Company shall invoice the Customer for the Charges on completion of the Services. All Charges shall be paid within the period of 30 days from and including the date of the invoice or if later, the date the invoice is submitted to the Customer. In default of payment within the time stipulated, the Company shall have the right to charge interest on any overdue amount shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment.

c) Payment shall be made in the currency specified by the invoice and in full without deduction or set off (and free of bank charges).

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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 (c) 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. If any such amounts are paid by the Company on behalf of the Customer, the Customer shall promptly indemnify the Company for all such amounts and the Company shall be entitled to charge interest thereon from and including the date of payment by the Company to the date of reimbursement by the Customer .

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 .

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 or bailee 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 in the same Group as the Company 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 performance 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.

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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 the Customer, any Ship owner or other party for any loss expense or claim arising from the exercise of this right.

f) In the event any movement of a Ship carrying Goods belonging to or under the control of the Customer leads to a closure of the Terminal (or part thereof) to other Ships, the Customer shall fully indemnify and hold the Company harmless in respect of all loss, damage, harm, costs and expenses arising as a result of 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) Save where the Company 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). Where the Company has agreed to be responsible for storage, the current edition of the United Kingdom Warehousing Association Contract Conditions for Logistics shall apply to such operations, a copy of which is available on the Company's website at 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).

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(ii) and fails to remove the Goods within the time specified or where the removal of the Goods by the Customer 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

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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. The Company may in its discretion refuse to accept delivery without liability to the Customer or apply additional Charges if in the Company's sole opinion it is unable to comply with such special precautions or instructions or it is impractical or uneconomic to do so.

b) The Customer warrants that, except as disclosed in writing to the Company pursuant to Clause 5(a), 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 the Company agrees to accept 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, in which case it has authority from 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

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manner so as not to delay any importation or exportation of the same.

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 5 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

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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 vehide 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 proceeds of sale and all sums due to the Company.

d) If the proceeds of sale received by the Company pursuant to Clause 6(c)(vi) above are not sufficient to pay all sums due to the Company hereunder, the Customer shall be liable to pay the amount of any deficit to the Company upon written demand.

7. CONDITION OF GOODS

a) This condition applies where any Goods or Dangerous Goods 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.

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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 such 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 such 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 winding up 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, anadministrative receiver, administrator or a receiver or manager is appointed over 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(b)(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.

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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) or otherwise 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 under the Contract.

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 by 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 the packaging 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;
vi. any losses where the Company has obtained proof of delivery acknowledging safe receipt of the Goods;
vii. 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; or
viii. 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, 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

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the Customer in contract, tort, 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 to the Company 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.
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 from and including:

i. 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. 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 despatched from the Terminal;
iii. 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 in writing and signed by an authorized employee of the Company.

c) In cases where 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

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**Web:** www.cargosolutions.co.uk



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 Goods.

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

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 for whatever reason, 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 Ship or other means of transport 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) 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.

c) The Customer shall indemnify and hold the Company harmless against all loss, damage, claims, demands, actions, costs, charges or expenses incurred or sustained by the Company arising out of any injury, loss or damage suffered by or caused to any person or property which is caused by any employee, servant, agent or independent contractor of the Customer or any person for whom the Customer is an agent for any reason

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including the failure of any such person 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 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, indement 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.

Rix Cargo Solutions

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h) Any notice required to be given under the Contract 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) Where the Company is entitled to charge interest under these Terms and Conditions it shall be entitled to do so in accordance with the terms of the Late Payment of Commercial Debts (Interest) Act 1998 and all subordinate legislation enacted from time to time in the relevant UK jurisdiction.

k) This Contract shall be governed and interpreted in accordance with English law and the Customer irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims) provided always that the Company may commence proceedings and may enforce the Contract in any other courts of competent jurisdiction.

**Cat: D:** 200,001-500,000 sq ft
**Membership No:** 50432
**Company:** Rix Shipping (Scotland) Ltd

# CONTRACT CONDITIONS FOR LOGISTICS (2019)
## (valid from 1 April 2023 – 30 April 2024)

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

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

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

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

**IMPORTANT NOTE**

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

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

**THE COMPANY'S OBLIGATIONS**

1.1. The Company will provide its services with reasonable skill and care. In the absence of written instruction to the Company given a reasonable time in advance with sufficient warning and detail, no particular precautions nor any special treatment need be taken or provided for the Goods by the Company or its subcontractors, nor shall time be of the essence for performance by the Company.

1.2. In the case of bulk Goods, unless the parties have agreed otherwise the Company may deal with and/or mix apparently similar goods consigned by or for the Customer without distinguishing between consignments.

1.3. In the case of carriage the Company's responsibility for the Goods starts when loading on the vehicle is complete and ends when the Goods are tendered for unloading. In the case of storage and / or processing it starts when they are accepted into store and ends when they are tendered by the Company or its subcontractors for collection, or the Company becomes aware of the grounds for their removal under Condition 2.2 or on the expiry of notice under Condition 7.1 or 7.2. Where the Company provides storage and carriage it shall also be responsible for the Goods while they are transferred from its vehicle into its store and vice versa. In the case of forwarding, the Company's responsibility is only to engage or propose apparently competent contractors and to give them adequate instructions (on the basis of matters known to the Company) in relation to the Goods; and in this case, or where the contract is for advice, it is not responsible for the Goods themselves.

1.4. The Company's duty is to the Customer only and not to any third party. Any advice given is for the Customer only and cannot be relied on by any other party.

1.5. Unless it states otherwise in writing, where the Company provides forwarding services it operates as the Customer's agent in dealing, or engaging others to deal, with the Goods.

1.6. For the purposes of the Fulfilment House Due Diligence Scheme and other matters relating to tax, excise, customs or duties, the Company acts as the direct representative of the Customer unless otherwise agreed in writing.

**CUSTOMER'S UNDERTAKINGS**

2.1. It is a condition of the contract, and the Customer represents, warrants and undertakes, that:-

2.1.1 It is either the owner of the Goods, or is authorised by the owner to accept these Conditions on the owner's behalf.

2.1.2 The Goods shall be presented to the Company (and/or anyone else dealing with them) securely and properly packed in compliance with any applicable statutory regulations, recognised standards and good practice; and that they and any Goods Transport Unit are and will remain in a condition to be safely handled, stored and/or carried and so as not to cause injury, damage, contamination or deterioration (or the possibility of them) to any person, premises, property, the environment, drains or watercourses, equipment or to any other items in any way. Where the Company is performing an operation or process on the Goods, they will be delivered to the Company in a condition where that operation or process can be done without further work (other than unpacking) by the Company.

2.1.3 Before the Company assumes any responsibility for or by reference to the Goods, the Customer will inform the Company in writing of any relevant matters; including any special precautions necessitated by the nature, size or shape, weight, condition or potential for deterioration of the Goods and any statutory or other requirements relevant to the Goods with which the Company or others may need to comply; and will promptly after invoicing pay the Company's reasonable extra charges for complying.

2.1.4 It will promptly after invoicing indemnify the Company against all duties, taxes and expenses that the Company has paid or may be required to pay in respect of the Goods; including where the liability to pay them is triggered by the fault, act or omission of the Company or its employees or sub-contractors.

2.1.5 Except to the extent previously notified in detail to, and accepted by, the Company in writing none of the Goods: are or may become hazardous or contaminated; may cause pollution of the environment or harm to human health if they escape from their packaging; require any official consent or licence (or would be illegal for the Company) to handle, possess, deal with or carry; or will at any time whilst in the care or control of the Company constitute Waste.

2.1.6 The Customer will provide a risk assessment and/or method statement appropriate for handling the Goods. Where the Company is carrying the Goods, then unless otherwise previously agreed in writing the Customer will provide suitable facilities, equipment and methods for, and will procure, safe and prompt loading and unloading of the Goods at, any location not occupied by the Company in which they are being handled.

2.1.7 It will comply with any reasonable requirements of the Company relating to handling, packing, carriage, storage or forwarding of Goods (and ancillary matters) which are notified in writing from time to time.

2.1.8 Information given by or on its behalf shall be correct and complete. The Customer will provide promptly when, and in a format, reasonably requested by or on behalf of the Company, any documentation, instructions or information which is relevant to the Goods, to any interest in them, to any services to be provided for the Customer, or to any actual or anticipated obligation of the Company related to either the Goods or the Customer.

2.1.9 Unless otherwise agreed the Customer will be responsible for instructing the Company on the order of stock removals.

2.2 The Customer will indemnify the Company against any expense, loss or damage it suffers as a result of the Customer's instructions (or failure to give instructions or information), or which is related to any breach of the Customer's obligations or the Customer's insolvency, or complying with the instructions

of a competent authority in respect of the Goods, and will pay all costs and expenses (including professional fees) incurred in, and the Company's reasonable charges for, dealing with such matters and their consequences. The Customer will pay an extra charge equal to the amount of any fine or penalty payable by the Company wholly or partly as a consequence of compliance with the instructions, or of acts or omissions of the Customer. If the Company suspects a breach of Condition 2, it may refuse to accept the Goods, demand their immediate removal, or itself arrange their removal without notice, at the Customer's expense.

**INSURANCE AND THE COMPANY'S LIABILITY**

3.1 Unless expressly agreed, the Company does not insure the Goods and the Customer shall self-insure or make arrangements to cover the Goods against all insurable risks to their full insurable value (including all duties and taxes). The insurance referred to in Condition 3.5 is insurance against the Company's potential liability for breach of its obligations and not to cover the Goods themselves against loss, damage, etc .

3.2 Subject to Condition 3.3, the Company shall have no liability for Loss however arising.

3.3 If and to the extent that Loss is directly caused by negligence or wilful act or default of, or breach of duty owed to the Customer by, the Company, its employees (acting in furtherance of their duties as employees) or sub-contractors or agents (acting in furtherance of their duties as sub-contractors or agents) and subject to Conditions 3.4, 3.7 and 3.8, the Company will accept liability for Loss assessed on normal legal principles but not exceeding the Limit fixed by Condition 3.5. Any quantification of amount or value includes duties and taxes.

3.4 In no case shall the Company be liable for any lost profit, income or savings, wasted expenditure, liquidated damages, or indirect or consequential loss suffered by anyone.

3.5 In no case shall any liability of the Company (including inter alia any liability in respect of duties and taxes) exceed the Limit, fixed as follows:-

3.5.1 Where potential Loss relates to Goods, the Customer may specify the Limit as an amount (in Sterling, US Dollars or Euros) per tonne weight of the Goods by notice in writing stating the Limit and the nature and maximum value of the Goods, including duty and taxes. The Limit so nominated by the Customer shall apply in respect of any cause of action arising after the Date and in the period in which the nomination remains in effect. It is a condition of the contract that the Customer pays within 7 days of receipt the Company's invoices for its costs in insuring against its potential liability up to the Limit, and/or to the extent that the Company elects to carry the risk itself, its extra charge equivalent to the estimated or likely cost of such insurance.

3.5.2. If the Company having made reasonable efforts is unable to obtain insurance on reasonable terms to cover its liability up to the Limit nominated by the Customer, or if the Customer has not yet paid any invoice issued under Condition 3.5.1, the Company may give 3 working days written notice, and the Limit for causes of action arising after the giving of the Customer's notice under 3.5.1 shall be £100 sterling per tonne weight of the Goods.

3.5.3 Unless and until a higher Limit has been fixed under Condition 3.5.1 and continues in effect, the Limit shall be £100 sterling per tonne.

3.5.4 Where Loss does not relate directly to Goods (for example alleged negligent advice or data irregularities) the Limit applicable shall be £1000 per incident or series of connected incidents.

3.6 Without prejudice to the Company's rights under Condition 6 to be paid free from deduction or set-off, any limitation of liability on the part of the Company shall be applied to any claim by the Customer before any set off or counterclaim is asserted against money payable to the Company.

3.7.1 The Company shall not be liable for any claim unless:
it has received written notice of it within 10 days of the event giving rise to the claim coming to the knowledge of the Customer or consignee; and

it has received, within 21 days of the event giving rise to the claim coming to the knowledge of the Customer or consignee, sufficient detail in writing to enable investigation. In the case of failure to deliver, time shall run from the second working day after the expected date of delivery.

3.7.2 No legal proceedings (including any counterclaim) may be brought against the Company unless they are issued and served within 9 months of the event giving rise to the claim.

3.8 The Company shall not be liable for any Loss to the extent that it is caused or contributed to by a breach of any of the Customer's obligations, or by a person for whom the Company is not responsible, or by any of the circumstances by virtue of which the Company is relieved of its obligations under Condition 8.

**EMPLOYEES, SUB-CONTRACTORS AND OTHERS**

4.1 The Company shall be entitled to sub-contract on reasonable or industry standard terms all or any part of its obligations and in this event these Conditions shall continue to apply as between the Company and the Customer. However, except where urgent the Company will obtain the Customer's consent (not to be unreasonably withheld or delayed) before storage is subcontracted and will on request notify the Customer of the location of the Goods.

4.2 No Interested Party will make a claim or issue proceedings in respect of Loss against any Additional Party.

4.3 Without prejudice to Condition 4.2, if an Additional Party pays or is liable to make a payment to an Interested Party in connection with a claim for Loss, the Interested Party will fully indemnify the Company against any claim (including all costs and expenses) by the Additional Party against the Company for reimbursement of, contribution to or indemnity against that payment to the extent that the claim added to any direct liability of the Company, and payments made by it, to all Interested Parties exceeds the Limit applicable to the Loss giving rise to the claim.

**CHANGE OF CUSTOMER**

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

**CHARGES, PAYMENTS AND LIEN**

6.1 The Company's charges are subject to VAT and may be increased by prior notice to the Customer. The notice shall be at least 7 days for increases reflecting any rise in fuel costs and at least 21 days otherwise. If the Customer does not agree to the increase it shall notify the Company in writing and will remove the Goods within 21 days after receipt of the Company's notice. If the Goods are not so removed then the increased charges will apply from expiry of the Company's notice. The Company has the right to charge for storage of the Goods for so long as it has custody of or is responsible for them.

6.2 The Customer will pay demurrage at the Company's standard rate (or a reasonable rate set by the Company if there is no standard rate) if the vehicle used by or on behalf of the Company to deliver the

Goods is delayed for more than 60 minutes beyond the time reasonably needed for loading or unloading; and demurrage and storage charges if delivery is refused.

6.3 The Company's charges shall be paid without deduction or set-off at such periodic intervals as may have been agreed between the parties and in any event on the earliest of (a) the expiry of any agreed period of credit (b) when any amount payable to the Company by the Customer becomes overdue and (c) the time immediately before any of the Goods cease to be in the Company's care or control. The Company shall be entitled to payment for carriage at the time the Goods are loaded onto the vehicle. Absence of a delivery note shall not justify a refusal by the Customer to pay.

6.4 Interest shall be paid on money overdue to the Company at the rate of 1.5% for each calendar month during all or part of which it is overdue.

6.5 The Company shall (on its own behalf and as agent for any assignee of its invoices) have a general and particular lien on the Goods (and any associated documentation or records) as security for payment of all sums (whether due or not) claimed by the Company from, or actually or prospectively payable to the Company by, the Customer or another Interested Party on any account (relating to the Goods or not), or otherwise claimed in respect of the Goods or other property of an Interested Party. Where a lien secures sums payable to or claimed by the Company, it shall continue to apply to Goods to cover those sums notwithstanding any transfer of ownership of Goods, or change of customer. Storage shall be charged for any goods detained under lien or where the Company is required by any competent authority to retain them.

**REMOVAL AND DISPOSAL OF GOODS**

7.1 The Goods shall be removed by the Customer at the time agreed between the parties. However the Company may at any time by notice in writing to the Customer require the removal of the Goods within 14 days from the date of such notice or, in the case of perishable goods, 3 days; or immediately in case of urgency.

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

7.3 Notice or action by the Company under this condition shall not in itself terminate the contract between the parties unless the Company expressly states so.

7.4 The time periods in this Condition may be extended by the Company in its discretion.

**FORCE MAJEURE**

8. The Company shall be relieved of its obligations to the extent that their performance is prevented or delayed by, or their non-performance results wholly or partly from, the act or omission of the Customer or anyone acting on its behalf or with its authority or an Interested Party or by storm, flood,

fire, explosion, civil disturbance, governmental, regulatory or quasi-governmental action, breakdown or unavailability of premises, equipment or labour, or other cause beyond the reasonable control of the Company.

**DATA AND CONFIDENTIALITY**

9.1 Each party will observe its obligations under the General Data Protection Regulation and other applicable data protection legislation including the Data Protection Act 2018.

9.2 Unless otherwise agreed in writing the Company will be a data processor and the Customer will be the data controller of personal data relating to or supplied by the Customer or consignees of the Goods.

9.3 The Company will process personal data in accordance with the Customer's instructions. The Company may use data supplied by or on behalf of the Customer for purposes appropriate to the performance of the Company's obligations, the exercise of the Company's rights or for business planning by the Company. The Company may share data with a Subcontractor for the provision of the Company's services to the Customer, and with any government authority where appropriate.

9.4 Subject to the provisions of this clause and applicable legislation, the Company and the Customer shall each keep confidential information or data supplied by or on behalf of the other which is expressed to be confidential or which is of such a nature that it should clearly be regarded as confidential by a reasonable person.

**TUPE AND SERVICE PROVISION CHANGE**

10.1 Where there is an Inward TUPE Transfer, the Customer will indemnify the Company against all liability and expense which the Company may incur in connection with:

10.1.1 the employment or the termination of employment, before the Effective Time, of any Employee;

10.1.2 any failure by the Transferor to comply with its legal obligations in respect of any of the Employees;

10.1.3 the transfer to the Company, by virtue of TUPE or otherwise, of the employment of any person or the applicability of terms of employment, other than those previously notified to, and previously accepted by, the Company in writing;

10.1.4 any act or omission of the Transferor, on or before the Effective Time, for which the Company becomes liable by virtue of TUPE or otherwise; or

10.1.5 the Transferor's failure to comply with its obligations under regulation 13 of TUPE.

10.2 Where there is an Outward TUPE Transfer, the Customer will indemnify the Company against all liability and expense which the Company may incur in connection with the Transferee's failure to comply with its legal obligations, including without limitation those under regulation 13 of TUPE.

**GENERAL**

11.1 Each exclusion or limitation of liability in these Conditions exists separately and cumulatively.

11.2 Signature on behalf of a Customer or its consignee on a delivery note is evidence that the Goods have been received in apparently good order save as noted

11.3 The Company may open packaging or Goods Transport Units to inspect them or Goods they contain

11.4 Any notice shall be duly given if left at or sent by first class prepaid post to the last known address of the other party or by facsimile to the last notified number evidenced by a successful transmission record, or by email to the last address notified for the purpose of service. It shall be deemed to have been received: if posted 2 working days after posting (4 working days if sent abroad), and if sent by facsimile or email, one working day after sending subject to confirmation of successful transmission (fax) or delivery (email).

11.5 "Writing" includes email.

11.6 Delay or failure by either party to enforce its rights shall not be a waiver of them.

**GOVERNING LAW**

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

**DEFINITIONS**

13 Terms used in these Conditions have the following meanings:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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