

## TERMS AND CONDITIONS

### 1. PARTIES AND INTERPRETATION

1.1 ASPRAY TRANSPORT LTD. AND ASSOCIATED COMPANIES (herein after referred to as the "Carrier") is not a common carrier and accepts goods for carriage only upon that condition and the Conditions set out below.

These Conditions set out the basis on which Aspray Transport Limited (**01687432**), whose registered office is at Nationworld House, Noose Lane, Willenhall, WV13 3AP, transports goods collected which may be either a single item tendered for carriage, or a consignment of multiple items from a single address under a single reference number for delivery to a single address ("**Consignment**"), in each case to be delivered to a recipient or any other person with authority at the delivery address, unless prior written authorisation from the Customer is received by the Carrier in relation to the consignment allowing goods to be left in a pre-determined safe location. The Customer as defined in the Rate Agreement ("**Customer**") should note the limitations and exclusions of the Carrier's liability and arrange any additional insurance as necessary.

1.2 In these Conditions the words "including", "in particular" and similar shall be construed as illustrative and not exhaustive.

1.3 No servant or agent of the Carrier is permitted to alter or vary these Conditions in any way unless expressly authorised to do so.

1.4 These Terms apply to the Services ordered by the Customer and provided by The Carrier (and any sub-contractor of The

Carrier) to the Customer to the exclusion of all other terms and conditions which may have been submitted by the Customer or which may otherwise be implied by trade, custom, practice or course of dealing unless otherwise expressly agreed by The Carrier in writing. These Terms apply only to:

(a) the provision of the Services in the United Kingdom and Ireland, by road. If you require collect or delivery services outside the United Kingdom or delivery services other than by road, different terms will apply. Please contact us for a copy of the applicable terms;

(b) Services provided to Business Account Customers. They shall not apply to Services ordered by business customers who do not have an account with The Carrier or to Services ordered by consumers; and

(c) orders for Services placed directly by Customers with The Carrier. They shall not apply to collection or delivery services placed with a third party for whom The Carrier is a sub-contractor. Any issues with services ordered by the Customer with third party providers should be addressed directly with that third party. The Carrier shall not be liable to the Customer as a result of any services performed by The Carrier as a third party's sub-contractor.

1.5 Please read these Terms carefully. These Terms apply to all Orders to provide the Services received by The Carrier whether in person, by e-mail or over the telephone. These Terms will also apply to Orders made on a Despatch System.

**These Terms contain limitations on The Carrier' liability and specify the way in which a claim for Loss or Damage must be made (please see in particular Condition 9).**

1.6 In the event of a conflict between these Terms and/or the Contract / Rate Agreement (herein "Contract") and/or the Confirmed Details, the order of priority shall be: (1) the Confirmed Details; (2) the Contract; and (3) these Terms.

1.7 The Carrier may contact the Customer regarding the Services using the details set out in the Confirmed Details or otherwise provided to The Carrier.

1.8 The Contract regarding the relevant Services will be formed upon the earlier of the Customer: a) receiving the Confirmed Details and/or Consignment Number from The Carrier; b) confirming to The Carrier its acceptance of the Charges for an Order verbally or by e-mail; or c) confirming an Order through a Despatch System. The Customer shall be deemed to have accepted these Terms by signing and returning to The Carrier the Contract or by placing an Order for the Services (after having been provided with the Contract but regardless of whether the Contract has been signed and returned).

1.9 The Carrier reserves the right to amend these Terms upon providing the Customer with thirty (30) days prior written notice and such amended Terms shall apply to all Orders placed subsequent to the effective date of amendment of the Terms.

## **2. DEFINITIONS AND INTERPRETATION**

2.1 Where relevant, all terms used in these Terms shall have the meaning given to them in these Terms or the relevant Confirmed Details. For the purposes of these Terms:

2.1.1 "**Acceptable Goods for Carriage**" means those Consignments which comply with The Carrier' conditions of carriage as defined below, and therefore:

(a) do not exceed the weight or dimension limitations set out in the Contract;

(b) comply with any other conditions set out in these Terms, the Contract or notified to the Customer from time to time;

(c) comply with all applicable laws and regulations; and

(d) are properly packaged to avoid damage to themselves and other consignments (including, without limitation, all boxes should be adequately taped shut to contain and support the weight of the goods inside, sharp edges and corners should be avoided, all bare metals must be completely wrapped, and fragile items should be packed in layers of bubble wrap, polystyrene bobbles or similar products to protect goods from impact and clearly labelled with fragile tape or stickers);

2.1.2 "**ADR**" means the ADR European Agreement Concerning the International Carriage of Dangerous Goods by Road as the same may be amended or substituted from time to time;

2.1.3 "**Business Days**" means any day other than a Saturday or a Sunday or public or bank holiday in Scotland or England and Wales;

2.1.4 "**Business Account Customer**" means an account customer of The Carrier that has accepted these Terms as provided for in Condition 1.5;

2.1.5 "**Charges**" means the sums due by the Customer to The Carrier in relation to the Services in accordance with the Prices set out in the Contract or as otherwise advised to the Customer and which are confirmed as part of the Despatch System or in the relevant Confirmed Details;

2.1.6 "**Collection Point**" means the location at which The Carrier is to collect a Consignment;

2.1.7 "**Collection Services**" means the collection of a Consignment from the relevant Collection Point;

2.1.8 **“Collection Time”** means the date and time by which The Carrier has undertaken to collect a Consignment as part of the Services, as set out in the Contract, Confirmed Details or otherwise;

2.1.9 **“Confirmed Details”** means the details relating to the Services which are confirmed to the Customer (whether set out in an e-mail provided to the Customer following the placing of an Order and/or those details provided in the Despatch System and/or those details otherwise confirmed to the Customer as part of the ordering process) which details set out the basis upon which the Services will be provided;

2.1.10 **“Consignment”** means goods (whether a single item or multiple items in bulk or contained in one parcel, package or container or any number of separate items, parcels, packages, pallets or containers) being carried under a Contract;

2.1.11 **“Consignment Number”** means, where relevant, in relation to each Consignment the number issued to the Customer by The Carrier;

2.1.12 **“Contract”** means each contract comprising the Order, the Contract, the relevant Confirmed Details and these Terms;

2.1.13 **“Customer”** means the Business Account Customer which places an Order;

2.1.14 **“Damage”** means any damage to a Consignment occurring during the time when The Carrier is responsible for the Consignment (as determined in accordance with Condition 4) by reference to the condition the Consignment was in at the time it was collected by The Carrier or deposited at the Depot (as relevant);

2.1.15 **“Dangerous Goods”** means any goods which The Carrier deems in its sole discretion to be dangerous from time to time (including without limitation the type of goods listed as dangerous in The Carriage

of Dangerous Goods and Use of Transportable Pressure Equipment (Amendment) Regulations 2011 and the ADR or any other rules applicable to the transportation or other services regarding dangerous goods);

2.1.16 **“Delivery Point”** means the agreed location where The Carrier has undertaken to deliver a Consignment as part of the Services;

2.1.17 **“Delivery Services”** means the transportation of a Consignment from either the Depot or the Collection Point;

2.1.18 **“Delivery Time”** means the date and time by which The Carrier has undertaken to deliver a Consignment to the Delivery Point as part of the Services as set out in the Contract, Confirmed Details or otherwise;

2.1.19 **“Depot”** means the Carrier or Third-Party depot set out in the Confirmed Details where, if applicable, the Customer has deposited the Consignment, or has arranged for the Consignment to be deposited;

2.1.20 **“Firearms”** means firearms of any description (whether modern or antique) and including without limitation: (i) air rifles of any description including paintball guns; (ii) de-activated or display firearms of any description; and (iii) replica firearms or realistic imitation firearms of any description;

2.1.21 **“Goods Not Under Liability”** means items such as (but not limited to) any acrylics, antiques, bare metals, ceramics, cheques, chemicals, china, currencies, fibre glass, furs, glass, jewellery, legal or business documents, liquids, memorabilia, Perspex, porcelain, pottery, precious metals, stamps, tickets, tobacco, watches, wines & spirits, works of art or anything of a similar nature to each of the foregoing and other items

listed as “Goods Not Under Liability” in the Contract;

2.1.22 “**Goods Not Accepted**” means the items in relation to which The Carrier shall not be obliged to perform the Services and which the Customer is prohibited from including in any Consignment without The Carrier’ prior agreement including without limitation Firearms and any other items noted as “Goods Not Accepted” in the Contract or otherwise notified by The Carrier to the Customer from time to time as being “Goods Not Accepted”;

2.1.23 “**Loss**” means, in respect of a Consignment, during the time when The Carrier is responsible for the Consignment (as determined in accordance with Condition 4) the misplacement, mis-delivery, physical loss or inability to locate that Consignment. No Loss shall be deemed to have taken place until three (3) days after the Delivery Time;

2.1.24 “**The Carrier**” means Aspray Transport Limited and associated companies (**01687432**), whose registered office is at Nationworld House, Noose Lane, Willenhall, WV13 3AP

2.1.25 “**Non-Parcel Consignment**” means a Consignment other than a Parcel Consignment;

2.1.26 “**Despatch System**” means the relevant despatch system made available for Customers to place Orders for the Services.

2.1.27 “**Orders**” means an order for the provision of the Services, whether placed in person, over the telephone, by e-mail or via Despatch System;

2.1.28 “**Consignment**” means a single item or multiple item order to a single delivery point made up of one or more of the following freight types:

**Carton** a) a Parcel or Bundle that weighs up to 25 kilograms; and b) is no longer

than 1200mm (Length) by 900mm (Width) by 600mm (Height); as such weight and size restrictions may be amended from time to time in the Contract;

**Quarter Pallets:** a) weighs up to 250 kilograms; and b) is no longer than 1.2M (Length) x 1.0m (Width) x 0.6m (Height); as such weight and size restrictions may be amended from time to time in the Contract;

**Half Pallets:** a) weighs up to 500 kilograms; and b) is no longer than 1.2M (Length) x 1.0m (Width) x 1.0m (Height); as such weight and size restrictions may be amended from time to time in the Contract;

**Standard Pallets:** a) weighs up to 1000 kilograms; and b) is no longer than 1.2M (Length) x 1.0m (Width) x 1.6m (Height); as such weight and size restrictions may be amended from time to time in the Contract;

**Skid:** a) weighs up to 125 kilograms; and b) is no longer than 1.0M (Length) x 0.6m (Width) x 0.5m (Height); as such weight and size restrictions may be amended from time to time in the Contract;

**Jiffy:** a) weighs up to 3 kilograms; and b) is no longer than 200mm (Length) x 100mm (Width) x 30mm (Height); as such weight and size restrictions may be amended from time to time in the Contract;

**Bundle 1.21 to 3M** a) weighs up to 25 kilograms; and b) is no longer than 3M (Length) x 0.9M (Width) x 0.6M (Height); as such weight and size restrictions may be amended from time to time in the Contract;

**Bundle 3.01 to 4M** a) weighs up to 25 kilograms; and b) is no longer than 4M (Length) x 0.9M (Width) x 0.6M (Height); as such weight and size restrictions may

be amended from time to time in the Contract;

**Bundle 4.01 to 6M** a) weighs up to 25 kilograms; and b) is no longer than 6M (Length) x 0.9M (Width) x 0.6M (Height); as such weight and size restrictions may be amended from time to time in the Contract;

**Double Pallets:** a) weighs up to 1000 kilograms; and b) is no longer than 2M (Length) x 1.0m (Width) x 1.6m (Height); as such weight and size restrictions may be amended from time to time in the Contract;

**Triple Pallets:** a) weighs up to 1000 kilograms; and b) is no longer than 3M (Length) x 1.0m (Width) x 1.6m (Height); as such weight and size restrictions may be amended from time to time in the Contract;

**IFT (Irregular Freight Type):** Any other freight type where a) weight as pre-agreed within Contract ; and b) dimensions as pre-agreed within Contract); as such weight and size restrictions may be amended from time to time in the Contract; Out of Gauge or IFT consignments not pre-agreed within a Contract will be accepted, but a surcharge and Rate will be applied appropriate to handling, administration, difficulty of servicing and volumetric considerations.

2.1.29 "**Perishable Items**" means any fresh, consumable, delicate or fragile goods, including without limitation fresh or frozen food;

2.1.30 "**Prices**" means the rates as set out in the Contract;

2.1.31 "**Recipient**" means the recipient of the Consignment;

2.1.32 "**Contract**" means the Contract (including any associated Service Level

Agreement and or Standard Operating Procedures) provided by The Carrier to Customers, among other things, the Prices and costs of additional liability as the same may be updated by The Carrier from time to time;

2.1.33 "**Services**" means the Services set out in these Terms including, without limitation, the Collection Services and / or the Delivery Services;

2.1.34 "**Terms**" means these terms and conditions as the same may be amended from time to time by The Carrier; and

2.1.35 "**Transit**" means the period of time when the Consignment is in The Carrier' (or its sub-contractor's) possession or control, which shall commence and end as set out in Condition 4.

2.1.36 "**Mis-Declaration**" means that any Shipment details incorrectly entered by the Customer relating to Address, Product Description, Weight and or Volumetric Weight will be amended as identified and will be subject to a surcharge and Administrative Charge as appropriate.

2.1.37 "**Non-Stackable**" means that any goods presented in a way that physically prevents, or gives written instruction preventing the Carrier from conducting consolidation for transit purposes as deemed appropriate, may be liable to additional charges based on either volumetric considerations or difficulty in effecting Service Delivery.

2.1.38 "**Outsized Pallets**" means:

(i) any Pallet in excess of 1.2M and up to 2M in length will be deemed as out of gauge and charged as two (2); (ii) any pallet in excess of 1M and up to 1.5M in width will be deemed as out of gauge and charged as two (2); (iii) any pallets above 1.6M in height are not accepted – if presented the Carrier reserves the right to break down the pallet and present as necessary, with the

pallet charged as two plus associated charges for re-work; (iv) any Pallet in excess of 2M and up to 3M in length will be deemed as out of gauge and charged as three (3); any Pallet in excess of 3M in length and 2M in width are not accepted – if presented the pallets will be held until such time the Customer arranges collection (at the Customer's cost), and until such time the Carrier will charge for appropriate storage;

### **3. THE SERVICES**

3.1 In consideration of the payment by the Customer of the Charges (pursuant to Condition 7 hereof) for the same, The Carrier shall supply the Services in accordance with the terms and conditions of the Contract. The Customer agrees and acknowledges that The Carrier is not a common carrier and furthermore may refuse to accept any Consignment or part thereof or refuse to perform the Services in relation to any Consignment it has already accepted where the Consignment does not comply with these Terms.

3.2 The Carrier shall use reasonable endeavours to perform the:

3.2.1 Collection Services by or before the Collection Time; and

3.2.2 Delivery Services by or before the Delivery Time;

however, the Parties acknowledge that the Collection Time and Delivery Time are estimates only and time is not of the essence regarding the Services.

3.3 The Carrier shall perform the Services in a professional manner using reasonable skill and care.

3.4 The Carrier shall not be required to perform the Collection Services and the Delivery Services other than at the specified Collection Point and/or the Delivery Point. If

the Carrier agrees to perform the Services other than at the specified Collection Point and/or the Delivery Point it shall be at the sole risk of the Customer.

3.5 The Carrier shall be permitted to amend the Services as required to comply with any applicable law or safety requirement or otherwise in any manner which does not materially change the nature or level of the Services. The Carrier will use reasonable endeavours to notify the Customer of such changes.

3.6 Other than where provided otherwise under these Terms, nothing in a Contract shall operate to grant The Carrier any right, title or interest in or in relation to any Consignment which is carried or stored by The Carrier in relation to the Services (title for which will remain at all times with the Customer, or the relevant owner, as appropriate).

3.7 The Carrier shall be entitled to appoint sub-contractors to perform all or part of the Services and such sub-contractors may in turn appoint sub-sub-contractors. The Carrier contracts for itself and as agent of and trustee for its employees, agents, and such sub-contractors employed to perform the Services and their respective employees and agents. Any such sub-contractors shall have the benefit of the Contract, shall be entitled to enforce the Contract directly against the Customer and, collectively and together with The Carrier (in aggregate), shall be under no greater liability to the Customer or any other party than The Carrier is under these Terms.

3.8 The carriage of any Consignment by rail, sea, inland waterways, or air is arranged by The Carrier as the Customer's agent and shall be subject to the conditions of the rail, shipping, inland waterway or air carrier contracted to carry the Consignment. The Carrier shall be under no liability

whatsoever to whomsoever and howsoever arising in respect of such carriage: provided that where the Consignment is carried partly by road, and partly by such other means of transport any loss, damage or delay shall be deemed to have occurred while the Consignment was being carried by road unless the contrary is proved by The Carrier.

3.9 The Carrier shall not be obliged to accept any Dangerous Goods or any other Goods Not Accepted in any Consignment and The Carrier shall only provide the Services in respect of the same where The Carrier expressly agrees to do so, which may be subject to the acceptance by the Customer of additional exclusions of liability and other, terms and conditions, at The Carrier' sole discretion. The Customer agrees that The Carrier or any third party (including a governmental authority) may open and inspect the Consignment at any time and the Customer consents to the Consignment being inspected, x-rayed and subjected to other tests and screening methods. If the Consignment does contain Goods Not Accepted or Dangerous Goods and The Carrier has not accepted them prior to the Services commencing, The Carrier may deal with the Consignment in its sole and absolute discretion (without incurring any liability to the Customer or the Recipient) including destroying or otherwise disposing of the Consignment or returning it to the Customer. The Carrier shall be entitled to charge the Customer for any cost to destroy, dispose of or return the Consignment.

3.10 The Carrier may, in its sole discretion, accept Dangerous Goods provided that:

3.10.1 the amount carried is under the limited quantity (LQ) provisions of Chapter 3.4 of the ADR;

3.10.2 the carriage of the Consignment is within the United Kingdom mainland;

3.10.3 the Customer classifies, packages and labels the Consignment in accordance with any and all applicable legislation under the Limited Quantity (LQ) and any further requirements of the Carrier;

3.12 In relation to the collection of Consignments into Transit, The Carrier shall either: (i) sign a hard copy document which will then be held; or (ii) sign or scan into electronic records (using an electronic proof of delivery device).

3.13 Where a "Signed For" Service is provided (as detailed in the Contract) or otherwise the signature of the Recipient is necessary, the Recipient will be required to either: (i) sign a hard copy document which will then be held and inputted onto its system; or (ii) sign or scan into electronic records (using an electronic proof of delivery device), acknowledging receipt of the Consignment by the Recipient at the time of delivery (with such signature forming proof of delivery).

3.14 The Carrier shall not inspect the Consignment at any point before or during Transit. The Carrier' signature on any document (whether a document prepared by the Customer or the Recipient or a document under Conditions 3.12 or 3.13) acknowledging receipt or delivery of the Consignment, shall not be evidence of the declared condition, nature, quality, value or weight of the Consignment. The burden of proving the conditions of the Consignment and its nature, quality, value or weight in a case of a dispute shall rest with the Customer.

#### **4. COLLECTION AND DELIVERY**

4.1 If the Carrier believes it will be unable to perform the Collection Services by the Collection Time and/or the Delivery Services by the Delivery Time, The Carrier shall notify the Customer of such inability and the new anticipated Collection Time and/or Delivery Time.

4.2 Subject to Condition 9 below, Transit shall and The Carrier's responsibility for each Consignment shall commence, and accordingly risk in each Consignment shall pass to The Carrier, when The Carrier, its agents or sub-contractors: a) takes physical control of that Consignment at the relevant Collection Point or Depot; or b) where a signature is provided under Condition 3.12 above.

4.3 Subject to the remainder of this Condition, Transit shall and The Carrier' responsibility for each Consignment shall terminate, and accordingly risk in each Consignment shall pass to the Customer, when The Carrier, its agents or sub-contractors unloads that Consignment at the Delivery Point or where a signature is provided under Condition 3.13 above.

4.4 In the event the Recipient is not at the Delivery Point and the Customer has provided The Carrier with special delivery instructions which mean the Recipient's signature is not required on delivery, then provided The Carrier carries out such instructions and the Delivery can be effected at the Delivery Point, Transit shall and The Carrier' responsibility for each Consignment shall terminate upon Delivery, and accordingly risk in each Consignment shall pass to the Customer.

4.5 The Carrier shall make one (1) attempt to collect and a maximum of two (2) attempts to deliver a Consignment. Where, having made the foregoing attempts The Carrier is unable to complete the Collection Services and/or Delivery Services (including,

but not limited to, as a result of the Recipient not being available to take delivery or no safe or adequate access or unloading facilities exist at the Collection Point or Delivery Point) The Carrier shall: 4.5.1 not, in the case of a failed collection, be required to attempt a further collection; and

4.5.2 in the case of a Consignment which has been collected but which has not been delivered, be entitled to return the Consignment to the Depot, another depot or the depot of an appropriate third party and leave a request for the Recipient to contact The Carrier to arrange an alternative delivery or to collect the Consignment from The Carrier or the third-party depot.

4.6 In the event that a Consignment is held by The Carrier or a third party for: (i) delivery at an alternative Delivery Time; or (ii) collection by the Recipient, either due to a failed delivery under Condition 4.5.2 or as a result of instructions from the Customer or the Recipient, and the Customer or the Recipient does not arrange an alternative Delivery Time or the Consignment is not so collected by the Recipient or the Customer within three (3) Business Days following: (a) the date notice is given to the Recipient and/or the Customer that a Consignment is being held in accordance with Condition 4.5.2; or (b) the proposed date of collection under such Recipient/Customer instructions, The Carrier' responsibility for the Consignment shall terminate, and accordingly risk in each Consignment shall pass to the Customer. The Carrier shall be entitled to deliver the Consignment back to the Customer and The Carrier reserves the right to charge for such return of the Consignment to the Customer by The Carrier.

4.7 Where the Carrier attempts to deliver a Consignment but the Recipient does not accept a Consignment, The Carrier shall notify the Customer and may in its sole discretion either return the Consignment to the Customer or hold the Consignment at a The Carrier or third-party depot and advise the Customer that the Consignment is available for collection. The Carrier reserves the right to charge for such return of the Consignment to the Customer by The Carrier. The Carrier does not accept any liability for or in relation to the Consignment for such holding and/or return service.

4.8 Where the Carrier is unable to deliver a Consignment to the Recipient, as the Recipient of a Consignment is unidentifiable for whatever reason, The Carrier shall send such Consignment to any of its, or its sub-contractors', facilities for investigation without delay and shall notify the Customer. If the Customer cannot or does not promptly provide the required information in respect of the Recipient to enable the Delivery Services, The Carrier shall be entitled to deliver the Consignment back to the Customer and The Carrier reserves the right to charge for such return of the Consignment to the Customer by The Carrier.

4.9 If the Customer cannot be identified for the purposes of holding and/or returning a Consignment, then the Consignment will be held at either The Carrier' or its sub-contractor's or other appropriate third party's premises (as applicable) for a further three (3) calendar months.

4.10 At all times a Consignment is held at a The Carrier depot or a depot of a subcontractor or a third party in accordance with this Condition 4 the Consignment shall be held in accordance with the relevant policy of The Carrier or its sub-contractors

or the relevant third party for the holding of such Consignments.

4.11 Where any failure to perform the Collection Services or the Delivery Services is due to the Consignment being a Goods Not Accepted or due to the act or omission of the Customer (including without limitation insufficient or improper labelling or addressing of the Consignment or any mis-statement or mis-representation by the Customer, the owner of the Consignment or the Recipient), the Customer shall be due to pay the cost of carriage for the safe return of the Consignment to the Collection Point, or other address agreed with The Carrier. The costs due are set out in the Contract and shall be due in advance of The Carrier returning the Consignment. In the event that the Customer does not respond to The Carrier to arrange for the return of the Consignment within a reasonable time, The Carrier shall be entitled to destroy the Consignment.

4.12 For all Reporting purposes on performance KPI's, any Consignment despatched on a Premium Timed Service will be deemed to have failed Service expectations should the delivery not be completed within 30 minutes of the anticipated Delivery Time.

## **5. CUSTOMER OBLIGATIONS**

4.1 5.1 The Customer acknowledges that it is responsible for ensuring that:

5.1.1 the details set out in the Confirmed Details are correct and undertakes to notify The Carrier of any errors in the Confirmed Details as soon as possible after becoming aware of the same;

5.1.2 where relevant, the Consignment is deposited at the Depot in good time to enable The Carrier to perform the Delivery Services in accordance with the Contract;

5.1.3 the Consignment falls within the Acceptable Goods for Carriage;

5.1.4 any customs and export duties, rights, licences and permits required to transport the Consignment are obtained at its own cost;

5.1.5 the Consignment and the transportation of it complies with all applicable laws and regulations;

5.1.6 sufficient insurance has been obtained in relation to the Consignment including regarding transportation. The Customer acknowledges that the amounts it is entitled to recover from The Carrier under a Contract as a result of any Damage or Loss may not be the same as the cost to replace the Consignment and so it is advised to take out additional insurance where required;

5.1.7 The Carrier is provided safe and adequate access to the Collection Point and/or the Delivery Point (where such is in the reasonable control of the Customer or the Recipient) and any assistance and/or special loading and unloading equipment shall be made available to The Carrier at the Customer's cost; and

5.1.8 it is either the owner of the Consignment or is permitted to engage The Carrier to provide the Services in relation to the Consignment.

5.2 The Carrier is not obliged to provide additional labour or equipment for loading and unloading other than one individual and vehicle. The Customer will co-operate with The Carrier in all matters relating to the provision of the Services. The Customer warrants that any additional labour required for loading or unloading the Consignment will be provided by the Customer or on the Customer's behalf. Whether additional labour is necessary shall be assessed by The Carrier in its sole discretion. The Customer acknowledges that if assistance, or special loading and

unloading equipment, is required (as determined by The Carrier in its sole discretion) to perform the Services (whether as a result of the weight, shape or dimensions of the Consignment or otherwise) and no such assistance or equipment is provided by the Customer, The Carrier shall be permitted to refuse to perform the Services until the same is provided. Where any additional assistance, or equipment is provided by The Carrier, the Customer shall be responsible for the cost of such assistance and equipment. The Carrier shall not be in breach of any of its obligations under these Terms as a result of such assistance or equipment not being provided.

5.3 For the avoidance of doubt, in the event the Customer, or any of its employees or third parties on the Customer's behalf, provide assistance to The Carrier to load or unload the Consignment, the Customer, or any of its employees or such third parties shall do so at their own risk. To the fullest extent permitted by law, The Carrier shall not be liable for any loss, personal injury or death suffered by the Customer, or any of its employees or third parties as a result.

5.4 The Customer shall be responsible for and indemnify The Carrier and its sub-contractors against any loss, demands, damages, claims, proceedings, fines, penalties, expenses, loss of or damage to a vehicle or any goods carried, or liability suffered or otherwise incurred by The Carrier as a result of:

5.4.1 the Customer using the Services in respect of any Consignment which is illegal;

5.4.2 injury to persons or damage to property arising from the non-compliance by the Customer with any of the provisions of these Terms;

5.4.3 The Carrier being instructed to load or unload the Consignment without additional

labour or equipment for loading and unloading; and

5.4.4 The Carrier performing the Services other than at the specified Collection Point and/or Delivery Point.

## **6. RESTRICTIONS ON SERVICES**

6.1 The Customer acknowledges that The Carrier is not obliged to provide the Services:

6.1.1 in relation to Goods Not Accepted;

6.1.2 in relation to any Consignment that is not an Acceptable Good for Carriage; or

6.1.3 in relation to any Consignment of which the Customer is not: (i) the owner; or (ii) permitted to engage The Carrier to provide the Services; regardless of the details included in the Confirmed Details.

6.2 Any Goods Not Accepted and Dangerous Goods must be disclosed to The Carrier in advance of the Services commencing.

6.3 The Carrier is not obliged to provide the Services beyond the delivery areas specified in the Contract regardless of the details included in the Confirmed Details.

6.4 For the avoidance of doubt, in the event of a conflict, the definition of Goods Not Accepted shall take precedence over Goods Not Under Liability. Accordingly, where the goods comprising a Consignment are similar in nature to Goods Not Under Liability but are listed as Goods Not Accepted, such goods shall be deemed Goods Not Accepted for the purposes of these Terms.

## **7. PAYMENT TERMS**

7.1 The Customer will be issued with a monthly Summary setting out the Charges due for the Services performed in that month. All invoices must be paid within fourteen (14) days of the date of the invoice, unless other terms have been

agreed as part of the Contract. Customers shall pay the Charges based on the Prices applicable at the time of ordering the Services.

7.2 Overdue invoices will accrue interest annually at the rate of interest specified in the Late Payment of Commercial Debts (Interests) Act 1998 from time to time, calculated on a daily basis, from the due date for payment until payment is received in full of the overdue sum. In addition, The Carrier may suspend the account if payment of any invoice previously issued is not paid in full within thirty (30) days of the date of the invoice.

7.3 The Charges will depend on the weight and dimensions of the Consignment. Where the volumetric weight of the Consignment exceeds the physical weight, the greater weight shall be used to calculate the Charges. Larger and heavier items may also be subject to a surcharge as set out in the Contract or as otherwise notified to the Customer from time to time.

7.4 The Carrier shall be permitted to increase the Charges (whether or not such Charges have been paid in full) in accordance with the Prices in the event that the information provided to it by the Customer (e.g. regarding the weight or value of the Consignment) is incorrect notwithstanding that a Consignment Number or Confirmed Details have been issued or that a Consignment has been collected or otherwise accepted by The Carrier.

7.5 The Charges are exclusive of any applicable value added tax (which shall be payable by the Customer).

7.6 The Carrier shall have a special lien on the Consignment and a general lien against the Customer and owner of the Consignment for sums unpaid on any invoice, account or contract whatsoever.

7.7 In the event such lien is not satisfied within a reasonable time period, The Carrier may sell the Consignment or part thereof as agent for the Customer and/or owner and apply the proceeds towards any sums unpaid and the expenses of the retention, insurance and sale of the Consignment and shall be discharged from any liability in respect of the Consignment.

7.8 The Carrier may exercise its lien on its own behalf or as agent for any assignee of its invoices at any time and at any place at its sole discretion whether or not sums have become payable in accordance with this Condition and whether or not the Services have been completed and these Conditions shall continue to apply during the period of exercise of such lien.

7.9 The Customer shall be liable to pay any additional charges for unreasonable delay or detention of any vehicle, trailer, container, or other equipment of The Carrier or its sub-contractors caused by the Customer or Recipient. The rights of The Carrier against any other person in respect of such delay or detention shall remain unaffected.

7.10 The charges payable by the Customer for the Services shall be based on the tariff set out in the Rate Agreement. The tariff is based on the account profile including projected use as set out in the Rate Agreement. All charges and supplements are subject to VAT.

7.11 The Customer shall maintain its projected use as set out in the Rate Agreement. The Carrier reserves the right to review volumes despatched against the projected profile (measured over successive three-month periods) and if the volumes despatched are less than ninety per cent (90%) of projected volumes, then the Carrier may revise its tariff to reflect the volumes despatched as against the volumes

anticipated by the original tariff and may retrospectively charge the difference for the relevant period.

7.12 The Carrier may vary the tariff by written notice at any time for any reason including: (i) with retrospective and prospective effect, if the Customer's use of the Services materially differs from the traffic profile; and/or (ii) if the Carrier's costs of providing the Services have increased.

7.13 The Carrier may charge supplements as described in the Rate Agreement including a fuel supplement in accordance with the Fuel Surcharge ("FSC") mechanism, as defined within the Rate Agreement. The FSC mechanism is determined by "**Monthly Prices of Road Fuels and Petroleum Products**" as published by the Department for Energy and Climate Change of Her Majesty's Government ("DECC") at <https://www.gov.uk/government/statistical-data-sets/oil-and-petroleum-products-monthly-statistics>

7.14 Without limiting clause 7.12, the Carrier shall conduct a rate review of the tariff annually on or around the anniversary of the Contract, unless pre-determined metrics and anniversary have been included within the contract. If no future agreement has been reached at the time of expiration of Contract, the Carrier reserves the right to apply published Standard Tariff Rates until such time that future agreement is concluded.

7.15 Any query relating to any invoice must be notified to the Carrier within seven (7) days of the date of invoice.

7.16 The Customer may not withhold payment of any amount due to the Carrier by way of set-off or counterclaim. The Carrier may set off any amount owing to it from the Customer against any amount owed by the Carrier to the Customer.

7.17 If the Customer fails to pay any amount due to the Carrier by the due date then without limiting the Carrier's other rights and remedies: (i) the Carrier may claim interest and costs under the Late Interest under the Late Payment of Commercial Debts (Interest) Act 1998; (ii) the Carrier may suspend performance of the Services until it is paid; and (iii) the Carrier may exercise a general right of lien and hold any Packages until all outstanding sums are paid. If any sums are not paid within fourteen (14) days after their due date, then the Carrier may without further notice to the Customer sell any Packages and apply the proceeds against the sums due. Any surplus after satisfaction of all sums and the Carrier's reasonable costs shall be repayable to the Customer on demand.

7.18 The Carrier may at any time by written notice withdraw or alter any credit allowed to the Customer

7.19 In the event that an error is identified to an historic invoice, no retrospective query will be investigated after 3 months from date of said invoice.

## **8. COMPLAINTS PROCEDURE**

8.1 In the event that you are unhappy with the service you have been provided, please contact Customer Services, unless specified complaints procedures have been detailed within any Service Level Agreement or Standard Operating Procedures.

## **9. CLAIMS PROCEDURE & LIMITATION OF LIABILITY**

9.1 For the avoidance of any doubt, the Unfair Contract Terms Act 1977 is hereby excluded to the fullest extent legally possible.

### **Claims Procedure**

9.2 In the event that the Customer wishes to make a claim for Damage to any Consignment (a "Damage Claim"), the following provisions will apply:

9.2.1 No Claim will be accepted where the Recipient has signed for the goods as complete or without recording items as damaged at time of delivery. Notation of "Goods Not Checked" at point of delivery will not be accepted as valid with respect to any subsequent attempt to claim.

9.2.2 all Damage Claims must be notified (specifying the relevant Consignment Number, Customer account number and Delivery Point post code together with reasonable details regarding the Services and the Consignment) to The Carrier by Online Portal or e-mail, in each case within five (5) Business Days of the time of actual delivery of the Consignment or the end of Transit (if no delivery); and

9.2.3 The Carrier shall not be liable for any Damage Claim unless it receives proof of the Damage Claim (together with photographs, proof of value, a full description of the Damage and, where possible, proof of purchase or rental) within ten (10) Business Days of actual delivery of the Consignment or the end of Transit (if no delivery).

Furthermore, where it is reasonably required to inspect the Consignment to assess the Damage, The Carrier may request that the Customer makes the Consignment available in its original packaging for the

purposes of inspection. Failure to do so may invalidate a Damage Claim. Where the Consignment (or part thereof which is subject to the Damage Claim) is returned to The Carrier for such inspection, The Carrier will return the Consignment to the Customer or destroy it as agreed with the Customer.

9.3 In the event that the Customer wishes to make a claim for the Loss of a Consignment ("Loss Claim") the following provisions will apply:

9.3.1 all Loss Claims must be notified (specifying the relevant Consignment Number, Customer account number and Delivery Point post code together with reasonable details regarding the Services and the Consignment) to The Carrier by Online Portal or e-mail, in each case within five (5) Business Days of the Delivery Time; and

9.3.2 The Carrier shall not be liable for any Loss Claim unless it receives full written details of the Loss Claim (together with photographs, proof of the weight and value of the Consignment and where possible, proof of purchase or rental) within ten (10) Business Days of the Delivery Time.

9.4 Where the Carrier pays the Customer the replacement cost of the Consignment (or the relevant part thereof), it shall be entitled to retain such Consignment (or the relevant part thereof). The Customer shall provide the Consignment (or relevant part thereof) to The Carrier prior to The Carrier making payment to the Customer. Title in such Consignment (or relevant part thereof) shall pass to The Carrier when it pays the Customer the replacement cost.

9.5 In respect of any other claim (other than a Damage Claim or a Loss Claim) under a Contract, any such claims must be notified to The Carrier within twenty (20) Business Days and proof of the claim provided within

thirty (30) Business Days following commencement of Transit.

9.6 The Carrier shall not (nor shall any sub-contractor of The Carrier) be liable for any Damage Claim, Loss Claim or other claim unless the Customer complies with the claims procedures in this Condition 9 provided that if the Customer proves that: (i) it was not reasonably possible for the Customer to advise The Carrier or make a claim in writing within the time limit applicable; and (ii) such advice or claim was given or made within a reasonable time, then The Carrier shall not have the benefit of the foregoing exclusion.

9.7 The Carrier and its sub-contractors shall in any event be discharged from all liability, whatsoever and howsoever arising, in respect of the Consignment unless proceedings are commenced and notice in writing is given to The Carrier within one (1) year of the date when Transit commenced.

#### **Limitations of Liability**

9.8 The Carrier and its sub-contractors shall only be liable for Damage or Loss as a result of The Carrier' negligence, breach of duty or other wrongful act or omission and subject always to the limitations set out in this Condition 9. The Carrier shall not be liable for any loss, delay, damage or other claim which arises as a result of any act or omission of the Customer and/or the Recipient. The Carrier shall not be liable for any delay in the performance of the Services.

#### **Parcel Consignments**

9.9 Where the Consignment is a Parcel Consignment then, except as otherwise provided in these Conditions, the following

terms shall apply. The liability of The Carrier in respect of claims for Loss or Damage, howsoever arising, shall in all circumstances be limited to a lesser of:

9.9.1 the Cost value of the goods actually Lost or Damaged (and the value of the goods actually Lost or Damaged shall be taken to be the replacement cost to the Customer at the commencement of Transit, and shall include any Customs and Excise duties or taxes payable in respect of these goods); or

9.9.2 in respect of Damage, the cost of repairing any damage to or reconditioning of the goods; or

9.9.3 a maximum of £100 (or £50 in respect of a Consignment weighing 5kg or less) per Consignment actually lost, mis-delivered or damaged subject to the other provisions of this Condition 9.

9.9.4 Where the Customer obtains increased liability cover in accordance with Condition 9.13 then except in relation to the items specified in Condition 9.9.5 below, The Carrier' liability in respect of each Consignment manifested on the increased liability cover option shall be limited to the value declared by the Customer for that Consignment (and evidenced to the reasonable satisfaction of The Carrier) or £5,000 (whichever is the lesser).

9.9.5 All claims are subject to a £25 excess.

### **Non-Parcel Consignment**

9.10 Where the Consignment is a Non-Parcel Consignment then except as otherwise provided in these Conditions, the following provisions shall apply. The liability of The Carrier in respect of claims for Loss or Damage, howsoever arising, shall in all circumstances be limited to the lesser of:

9.10.1 the Cost value of the goods actually Lost or Damaged (and the value of the

goods actually Lost or Damaged shall be taken to be the replacement cost thereof to the owner at the commencement of Transit, and in all cases shall be taken to include any Customs and Excise duties or axes payable in respect of those goods);

9.10.2 in respect of Damage, the cost of repairing any damage to or of reconditioning the goods;

9.10.3 a sum calculated at the rate of £10,000 sterling per tonne on the gross weight of the goods actually lost, mis-delivered or damaged, to a maximum of £1000 per Consignment actually lost, mis-delivered or damaged subject to the other provisions of this Condition 9.

9.10.4 In the case of loss, mis-delivery of or damage to a part of the Consignment the weight to be taken into consideration in determining the amount to which The Carrier' liability is limited shall be only the gross weight of that part regardless of whether the loss, mis-delivery or damage affects the value of another part of the Consignment.

9.10.5 Nothing in this Condition 9.10 shall limit the liability of The Carrier to less than the sum of £25 excess.

9.11 Other than in respect of Parcel Consignments, The Carrier shall not be liable for any Loss Claim or Damage Claim or other loss for less than twenty five pounds sterling (£25).

9.12 The Carrier will not be liable for any indirect, incidental, special, punitive or consequential losses or damages of any kind (including, without limitation, lost profits, loss of market or loss of goodwill) regardless of the form of action, whether in contract, tort, delict, negligence, breach of statutory duty or otherwise suffered by the Customer which the parties agree is reasonable in the circumstances.

9.13 Should the Customer require additional liability coverage in relation to the Services, it is the Customer's responsibility to notify The Carrier of this before the commencement of Transit. Costs of additional liability coverage are set out in the Contract. Any additional liability cover shall not be greater than the value of the Consignment. The Customer shall provide The Carrier with all such information regarding the Consignment as The Carrier shall need to assess any suggested new limit and charges. If the Carrier agrees to the increased liability cover and confirms acceptance prior to transit The Carrier shall advise the Customer of the increased Charges in respect of the increased liability cover. The Carrier may also offer a different level of increased liability cover and associated Charges. If such charges are not acceptable to the Customer, the existing limitations in this Condition shall continue to apply.

9.14 Subject to the other provisions of this Condition 9, including without limitation Condition 9.13 above, The Carrier' liability for any other loss whatsoever arising in connection with each Contract will be limited to the sums paid to The Carrier by the Customer under the relevant Contract or the Customer's proved loss (whichever is the lesser) which the parties agree is reasonable in the circumstances.

9.15 In the event that the Customer has increased the liability cover in accordance with Condition 9.13 above, the limitation in Conditions 9.9.3 and 9.10.3 above shall be increased accordingly. To avoid any doubt, if the revised carriage charges and increased limit offered by The Carrier under Condition 9.13 is not acceptable to the Customer, then the aforementioned limitations in Conditions 9.9.3 and 9.10.3 shall continue to apply.

9.16 For the avoidance of doubt, The Carrier enters into these Conditions with the Customer and the Customer's remedies are solely against The Carrier. The Customer shall not have any claim against any other party in respect of a breach of these Conditions.

9.17 The provisions of this Condition 9 shall apply to any Loss Claims, Damage Claims or any other claims or losses by the Customer.

#### Exclusion of Liability

9.18 The Carrier shall not be liable for any Damage, Loss or other loss caused:

9.18.1 by a failure of the Consignment, or goods contained therein, to be Acceptable Goods for Carriage;

9.18.2 by the Consignment being Dangerous Goods or where accepted by The Carrier, the Consignment being in breach of Condition 3.10;

9.18.3 where relevant, by a failure of the Customer to deposit the Consignment at the Depot in sufficient time;

9.18.4 by seizure or forfeiture under legal process;

9.18.5 as a result of the circumstances set out in Condition 4.4;

9.18.6 by inherent liability to wastage in bulk or weight, faulty design, latent defect or inherent defect, vice or natural deterioration of the Consignment;

9.18.7 to Perishable Items, Goods Not Accepted or Goods Not Under Liability and the Customer acknowledges that all Perishable Items and Goods Not Under Liability shall be collected or delivered by The Carrier at the Customer's own risk;

9.18.8 as a result of the Customer not notifying The Carrier' of any special handling requirements in respect of the Consignment;

9.18.9 as a result of insufficient or improper packaging and protection of the Consignment and goods contained therein;

9.18.10 as a result of insufficient or improper labelling or addressing of the Consignment;

9.18.11 as a result of any delay or failure to provide The Carrier safe and adequate access to either or both the Collection and Delivery Points;

9.18.12 as a result of any assistance, special loading and unloading equipment not being made available to The Carrier at either or both the Collection and Delivery Points;

9.18.13 as a result of the circumstances set out in Condition 3.4;

9.18.14 as a result of the Customer loading or unloading the Consignment at any time;

9.18.15 by any error, act, omission, mis-statement or mis-representation by the Customer, the owner of the Consignment or the Recipient;

9.18.16 as a result of any acts or omissions which take place before The Carrier is responsible or, after The Carrier has ceased to be responsible, for the Consignment (as determined in accordance with Condition 4) whether or not caused or contributed to directly or indirectly by any act, omission, neglect, default or other wrongdoing on the part of The Carrier, its employees, agents or sub-contractors; or

9.18.17 as a result of the Recipient not taking delivery of the Consignment within a reasonable time after delivery of the Consignment has been attempted;

all of which the parties agree is reasonable in the circumstances.

9.19 To avoid any doubt, nothing in the Contract shall exclude or limit The Carrier' liability for death or personal injury arising

from negligence or which otherwise cannot be excluded by law.

9.20 The Carrier shall not in any circumstance be liable in respect of a Consignment, whether or not delivery has taken place, where there has been fraud or a criminal act on the part of the Customer, the Recipient, the owner or the servants or agents of either, in respect of that Consignment.

9.21 All claims are subject to a £25 excess.

9.22 No liability is provided on return or third party collections.

## **10. INDEMNITY**

10.1 In addition to the indemnities set out elsewhere in these Terms, the Customer shall indemnify, keep indemnified and hold The Carrier and its sub-contractors harmless against:

10.1.1 all losses, damages, costs and expenses (of whatever nature) or liabilities incurred by or awarded against The Carrier or its sub-contractors, (including but not limited to those arising out of claims, demands, proceedings, fines, penalties and loss of or damage to the carrying vehicle and to other goods carried) as a result of:

(a) any error, omission, mis-statement, or misrepresentation by the Customer, the owner of the Consignment, the Recipient, or by any employee or agent of them;

(b) insufficient or improper packing, labelling, or addressing of the Consignment; and

(c) fraud or criminal activity as set out in Condition 9.20; and

10.1.2 all claims and demands whatsoever, (including for the avoidance of doubt claims alleging negligence) by whomsoever made and howsoever arising (including but not limited to claims caused by or arising out of

the carriage of Dangerous Goods and claims made upon The Carrier by HM Revenue & Customs in respect of dutiable goods consigned in bond) in excess of the liability of The Carrier under these Terms (if any) in respect of any loss or damage whatsoever to or in connection with the Consignment whether or not caused or contributed to directly or indirectly by any act, omission, neglect, default, or other wrongdoing on the part of The Carrier, its employees, agents or sub-contractors.

## **11. CONVENTIONS AND PRECEDENCE**

11.1 Any Consignment carried by The Carrier may be governed by a convention or agreement between countries. If any applicable convention becomes inconsistent with these Terms, the terms of such convention shall take precedence.

Conventions that may apply include but are not limited to:

11.1.1 Transporting Goods by Air – Warsaw Convention 1929 or the convention for the Unification of Certain Rules for International Carriage by Air as amended at The Hague 1955;

11.1.2 Transporting Goods by Road - The Geneva Convention for the Contract of International Carriage of Goods by Road (CMR) 1956;

11.1.3 Transporting Goods by Sea – the International Convention for Unification of Certain Rule of Law relating to Bills of Lading 1924.

11.2 The above conventions may from time to time be amended. The Customer should be aware that there may at times be more than one convention applying to the Services.

## **12. CONFIDENTIALITY**

12.1 As part of the Services, the Customer and The Carrier may share Confidential Information. Both the Customer and The Carrier shall keep in strict confidence all such Confidential Information disclosed by the other in relation to the Services.

12.2 The Customer and The Carrier shall be entitled to disclose the other's Confidential Information:

12.2.1 to their employees, agents and subcontractors who need to know such information for the purposes of performing their obligations under the relevant Contract; and

12.2.2 as may be required by law, court order or any government or regulatory authority.

12.3 For the purposes of this Condition 12, "**Confidential Information**" shall mean any commercial, financial, technical or other information of a confidential or proprietary nature, relating to or used in the business of either party whether or not in tangible or documented form or communicated orally and labelled or otherwise identified as confidential. Confidential Information shall not include any information which becomes public knowledge other than as a result of a breach of this obligation.

## **13. DATA PROTECTION**

13.1 For the purposes of this Clause 13, the terms "**Controller**", "**Process**", "**Data Subject**", "**Personal Data**", "**Data Protection Officer**" and "**Processing**" shall have the meaning given in the GDPR. The Parties acknowledge that for the purposes of Data Protection Legislation, the Carrier is the Processor and the Customer is the Controller.

13.2 Both Parties shall comply with applicable requirements of the Data Protection Legislation. This Clause 13 is in addition to, and does not relieve, remove or replace a Party's obligations under the Data Protection Legislation.

13.3 Both Parties shall not knowingly do or omit to do anything in violation of this Agreement which will cause the other Party to breach any Data Protection Legislation.

13.4 The scope, nature and purpose of processing by the Carrier, the duration of the processing and the types of Personal data (within the meaning of the Data Protection Legislation) and categories of Data Subjects are set out below:

13.4.1 Scope and nature – recording and managing address information;

13.4.2 Purpose of Processing – to deliver shipments to the addressees;

13.4.3 Duration of Processing – the Term of the Agreement;

13.4.4 Type of Personal Data – names and addresses

13.4.5 Categories of Data Subject - individuals receiving parcels from the Carrier.

13.5 Without prejudice to the generality of Clause 13.2, the Carrier shall, in relation to any Personal Data processed in connection with the performance of its obligations under this Agreement:

13.5.1 process such Personal Data only for the purposes of performing its obligations under this Agreement and on the documented instructions of the Customer (and for the avoidance of doubt such documented instructions shall include the Carrier's obligations under this Agreement) unless the Carrier is required by applicable law to process the Personal Data, in which case the Carrier shall promptly notify the Customer of this before performing the processing required by the applicable law,

unless such applicable laws prohibit the Carrier from so notifying the Customer;

13.5.2 notify the customer if, in the Carrier's opinion, the Carrier's compliance with the Customer's instructions in the respect of Processing of Personal Data would breach Data Protection Legislation, in which case the Carrier will be entitled without penalty to suspend execution of the instructions concerned, until the Customer confirms in writing that such instructions are to be followed. The Carrier shall not have any liability of any nature whatsoever which arises as a result of compliance with Customer instructions. Any notification by the Carrier under this clause 13.5.2 shall not be regarded as legal advice and the Carrier shall not be required to perform a legal assessment of Customer instructions;

13.5.3 ensure that it has in place and maintains protective measures regarding the security of the Personal Data, including without limitation protection against unauthorised disclosure of or access to, and protection against accidental or unlawful destruction of, loss of or alteration to Personal Data transmitted, stored or otherwise processed;

13.5.4 ensure that all of the Carrier's staff who have access to and / or process Personal Data are obliged to keep the Personal Data confidential;

13.5.5 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the Carrier complies with its obligations under Data Protection Legislation by providing adequate levels of protection to any Personal Data that is transferred;

13.5.6 assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under Data

Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory or regulatory authorities;

13.5.7 notify the Customer without undue delay on becoming aware of a Personal Data breach;

13.5.8 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of this Agreement unless it is required by applicable law to store the Personal Data;

13.5.9 maintain complete and accurate records and information to demonstrate its compliance with this clause 13.5 and allow for reasonable audits by the Customer or the Customer's designated auditor to assess the Carrier's compliance with this clause 13.5 and Data Protection Legislation, subject to (i) prior entry into written confidentiality provisions confirming the audit; (ii) a maximum of one (1) audit in each consecutive twelve (12) month period; (iii) the customer giving the Carrier at least five(5) Business days' notice of such audit.

13.6 The Customer hereby authorises the Carrier to engage third parties to carry out processing of the Personal Data (**Sub-Processors**), provided that:

13.6.1 The Carrier shall enter into a written agreement with each Sub-Processor that impose obligations on that Sub-Processor which are equivalent to, and no less onerous than, those applicable to the Carrier;

13.6.2 The Carrier shall not be relieved of any of its obligations under clause 13.5 by engaging Sub-Processors.

13.7 The Customer will:

13.7.1 comply with its obligations under applicable Data Protection Legislation in relation to its collection processing and

provision of Personal Data to the Carrier in connection with this Agreement, including that its processing of Personal Data using the Services is lawful and is undertaken with the principles relating to the processing of personal data set out in Data Protection Legislation.

13.7.2 ensure there is no prohibition or restriction in place which would prevent or restrict the Customer from disclosing or transferring Personal Data to the Carrier or that would prevent or restrict the Carrier disclosing or transferring the Personal Data to the Sub-Processors;

13.7.3 not process any Personal Data using the Services, or permit the Carrier to process any Personal Data, in breach of or in contravention of any order issued to, or limitation of processing imposed on, the Customer by any supervisory authority;

13.7.4 provide the Carrier with such co-operation and information as the Carrier may reasonably request from time to time to permit the Carrier and / or any Sub-Processor to comply with its obligations under Data Protection Legislation.

13.8 The Carrier shall be entitled, on giving notice to the customer, to make any variations to this Clause 13 which the Carrier reasonably considers to be necessary as a result of any change in, or decisions of a competent authority under Data Protection Legislation.

#### **14. ASPRAY ONLINE CUSTOMER PORTAL**

14.1 The Carrier will provide the Customer access to the Aspray Online Customer Portal for online tracking and tracing of deliveries (the "Portal").

14.2 The Customer may (i) use the Portal for its own internal purposes (and not for any

other party or affiliates or group company) in relation to Services; (ii) not copy the Portal software; (iii) not make alterations to, or modifications of, the whole or any part of the Portal; (iv) not disassemble, de-compile, reverse engineer or create derivative works based on the whole or any part of the Portal

14.3 The Customer acknowledges that: (i) all IP rights in the Portal belong to the Carrier or its licensors; and (ii) that the Customer has no rights in, or to, the Portal other than the right to use it in accordance with any terms of use accessible via the Portal.

14.4 The Customer acknowledges that the Portal has not been developed to meet its individual needs and that it is not error free, nor shall it be fully available or operational at all times. The Carrier does not make and hereby expressly disclaims to the fullest extent permissible by law any and all express or implied warranties regarding the Portal, including without limitation in relation to its availability, accuracy, completeness, availability, quality, fitness for purpose and, merchantability and the non-infringement of third-party IP rights.

14.5 The content and information made available through the Portal is provided for general information only. It is not intended to amount to advice on which the Customer should rely. The Carrier shall not be responsible for any losses incurred by the Customer as a result of any action or inaction taken as a result of such content or information.

14.6 The Carrier reserves the right to charge fee as applicable for use of the Portal if deemed appropriate.

## **15. FORCE MAJEURE**

15.1 The Carrier will not be in breach of these Terms or liable to the Customer for any failure or delay in performing its obligations under a Contract, or any Damage or Loss caused by any circumstances reasonably beyond its or its sub-contractors' control (including, without limitation, an act of God, riots, civil commotion, lockout, road traffic accident, delay or cancellation of ferries, flights, railway or other transport, strikes, general or partial stoppage or restraint of labour howsoever caused, war, invasion, acts of a foreign enemy, hostilities (whether war or not) civil war, rebellion, insurrection, military or usurped power or confiscation, requisition, or destruction or damage by or under any government or local or public authority, acts of terrorism, requisition or destruction of or damage to property, seizure or forfeiture under legal process and similar events). The Carrier will be entitled to a reasonable extension of time for performing its obligations in such circumstances.

## **16. TERMINATION**

16.1 The Carrier may terminate a Contract at any time on written notice to the Customer in the event that: (i) the Customer breaches any of its obligations under a Contract; (ii) the Consignment is, or contains, Goods Not Accepted or Dangerous Goods (to which The Carrier has not consented); or (iii) the Customer is unable to pay its debts, or resolves by formal corporate action to liquidate and dissolve, or voluntarily institutes bankruptcy or reorganization proceedings or if a trustee or receiver is appointed for the Customer, or if any proceeding is instituted by or against the Customer under the provision of any bankruptcy or reorganization law which results in the entry of an order, or if it

enters into a voluntary arrangement with its creditors or in any other way ceases to do business

16.2 Notwithstanding the above rights of termination, The Carrier shall be permitted at any time before performing the Collection Services or the Consignment being deposited at the Depot, to cancel the Contract, by notifying the Customer in writing. In such circumstances, The Carrier shall refund any Charges paid to The Carrier (if any) in respect of the relevant Consignment to the Customer within ten (10) Business Days of such notification.

16.3 Upon termination of a Contract for whatever reason, The Carrier shall be entitled to cease performing the Services and may terminate or suspend any account of the Customer. Notwithstanding the termination of a Contract (other than for cancellation set out at Condition 16.2), The Carrier shall be entitled to issue an invoice for any Service performed prior to the date of termination but for which an invoice has not yet been issued and the Customer will immediately pay The Carrier all due and outstanding Charges.

16.4 The provisions of each Contract which expressly or by implication are intended to survive after termination or expiration of a Contract, including without limitation 1.1, 1.3, 3.7, 3.8, 3.9, 5.2, 5.3, 5.4, 7.6, 7.7, 7.8, 7.9, 9, 10, 12, 14, 15.3, 15.4, and 16 - 18 (inclusive) shall remain in full force and effect.

16.5 The Carrier may terminate the Contract and/or suspend performance of the Services if the Customer: (i) is in material breach of any obligation under the Contract and fails to remedy such breach (if capable of remedy) within fourteen (14) days after receiving notice of it; or (ii) becomes insolvent, resolves to wind up,

makes an arrangement with its creditors, goes into administration or receivership or suffers or takes any similar occurrence or action, or is subject to any petition, application or order for any such occurrence or action; or (iii) does not accept any variations proposed.

16.6 The Customer may terminate the Contract by three (3) months' written notice, provided that such notice may not be effective any earlier than the end of the minimum term specified in the Rate Agreement. During such notice period, the Customer shall maintain projected volumes, and the Carrier shall be entitled to levy all appropriate charges and / or costs incurred should the Customer fail to maintain volumes at the appropriate level.

16.7 After termination, the Carrier may invoice any charges and surcharges not previously invoiced, and any sums invoiced shall become immediately due.

## **17. NOTICES**

Any demand, notice or other communication given or made under or in connection with the Contract must be in writing and will be given to The Carrier and/or to the Customer, as the case may be, either personally or by post to the address set out in the Contract, the Confirmed Details or which have otherwise been given to the other party as contact details.

## **18. MISCELLANEOUS**

18.1 Each Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and

understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

18.2 The relationship between the parties is that of independent contractors. Except other than as expressly stated in these Terms, no Contract shall in any way create the relationship of principal and agent, partners, parties to joint venture, or any similar relationship between the Customer and The Carrier and neither party will have the right to represent or obligate the other. The Customer is not permitted to appoint sub-customers or sub-contract (and sub-sub-contract) its obligations hereunder without The Carrier' prior approval in writing. The Carrier shall be permitted to sub-contract its obligations hereunder provided that it shall be liable for the acts and omissions of any such sub-contractors.

18.3 The Customer shall not be permitted to assign nor otherwise transfer its rights and/or obligations under a Contract to a third party. The Carrier may assign its rights and/or obligations under a Contract.

18.4 In the event that any provision of the Terms is declared by a court of competent jurisdiction or arbitration tribunal to be void or unenforceable, the parties hereto expressly agree that such void or unenforceable provision shall be deemed severed from the Contract, and the remainder of the Contract shall not be affected thereby and shall remain in full force and effect to the extent feasible in the absence of the void and unenforceable

provision. The parties furthermore agree to replace the invalid or unenforceable provision by a valid provision which has the same or similar effect as the severed provision.

18.5 A Contract may not be modified except as expressly set out in these Terms or otherwise in writing signed by both parties.

## **19. GOVERNING LAW**

The Contract and any non-contractual obligations arising out of or in connection with it will be governed by and construed in accordance with the laws of England and Wales, and the parties agree to submit to the exclusive jurisdiction of the English and Welsh courts.

## **CONDITIONS OF CARRIAGE**

PLEASE SIGN BELOW AND RETURN THIS PAGE TO THE CARRIER TO CONFIRM THAT YOU HAVE READ AND ACCEPT THE TERMS AND CONDITIONS WHICH APPLY TO THE SERVICES. IF YOU DO NOT SIGN AND RETURN THIS PAGE, BY PLACING MORE ORDERS FOR THE SERVICES YOU WILL CONFIRM BY IMPLIED CONTRACT THAT YOU HAVE READ AND ACCEPT THE TERMS AND CONDITIONS.

By signing below, you also confirm you have been made aware of the limits on The Carrier's liability regarding the collection and / or delivery of Consignments.

**Company Name:**

**Company Address:**

**Telephone Number:**

**Email Address (for invoices):**

**Name:**

**Signature:**