
IM EXPORT SERVICES LIMITED
STANDARD TERMS AND CONDITIONS FOR GOODS AND/ OR SERVICES

1. Application of Terms and Conditions

- 1.1. The Company shall supply, and the Customer shall purchase the Goods and/or Services in accordance with the quotation / specification / accepted order / or correspondence from the Company ('quotation')- all of which shall be subject to these Terms and Conditions;
- 1.2. With the exception of the BIFA Conditions if and when applicable the Contract between the Company and the Customer shall be to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Customer;
- 1.3. All transport and movements of freight which comprise any part of the Services provided by the Company shall be covered by the BIFA Conditions and accordingly the BIFA Conditions as applicable are incorporated into these terms and conditions.

2. Definitions and Interpretation

- 2.1. In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

"BIFA Conditions"	means the standard trading conditions of the British International Freight Association current at the date of formation of the contract as set out in these terms and conditions;
"Business Day"	means any day other than a Saturday, Sunday or bank holiday;
"Commencement Date"	means the commencement date for the Contract as set out in the quotation / specification / accepted order;
"Company"	means IM Export Services Limited, a company registered in England under company number 05256129 of 49 Arthur Street Industrial Estate, Lakeside, Redditch, B98 8JY and includes all employees and agents of IM Export Services Limited.
"Confidential Information"	means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with this Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
"Contract"	means the contract for the purchase and sale of the Goods and supply of the Services under these Terms and Conditions;
"Contract Price"	means the price stated in the Contract payable for the Goods and/or the Services;

“Customer”	means the person who accepts a quotation or offer of the Company for the sale of the Goods and/or the supply of the Services, or whose order for the Goods and/or Services is accepted by the Company;
“Delivery Date”	means the date or dates stipulated in the Customer’s order and accepted in writing by the Company;
“Goods”	means the packaging materials, supplies and/or goods (including any instalment of the Goods or any part or parts thereof) which the Company is to supply in accordance with these Terms and Conditions;
“Month”	means a calendar month;
“Person”	means any person or persons or a company (and any reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established).
“Services”	means the Services to be provided to the Customer as set out in the quotation / specification / accepted order to be provided in accordance with these Terms and Conditions; and

2.2. Unless the context otherwise requires, each reference in these Terms and Conditions to:

2.2.1. “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;

2.2.2. a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;

2.2.3. “these Terms and Conditions” is a reference to these Terms and Conditions and any Schedules as amended or supplemented at the relevant time;

2.2.4. a Schedule is a schedule to these Terms and Conditions; and

2.2.5. a Clause or paragraph is a reference to a Clause of these Terms and Conditions (other than the Schedules) or a paragraph of the relevant Schedule.

2.2.6. a “Party” or the “Parties” refer to the parties to these Terms and Conditions.

2.3. The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.

2.4. Words imparting the singular number shall include the plural and vice versa.

2.5. References to any gender shall include the other gender.

3. Basis of Sale and Service

3.1. The Company’s employees or agents are not authorised to make any representations concerning the Goods and/or Services unless confirmed by the Company in writing. In entering into the Contract the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

3.2. No variation to these Terms and Conditions shall be binding unless agreed in writing between the authorised representatives of both the Customer and the Company.

3.3. No contract for the sale of the Goods and Services shall be binding on the Company

unless the Company has issued a quotation which is expressed to be an offer to sell the Goods and/or provide the Services or has accepted an order placed by the Customer by whichever is the earlier of:

- 3.3.1. the Company's written acceptance;
 - 3.3.2. delivery of the Goods and/or provision of the Services; or
 - 3.3.3. the Company's invoice.
- 3.4. Any typographical, clerical or other accidental errors or omissions in any literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.
- 3.5. The Customer entering into any transaction with the Company expressly warrants that it is either the owner or authorised agent of the owner of any goods and by entering into the transaction it accepts these conditions for himself as well as for all other parties on whose behalf it is acting.
- 3.6. The Customer will indemnify the Company and keep the Company indemnified against any demand or claim made and any action or other proceeding brought against the Company arising out of or in connection with any dispute as to the ownership of the goods or as to the person entitled in law to possession thereof.
- 3.7. Unless otherwise expressly agreed in writing between the Company and the Customer and whether the Company contracts as principal or agent the Company reserves to itself complete freedom in respect of arranging the means, routes and procedure to be followed in the handling, packing and transportation of the goods and in the method and place of storage if required. Without prejudice to the generality of the foregoing the Company reserves the right at all times:
- 3.7.1. to consign goods by any route and to allow deviation from the usual or intended route, and/or a stoppage at any place on route;
 - 3.7.2. to arrange a store, warehouse, or hold goods in any place, store or warehouse wheresoever and whatsoever and irrespective of other goods there stored warehoused or held;
 - 3.7.3. to change the day or time of intended movement of the goods without prior notice;
 - 3.7.4. all such dealings with the goods shall be within the scope of the contract.
- 3.8. Goods will be forwarded or dealt with at owner's risk unless express instructions in writing are received to the contrary, and acknowledged by the Company in writing.
- 3.9. The Customer in contracting with the Company hereby authorises the Company to contract as agent for the Customer with any packer, transport or storage contractor, wharfinger, lighterman, ship owner, carrier by sea or air or road or rail or any other person in connection with any business undertaken by the Company. The Customer shall be deemed to have knowledge of and consented to any terms and conditions of any contract entered into by the Company on the Customer's behalf including terms imposed by the Carriage of Goods by Sea Act 1971, the Carriage of Air Act 1961, Carriage by Air (Supplementary Provisions) Act 1961 and the Carriage of Goods by Road Act 1965 or any amendments thereof or extensions thereto.
- 3.9.1. The Company shall be under no obligation to attempt to contract on terms more favourable to the Customer than those normally obtainable from the persons with whom the Company contracts on the Company's behalf.
 - 3.9.2. The Customer shall indemnify the Company against any claim arising out of the contract entered into by the Company on behalf of the Customer and shall be liable for any duty, tax imposed or outlays of whatever nature levied by the authorities at any Port or place for or in connection with the goods or for any

payments fines expenses loss or damage incurred or sustained by the Company.

- 3.10. All servants and agents of the Company shall be entitled to the benefit of these terms and conditions and the Company contracts hereunder on their behalf.
- 3.11. The Customer will indemnify the Company against any claims or demands made by the consignee or any third party against the Company insofar as such claims or demand exceeds the Company's liability as defined and laid down by these conditions.
- 3.12. The Customer warrants the accuracy of all descriptions values and other particulars supplied to the Company for Customs or any other purpose for any document evidencing a transport transaction. The Customer further undertakes to indemnify the Company against all losses damages expenses and fines arising from any inaccuracy or omission even if the same is not due to any negligence.
- 3.13. The Company will not be liable under any circumstances for any loss or damage or expense arising from or in any way connected with marks weight numbers brands contents quality or description of any goods.
- 3.14. The Company will not be liable for any failure to enter the requisite particulars in any consignment note or any other document evidencing a transport transaction unless such details were supplied to the Company in writing and received by the Company and it is shown that the same was not inserted as a result of wilful default;
- 3.15. If any goods cannot be delivered because they are incorrectly or insufficiently addressed or because they are not collected or accepted by the consignee or the consignees cannot be reasonably found then the Company may give notice to the Customer that the same may be disposed of within 21 days of the notice, at the Company's sole discretion, and the Customer will indemnify the Company for the costs thereof insofar as they are recovered as a result of such disposal.
- 3.16. The Company shall not be liable for any damage caused to private roadways, mains, pipes, manholes, weighbridges, bridges or approaches of any kind to such premises or property thereon when collecting or delivering goods at the premises of the Customer or the consignee or at any premises visited while carrying out the instructions of the Customer or consignee by reason of the weight or the vibration of any vehicle or load or the nature of the goods carried and the Customer shall indemnify the Company in respect of any claim arising therefrom.
- 3.17. While storing goods, the Company:
 - 3.17.1. may give notice requiring the removal of the goods within 7 days or may increase the rent for charges for storing at the expiration of 7 days after giving written notice thereof;
 - 3.17.2. may charge 5% more than its normal rate if the Customer requires the goods or any part thereof to be available for immediate collection delivery or inspection;
 - 3.17.3. shall charge storage for a minimum period of 7 days, and any part thereof shall count as such period.
- 3.18. Unless under special arrangements previously made in writing the Company will not handle or deal with bullion, coins, precious stones, jewellery, valuables, antiques, pictures, livestock or plants, and if the Company does handle or deal with same it will not accept any liability whatever whether in negligence or otherwise for such goods
- 3.19. Where the Customer or his agent has packed, stowed or stuffed goods into any vehicle crate package or container the Customer warrants the goods are properly and effectively packed, stowed stuffed and will indemnify the Company against loss damage or charges suffered by or made upon the Company arising from any defective stowage packing or stuffing including overloading unsafe or

imbalanced stowing packing or stuffing or damaging the vehicle crate package or container

- 3.20. Pending forwarding and delivery goods may be warehoused or otherwise held in any place or places at the sole discretion of the Company and at the owner's risk and expense.
- 3.21. Except pursuant to specific instructions previously received in writing and accepted in writing by the Company then the Company will not accept or deal with goods of a dangerous or damaging nature, nor goods likely to harbour or encourage vermin or other pests, nor goods liable to taint or affect other goods. If such goods are accepted pursuant to a special arrangement but thereafter and in the opinion of the Company constituted a risk to other goods, property, life or health the Company shall where reasonably practical contact the Customer in order to require him to remove or otherwise deal with the goods but reverse the right in any event to do so at the expense of the Customer.

4. The Goods

- 4.1. No order submitted by the Customer shall be deemed to be accepted by the Company unless and until confirmed in writing by the Company's authorised representative.
- 4.2. The specification for the Goods shall be that set out in the Company's quotation / specification / accepted order documentation. The Goods will only be supplied in the units stated in the Company's quotation / specification / accepted order. Orders received for quantities other than these will be adjusted accordingly.
- 4.3. Illustrations, photographs or descriptions issued by the Company are intended as a guide only and shall not be binding on the Company.
- 4.4. The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or regulatory requirements, or which do not materially affect their quality or performance.
- 4.5. The Company reserves the right to make any changes in the specification of the Goods or the materials used which do not impact on the structure or performance of the goods and which do not materially affect their quality or performance.
- 4.6. No order which has been accepted by the Company may be cancelled by the Customer except with the agreement in writing of the Company on the terms that the Customer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of such cancellation.

5. The Services

- 5.1. With effect from the Commencement Date the Company shall, in consideration of the price being paid in accordance with Clauses 6 and 7 will provide the Services expressly identified in the quotation / specification / accepted order.
- 5.2. The Company will use reasonable care and skill to perform the Services identified in the quotation / specification / accepted order.
- 5.3. The Company shall use its reasonable endeavours to complete its obligations under the Contract, but time will not be of the essence in the performance of such obligations.

6. Price

- 6.1. The price of the Goods and/or Services shall be the price listed in the Company's quotation / specification / accepted order or such other price as may be agreed in writing by the Company and the Customer.

- 6.2. The Company reserves the right, by giving written notice to the Customer at any time before delivery or provision, to increase the price of the Goods and/or Services to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (including, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods and services which are requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.
- 6.3. Except as otherwise stated under the terms of any quotation / specification / accepted order, and unless otherwise agreed in writing between the Customer and the Company, all prices are inclusive of the Company's charges for packaging and transport.
- 6.4. The price provided by the Company to the Customer is exclusive of any additional sums payable by the Customer to the Company in accordance with the provisions of these terms and conditions including, but not limited to clauses 8, 12 and 16.3
- 6.5. The price is exclusive of any applicable value added tax, excise, sales taxes or levies of a similar nature which are imposed or charged by any competent fiscal authority in respect of the Goods and Services, which the Customer shall be additionally liable to pay to the Company.

7. Payment

- 7.1. Subject to any special terms agreed in writing between the Customer and the Company, the Company shall invoice the Customer for the price of the Goods and / or Services at any time, unless, in the case of Goods, the Goods are to be collected by the Customer or the Customer wrongfully fails to take delivery of and/or Services, in which event the Company shall be entitled to invoice the Customer for the price at any time after the Company has notified the Customer that the Goods and/or Services are ready for collection or (as the case may be).
- 7.2. All payments shall be made to the Company as indicated on the form of acceptance or invoice issued by the Company. All sums so due shall be paid immediately without deduction, and payment shall not be withheld or delayed on account of any claim counterclaim or set-off. Any sum not paid within 14 days shall bear interest from the due date at 6% over Lloyds Bank base rate in force from time to time.
- 7.3. Please note that all accounts which are not paid within the applicable credit terms will be passed to the Company's nominated debt collection agency. This will incur a fee from the nominated agency of 15% plus VAT of the amount recovered to cover the costs of recovery. As soon as the account is passed to our nominated agency that fee will be added to the invoice amount due and will be payable in addition to the invoice amount. This is an entirely separate charge to any late payment of commercial debts legislation (or similar), legal costs and disbursements which may also be properly incurred in obtaining payment.
- 7.4. The Customer shall pay the price of the Goods and/or Services (less any discount or credit allowed by the Company, but without any other deduction, credit or set off) in accordance with the payments terms set out in the quotation / specification / accepted order or if no date is specified, no later than 7 days from the earlier of:
 - 7.4.1. receipt of the Goods/provision of the Services; or
 - 7.4.2. the date of the Company's invoice,or otherwise in accordance with such credit terms as may have been agreed in writing between the Customer and the Company in respect of the Contract. Payment shall be made on the due date notwithstanding that delivery or provision may not have taken place and/or that the property in the Goods has not passed to the Customer. The

time for the payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

- 7.5. The Company is not obliged to accept orders from any customer or buyer who has not supplied the Company with references satisfactory to the Company. If at any time the Company is not satisfied as to the creditworthiness of the Customer it may give notice in writing to the Customer that no further credit will be allowed to the Customer in which event no further goods or services will be delivered or provided to the Customer other than against cash payment and notwithstanding sub-Clause 7.4 of these conditions, all amounts owing by the Customer to the Company shall be immediately payable in cash.

8. Insurance

- 8.1. Unless specified as being included in the quotation provided by the Company insurance is NOT included. The Customer is required to insure all goods provided for packing by the Company from their delivery to the Company's premises or from the time of collection by the Company.
- 8.2. If so requested by the Customer the Company will use its best endeavours to obtain insurance cover for the Customer's goods the costs of which will be payable by the Customer to the Company. All insurance effected by the Company is subject to the usual conditions of the policies of the insurance company or underwriters taking the risk. Unless and until such insurance cover is confirmed by the Company to the Customer as being in place the Company shall have no responsibility for the Customer's goods. Should the insurers dispute liability for any reason the Customer shall have recourse against the insurers only and the Company shall be under no liability whatsoever for negligence or otherwise in relation thereto.
- 8.3. The Parties acknowledge that there are certain Countries where insurance will not be available – or may be available on disclosure and upon special terms. Currently these include (but are not limited to): **Afghanistan, Bougainville, Burundi, Chechnya, Republic of Cote D'Ivoire (Ivory Coast), Cuba, Democratic Republic Congo (Zaire), Eritrea, Iran, Iraq, Liberia, Nigeria, North Korea, Russia, Sierra Leone, Somalia, Sudan and Syria, Ukraine.**
- 8.4. The Customer acknowledges that there are certain items that are excluded from insurance cover and as such insurance will not be available – or may be available on disclosure and upon special terms. Currently these include (but are not limited to): **Bullion and Precious Metal Objects; Bank Notes, Coins, Cheques and Credit Cards; Bonds, Negotiable Documents, Securities and other financial instruments; Live Animals, Birds, Reptiles and Fish; Military goods and / or goods for military purpose; dangerous drugs; computer chips, memory cards; mobile phones; spirits; cigarettes or tobacco products; Lithium batteries.**

9. Delivery and Performance

- 9.1. Delivery of the Goods shall be made by the Company delivering the Goods to the address/place specified in the quotation / specification / accepted order or, if no place of delivery is so specified, by the Customer collecting the Goods at the Company's premises at any time after the Company has notified the Customer that the Goods are ready for collection..
- 9.2. The Delivery Date is approximate only and time for delivery shall not be of the essence unless previously agreed by the Company in writing. The Goods may be delivered by the Company in advance of the Delivery Date upon giving reasonable notice to the Customer.
- 9.3. If the Customer fails to take delivery of the Goods or any part of them on the Delivery Date and/or fails to provide any instructions, documents, licences, consents or authorisations required to enable the Goods to be delivered on that date, the

Company shall be entitled upon giving written notice to the Customer to store or arrange for the storage of the Goods and risk in the Goods shall pass to the Customer, delivery shall be deemed to have taken place and the Customer shall pay to the Company all costs and expenses including storage and insurance charges arising from such failure.

- 9.4. With effect from the Commencement Date the Company shall, in consideration of the price being paid in accordance with these Terms and Conditions and the quotation / specification / accepted order provide the Services expressly identified in the quotation / specification / accepted order.

10. Non-Delivery of Goods and Services

- 10.1. If the Company fails to deliver the Goods or provide the Services or any of them on the Delivery Date (or Commencement Date, as appropriate) other than for reasons outside the Company's reasonable control or the Customer's or its carrier's fault:
- 10.1.1. if the Company delivers the Goods and/or provides the Services at any time thereafter the Company shall have no liability in respect of such late delivery; or
- 10.1.2. if the Customer gives written notice to the Company within five Business Days after the Delivery Date (or Commencement Date, as appropriate) and the Company fails to deliver the Goods and/or Services within twenty-five Business Days after receiving such notice the Customer may cancel the order and the Company's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar goods or services to those not delivered or provided over the price of the Goods or Services not delivered or provided.

11. Title and Risk

- 11.1. The risk in the Goods shall pass to the Customer on completion of delivery.
- 11.2. Title to the Goods shall not pass to the Customer until the earlier of:
- 11.2.1. the Company receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Company has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
- 11.2.2. the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 11.4
- 11.3. Until title to the Goods has passed to the Customer, the Customer shall:
- 11.3.1. store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;
- 11.3.2. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 11.3.3. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Company's behalf from the date of delivery;
- 11.3.4. notify the Company immediately if it becomes subject to any of the events listed in clause 7; and
- 11.3.5. give the Company such information relating to the Goods as the Company may require from time to time.
- 11.4. Subject to clause 11.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Company receives payment for the Goods. However, if the Customer resells the Goods before that time:
- 11.4.1. it does so as principal and not as the Company's agent; and

11.4.2. title to the Goods shall pass from the Company to the Customer immediately before the time at which resale by the Customer occurs.

11.5. If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 12.3 then, without limiting any other right or remedy the Company may have:

11.5.1. the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and

11.5.2. the Company may at any time:

11.5.2.1. require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and

11.5.2.2. if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

12. Retention of Goods and Property

12.1. Until payment has been made to the Company in accordance with these Conditions and the Customer shall be in possession of the property belonging to the Customer and/or its customer, such goods or property shall be held by the Company as bailee and the Company shall be entitled to charge and be paid by the Customer for all costs of and associated with such storage and/or the costs of and incidental to any disposal of the same and the Customer acknowledges and agrees that the Company shall be under no liability (a) to release such goods or property until all sums due from the Customer to the Company have been paid in full and (b) the Company shall be under no obligation to insure such goods or property and shall have no liability whatsoever or howsoever arising for any damage to the same.

12.2. The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain in the possession of the Company in accordance with the provisions of clause 12.1.

12.3. The Customer's right to possession of any goods or property held by the Company in which the Company maintains legal and beneficial title shall terminate if:

12.3.1.1.1. the Customer commits or permits any material breach of his obligations under these Conditions;

12.3.1.1.2. The Customer enters into a voluntary arrangement under Parts I or VIII of the Insolvency Act 1986, the Insolvent Partnerships Order 1994 (as amended), or any other scheme or arrangement is made with his creditors;

12.3.1.1.3. the Customer is or becomes the subject of a bankruptcy order or takes advantage of any other statutory provision for the relief of insolvent debtors;

12.3.1.1.4. the Customer convenes any meeting of its creditors, enters into voluntary or compulsory liquidation, has a receiver, manager, administrator or administrative receiver appointed in respect of its assets or undertaking or any part thereof, any documents are filed with the court for the appointment of an administrator in respect of the Customer, notice of intention to appoint an administrator is given by the Customer or any of its directors or by a qualifying floating charge-holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986), a resolution is passed or petition presented to any court for the winding up of the Customer or for the granting of an administration

order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer.

13. Assignment

- 13.1. The Company may assign the Contract or any part of it to any person, firm or company without the prior written consent of the Customer.
- 13.2. The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

14. Defective Goods

- 14.1. If on delivery any of the Goods are defective in any material respect and either the Customer lawfully refuses delivery of the defective Goods or, if they are signed for on delivery as "condition and contents unknown" the Customer gives written notice of such defect to the Company within five Business Days of such delivery, the Company shall at its option:
 - 14.1.1. replace the defective Goods within thirty Business Days of receiving the Customer's notice; or
 - 14.1.2. refund to the Customer the price for those Goods (of parts thereof, as appropriate) which are defective;
 - 14.1.3. but the Company shall have no further liability to the Customer in respect thereof and the Customer may not reject the Goods if delivery is not refused, or notice given by the Customer as set out.
- 14.2. No Goods may be returned to the Company without the prior agreement in writing of the Company. Subject thereto any Goods returned which the Company is satisfied were supplied subject to defects of quality or condition which would not be apparent on inspection shall either be replaced free of charge or, at the Company's sole discretion the Company shall refund or credit to the Customer the price of such defective Goods, but the Company shall have no further liability to the Customer.
- 14.3. The Company shall be under no liability in respect of any defect arising from fair wear and tear, or any wilful damage, negligence, subjection to normal conditions, failure to follow the Company's instructions (whether given orally or in writing), misuse or alteration of the Goods without the Company's prior approval, or any other act or omission on the part of the Customer, its employees or agents or any third party.
- 14.4. Goods, other than defective Goods returned under sub-Clauses 14.1 or 14.2, returned by the Customer and accepted by the Company may be credited to the Customer at the Company's sole discretion and without any obligation on the part of the Company.
- 14.5. Subject as expressly provided in these Terms and Conditions, and except where the Goods are sold under a consumer sale, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

15. Customer's Default

- 15.1. If the Customer fails to make any payment on the due date, then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
 - 15.1.1. cancel the order or suspend any further deliveries or provision of Goods and Services to the Customer;
 - 15.1.2. appropriate any payment made by the Customer to such of the Goods and/or Services (or the goods and/or services supplied under any other contract

between the Customer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Customer); and

15.1.3. charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of 8% per annum above Lloyd's Bank plc's base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

15.2. This condition applies if:

15.2.1. the Customer fails to perform or observe any of its obligations hereunder or is otherwise in breach of the Contract;

15.2.2. the Customer becomes subject to an administration order or enters into a voluntary arrangement under Parts I or VIII of the Insolvency Act 1986 or the Insolvent Partnerships Order 1994 (as amended) or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation;

15.2.3. an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or

15.2.4. the Customer ceases, or threatens to cease, to carry on business; or

15.2.5. the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

15.3. If sub-Clause 15.2 applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

16. Liability

16.1. The Company will not by reason of any representation, implied warranty, condition or other term, or any duty at common law or under express terms of the Contract (or these Terms and Conditions), be liable for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the Company's servants or agents or otherwise) which arise out of or in connection with the supply of the Goods and Services.

16.2. The Company will not by reason of any representation, implied warranty, condition or other term, or any duty at common law or under express terms of the Contract (or these Terms and Conditions), be liable for any claims whatsoever or howsoever arising for:

16.2.1. Third party handling;

16.2.2. demurrage;

16.2.3. fluids leaking from cargo at any time before and during transit;

16.2.4. movement of parts that required adequate and proper securing, protecting and / or locking, details of which were not specially made known to the Company in writing prior to packing;

16.2.5. failure of timber products used in the manufacture of storage and packing cases and associated products and/or in the event that the timber products requested by the Customer were not suitable for the goods being packed;

16.2.6. the failure of items not provided by the Company but provided by or on behalf of the Customer e.g. defective pallets, strapping, transit brackets, waterproofing products;

- 16.2.7. costs arising from or associated with missed unloading/shipping slots;
- 16.2.8. delays caused by the Customer, its employees, servants, agents or third parties acting on its instructions;
- 16.2.9. damage caused by any interference with the packaging provided by the Company by any third party e.g., unpacking or opening of crates or the removal of tarpaulins or weatherproof coverings by Customs or other officials.
- 16.3. The Company reserves the right to recover from the Customer all costs and losses arising from or associated with any occurrence of matters listed or referred to in clause 16.2 including, but not limited to, additional storage, packing, and handling charges.
- 16.4. All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 16.5. The Customer shall indemnify the Company against all damages, costs, claims and expenses suffered by the Company, arising from loss or damage to any equipment (including that of third parties) caused by the Customer, its agents or employees.
- 16.6. Where the Customer consists of two or more persons such expression throughout shall mean and include such two or more persons and each or any of them. All obligations on the part of such a Customer shall be joint and several obligations of such persons.
- 16.7. The Company shall not be liable to the Customer or be deemed to be in breach of these terms and conditions by reason of any delay in performing, or any failure to perform, any of the Company's obligations if the delay or failure was due to any cause beyond the Company's reasonable control.
- 16.8. Nothing in these Terms and Conditions excludes or limits the liability of the Company:
- 16.8.1. for death or personal injury caused by the Company's negligence;
- 16.8.2. for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- 16.8.3. for fraud or fraudulent misrepresentation.
- 16.9. Subject to the remaining provisions of this Clause 16:
- 16.9.1. the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract Price; and
- 16.9.2. the Company shall not be liable to the Customer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

17. Communications

- 17.1. All notices under these Terms and Conditions and under the Contract shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.
- 17.2. Notices shall be deemed to have been duly given:
- 17.2.1. when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient; or

17.2.2. when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or

17.2.3. on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

17.2.4. on the tenth business day following mailing, if mailed by airmail, postage prepaid.

17.3. All notices under this Agreement shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

18. Force Majeure

Neither Party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

19. Waiver

The Parties agree that no failure by either Party to enforce the performance of any provision in these Terms and Conditions or under the Contract shall constitute a waiver of the right to subsequently enforce that provision or any other provision. Such failure shall not be deemed to be a waiver of any preceding or subsequent breach and shall not constitute a continuing waiver.

20. Severance

The Parties agree that, in the event that one or more of the provisions of these Terms and Conditions or the Contract are found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of these Terms and Conditions (and, by extension, the Contract). The remainder of these and the Contract shall be valid and enforceable.

21. Third Party Rights

A person who is not a party to the Contract shall have no rights under the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

22. Law and Jurisdiction

22.1. These Terms and Conditions and the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

22.2. Any dispute, controversy, proceedings or claim between the Parties relating to these Terms and Conditions or to the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.