

**THE FINISHING LINE LIMITED**  
**TERMS AND CONDITIONS OF BUSINESS**

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THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 16 (LIMITATION OF LIABILITY).

**1. Interpretation**

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

<b>"Applicable Data Protection Laws"</b>	to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.  to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data.
<b>"Business Day"</b>	any day (not being a Saturday or Sunday) when banks are open in the City of London for the transaction of general banking business.
<b>"Carrier"</b>	the Supplier's designated carrier or carriers selected as suitable for the nature of the Order and as agreed with the Customer, including but not limited to Royal Mail, Whistl and DPD.
<b>"Charges"</b>	the charges payable by the Customer for the supply of the Services in accordance with clause 7.

<b>“Commencement Date”</b>	has the meaning given in clause 2.2.
<b>“Conditions”</b>	these terms and conditions as amended from time to time in accordance with clause 19.5.
<b>“Confidential Information”</b>	means any information that is not in the public domain and is intended to be protected from disclosure (whether it is proprietary in nature or whether by contract, legal protections such as trade secret laws, or other means). Information may be confidential irrespective of whether it is specifically labelled “confidential”, “proprietary” or otherwise, or whether it is oral, written, drawn or stored electronically.
<b>“Contract”</b>	the contract between the Supplier and the Customer for the supply of Services in accordance with the Order and these Conditions.
<b>“Control”</b>	has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.
<b>“Customer”</b>	the person or firm who purchases Services from the Supplier.
<b>“Customer Default”</b>	has the meaning set out in clause 4.2.
<b>“Date”</b>	means the 10th Business Day after the relevant notice is actually received by the Supplier.
<b>“Force Majeure Event”</b>	any circumstances not within a party’s reasonable control preventing a party from performing any or all of its obligations, including, without limitation, fire, flood, earthquake, act of God or other natural disaster, lockout, strike, industrial action of any kind, national calamity or riot, pandemic, epidemic, war or terrorist activity, civil commotion, malicious damage, interruption or failure of utility service (otherwise than through non-payment).
<b>“Goods”</b>	the goods which are the subject of the Contract which are to be stored and processed in accordance with the Services by the Supplier for the Customer.
<b>“Intellectual Property Rights”</b>	patents, registered and unregistered designs, copyright, trade marks and trade names and all other intellectual property protection wherever in the world enforceable.
<b>“Interested Party”</b>	means the Customer and/or anyone with an interest in the Goods; any obligation of the Interested Party is borne jointly and severally.
<b>“Limit”</b>	means a limit per tonne gross weight of that part of the Goods in respect of which a claim arises.
<b>“Loss”</b>	includes (without limitation) loss (including theft), destruction, damage, unavailability, contamination, deterioration, delay, non-delivery, mis-delivery, unauthorised delivery, non-compliance with instructions

or obligations, incorrect advice or information, loss or corruption of data, breach of data protection or processing obligations, interference with or disruption of information technology systems, breach of duty; and any event giving rise to any liability of an Interested Party to any other person or authority.

**“Minimum Contract Packing Charge”** the Supplier’s charge to Customer chargeable if the minimum spend each month specified in the Order quotation is not met, which charge is to cover operational costs including but not limited to job set up costs, system administration, and system maintenance.

**“Minimum”** means the minimum number of Recipient orders each month during the Term, as set out in the Supplier’s order quotation at tab 1.

**“Minimum Fulfilment Order Charge”** the Supplier’s charge arising from a failure of the Customer to process the minimum number of Recipient orders through the Supplier, calculated using the following formula:

i)  $\text{Minimum} - X = Y$  and ii)  $Y \times Z = \text{Minimum Order Charge}$

Where X is the actual number of orders processed by the Supplier in the month in question; and

Z is the fulfilment minimum order charge set out on the Order.

**“Order”** the Customer’s order for Services as set out in the Supplier’s order quotation set out on tab 1 of the spreadsheet to which these Conditions are set out on tab 2

**“Recipient”** any recipient to which the Supplier ships the Goods on behalf of the Customer. For the avoidance of doubt the Supplier does not have any contractual relationship with or obligation to the Recipient.

**“Services”** any services supplied to the Customer by the Supplier as set out in the Order, including but not limited to receiving, checking, assembly, disassembly, packing and storing Goods, maintaining warehouse security, despatching Goods to the Recipient as required by the Customer, printing address labels, packing and addressing parcels and packages, making arrangements with Carrier(s) for collection of Goods selected as suitable by the Supplier and with the Customer’s agreement, preparing packages for collection by Carrier, reporting to the Customer, receiving and providing information which may involve storing data in electronic form or printed documentation, receiving and sending data by email or printed hard-copy form.

**“Supplier”** The Finishing Line Limited registered in England and Wales with company number 2120683.

**“Term”** the term of the Contract as specified in the Order.

1.2 Interpretation:

1.2.1 Unless expressly provided otherwise in this Contract, a reference to legislation or a legislative provision:

(a) is a reference to it as amended, extended, or re-enacted from time to time; and

(b) shall include all subordinate legislation made from time to time under that legislation or legislative provision.

1.2.2 Any words following the terms including, include, in particular, for example or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.3 A reference to writing or written includes fax and email.

**2. Basis of contract and duration**

2.1 The Order constitutes an offer by the Supplier to provide the Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Customer issues written acceptance of the Order and the Supplier issues acknowledgement of that acceptance at which point, and on which date the Contract shall come into existence (**Commencement Date**).

2.3 This Contract shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with clause 17 (Termination), for the Term. On expiry of the Term, it shall terminate automatically without notice unless renewed or extended in accordance with clause 2.4.

2.4 At the end of the Term this Agreement may be renewed on terms to be agreed by both parties for a further period.

2.5 Any samples, drawings, descriptive matter, or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier’s catalogues or brochures, are issued, or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

2.6 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.7 Any Order is only valid for acceptance by the Customer within a period of 20 Business Days from its date of issue.

**3. Supply of Services**

3.1 The Supplier shall supply the Services to the Customer in accordance with the Order in all material respects.

- 3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 The Supplier reserves the right to amend the Order if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer of any such event.
- 3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

#### **4. Customer's obligations**

- 4.1 The Customer shall:
  - 4.1.1 ensure that the terms of the Order are complete and accurate;
  - 4.1.2 guarantee a minimum spend each month relating to contract packing services during the Term, as specified in the Order quotation;
  - 4.1.3 guarantee the Minimum number of Recipient orders each month during the Term;
  - 4.1.4 co-operate with the Supplier in all matters relating to the Services;
  - 4.1.5 provide the Supplier with such information as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
  - 4.1.6 subject to clause 4.1.8, provide the Supplier with the necessary stock level of Goods as the Supplier may reasonably require in order to supply the Services. Unless otherwise agreed by the Supplier, all Goods must be barcoded and received by the Supplier not less than 4 Business Days prior to despatch. Failure to supply barcoded goods will result in an additional charge to the Customer for the Supplier to print and apply product barcoding to the Goods;
  - 4.1.7 ensure that all Goods provided in accordance with clause 4.1.6 are accompanied by a delivery note detailing the type and amount of Goods provided to the Supplier. Due to logistical limitations, the Goods shall not be counted by the Supplier and the delivery note shall constitute conclusive evidence of the number of Goods provide;.
  - 4.1.8 await confirmation from the Supplier prior to sending Goods into the Supplier's facility. Failure to do so will result in additional charges to the Customer to cover costs incurred by the Supplier, including the costs of allocation and mobilising of personnel to receive, unload and process unscheduled shipments;
  - 4.1.9 provide the Supplier with a copy of all Material Safety Data Sheets relating to the Goods and ensure that the Goods are safely presented to the Supplier so as to avoid any harm to the Supplier's staff, warehouse or any Carrier. The Supplier reserves the right to refuse acceptance of any Goods presented by the Customer which it deems unsafe for any reason. For the avoidance of doubt, where Goods are deemed unsafe due to their size or weight, the Supplier at their discretion shall be entitled to repack such Goods to comply with warehouse guidelines with such additional cost being charged to the Customer;
  - 4.1.10 obtain any import licence or permit necessary for the entry of the Goods into the countries to which they are to be shipped either i) in fulfilment of Recipient orders or ii) to the United Kingdom for delivery to the Supplier;

- 4.1.11 ensure that all Goods provided to the Supplier have undergone necessary safety testing and are approved as safe for the Goods' intended purpose(s) and, if requested by the Supplier, provide all available evidence of such approval to the Supplier;
  - 4.1.12 provide the Supplier with written information prior to presenting the Goods detailing any necessary precautions due to the nature, weight or condition of the Goods and any laws and/or regulations that the Supplier needs to comply with relating to the storage, handling or transportation of the Goods;
  - 4.1.13 be responsible for any charges payable in connection with the importation and delivery of the Goods, including but not limited to customs duties, clearance charges, or taxes;
  - 4.1.14 comply with all applicable laws and regulations, including health and safety laws and any other laws affecting the Goods, including in relation to their manufacture, sale, packaging and labelling.
- 4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 4.2.1 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
  - 4.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
  - 4.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

## **5. Dangerous or prohibited goods**

- 5.1 Except with the prior written agreement of the Supplier and with appropriate safeguards put in place, any Goods presented by the Customer to the Supplier which contain or are believed to contain any flammable, volatile or explosive material or liquid shall be refused storage by the Supplier.
- 5.2 If any such unauthorised Goods are identified at any time, the Supplier reserves the right to demand the Customer to remove the Goods immediately from the warehouse and if not removed within 48 hours of demand, to arrange for their removal at the cost of the Customer.
- 5.3 The Supplier reserves the right to refuse delivery of Goods that in its reasonable opinion it deems to be unsafe or in an unsuitable condition for storage or packing.

## **6. Product recall**

- 6.1 Notwithstanding the Customer's obligation under clause 4.1.11, if the Customer is the subject of a request, court order or other directive of a governmental or regulatory authority to withdraw any Goods from the market (**Recall Notice**) it shall immediately notify the

Supplier in writing enclosing a copy of the Recall Notice. The Supplier shall withhold sending Goods the subject of a Recall Notice pending resolution.

- 6.2 The Supplier shall not be responsible to undertake any recall or withdrawal of the Goods subject to a Recall Notice. The sole responsibility for implementing any product recall process shall be for the Customer. The Supplier can assist with such recall upon agreement of the Supplier's charges.

## **7. Charges and payment**

- 7.1 The Customer shall pay the Supplier the charges specified in the Order. The charges are based on the information provided by the Customer and shall be paid in Pounds Sterling (£).

- 7.2 The Supplier shall, at any time, be entitled to charge the Customer:

7.2.1 in any month where the minimum number of Recipient orders falls below the Minimum, as required by clause 4.1.3, the Minimum Order Charge;

7.2.2 in any month where the minimum contract packing spend falls below the minimum set out in the Order, the Minimum Contract Packing Charge; and

7.2.3 for any increase in the cost of services provided by third parties used by the Supplier for the performance of the Services, where the cost is increased due to the number of Recipient orders falling below the Minimum.

- 7.3 In addition to the charges specified in the Order, the Supplier shall be entitled to impose an additional administrative charge to the Customer in circumstances where the Supplier considers that fulfilment of the Order exceeds its normal administrative duties in respect of the nature and size of the Order.

- 7.4 The Supplier reserves the right to increase its charges to the Customer:

7.4.1 on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index;

7.4.2 with immediate effect to compensate for:

(a) any changes to the Services requested by the Customer after the Commencement Date;

(b) any increases in the Supplier's costs due to factors beyond its control, including but not limited to raw materials, postal services, pallet networks and external Carrier costs;

7.4.3 by giving one month's notice in writing to the Customer for any other reason related to increased supply costs. If the Customer does not accept such increase, they may cancel the Contract by giving written notice in accordance with clause 17.

- 7.5 The Supplier shall invoice the Customer monthly in arrears.

- 7.6 The Customer shall pay each invoice submitted by the Supplier:

7.6.1 in accordance with any credit terms set out on the Order, and if none within 15 days of the date of invoice; and

7.6.2 in full and in cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Contract.

- 7.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 7.8 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 17, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.8 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 7.9 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 7.10 Where any invoice is overdue by 30 days or more, the Supplier reserves the right to instruct a third-party agent, or commence court proceedings, to recover all outstanding sums due, in such case the Customer shall indemnify the Supplier against all fees or costs incurred in addition to any interest charged pursuant to clause 7.8.

## **8. Delivery options**

### Recipient order fulfilment provisions:

- 8.1 The Supplier will use its reasonable endeavours to despatch Recipient Orders in accordance with this clause 8. Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods or any financial loss caused as a result of any such delay. If the Recipient's Order is delayed for any reason, the Recipient shall be notified accordingly.
- 8.2 For Recipient order(s) placed before 12.00 noon, the Recipient shall be eligible for next-day delivery to mainland UK. Delivery times are not guaranteed by the Supplier and are the responsibility of the Carrier. For delivery outside of the mainland UK, delivery times are likely to be extended.
- 8.3 The Recipient may choose a 24 hour plus or 48 hour plus delivery service, commencing from the time of despatch of the order, subject to the availability of the Carrier and delivery destination specified in the order. Delivery times are not guaranteed by the Supplier and are the responsibility of the Carrier.
- 8.4 In the event that some Goods are not in stock and the entire Recipient order cannot be despatched, the Customer may authorise the Supplier to split the order by giving the Supplier confirmation in writing. This option will be subject to additional Carrier and picking fees payable by the Customer.

### Contract packing provisions:

- 8.5 The Supplier's completion of contract packing shall comprise of the following:

- 8.5.1 the Goods will be assembled, packed and/or palletised in accordance with the requirements of the Order;
- 8.5.2 the Goods will be wrapped securely and identified with the correct quantity and depot destination to ensure the correct delivery;
- 8.5.3 the Goods will be placed in storage, ready for collection;
- 8.5.4 the Goods will be loaded and collected during the Supplier's normal business hours in accordance with the Customer's reasonable instructions, which the Customer will from time-to-time supply to the Supplier not less than 5 Business Days prior to the proposed collection.

## **9. Carriers**

- 9.1 At the Customer's request, the Supplier may recommend Carriers they have engaged previously. The Supplier accepts no responsibility for any acts or omissions for any Carrier recommended to the Customer or otherwise engaged by the Supplier on the Customer's behalf. For avoidance of doubt, this includes any delay, failures to collect or deliver, delivery to incorrect address or the Carrier's non-compliance with the Supplier's instructions.
- 9.2 The Customer acknowledges and agrees that in delivering Goods to the Recipient, the Supplier's selected Carrier may not keep records relating to the delivery of the Goods.

## **10. Returns**

- 10.1 Where the Recipient has pre-booked the return of Goods and the Supplier has arranged for Carrier collection and the Carrier cannot collect the Goods from the Recipient at the agreed time, date and location, the Supplier will charge all costs and expenditure incurred by the Carrier in connection with the attempted collection to the Customer.
- 10.2 Where the Recipient self-sends returned Goods to the Supplier, the Recipient shall be responsible for the Carrier they select and any associated costs.
- 10.3 All return methods are subject to the Supplier's returns processing charges, which are payable by the Customer.

## **11. Compensation claims**

- 11.1 Any claims for compensation arising out of or in connection with the loss or damage to Goods in the possession of the Supplier must be made by the Customer in writing within 14 days of such loss or damage being discovered. The Customer must provide photographs of the damaged Goods as evidence in support of its claim for compensation.
- 11.2 For the avoidance of doubt, the Supplier does not accept responsibility for any loss or damage caused to any Goods by the Carrier. The Supplier will act on the Customer's behalf to raise any claim with the Carrier.

## **12. Lien**

- 12.1 The Supplier shall have a right of lien and/or retention over the Goods (and any associated documentation or records) which the Supplier holds on behalf of the Customer as security for payment of all sums (whether due or not) claimed by the Supplier from the Customer and to secure performance by the Customer of all its obligations to the Supplier. The storage costs for any Goods under the lien shall continue to be charged to the Customer.

### **13. Intellectual property rights**

- 13.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any Goods provided by the Customer) shall be owned by the Supplier.

### **14. IT system failures**

- 14.1 The Supplier accepts no responsibility for any loss or damage caused to the Customer through the failure of any Supplier IT systems, including but not limited to failures caused by third party utility or telephone services.

### **15. Data protection**

- 15.1 Both parties will comply with all requirements of Applicable Data Protection Laws. This clause 15.1 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Applicable Data Protection Laws.

- 15.2 The Customer shall act as the data controller and the Supplier shall act as the data processor in respect of personal data relating to the Customer and the Recipients.

- 15.3 The Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of the provision of the Services, including supply of the Recipients personal data to Carriers operating in the United Kingdom and in other countries outside the United Kingdom.

- 15.4 The personal data collected and processed shall be limited to what is necessary for the Supplier to provide the Services, including:

15.4.1 the Recipient's:

- (a) full name;
- (b) email address;
- (c) billing address and delivery address (if different);
- (d) telephone number; and

15.4.2 any other contact details required for the Supplier to provide the Services.

- 15.5 The Supplier shall, in relation to any personal data processed in connection with the provision of the Services:

- 15.5.1 process that personal data only on the documented written instructions of the Customer, except where required by law to perform the processing without documented written instructions;

- 15.5.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data;

- 15.5.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;

- 15.5.4 not transfer any personal data outside of the UK or EEA unless the following conditions are fulfilled:

- (a) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
- (b) the Recipient has enforceable rights and effective legal remedies;
- (c) the Supplier complies with its obligations under the Applicable Data Protection Laws by providing an adequate level of protection to any personal data that is transferred; and
- (d) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data.

15.5.5 assist the Customer, at the Customer's cost, in responding to any subject access request from a Recipient and in ensuring compliance with its obligations under the Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

15.5.6 notify the Customer without undue delay on becoming aware of any personal data breaches;

15.5.7 at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the Contract unless required by law to store the personal data; and

15.5.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 15.5 and allow for audits by the Customer or the Customer's designated auditor and immediately inform the Customer if, in the opinion of the Provider, an instruction infringes the Applicable Data Protection Laws.

15.6 The Customer consents to the Supplier appointing any Carrier as a third-party processor of Personal Data under this agreement. The Supplier confirms that it has entered or (as the case may be) will enter with third-party processors into a written agreement substantially on that third party's standard terms of business which the Provider confirms reflects and will continue to reflect the requirements of the Applicable Data Protection Laws.

**16. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

16.1 Unless expressly agreed, the Supplier does not insure the Goods and the Customer shall self-insure or make arrangements to cover the Goods against all insurable risks to their full insurable value (including all duties and taxes). The insurance referred to in clause 16.5 is insurance against the Supplier's potential liability for breach of its obligations and not to cover the Goods themselves against loss, damage, etc.

16.2 Subject to clause 16.3, the Supplier shall have no liability for Loss however arising.

16.3 If and to the extent that Loss is directly caused by negligence or wilful act or default of, or breach of duty owed to the Customer by, the Supplier, its employees (acting in furtherance of their duties as employees) or sub-contractors or agents (acting in furtherance of their duties as sub-contractors or agents) and subject to clauses 16.4, 16.7 and 16.9, the Supplier will accept liability for Loss assessed on normal legal principles but not exceeding the Limit fixed by clause 16.5. Any quantification of amount or value includes duties and taxes.

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

16.5 In no case shall any liability of the Supplier (including amongst other things any liability in respect of duties and taxes) exceed the Limit, fixed as follows: -

- 16.5.1 where potential Loss relates to Goods, the Customer may specify the Limit as an amount (in Sterling) per tonne weight of the Goods by notice in writing stating the Limit and the nature and maximum value of the Goods, including duty and taxes. The Limit so nominated by the Customer shall apply in respect of any cause of action arising after the Date and in the period in which the nomination remains in effect. It is a condition of the contract that the Customer pays within 7 days of receipt the Supplier's invoices for its costs in insuring against its potential liability up to the Limit, and/or to the extent that the Supplier elects to carry the risk itself, its extra charge equivalent to the estimated or likely cost of such insurance.
- 16.5.2 if the Supplier having made reasonable efforts is unable to obtain insurance on reasonable terms to cover its liability up to the Limit nominated by the Customer, or if the Customer has not yet paid any invoice issued under clause 16.5.1, the Supplier may give 3 Business Days written notice, and the Limit for causes of action arising after the giving of the Customer's notice under clause 16.5.1 shall be £100 sterling per tonne weight of the Goods.
- 16.5.3 unless and until a higher Limit has been fixed under clause 16.5.1 and continues in effect, the Limit shall be £100 sterling per tonne.
- 16.5.4 where Loss does not relate directly to Goods (for example alleged negligent advice or data irregularities) the Limit applicable shall be £1000 per incident or series of connected incidents.
- 16.6 Without prejudice to the Supplier's rights under clause 6 to be paid free from deduction or set-off, any limitation of liability on the part of the Supplier shall be applied to any claim by the Customer before any set off or counterclaim is asserted against money payable to the Supplier.
- 16.7 The Supplier shall not be liable for any claim unless:
- 16.7.1 it has received written notice of it within 10 days of the event giving rise to the claim coming to the knowledge of the Customer or consignee; and
- 16.7.2 it has received, within 21 days of the event giving rise to the claim coming to the knowledge of the Customer or consignee, sufficient detail in writing to enable investigation. In the case of failure to deliver, time shall run from the second Business Day after the expected date of delivery.
- 16.8 No legal proceedings (including any counterclaim) may be brought against the Supplier unless they are issued and served within 9 months of the event giving rise to the claim.
- 16.9 The Supplier shall not be liable for any Loss to the extent that it is caused or contributed to by a breach of any of the Customer's obligations, or by a person for whom the Supplier is not responsible, or by any of the circumstances by virtue of which the Supplier is relieved of its obligations under clause 19.1.
- 16.10 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 16.10.1 death or personal injury caused by negligence;
- 16.10.2 fraud or fraudulent misrepresentation; and
- 16.10.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

## **17. Termination**

- 17.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 17.1.1 the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing to do so;
  - 17.1.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - 17.1.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - 17.1.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 17.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:
- 17.2.1 the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment; or
  - 17.2.2 there is a change of control of the Customer.
- 17.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if:
- 17.3.1 the Customer fails to pay any amount due under the Contract on the due date for payment;
  - 17.3.2 the Customer becomes subject to any of the events listed in clause 17.1.3 or clause 17.1.4, or the Supplier reasonably believes that the Customer is about to become subject to any of them; and
  - 17.3.3 the Supplier reasonably believes that the Customer is about to become subject to any of the events listed in clause 17.1.2.

## **18. Consequences of termination**

- 18.1 On termination or expiry of the Contract:
- 18.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied up to the date of termination or expiry but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

18.1.2 the Supplier shall only release the Customer's remaining Goods held in the possession of the Supplier once the Customer has paid all invoices and any other amounts due in full;

18.1.3 subject to clause 18.1.2, the Customer shall be permitted to:

- (a) collect any Goods from the Supplier's warehouse; or
- (b) instruct its own carrier agent to collect any Goods from the Supplier's warehouse;

on a specified date within 28 days of the date of termination at a pre-agreed time convenient for the Supplier. For the avoidance of doubt, any costs arising out of or in connection with clause 18.1.3(b) shall be payable by the Customer.

18.2 Notwithstanding clause 12, if payment has not been made in accordance with clause 18.1.1, the Supplier may, upon giving not less than 14 days prior written notice to the Customer, sell or otherwise dispose of the Goods. Any costs recovered through the sale or disposal of the Goods in excess of all amounts owed to the Supplier and its costs of sale or disposal shall be paid to the Customer.

18.3 Termination or expiry of the Contract shall not affect any rights, remedies, obligations, or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

18.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

## **19. General**

19.1 Force majeure. Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event.

19.2 Assignment and other dealings.

19.2.1 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

19.2.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

19.3 Confidentiality.

19.3.1 Each party undertakes that it shall not at any time during the Contract, and for a period of 2 years after termination or expiry of the Contract, disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 19.3.2.

19.3.2 Each party may disclose the other party's Confidential Information:

- (a) to its employees, officers, representatives, contractors, subcontractors, or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that

its employees, officers, representatives, contractors, subcontractors, or advisers to whom it discloses the other party's Confidential Information comply with this clause 19.3; and

- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

19.3.3 Neither party shall use the other party's Confidential Information for any purpose other than to perform its obligations under the Contract.

19.3.4 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in these Conditions are granted to the other party or to be implied from these Conditions.

19.4 Entire agreement.

19.4.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations, and understandings between them, whether written or oral, relating to its subject matter.

19.4.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

19.5 Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

19.6 Waiver. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

19.7 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal, or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement. If any provision or part-provision of this Contract deleted under this clause 19.7 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

19.8 Notices.

19.8.1 Any notice given to a party under or in connection with the Contract shall be sent by first-class pre-paid post, recorded delivery, facsimile transmission, or hand delivered to the address (or in the case of a facsimile, to the correct facsimile number) of the party to be served.

19.8.2 Any notice shall be deemed to have been received:

- (a) if by recorded delivery, at the time the notice is left at the relevant address;

- (b) if given by letter:
  - (i) to an inland destination, 48 hours after posting; or
  - (ii) to an overseas destination, 5 Business Days after posting; or
- (c) if sent by fax the next Business Day after transmission, provided a valid transmission report is received.

19.8.3 This clause 19.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

19.9 Third party rights.

19.9.1 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

19.10 Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

19.11 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.