



## TERMS OF BUSINESS FOR LOGISTICS SERVICES

Last amended: 15 December 2016

Version: 3.0

Document controller: Christopher Nicklin

### 1. INTERPRETATION AND EFFECT

1.1 These terms and conditions of business (“**Terms of Business**”) shall apply to the Services and (except as otherwise provided herein) shall supersede and prevail over all other terms and conditions of business existing between the Customer and the Company insofar as they relate to the Services.

1.2 The definitions and rules of interpretation in this Clause apply in these Terms of Business (unless the context requires otherwise):

**Agreement:** the Appointment Agreement and these Terms of Business;

**Appointment Agreement:** any agreement, document, purchase order, or correspondence into which these Terms of Business are incorporated;

**Bill of Lading:** Bill of Lading and/or Sea Waybill;

**CIM:** the Uniform Rules concerning the International Carriage of Goods by Rail (Appendix B to COTIF), (as from time to time amended);

**CMR:** the Convention on the Contract for the International Carriage of Goods by Road (as from time to time amended);

**COGSA:** the United States (Carriage of Goods by Sea Act);

**Commencement Date:** the date identified as such in the Appointment Agreement;

**Company:** means Den Hartogh Dry Bulk Logistics Limited or subsidiary companies;

**Consignee:** the person to whom the Company contracts with the Customer to deliver the Goods;

**Consignment:** goods, whether a single item or in bulk or contained in one parcel, package or Container, as the case may be, or any number of separate items, parcels, packages or Containers sent at one time in one load or held at one time in one unit by or on behalf of the Customer;

**Container:** includes tank containers, dry bulk containers, Bag in Box containers, tanks, boxes and any other form of container or other means used by the Company for the transport of the Goods;

**Contractor:** a third party employed by the Company to assist in the Company’s performance of its obligations under this Agreement;

**Conventions:** CIM, CMR, the Hague-Visby Rules and COGSA, or whichever of them is applicable in the relevant context;

**COTIF:** the Convention Concerning International Carriage by Rail (signed at Berne on 9 May 1980, as amended by the Vilnius Protocol of 3 June 1999);

**Customer:** the person for whom the Company has contractually agreed, by means of the Appointment Agreement, to perform the Services;

**Fees:** the amounts payable by the Customer for the Services as set out in, or calculated in accordance with the method set out in, the Appointment Agreement;

**Goods:** the goods entrusted to the Company which form all or any part of any Consignment;

**Hague-Visby Rules:** the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (as amended by the Brussels Protocol and the Protocol of 1979);

**House Bill of Lading:** the combined transport / port to port Bill of Lading (if any) which: relates to all or part of the journey which is the subject of the Agreement; has the Customer specified as the shipper; and the Company as the carrier. A copy of the Company’s standard House Bill of Lading will be provided to the Customer upon request;

**Incumbent Services Provider:** any person, other than the Company and its servants, who provides services to the Customer from time to time;

**Indirect Losses:** means (whether or not any such category of loss would normally be regarded as indirect loss under general principles of law) loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, the consequences of any delay or deviation, special losses, or any claim for consequential loss or for indirect loss of any nature;

**Ocean Bill of Lading:** any combined transport / port to port Bill of Lading / Sea Waybill which relates to all or part of the journey which is the subject of the Agreement, where the Customer or Company is the shipper and where a third party is specified as the carrier;

**Person:** a third party and includes subcontractors, persons or any body or bodies corporate;

**Services:** the services to be provided by the Company for the Customer as set out in the Appointment Agreement;

**Subsidiary:** has the meaning given in section 1159 of the Companies Act 2006;

**Termination Date:** the date of termination of this Agreement howsoever arising;

**Transfer Date:** means, in respect of any Transferring Employee, the date on which he/she transfers or is alleged to have transferred (as the case may be) into the employment of the Company;

**Transferring Employee:** a person employed by the Customer or by any Incumbent Services Provider who, as a result of the operation of TUPE, transfers or purports to transfer into the employment of the Company or any of its servants; and

**TUPE:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) or (as the case may be) the relevant laws of any other country which implement the Acquired Rights Directive (Directive 2001/23).

- 1.3 The headings in these Terms of Business are inserted for convenience only and shall not affect its construction.
- 1.4 A reference to a particular law or international convention is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.5 A reference to one gender includes a reference to the other gender and words in the singular shall, where the context allows, include the plural and vice versa.
- 1.6 In the event of any conflict or inconsistency between any term or condition of these Terms of Business and any provision of any Convention, the provision of the relevant Convention shall prevail.
- 1.7 In the event of any conflict or inconsistency between any term or condition of the Appointment Agreement and any provision of any Convention, the term or condition of the Appointment Agreement shall prevail unless the provision of the relevant Convention is of mandatory application.

## 2. APPOINTMENT

- 2.1 The Customer appoints the Company to provide, and the Company shall provide, the Services on the terms of the Agreement.
- 2.2 The Company may perform the Agreement as principal or, at its sole option and as agent for the Customer; it may arrange or procure the services of any other carrier or third party for the fulfilment of the Agreement in whole or in part.
- 2.3 The Company shall be entitled to perform any of its obligations by itself or by its parent, Subsidiary, associated company or subcontractors.
- 2.4 The Company, whether acting in the capacity of principal or agent as above, and any other Person employed by the Company may employ the services of any other Person for the purposes of providing the Services in whole or in part and the name of every such other Person shall be provided to the Customer upon request.
- 2.5 In the absence of written agreement to the contrary, any contract to which these Terms of Business apply is made by the Company on its own behalf and also as agent for and on behalf of any parent, Subsidiary or associated company and any such company shall be entitled to the benefit of these Terms of Business.
- 2.6 The Customer shall indemnify the Company against any claim against the Company arising by reason of the failure of any third party or parties being an owner of the Goods or otherwise having an interest in the Goods to be bound by these Terms of Business or by terms and conditions equivalent to them.
- 2.7 Subject to Clause 2.4 nothing in the Agreement creates legal rights for, or enforceable by, any party other than the Customer or the Company.
- 2.8 Clause 3 (the Services) and Clause 4 (the Goods) refer to performance of the Agreement by the Company as principal.

## 3. THE SERVICES

### 3.1 Commencement of the Services

The Services shall commence when the Company takes possession of the Goods at point of loading whether at designated place of collection or at the Company's premises as detailed in the Appointment Agreement.

### 3.2 Loading/Unloading of the Goods

- 3.2.1 The Company may agree to undertake the operation of loading and unloading the Goods.
- 3.2.2 The Company does not accept any responsibility for the accuracy of the quantity of the Goods indicated by the Customer or any other statement regarding or description of the Goods. Neither the Company nor its contractors shall be deemed to have received the Goods contained in the Container in a good condition, even if no reservation has been made in this respect.
- 3.2.3 The Customer shall be liable to the Company at all times for damage caused during the loading of the Goods by it or by third parties to chassis, trailers and/or Containers which have been made available, for loading, to the Customer or third parties.
- 3.2.4 With respect to unloading of the Goods, the Company shall use reasonable endeavours to ensure that the quantity of goods actually delivered falls within any tolerances agreed with the Customer or, in the absence of agreement, generally accepted in the industry.

### 3.3 Transportation of the Goods

The Company is free in the method of performing the Services including but not limited to warehousing/storage during transit, and in particular, with regard to carriage by sea, it has the option of carriage on deck or below deck or as dictated by relevant legislation, unless the Company has accepted specific instructions from the Customer in this respect. Insofar as possible, account shall be taken of the wishes of the Customer with regard to the time or duration of the performance of the Services, but the Company does not give any guarantee in this respect.

### 3.4 Storage of the Goods

- 3.4.1 The Customer may give written authority to the Company for Goods that are stored by the Company or any part thereof to be transferred by the Company to the account of another party but subject to (a) the Customer ensuring before the effective date of the transfer that the other party in question notifies the Company in writing that it is to become the Customer and is to be bound by these Terms of Business and by any notice under these Terms of Business, (b) the original Customer providing evidence to the reasonable satisfaction of the Company that the substituted Customer is sufficiently credit-worthy, and (c) the Company retaining a right of recourse against the original Customer in the event of the non-payment of any sums due to the Company by the substituted Customer. Further, the Customer agrees to continue to pay the Company's charges until receipt by the Company of the other party's written notification.
- 3.4.2 In the case of Goods to be delivered to a pier or other stated location, the Consignment shall be stored at the quayside or at that other stated location at the Customer's or Consignee's (as the case may be) risk and responsibility.
- 3.4.3 When reasonably necessary and at the discretion of the Company, the Goods may be carried, stored or handled in the course of transit with other compatible goods or transferred between stores.

### 3.5 Delivery of the Goods

- 3.5.1 The Company accepts no responsibility for the observance of the terms of any letter of credit or other instructions relating to the delivery or release of Goods in specified circumstances only, such as (without prejudice to the generality of this Clause) against payment or against surrender of a particular document, or for the verification of any document referred to in any such letter of credit or other instructions.
- 3.5.2 If any document refers to notice of arrival of the Goods to the Customer or Consignee, failure to give such notice shall not result in any liability on the part of the Company, nor shall the Customer be released from any obligation under the Agreement.
- 3.5.3 Except where the Company specifically and explicitly accepts such responsibility in writing, the Company accepts no responsibility for departure or arrival dates of Goods.

### 3.6 Advice and Information

Advice and information, in whatever form it may be given, is provided by the Company for the Customer only, and the Customer shall indemnify the Company against any liability, claims, loss, damage, costs or expenses arising out of any other person relying upon such advice or information even where such advice or information is given negligently by the Company, its servants, agents or contractors.

### 3.7 Termination of the Services

- 3.7.1 The provision of the Services in relation to the Consignment concerned shall terminate (unless otherwise previously terminated in accordance with Clauses 13 or 17.3 below) where:
- (a) the Consignment is tendered to the Customer at the Company's premises; or
  - (b) the Consignment is delivered at the usual place of delivery (including but not limited to into silo, tank, container or other receptacle) at the Customer's or Consignee's address, or any other place of delivery specified in the Appointment Agreement, within the customary cartage hours of the district.
- 3.7.2 Upon the termination of the Services, where any Container used in the provision of the Services is under the control of the Customer, the Customer shall return it in sound condition to the depot or port nominated by the Company.

### 3.8 Storage of the Goods after failure to take delivery

Subject to clause 3.9 below, when for any reason whatsoever Goods or any part thereof cannot be delivered to the Customer or Consignee at the time and place when and where the Company is entitled to deliver up or call upon the Customer or Consignee to take delivery thereof (including if the Customer or Consignee fails to take receipt of the Consignment), the Company shall notify the Customer to request further instructions from the Consignee, and pending such instructions shall be entitled, without further notice and at the sole risk of the Customer (without the Company being liable for its own negligence or that of its servants, agents or contractors), to store the Consignment or any part thereof at the Company's own premises, in a warehouse or at a terminal, either in the open air or under cover, whereupon the transit shall be deemed to end, the liability of the Company in respect of such Goods or part thereof shall wholly cease and the costs of such storage and Container lease rental charge shall accrue for the account of the Customer and shall forthwith upon demand be paid by the Customer to the Company. The Customer shall further indemnify the Company, for all costs and expenses incurred by the Company as a result of the failure to take delivery and shall, if applicable, pay demurrage as set out in or calculated in accordance with the terms of the Appointment Agreement. Any further instructions to move the Goods shall be the subject of a new agreement.

### 3.9 Disposal of the Goods after failure to take delivery

The Company shall be entitled at the expense of the Customer to dispose of (by sale or otherwise as may be reasonable in all the circumstances):

3.9.1 on 28 days' notice in writing to the Customer, or where the Customer cannot be traced and reasonable efforts have been made to contact any parties who may reasonably be supposed by the Company to have any interest in the Consignment, any Consignment which has been held by the Company for 90 days after failure to take delivery and which cannot be delivered as instructed, provided that such notice cannot be served by the Company so that it expires prior to the expiry of the 90 day holding period; and/or

3.9.2 without prior notice, Goods which have perished, deteriorated or altered or are in immediate prospect of doing so in a manner which is caused or may reasonably be expected to cause loss or damage to third parties or contravene any applicable laws or regulations.

3.10 Where the Container is damaged during transit, preventing the onward carriage of the Goods, if no instructions for disposal or onward transport are received from the Customer for a period of 28 days, counting from the date the Company gives notice in writing to the Customer of the damage to the Container, then the Company shall be entitled to charge the Customer demurrage for delay of the Container and cost of storage and other charges.

## 4. THE GOODS

4.1 Where the Company is performing the Agreement as principal, the Company shall, if so required, sign a document prepared by the Customer acknowledging the receipt of the Goods, but no such document shall be evidence of the condition or the correctness of the declared nature, quality, quantity, weight, condition or actual or required temperature of the Goods at the time they are received by the Company and the burden of proving the condition of the Goods on receipt by the Company and that the Goods were of the nature, quality, quantity or weight declared in the relevant document shall rest with the Customer.

4.2 The Customer shall be responsible for the correct and lawful labelling of the Goods, and in the event that the Company shall label the Goods at the Customer's request, the Customer shall remain responsible and liable for such labelling.

4.3 The Customer shall be responsible for declaring to the Company by means of a Material Safety Data Sheet the nature of the Goods and the correct and lawful method of handling any Goods deemed to be of a hazardous nature, and shall indemnify the Company for any failure to do so.

4.4 Except under special arrangement previously made in writing, the Company will not accept or deal with bullion, coin, precious stones, jewellery, valuables, antique pictures, human remains, livestock or plants, mobile telephones, video or audio equipment, non-ferrous metals, computers or accessories, or any goods which the Company deems are incompatible with the Company's Containers for any reason, including but not limited to the Company's opinion that the Goods have not been adequately stored, or have been stored for too long, by the Customer prior to the Company taking possession of the Goods. Should the Customer, nevertheless, deliver any such goods to the Company, or cause the Company to handle or deal with any such goods otherwise than under special arrangements previously made in writing, the Company shall be under no liability whatsoever for or in connection with such goods howsoever arising including as to the negligence of the Company, its servants, agents or contractors.

4.5 The Company may at any time waive its rights and exemptions from liability under Clause 4.4 above in respect of any one or more of the categories of goods mentioned therein or any part of any such category but only where such a waiver is given in writing signed by a director of the Company.

- 4.6 Except following instructions previously received in writing and accepted by the Company, the Company will not accept or deal with goods of a dangerous or damaging nature, nor with goods likely to harbour or encourage vermin or other pests, nor with goods liable to taint or affect other goods. If such goods are accepted pursuant to such accepted instructions then:
- 4.6.1 such Goods must be classified, packed and labelled in accordance with the statutory and international regulations and laws for the carriage or storage of the substance declared; and
- 4.6.2 when in the opinion of the Company the Goods constitute a risk to other goods, property, life or health, the Company shall, where reasonably practicable, contact the Customer to notify the Customer of its opinion, but reserves the right at the expense of the Customer to remove or otherwise deal with the Goods.
- 4.7 The Company may at any time and any place unload, destroy or make harmless in some other way Goods entrusted to the Company for whatever reason, which the Company, if it had known at the time of taking receipt thereof that they could be dangerous, would not have accepted.

## 5. **APPLICABLE CONDITIONS AND RULES**

### 5.1 Applicability of the Conventions

Save where the Company acts as agent of the Customer under clause 2.2 above and subject to clause 5.2 below (carriage by sea or inland waterway), the Company will as contracting carrier perform the Services subject to the provisions of any applicable Convention (including but not limited to provisions as to liability and limitation of liability).

### 5.2 Carriage by Sea or Inland Waterway

Save where the Company acts as agent of the Customer under clause 2.2 above, where all or part of the carriage is to take place by sea and/or inland waterway, the terms of the House Bill of Lading shall be applicable. The Hague-Visby Rules shall be deemed to apply whether or not the carriage of the Goods is on deck. In the event of conflict between these Terms of Business, where applicable, and the House Bill of Lading, the terms and conditions of the House Bill of lading shall prevail. Where the Company acts as agent of the Customer in arranging or procuring carriage by sea and/or inland waterway whether for combined transport or port to port shipment, carriage shall be subject to the terms and conditions of the Ocean Bill of Lading (or other contract for carriage by inland waterway) which shall regulate the carriage of the Goods.

## 6. **FEES**

- 6.1 Unless otherwise agreed in writing by the Company, payment for the Services must be made by the Customer to the Company within 30 days of the invoice date in the agreed currency by transfer to a bank account designated by the Company and detailed in the Appointment Agreement.
- 6.2 The Customer shall pay to the Company, in cash or as otherwise agreed all sums immediately when due without reduction or abatement on account of any claim, counterclaim or set-off.
- 6.3 The prices quoted by the Company are based on the rates, wages and the like which apply at the time this Agreement is made. In the event of a subsequent increase in one or more cost price factors, the Company is entitled to increase the original price accordingly and the Company shall be under no liability or obligation to the Customer with respect to any such action. This Agreement is based on flexible loading and unloading times. It does not encompass completion of customs documents and assumes that the Goods are not held or carried under customs seal, unless the Company has expressly accepted such a condition in writing.
- 6.4 In the event of late payment the Customer is legally in default without any need for notice of default being served on the Customer by the Company. Interest shall be payable on amounts not paid by the due date at the rate of 5% above the base rate of Rabobank, London branch at the relevant time, such interest to accrue on a daily basis from the last due date for payment until the date payment is actually made, compounded every 90 days from the due date for payment.
- 6.5 Despite the acceptance by the Company of instructions to collect freight, duties, charges or other expenses incurred in connection with the provision of the Services from the Consignee or any other person, the Customer shall remain responsible for such freight, duties, charges or expenses unless specifically agreed in writing with the Company, and the Customer shall be liable to pay the same on receipt of evidence of proper demand and in the absence of evidence of payment (for whatever reason) by such Consignee or other person when due.

- 6.6 The Company shall be entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by or paid to a party providing any one or more of the Services.
- 6.7 Unless provided otherwise in the Company's quotation for the Services, the Customer shall be liable to pay any additional charges that occur at the delivery point of the Consignment, to the extent that they are not paid when due by the Consignee, whether incurred by the Customer or the Consignee, and including but not limited to:
- 6.7.1 demurrage for unreasonable detention of any vehicle, trailer, chassis, Container, silo or any other equipment;
  - 6.7.2 terminal charges;
  - 6.7.3 costs of any wasted journey due to the Customer's or the Consignee's lack of readiness to unload, and costs of any additional stops necessitated by the Customer's or the Consignee's requirements not previously agreed by the Company in writing;

the rights of the Company against any other person in respect thereof shall remain unaffected.

- 6.8 The Company is at all times entitled to demand payment in advance from the Customer or satisfactory security for the performance of its obligations. If the Customer does not immediately comply with a request to this effect, the Company is entitled to terminate or suspend the Services.

#### 6.9 Lien

6.9.1 Subject to Clause 6.9.2 hereof, the Company shall have a general lien on all Goods, monies and documents of the Customer (at the Customer's expense and risk) relating to Goods in its possession, custody or control for all sums due at any time from the Customer or Consignee in connection with such Goods and in addition a general lien on all Goods and associated documents in its possession for all sums due to it from the Customer or Consignee on any account whatsoever, and shall be entitled to sell or dispose of such Goods or documents as agent for and at the expense of the Customer and apply the proceeds in or towards the payment of such sums on 28 days notice in writing to the Customer. Upon accounting to the Customer for any balance remaining after payment of any sum due to the Company and the costs of sale and disposal, the Company shall be discharged of any liability whatsoever in respect of the Goods or documents.

6.9.2 Without prejudice to Clause 3.9, when the Goods are liable to perish or deteriorate, the Company's right to sell or dispose of the Goods shall arise immediately upon any sum becoming overdue to the Company subject only to the Company taking reasonable steps to bring to the Customer's attention the Company's intention of selling or disposing of the Goods before so doing

### 7. INFORMATION DATABASE

7.1 To enable the Company to provide the Services, the Company maintains a database which contains personal information relating to its customers, including the Customer. None of this information is sensitive. This information will be used only for the purposes of providing the Services and the Company will not share the information with any other person without first obtaining the Customer's consent.

7.2 If the Customer has any objection to the Company including information on its database or enquiries relating to the maintenance of such database, it shall contact the office of the Company with which it normally deals.

### 8. CUSTOMER'S INDEMNITY FOR OFFICIAL CHARGES

The Customer is at all times obligated to indemnify the Company for amounts claimed and penalties imposed on the Company or any agent and/or contractor engaged by it by any government or other authority in connection with the performance of the Services, save to the extent that such claim is the result of an imputable fault in the performance on the part of the Company of its obligations under this Agreement.

9. **GENERAL EXCLUSIONS AND LIMITATION OF LIABILITY**

- 9.1 The following general exclusions and limitations of liability shall apply where the Conventions do not apply (for example, where there is carriage by road not under CMR, carriage by rail not under CIM, or where there is warehousing/storage during the course of transit).
- 9.2 The Company shall in no circumstance whatsoever be liable for:
- 9.2.1 Indirect Losses;
  - 9.2.2 import duty, excise duty, turnover tax and/or other duty, levy or related fine which is imposed by any government or any other authority or which is demanded in connection with the performance of the Services;
  - 9.2.3 loss of or damage to the Goods arising after transit is deemed to have ended within the meaning of Clause 3.7 unless such loss or damage is due to the negligent act, error or omission of the Company or that of its servants, agents or contractors;
  - 9.2.4 to the extent that the liability arises from or is contributed to by the negligent act, error or omission, non-disclosure, miss-statement or misrepresentation by the Customer, the consignee or either of their respective servants, agents or contractors;
  - 9.2.5 inherent liability to wastage in bulk or weight, faulty design, latent or inherent defect or vice or natural deterioration of the Goods;
  - 9.2.6 any loss of or damage to the Goods due to contamination during the period of transit unless such contamination is due to negligent act error or omission of the Company or that of its servants, agents or contractors; or
  - 9.2.7 any loss or damage to any silo, retaining tank, container or other receptacle into which the Goods may be delivered by the Company its servants agents or contractors or any loss or damage to any cargo or property contained in such silo, retaining tank, container or other receptacle, whether or not as a result of or contributed to by negligent act error or omission by the Company its servants agents or contractors (including but not limited to driver of the carrying vehicle).
- 9.3 Subject to the aforesaid, and subject to limitation of liability under applicable Convention, the Company's liability shall in any event be limited as follows:
- 9.3.1 in the case of damage/loss to the Goods, howsoever caused, including but limited to damage/loss arising out of and/or contributed to by negligent act, error or omission of the Company or that of its servants, agents or contractors, the liability of the Company shall be limited to the sterling equivalent calculated as at the date of damage/loss of 2 special drawing rights (SDRs) per kilo of the gross weight of the Goods which are the subject of the Services;
  - 9.3.2 in the case of damage/loss to property or cargo (other than to the Goods), and other than in the case of damage/loss under paragraph 9.2.7 above, the Company's liability whether or not arising out of negligent act error or omission of the Company its servants agents or contractors shall be limited to the reasonable cost of repair or replacement (whichever is the lesser) of the relevant property or cargo;
  - 9.3.3 save for paragraphs 9.3.1 and 9.3.2 above, in respect of any act, error or omission whether arising out of and/or contributed to by the negligence of the Company its servants agents or contractors, the Company shall be entitled to limit its liability to a sum not exceeding the Fee for the Services.
- 9.4 Nothing in these Terms of Business shall be construed as excluding or limiting the Company's liability for death, personal injury or for any other type of liability which cannot be excluded or limited by law.



9.5 Any employee, agent and/or contractor of the Customer or the Consignee who enters any premises of the Company or of its agent and/or contractor, sheds, transport vehicles or any other place where work is executed, shall be there, with all Goods and other items he has with him, at his own risk, and must strictly adhere to any regulations and/or instructions established by the Company or which are applicable by law. The Customer shall indemnify the Company in this respect against claims of all such parties as are on a relevant site in connection with the performance of the Services. Further, the Company shall not be liable for any injury suffered by the Customer or the Consignee, their employees, agents and/or subcontractors, if the injury occurs when said persons perform activities to or on top of a Container, save to the extent that the injury is caused by the negligence of the Company or of persons for whom the Company is responsible. The Customer shall indemnify the Company in this respect against any claims of Consignees or of such other parties as are mentioned in this Clause 9.5.

## 10. CLAIMS

10.1 Any claim made by the Customer against the Company in respect of any aspect of the Services shall be made within the timescale and in accordance with the procedures set out in the applicable Convention, and otherwise shall be made in writing and notified to the Company within 3 calendar months of the date upon which the Customer became or should have become aware in the ordinary course of business of any event or occurrence alleged to give rise to such claim, and any claim not made and notified as aforesaid shall be deemed to be waived and absolutely barred.

10.2 The Company shall in any event be discharged of all liability whatsoever and howsoever arising in respect of any aspect of the Services unless suit be brought and written notice thereof given to the Company within 12 months (or such longer period as aforesaid, where applicable) of the date of the event or occurrence alleged to give rise to a cause of action against the Company.

## 11. ADDITIONAL WARRANTIES AND INDEMNITIES

11.1 The Customer warrants that:

11.1.1 the description and particulars of the Goods furnished by or on behalf of the Customer are full and accurate;

11.1.2 when presented for warehousing or storage, the Goods shall be securely and properly packed in compliance with any statutory regulations or official or recognised standard and in such condition as not to cause damage or injury or the likelihood of damage or injury to the property of the Company or to any other Goods, whether by spreading of damp, infestation, leakage or the escape of fumes or substances or otherwise howsoever;

11.1.3 before presentation of the Goods for warehousing or storage, the Customer will inform the Company in writing of any special precautions necessitated by the nature, weight or condition of the Goods and of any statutory duties specific to the Goods and with which the Company may need to comply;

11.1.4 it will reimburse all duties and taxes that the Company may be required to pay in respect of the Goods;

11.1.5 unless, prior to acceptance of the Goods by the Company, the Company receives a written notice containing all appropriate and necessary information, the Goods shall not constitute waste as defined from time to time in terms of Directive 75/442/EEC or any similar, equivalent or like law applying in any other territory;

11.1.6 unless, prior to acceptance of the Goods by the Company, the Company receives a written notice containing all appropriate information, the Goods shall not be or contain substances the storage of which would require the obtaining of any consent or licence or which, if they escape from their packaging, would or may cause pollution of the environment or harm to human health.

11.2 In the event of a breach by the Customer of any of the warranties given in Clause 11.1 above, the Customer will indemnify the Company and any director, servant, employee, agent or contractor of the Company against any loss or damage it suffers as a result of the breach, except to the extent that such loss or damage is caused or contributed to by the negligence of the Company, its directors, servants, agents or contractors, and will pay all costs and expenses (including professional fees) incurred in, and the Company's reasonable charges for, dealing with the breach and its consequences.

- 11.3 The Company shall perform its duties with a reasonable degree of care, diligence, skill and judgement.
- 11.4 Unless the Company has agreed in writing to the contrary:
- 11.4.1 the Customer warrants that any special appliances required for the provision of the Services which are not held as standard equipment by the Company at any place where Services are delivered will be provided by the Customer or on the Customer's behalf;
- 11.4.2 the Company shall be under no liability whatsoever to the Customer for any damage, however caused, if the Company is instructed to provide the Services to any Goods requiring special appliances which, in breach of the warranty in Clause 11.4.1 above, have not been provided by the Customer or on the Customer's behalf;
- 11.5 The Customer shall save, hold harmless, defend and indemnify the Company (and keep the Company indemnified) from and against:
- 11.5.1 all liability, loss, damage, costs and expenses whatsoever (including without prejudice to the generality of the foregoing, all duties, taxes, imports, levies, deposits and outlays of whatsoever nature levied by any authority in relation to the Goods) arising out of the Company acting in accordance with the Customer's instructions or from the negligence of the Customer, except to the extent that the Company has caused or contributed to such liability, loss, damage, costs and expenses by reason of its own negligence or that of its servants, agents and contractors;
- 11.5.2 all claims, costs and demands whatsoever and by whomsoever made or proffered in excess of the liability of the Company under the terms of these Terms of Business except to the extent that such claims, costs or demands arise from or in connection with the negligence or breach of duty of the Company, its servants, agents and contractors; and
- 11.5.3 any claims of a General Average nature which may be made on the Company in relation to the Goods.
- 11.6 Where the Company is acting as the Customer's agent, as per clause 2.2 above, in the event of loss/damage to the Company's containers or other property being carried by sea/by inland waterway/by road or rail (which shall include warehousing or storing at terminal during the course of transit), the Customer shall (at Company's cost) claim against the ocean carrier under the Ocean Bill of Lading or against the carrier under the contract of carriage by inland waterway / by road or rail (in all cases whether combined transport or port to port) or against the warehouse keeper or terminal operator when Goods are in the course of transit or against the responsible third party and shall take all reasonable steps to seek recourse and make recovery against the correct party so as to protect the Company's rights and entitlement, failing which the Company shall be entitled upon written notice to the Customer to take all necessary steps including but not limited to commencement of legal proceedings in the name of the Customer and at the cost and expense of the Customer.

## 12. **INSURANCE**

- 12.1 The Customer shall be responsible for insuring the Goods in transit at its expense.
- 12.2 The Customer shall, within 10 Business Days of receipt of a written request from the Company, supply to the Company copies of the insurance policies covering the Goods and evidence that the relevant premiums have been paid.
- 12.3 The Customer shall comply with all terms and conditions of its insurances at all times. If cover under any of such insurances shall lapse or not be renewed or be changed in any material way or if the Customer is aware of any reason why the cover under them may lapse or not be renewed or be changed in any material way, the Customer shall notify the Company without delay.

## 13. **TERMINATION**

- 13.1 Either party may terminate the Agreement where the other party:
- 13.1.1 is in persistent or material breach of the Agreement (including but not limited to the failure by the Customer to pay the Company's invoices when due) and, in the case of material breaches capable of remedy, has failed to remedy the same within thirty (30) days of written notice so to do;
- 13.1.2 has a receiver or administrative receiver appointed or passes a resolution for winding up (otherwise than for the purpose of a scheme of solvent amalgamation or reconstruction) or if a court having proper authority makes an order to that effect;

13.1.3 is the subject of an administration order or enters into any voluntary arrangement with its creditors; or

13.1.4 is the subject of any similar event which occurs in any jurisdiction where it has assets.

13.2 The termination or expiry of the Agreement shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party nor shall it extinguish any licensed rights or the benefit of any indemnities for any party hereunder or any provision of the Agreement necessary to give effect to them.

13.3 Upon termination of this Agreement for any reason, the Company shall offer all reasonable assistance and co-operation to the Customer to facilitate the smooth transition of the Services to a third party with a view to minimising disruption to the Customer's business.

13.4 The provisions of the Agreement which by their nature survive termination shall do so including in particular Clause 1, this Clause 13.4, Clause 14, Clause 19 and any provision requiring the Customer to indemnify or otherwise compensate the Company.

#### 14. **TUPE**

14.1 The parties acknowledge that there is a risk that persons employed by the Customer or by an Incumbent Services Provider may transfer into the employment of the Company as a result of the operation of TUPE.

14.2 The Customer shall indemnify, and shall procure that any Incumbent Services Provider indemnifies, on demand, the Company against all losses, damages, costs, claims, liabilities and expenses (including reasonable legal expenses) incurred by the Company in connection with or as a result of:

14.2.1 any claim or demand by any Transferring Employee or a trade union or other body or person representing a Transferring Employee (whether in contract, tort, under statute, pursuant to European law or otherwise) arising from any act, fault or omission of the Customer or the Incumbent Services Provider on or before the Transfer Date; and / or

14.2.2 any failure by the Customer or the Incumbent Services Provider to comply with its obligations under TUPE, or any award of compensation under TUPE.

14.3 If TUPE applies to transfer the employment of any Transferring Employee then if the Company shall serve a notice terminating the employment of such person within six month after the Transfer Date, the Customer shall indemnify or shall procure that the Incumbent Service Provider indemnifies, on demand, the Customer in respect of any statutory or contractual redundancy payment payable in respect of the Transferring Employee, and any compensation or damages which the Company is obliged to pay the Transferring Employee for unfair and/or wrongful dismissal or as a reasonable settlement of a claim for such compensation or damages.

#### 15. **STATUS**

15.1 The Customer shall, and shall procure that any new or substituted provider of the Services shall, in respect of the employees of the Company engaged in providing the Services comply with all requirements of the EU Acquired Rights Directive or any national legislation under that Directive or having similar effect, so far as they shall be or become relevant.

#### 16. **NOTICES**

16.1 Any notice given under this Agreement shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally, or sending it by pre-paid recorded delivery or registered post to the relevant party at its last known address or by fax to its last known fax number. Any such notice shall be deemed to have been received:

16.1.1 if delivered personally, at the time of delivery;

16.1.2 in the case of pre-paid recorded delivery or registered post, 48 hours from the date of posting; and

16.1.3 in the case of fax, the next working day.

16.2 In proving such service it shall be sufficient to prove that the envelope containing such notice was addressed to the address of the relevant party and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery or registered post or that the notice was transmitted by fax to the fax number of the relevant party, whichever shall be applicable.

17. **FORCE MAJEURE AND MATTERS AFFECTING PERFORMANCE**

- 17.1 For the purposes of these Terms of Business the expression “**Force Majeure**” shall mean any cause affecting the performance by a party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) governmental regulations, fire, flood, or any disaster. Any act, event, omission, happening or non-happening will only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected party, its agents or employees.
- 17.2 Neither party shall in any circumstances be liable to the other for any loss of any kind whatsoever including but not limited to any damages or abatement of Fees whether directly or indirectly caused to or incurred by the other party by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure provided that the affected party shall have notified the other in writing within two (2) days of the occurrence of the Force Majeure. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform, or resume performance of, such obligations hereunder as soon as reasonably possible.
- 17.3 Without prejudice to the generality of Clause 17.2 above, if at any time the performance of the Services or any part thereof is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage of any kind (including Force Majeure) (even though the circumstance giving rise to such hindrance, risk, delay, difficulty or disadvantage existed when the Agreement was entered into or when the Goods were received by the Company for carriage), the Company (whether or not the Services have commenced) may, without prior notice to the Customer and at the sole discretion of the Company, either:
- 17.3.1 carry the Goods to the contracted place of delivery by an alternative route to that (if any) indicated in the Appointment Agreement, Bill of Lading, consignment note or other transportation document applicable to the Goods (as the case may be) or to that which is usual for Goods consigned to that place of delivery and shall be entitled to charge the Customer additional fees for doing so;
- 17.3.2 suspend the carriage of the Goods and store them ashore or afloat and endeavour to forward them as soon as reasonably practicable and to charge the Customer additional fees for doing so; or
- 17.3.3 abandon performance of the Services in respect of the Goods and place them at the Customer’s disposal at any place which the Company may (acting reasonably) deem safe and convenient, whereupon the responsibility of the Company in respect of such Goods shall cease. The Customer shall pay any additional costs of carriage to, and delivery and storage at, such place.
- 17.4 If either of the parties shall become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.
- 17.5 If either of the parties is prevented from performance of its obligations under the Agreement for a continuous period in excess of three (3) months by reason of Force Majeure, the other party may terminate the Agreement immediately on service of written notice upon the party so prevented.
- 17.6 It is expressly agreed that any failure by the Company to perform or any delay by the Company in performing its obligations under the Agreement which results from any failure or delay in the performance of its obligations by any person, firm or company with which the Company shall have entered into any contract, supply arrangement or sub-contract or otherwise (with the exception of the Customer) shall be regarded as a failure or delay due to Force Majeure only in the event that such person, firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or sub-contract or otherwise as a result of circumstances of Force Majeure.

18. **TRANSFER AND SUB-CONTRACTING**

- 18.1 The Agreement is personal to the Customer. Subject to the provisions of Clause 3.4.1 above, the Customer shall not assign, novate, sub-contract or otherwise dispose of the Agreement or any part thereof without the previous consent in writing of the Company. The Customer may not declare a trust of or allow to be constituted as trust property the benefit of the rights or interests in the Agreement and any purported assignment, transfer, sub-contracting, delegation, charging or deadlines in contravention of this Clause 18.1 shall be ineffective.
- 18.2 The Company shall not be entitled to assign, novate or otherwise dispose of its rights and obligations under the Agreement or any part thereof, except that it may do so in favour of any company which is in common ownership with the Company.

19. **MISCELLANEOUS PROVISIONS**

- 19.1 Without prejudice to any restriction or limitation on the extent of either party's obligations under the Agreement, each party shall from time to time upon the request (and at the expense) of the other party, use all reasonable endeavours to execute or procure the execution of any additional documents or do or procure any other acts or things which may reasonably be required to give full effect to the Agreement in a form reasonably satisfactory to the party concerned.
- 19.2 The Agreement shall not be varied or amended unless such variation or amendment is agreed in writing on behalf of the parties.
- 19.3 If any provision of the Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions shall continue in full force and effect as if the Agreement had been executed with the relevant provision eliminated.
- 19.4 The failure of either party to insist upon strict performance of any provision of the Agreement, or the failure of either party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by the Agreement. Waiver of any default or breach of the Agreement by a party shall not constitute a waiver of any subsequent default or breach. No waiver of any of the provisions of the Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing.
- 19.5 The Agreement (being these Terms of Business and the Appointment Agreement) constitutes the entire agreement between the parties relating to the subject matter of the Agreement and, save as may be expressly referred to or referenced herein, supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing, between the parties in relation to the subject matter of the Agreement. Each of the parties acknowledges and agrees that it has not entered into the Agreement in reliance on any statement or representation of any person (whether a party to the Agreement or not) other than expressly incorporated in the Agreement.
- 19.6 The Agreement (and any dispute or claim relating to it, its enforceability or its termination) shall be governed by English law and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.
- 19.7 The Agreement is binding upon the Company and its successors and assignees and the Customer and the Customer's successors and assignees.