

DB SCHENKER RAIL (UK) LIMITED (“DB Schenker”)

GENERAL CONDITIONS OF CARRIAGE (1st January 2009)

These Conditions set out the basis on which DB Schenker transports goods for the Customer. DB Schenker is not and does not contract as a common carrier. These Conditions shall apply to all transportation of goods by DB Schenker. *A copy of these terms is available at www.rail.dbschenker.co.uk.*

Please note that these Conditions contain limitations or exclusions of liability on the part of DB Schenker. In order to minimise its charges DB Schenker considers it reasonable to limit its liability and to share risk with the Customer in the manner set out in these Conditions.

Customers are recommended to take professional advice and to consider their insurance arrangements for risks that fall to them under these Conditions.

Customers’ attention is drawn to the rights of DB Schenker to apply a fuel surcharge.

1. DEFINITIONS AND APPLICATION

1.1 In these Conditions the following words shall have the following meanings:

“**Arrival Point**” the location to which a Consignment is to be transported by DB Schenker pursuant to the Contract;

“**Claims**” claims, Losses, damages, liabilities, demands, judgements, costs and expenses (including legal costs) incurred or suffered by a party (including death or personal injury);

“**Conditions**” these conditions;

“**Confidential Information**” all information in respect of the business of each of the parties including, without prejudice to the generality of the foregoing, business methods, prices, business, financial, marketing, development or manpower plans, or customer lists that arise through the negotiation or performance of the Contract;

“**Consignee**” the person (who may or may not be the Customer) to whom DB Schenker delivers the Goods;

“**Consignment**” Goods in bulk or contained in one parcel, package or container, as the case may be, or any number of separate parcels, packages or containers sent at one time in one load by or for the Customer from one address to one address;

“**Consignor**” the person (who may or may not be the Customer) from whom DB Schenker collects the Goods;

“**Contract**” the contract between DB Schenker and the Customer for the carriage of the Goods, which includes any Specification agreed by the parties and to which these Conditions apply;

“**Customer**” the person who contracts with DB Schenker for the carriage of Goods;

“**Customer’s Equipment**” items falling within the terms of Condition 16;

“Dangerous Goods” goods of any nature falling within the definition of “dangerous goods” given in the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2004 as amended or replaced from time to time;

“Departure Point” means the location from which a Consignment is to be transported by DB Schenker pursuant to the Contract;

“DB Schenker” DB Schenker Rail (UK) Limited (registered number 2938988) whose registered office address is Lakeside Business Park, Carolina Way, Doncaster, DN4 5PN;

“DB Schenker Group” any holding company of DB Schenker and any subsidiary of DB Schenker or any such holding company from time to time (“holding company” and “subsidiary” having the meaning given in Section 1159 of the Companies Act 2006);

“DB Schenker Loading Standards” the standards for the loading and unloading of Wagons and any other equipment used to transport Goods, a copy of which is available upon request from DB Schenker;

“Force Majeure” any circumstance beyond the reasonable control of either party including, without limitation, acts of God, war, riot, terrorism, crime, civil commotion, compliance with any law or governmental order, rule, regulation or direction or any overriding emergency procedures, accident, fire, flood, severe weather conditions, failure of, material reduction in utility of or inability to use a third party’s infrastructure or refusal due to a physical or operational impediment of any such third party to allow such use and strikes and any other industrial action or dispute;

“Goods” the goods, which DB Schenker is to carry pursuant to the Contract;

“Indemnified Amount” £5,000,000 or such other sum as shall be agreed in writing between DB Schenker and the Customer;

“Loss” the actual loss or destruction of Goods;

“Network Rail” Network Rail Limited (no. 4402220) or Network Rail Infrastructure Limited (no. 2904587) each of whose registered office is at Kings Place 90 York Way London N1 9AG or either of their successor’s or assigns;

“Private Siding” a railway or siding not owned by or leased to DB Schenker or Network Rail;

“Railway Industry Standards” as the context requires the applicable published rules and regulations including codes of practice and conduct in force from time to time relating to any equipment or activity or service to be provided under or used in connection with the Contract;

“Specification” the completed DB Schenker “specification” or other document, which sets out terms agreed between the parties’ for the transport of Goods. (*A blank copy of a DB Schenker specification document is available at www.rail.dbschenker.co.uk*);

“Term” the duration of the Contract as set out in the Specification;

“Wagons” wagons or containers in which Goods are transported;

- 1.2 Any reference in these Conditions to a statute or statutory provision shall be construed as a reference to the same as amended, consolidated, modified, extended, re-enacted or replaced from time to time.
- 1.3 The headings in these Conditions are for convenience only and shall not affect the construction of these Conditions.
- 1.4 The expression "person" means any individual, firm, company, unincorporated association and partnership and vice versa.
- 1.5 The expression, Consignee, Consignor and Customer shall include such persons principals, agents, employees and sub-contractors.

2. DB SCHENKER'S OBLIGATIONS

- 2.1 DB Schenker shall for the Term and in consideration of payment of the Charges:
 - 2.1.1 transport each Consignment from the Departure Point to the Arrival Point, subject to the terms of the Contract. DB Schenker shall be entitled to transport each Consignment by such route and means as it shall decide;
 - 2.1.2 be the train Operator, as defined in the Railways Act 1993, for the purposes of the Contract;
 - 2.1.3 provide the services specified in the Contract with reasonable skill and care and in accordance with applicable Railway Industry Standards;
 - 2.1.4 provide any equipment specified in the Contract as to be provided by DB Schenker, such equipment to be safe and functional in respect of its designed purpose and in accordance with applicable Railway Industry Standards;
 - 2.1.5 permit or procure access on the terms of Condition 15 for the Customer (provided the identity of any agents or subcontractors of the Customer is notified to DB Schenker and approved by DB Schenker in advance of them seeking such access) to DB Schenker's land or premises for the purposes of fulfilling the Customer's obligations under the Contract;
 - 2.1.6 if the Departure Point and/or Arrival Point is/are located at any land or premises owned or leased by DB Schenker (save where such land is leased to DB Schenker by the Customer, Consignee or Consignor), use its reasonable endeavours to ensure that:
 - 2.1.6.1 such land or premises are safe, free from defects and, where appropriate, are kept and operated in an appropriate condition for use as part of a railway network and comply with applicable Railway Industry Standards; and
 - 2.1.6.2 such land or premises are connected to Network Rail's network enabling safe transfer on to the Network Rail network; and
 - 2.1.7 use its reasonable endeavours not to cause damage to the Customer's or any third party's infrastructure, land or premises in the performance of the Contract.
- 2.2 DB Schenker may sub-contract any part(s) or the whole of the transport of the Goods

3. LOADING/ UNLOADING

- 3.1 If DB Schenker is to load the Goods on the Wagons, then the Customer shall make the Goods reasonably accessible to DB Schenker at the Departure Point, packaged and labelled as set out in Condition 4 and at the times stated in the Specification.
- 3.2 If the Customer or its Consignor or Consignee loads or reloads the Wagons the Customer shall:
- 3.2.1 procure that each Wagon is loaded or reloaded in a manner which complies with all applicable laws, regulations, Railway Industry Standards and DB Schenker Loading Standards;
 - 3.2.2 procure that each Wagon is loaded or reloaded evenly (with the weight distributed evenly over the Wagon) and that each Wagon is not overloaded;
 - 3.2.3 procure that each Wagon is loaded or reloaded in a manner which will not cause any injury or damage to any property or person during transportation of the Goods or any delay in transportation;
 - 3.2.4 procure that any dunnage, stanchions, straps or other loose equipment is not damaged and is secured to the Wagons; and
 - 3.2.5 without prejudice to any other provision of the contract be liable for and indemnify DB Schenker in full against all Claims arising out of (1) the Customer's, breach of Conditions 3.2.1, 3.2.2, 3.2.3 and/or 3.2.4; (2) the Customer's, negligent or wilful act or omissions, or (3) any breach of statutory duty by the Customer in relation to loading, unloading or reloading the Goods.
- 3.3 DB Schenker's employees shall have no authority to give assistance beyond that agreed in writing by DB Schenker and DB Schenker shall not be liable for any Claims howsoever caused (including without limitation if caused by negligence) by the giving of any other assistance.
- 3.4 If the Customer, the Consignor, or the Consignee is to load, unload or reload Goods from the Wagons the Customer shall ensure that the same is carried out expeditiously, in sufficient time to enable DB Schenker to perform the Contract and so as not to delay the use of DB Schenker's equipment elsewhere by DB Schenker.
- 3.5 DB Schenker shall have the right to carry out a brief visual inspection of any Wagons loaded by or on behalf of the Customer and/or any Goods, which DB Schenker is to transport. Any such brief visual inspection shall not relieve the Customer of any of its obligations under the Contract or at law in relation to loading or packaging of or otherwise relating to the Goods and shall not be deemed to be acceptance by DB Schenker that the Customer has complied with such obligations.

4. THE GOODS, LABELLING AND PACKAGING

- 4.1 The Customer warrants that either it is the legal owner of the Goods or that it has the authority of the legal owner (s) and/or all persons having an interest in the Goods to enter into the Contract and to accept the Conditions for the transport of the Goods.
- 4.2 The Customer shall give DB Schenker such details for each Consignment as DB Schenker may require from time to time. The Customer will issue DB Schenker with adequate forwarding instructions for each Consignment. The Customer shall procure

that each Consignment shall be clearly and properly addressed and labelled in accordance with DB Schenker's requirements. If the Customer should change any aspect of a Consignment after advising DB Schenker of the information required in this Condition 4.2, then the Customer shall as soon as practicable notify DB Schenker of such changes (and in any event shall notify DB Schenker prior to the movement of such Consignment).

- 4.3 The Customer shall ensure that all Goods
- 4.3.1 are adequately and properly packaged and that such packaging complies with all applicable laws, rules, regulations and Railway Industry Standards;
 - 4.3.2 will be safe and fit to be transported; and
 - 4.3.3 will not cause death or personal injury to any person or damage to any property or other Goods during transportation.
- 4.4 The Customer shall indemnify DB Schenker against all Claims arising from a breach of Condition 4.3 by the Customer or its Consignor or Consignee and in the event that there is a dispute as to the cause of a Claim the Customer shall be required to establish to the reasonable satisfaction of DB Schenker that the cause of the Claim was other than the Goods not being adequately and properly packaged and other than the Goods not being safe and fit to be transported. Where no cause of a Claim can be established to the reasonable satisfaction of DB Schenker, the Customer shall be deemed to be in breach of Condition 4.3.
- 4.5 The Customer confirms that, other than as agreed in writing between it and DB Schenker, there are and will be no special requirements for the transport of the Goods. Accordingly DB Schenker shall have no liability for any deterioration or Loss of or damage to the Goods resulting from any such special requirement not so agreed in writing. If the Customer notifies DB Schenker of any such special requirement DB Schenker shall have no obligation to transport such Goods unless it agrees to do so in writing. If DB Schenker agrees to carry any Goods for which there is a special requirement it may charge the Customer additional sums.
- 5. DANGEROUS GOODS**
- 5.1 DB Schenker shall have no obligation to accept any Dangerous Goods for carriage. DB Schenker shall have no liability for any Claims (including without limitation in negligence) in respect of any Dangerous Goods unless, prior to loading, DB Schenker has received in writing precise and correct identification of the Goods and has further agreed in writing to accept the same for carriage.
- 5.2 If DB Schenker accepts any Dangerous Goods for carriage the Customer shall ensure that the Goods are safely packaged and labelled with the precise and correct identity of the relevant substances and/or articles and all other relevant information as specified by any statutory or regulatory requirements from time to time and that a certificate of readiness is issued by the Customer prior to carriage commencing and the Customer complies with any other requirements of DB Schenker for the time being in force regarding carriage of Dangerous Goods.
- 5.3 Without prejudice to any other provision of the Contract the Customer shall indemnify DB Schenker in full against all Claims arising out of or in connection with the carriage of Dangerous Goods which DB Schenker has not expressly accepted for carriage in writing

or in respect of which the Customer has not complied with its obligations under Condition 5.2 even where caused by the negligence of DB Schenker.

- 5.4 DB Schenker shall have the right to enter and have access to any premises not owned by DB Schenker where Dangerous Goods are or are to be loaded or unloaded to audit the loading and unloading procedures that are in place and/or which occur in relation to Dangerous Goods and where such premises are not owned by the Customer, the Customer shall procure that DB Schenker shall have such right to enter and access such premises.

6. CHARGES

- 6.1 The Customer for the Term shall pay to DB Schenker the charges agreed between the parties as shown in the Specification (and as may be varied in accordance with these Conditions or as otherwise agreed in writing between DB Schenker and the Customer from time to time).
- 6.2 DB Schenker may issue an invoice at any time in respect of any individual Consignment the subject of the Contract following carriage of such Consignment or as otherwise agreed in accordance with the terms of the Contract.
- 6.3 All charges shall be paid by the Customer to DB Schenker in the currency of the invoice in cleared funds within 28 days of the date of the relevant invoice. All remittances should include a reference to the relevant invoice (including its number). Payment should be made as follows (as may be varied from time to time by written notice from DB Schenker):

Payment by CHAPS or BACS should be made to the following:

Bank: Lloyds TSB Bank PLC
City Office
PO Box 17328
11 – 15 Monument Street
London EC3V 9JA

Sort Code: 30 00 02
Account Number: 00660308
Account Name: DB Schenker Rail (UK) Ltd Revenue Account

All CHAPS/BACS remittance advices to be posted to DB Schenker Rail (UK) Limited Credit Control, Lakeside Business Park, Carolina Way, Doncaster, DN4 5PN.

- 6.4 If any charges payable by the Customer under the Contract are not paid on the due date for payment DB Schenker shall be entitled to charge the Customer interest (accruing on a daily basis) at the rate of four percent above the base lending rate of Lloyds TSB Bank Plc time to time, from the due date of payment until payment (whether before or after judgment).
- 6.5 All charges and/or payments payable pursuant to the Contract are exclusive of value added tax and any other tax, duty or fee imposed from time to time by any government or other authority and are subject to the addition of value added tax and any other tax, duty or fee at the appropriate rate.
- 6.6 All payments to be made by the Customer to DB Schenker under the Contract shall be made in full without any set-off, restriction or condition and without any deduction for or

on account of any counterclaim unless such deduction has been agreed in advance in writing with DB Schenker.

- 6.7 If DB Schenker accepts any change to the Specification proposed by the Customer, DB Schenker may charge the Customer an additional reasonable charge in respect of such change. DB Schenker will inform the Customer as soon as reasonably practicable of such additional charges. The Customer agrees to pay such additional charges.
- 6.8 If (a) the Customer fails to make any Goods available for collection and/or loading at the specified time or (b) the Consignee fails to take delivery of any Goods immediately on arrival at the Delivery Point or (c) the Customer breaches its obligations under Condition 3.4 then DB Schenker may charge the Customer additional charges.
- 6.9 The parties acknowledge that a reasonable allowance for the price of fuel used by DB Schenker in providing its services is provided for within the charges. However given continuing uncertainties and constant fluctuations in global oil markets the parties agree that if in any month the average price of fuel delivered to DB Schenker inclusive of fuel duty exceeds £275 per tonne, then DB Schenker may by written notice invoice a fuel surcharge to the Customer for the next following month. This fuel surcharge may be invoiced on a weekly basis and must be directly proportionate to the increase in the average price of fuel delivered to DB Schenker. Fuel surcharge invoices shall be paid by the Customer in accordance with the terms of this Contract and must be accompanied by a note detailing how the fuel surcharge has been determined by reference to the proportionate change in the average price of fuel delivered to DB Schenker in the previous month.
- 6.10 Having regard to the nature of any access charges levied by Network Rail or any other infrastructure manager or service provider on the Operator in respect of its access requirements for the operation of this Contract, through an access contract between Network Rail or any other infrastructure manager or service provider and the Operator ("**Access Charges**"), the charges and payments under this Contract may be increased by the Operator in direct proportion to any increase in the level of Access Charges due as a result of the Operator fulfilling its obligations under this Contract from the date of any such increase.
- 6.11 Save for Condition 6.9, during the Term DB Schenker will not vary its charges without the prior consent of the Customer, save in circumstances where a change in charges arises as a consequence of a change in law, manner or rate of taxation or as a result of decision by any competent legal or regulatory authority. DB Schenker will give as much notice as reasonably practicable of any such change in these Conditions. Details of changes may be published on www.rail.dbschenker.co.uk from time to time.

7. FINANCIAL SECURITY

- 7.1 If DB Schenker reasonably determines that it would be commercially prudent to obtain financial security against the Customer failing to perform any of its obligations hereunder, DB Schenker shall be entitled to require the Customer to provide such financial security against the failure of the Customer to perform any of its obligations under the Contract as DB Schenker deems appropriate. Failure to provide such security within the time period stipulated by DB Schenker shall be deemed to be a material breach of this Contract.
- 7.2 DB Schenker shall have a lien on all Consignments in DB Schenker's possession for all charges due to DB Schenker from the Customer. DB Schenker shall be entitled to charge the Customer its costs associated with asserting and exercising its lien. If the lien is not satisfied within a reasonable period of time from the date upon which DB Schenker first

gives notice of its exercise to the Customer then the Goods the subject of the lien may be sold and the proceeds of sale applied in satisfaction of the lien and all proper and related charges and expenses of DB Schenker in exercising the lien and DB Schenker will account to the Customer for any surplus.

8. LOSS OR DAMAGE OF GOODS

- 8.1 Subject to the other provisions of these Conditions and unless agreed otherwise in writing between DB Schenker and the Customer, DB Schenker shall be liable for any Loss of or damage to Goods which occurs whilst the Goods are in transit between the Departure Point and the Arrival Point.
- 8.2 DB Schenker shall have no liability for any Loss of or damage to Goods which arises from any of the following:
- 8.2.1 inherent liability to wastage in bulk or weight, latent defect or inherent defect, vice or natural deterioration of the Goods;
 - 8.2.2 any act or omission of the Customer, the Consignor or the Consignee ; or
 - 8.2.3 any event of Force Majeure.
- 8.3 DB Schenker shall have no liability for any Loss of or damage to Goods caused by the manner in which the same are loaded or unloaded by a person other than DB Schenker.
- 8.4 Unless otherwise agreed in writing between the Customer and DB Schenker the liability of DB Schenker for Loss of or damage to Goods whilst in transit in accordance with this Condition 8 shall be limited to, in the case of Loss, the cost (excluding VAT) to the Customer of the relevant Goods and in the case of damage, the reduction in value subject to (in all cases) a maximum of £1,300 per tonne of Goods. DB Schenker shall have no other liability for any Loss of or damage to Goods even if caused by its negligence.
- 8.5 DB Schenker shall be entitled to proof of the actual value or reduction in value (as the case may be) of any Goods the subject of Loss or damage.

9. FORCE MAJEURE

- 9.1 Neither party shall be deemed to be in breach of the Contract or otherwise liable to the other for any failure or delay in performing its obligations under the Contract due to Force Majeure. If a party's performance of its obligations under the Contract is affected by Force Majeure:
- 9.1.1 it shall give notice to the other party, specifying the nature and extent of the Force Majeure, as soon as reasonably possible upon becoming aware of the Force Majeure and will at all times use reasonable endeavours to mitigate the severity of the Force Majeure;
 - 9.1.2 the date for performance of such obligation shall be deemed suspended only for a period equal to the delay caused by such Force Majeure;
 - 9.1.3 it shall not be entitled to payment from the other party in respect of extra costs and expenses incurred by virtue of the Force Majeure.

10. LIABILITY

- 10.1 Subject to Conditions 3.3, 3.4, 4.3, 4.5, 5.1, 8, 9, 10, 11, 12, 16.5, 16.6, 16.7 and 16.8 DB Schenker shall be liable for any delay in delivery of a Consignment and shall be liable for and indemnify the Customer in full against all Claims, incurred or suffered by the Customer arising directly from any negligent or wrongful act or omission on the part of DB Schenker.
- 10.2 The Customer shall be liable for and shall indemnify DB Schenker in full against all Claims, incurred or suffered by DB Schenker arising from any negligent or wrongful act or omission on the part of the Customer, the Consignee or the Consignor, or their suppliers or arising from any inherent defect in Wagons supplied by the Customer (or a third party nominated by the Customer).
- 10.3 The parties' liability to each other in respect of any breach of the Contract and breach of any other obligation whether in contract, tort, by statute or otherwise arising out of or in connection with the Contract or its performance (in each case whether caused by negligence or otherwise) and pursuant to the indemnities contained in the Contract shall be limited as follows:
- 10.3.1 neither party shall have liability to the other for loss of profit, customer claims, loss of business, loss of goodwill, loss of reputation, whether such loss or claims are direct or indirect or any consequential loss whatsoever (save that this Condition 10.3.1 shall not apply in respect of any loss of profit arising from the Customer's breach of the Contract or any payment due to be made by the Customer as a consequence of the Contract terminating or loss of profit or arising from any failure by the Customer to provide to DB Schenker a required volume of Goods set out in the Contract);
- 10.3.2 DB Schenker shall have no liability for any such breach which arises from the act or omission of the Customer, the Consignor, or the Consignee;
- 10.3.3 the Customer shall have no liability for any such breach which arises from the act or omission of DB Schenker;
- 10.3.4 DB Schenker's maximum liability for or arising out of or in connection with a failure by DB Schenker to deliver a Consignment within the time stated in the Specification, or if no time is so specified, then within a reasonable period of time, shall be the price (excluding VAT) the Customer paid to DB Schenker for carriage of such Consignment;
- 10.3.5 DB Schenker's maximum liability for the Loss of or damage to Goods shall be as set out in Condition 8; and
- 10.3.6 where both parties to the Contract are signatories to the Claims Allocation and Handling Agreement (dated 1 April 1994 and as amended from time to time) ("CAHA") neither party's liability to the other in respect of the relevant matter shall exceed the liability of such party pursuant to or allocated in accordance with CAHA for such matter.
- 10.4 The maximum liability of either party to the other in respect of any breach of this Contract and breach of any other obligation whether in contract, tort, by statute or otherwise arising out of or in connection with the Contract or its performance (in each case whether caused by negligence or otherwise) and pursuant to the indemnities contained in the

Contract shall be £5,000,000 for any claim or series of claims that arise from any one occurrence.

10.5 Nothing herein shall in any way diminish either party's common law duty to mitigate their respective losses (and each party shall be obliged to mitigate its losses where such losses are the subject of any indemnity contained in the Contract).

10.6 Each party's liability to indemnify the other under the Contract shall be reduced proportionally to the extent that the act or omission of the other party, its employees, agents or sub-contractors may have contributed to the event which gives rise to the liability to so indemnify.

10.7 Where either party (the "indemnitee") becomes aware that matters have arisen which will or are likely to give rise to a claim against it which will or is likely to give rise to a claim against the other ("the indemnifier") under the indemnities contained in the Contract the indemnitee will:

10.7.1 as soon as practicable notify the indemnifier in writing of the potential claim and of the matters which will or are likely to give rise to such claim;

10.7.2 not make any admission of liability, agreement or compromise with any person, body or authority in relation to the potential claim without prior written agreement of the indemnifier; and

10.7.3 at all times disclose in writing to the indemnifier all information and documents relating to the potential claim or the matters which will or are likely to give rise to such claim.

10.8 Nothing in these Conditions shall exclude or restrict either party's liability for:

10.8.1 death or personal injury caused by its negligence; or

10.8.2 fraud or fraudulent representations made by it.

10.9 The exclusions and limitations of liability contained in these Conditions (including but not limited to those contained in Conditions 8, 9, 10, 11, 12, 16 and 19) shall extend to members of DB Schenker Group and DB Schenker's employees, agents and sub-contractors all of whom shall be entitled to the benefit of such exclusions and limitations and The Contracts (Rights of Third Parties) Act 1999 shall apply to all such persons and to their benefiting from such exclusions and limitations.

10.10 DB Schenker does not accept liability for the acts or omissions of other carriers unless such other carriers have been specifically engaged by DB Schenker as subcontractors or assignees in respect of performing DB Schenker's obligations under this Contract.

11. CLAIMS PROCEDURE

11.1 DB Schenker shall have no liability for any Loss of, damage to or delay in the delivery of any Goods unless it is advised of the same in writing within 7 days of the completion or termination of carriage by DB Schenker of the relevant Consignment provided that if in any particular case:

11.1.1 the Customer proves that it was not reasonably possible for the Customer to advise DB Schenker in writing within the above time period; and

11.1.2 the Customer did notify DB Schenker of the same within a reasonable time;

then DB Schenker shall not have the benefit of this Condition.

11.2 Notices of any Losses, damages or delays in the delivery of Goods should be sent by post to Risk Management Team, DB Schenker Rail (UK) Limited, Carolina Way, Doncaster, DN4 5PN or faxed on 0870 140 5786 or by e-mail to Risk.management@dbschenker.com (or such other address, fax number or e-mail address as shall be notified by DB Schenker from time to time) and marked for the attention of the Risk Management Team.

12. **STORAGE AND SALE OF GOODS AFTER TRANSIT**

12.1 Where Goods are held by DB Schenker after transit or whilst transit is suspended DB Schenker shall store the Goods at the Customer's cost in such storage facility as DB Schenker shall deem appropriate. DB Schenker shall have no liability for any Loss of or damage to Goods (even if caused by negligence) occurring during the period of storage.

12.2 Where Goods which are held by DB Schenker after transit or whilst transit is suspended are Dangerous Goods, then DB Schenker will hold such Goods at the Customer's sole risk and expense and DB Schenker may, if it is satisfied it is reasonable to do so, destroy the Goods and/or return them to the Customer or its Consignor or its Consignee (who shall receive them at once) or otherwise dispose of them.

13. **INSURANCE**

13.1 The Customer shall maintain, at its own expense, comprehensive insurance (covering loss or damage to persons or property) to an amount which is not less than the Indemnified Amount together with employer's liability insurance in an amount no less than the statutory minimum. Such insurance is to be held with a reputable insurance company.

13.2 The insurance cover required to be held by the Customer shall be primary in respect of the Customer's liabilities arising under the Contract.

13.3 At DB Schenker's request, the Customer shall provide current certificates of insurance in order to satisfy DB Schenker that such insurance coverage is in effect. In the event of the required insurance cover being withdrawn or terminated the Customer will immediately inform DB Schenker who can terminate the Contract forthwith without prejudice to any rights it may have under the Contract.

13.4 DB Schenker shall maintain, at its own expense, insurance (covering loss or damage to persons or property) to an amount which is consistent with UK prudent railway practice and as required by all applicable laws and regulations. Such insurance shall include employer's liability insurance in an amount no less than the statutory minimum and is to be held with a reputable insurance company.

13.5 The insurance cover required to be held by DB Schenker shall be primary in respect of DB Schenker's liabilities arising under the Contract.

13.6 At the Customer's request, DB Schenker shall provide a current certificate of insurance in order to satisfy the Customer that such insurance coverage is in effect. In the event of this insurance cover being withdrawn or terminated DB Schenker will immediately inform the Customer who can terminate the Contract forthwith without prejudice to any rights it may have under the Contract.

13.7 In the event that liability is determined to be split in some proportion between DB Schenker and the Customer then the insurance held by each party in compliance with this Condition 13 will be primary in respect of that party's liability.

14. **TERMINATION**

14.1 A party may by notice in writing served on the other party ("Defaulting Party") terminate the Contract forthwith if :

14.1.1 the Defaulting Party shall be in material breach of any of the terms of the Contract and, where the breach is capable of remedy, the Defaulting Party fails to remedy such breach within 28 days of service of a written notice from the party not in breach, specifying the breach and requiring the Defaulting Party to remedy such breach; or

14.1.2 bankruptcy or insolvency proceedings are brought against the Defaulting Party or if an arrangement with its creditors is made, or if a receiver or administrator is appointed over any of the Defaulting Party's assets or if the Defaulting Party goes into liquidation.

14.2 Without prejudice to Condition 14.1 DB Schenker may by notice in writing served on the Customer terminate the Contract forthwith if the Customer fails to pay monies due under an invoice by the due date for payment of such invoice.

14.3 For the purposes of these Conditions a breach shall be capable of remedy if it can be remedied in all respects other than time of performance.

14.4 The termination of the Contract howsoever arising is without prejudice to the rights, duties and liabilities of the parties accrued prior to termination.

15. **ACCESS TO PREMISES**

15.1 The Customer shall procure that none of its employees, agents, sub-contractors or contractors or the Consignee or the Consignor enter onto any part of any land or premises owned or controlled by DB Schenker without the prior consent of DB Schenker and being accompanied by a member of DB Schenker staff. The Customer shall procure that any person who enters onto DB Schenker's land or premises complies with all applicable DB Schenker regulations and instructions (including but not limited to those relating to alcohol and drugs) copies of which are available on request from DB Schenker.

15.2 The Customer shall procure such access to its, its sub-contractor's, or the Consignor's or the Consignee's land as is necessary for DB Schenker to perform the Services. DB Schenker shall procure that none of its employees, agents, sub-contractors or contractors enter onto any part of the Customer's, the Consignor's or the Consignee's land without the Customer having procured the aforementioned consent. DB Schenker shall procure that any person entering into the Customer's, its sub-contractor's, the Consignor's or the Consignee's land or premises on behalf of DB Schenker shall comply with all applicable regulations and instructions that are brought to the attention of DB Schenker in writing.

15.3 Each party shall take all reasonable steps to ensure the health and safety of the other party's employees, agents or sub contractors whilst on their premises and shall consult and liaise with each other with a view to maintaining a safe system of work at such premises.

15.4 No party shall acquire any interest (whether legal or equitable) in any land or premises belonging to the other party or any third party as a consequence of this Contract.

16. CUSTOMER'S EQUIPMENT AND PRIVATE SIDINGS

16.1 This Condition shall apply where it is agreed between DB Schenker and the Customer that:

16.1.1 the Customer or one of its contractors is to provide any equipment for DB Schenker to use in transporting Goods including but not limited to Wagons (whether such equipment is owned by the Customer or any other person), in these Conditions such equipment shall be "Customer's Equipment"; and/or

16.1.2 where the Departure Point and/or the Arrival Point is located at any Private Sidings (save where access to such Private Sidings is governed by a separate private sidings agreement to which DB Schenker is a party);

For the avoidance of doubt where Wagons are the subject of a separate contract of use agreement, such contract of use agreement shall take precedence over any conflicting term of this Condition¹⁶.

16.2 The Customer shall:

16.2.1 ensure that the Customer's Equipment is registered with the appropriate authority and is safe and fit to run, is free from defects and complies with and is maintained in accordance with all applicable Railway Industry Standards;

16.2.2 ensure that the Private Sidings are safe, free from defects and are kept in an appropriate condition for use as part of a railway network and comply with all applicable Railway Industry Standards;

16.2.3 ensure that the Private Sidings are connected to the Network Rail network enabling safe transfer onto the Network Rail network and do not allow risk to be imported onto the Network Rail network; and

16.2.4 ensure that DB Schenker has the access to the Private Sidings and to the Network Rail network from the Private Sidings reasonably required by DB Schenker to enable it to carry Goods in accordance with the Contract.

16.3 DB Schenker may refuse to accept any Customer's Equipment if it does not comply with Condition 16.2.1. The Customer shall not rely upon DB Schenker carrying out any checks upon the Customer's Equipment and the Customer acknowledges that DB Schenker relies upon the Customer's obligations under Condition 16.2.1.

16.4 DB Schenker may refuse to collect or deliver any Consignment if there is any breach of Condition 16.2.2, 16.2.3 or 16.2.4. The Customer shall not rely upon DB Schenker carrying out any checks upon Private Sidings and the Customer acknowledges that DB Schenker relies upon the Customer's obligations in Conditions 16.2.2, 16.2.3 and 16.2.4.

16.5 DB Schenker's liability for any loss of or damage to any Customer's Equipment caused by its proven negligence shall be limited to the reasonable cost of repair and in any event shall be limited to the depreciated value of that Customer's Equipment. DB Schenker shall have no other liability arising from any loss or damage to Customer's Equipment even if caused by negligence. The Customer shall give DB Schenker a reasonable

opportunity to inspect any damage for which it is claimed DB Schenker is responsible under this Condition.

- 16.6 Without prejudice to any other provision of the Contract the Customer shall indemnify DB Schenker in full against all Claims and sums payable to Network Rail as a consequence of DB Schenker's failure to meet performance standards suffered or incurred by DB Schenker which arises from any Customer's Equipment not complying with Condition 16.2.1.
- 16.7 If DB Schenker damages any Private Sidings by its proven negligence it shall be liable for the reasonable repair costs of the same. DB Schenker shall have no other liability arising from damage to Private Sidings even if caused by its negligence.
- 16.8 Where any of the Goods, the Customer's Equipment or the Private Sidings are not the property of the Customer, the Customer shall procure that DB Schenker has no liability for any loss or destruction of or damage to the same whether caused by negligence or otherwise) to any other person owning or having an interest therein (including but not limited to any insurer of any such person) in addition to the Customer's liability to DB Schenker under the express terms of the Contract and the Customer shall indemnify DB Schenker from any Claim to any such person.

17. CONFIDENTIALITY

- 17.1 Each party shall keep confidential the terms of the Contract and any and all Confidential Information that it may acquire in relation to the other party. Neither party shall use the other party's Confidential Information for any purpose other than to perform its obligations under the Contract. Each party shall ensure that its agents and employees comply with the provisions of this Condition 17.1.
- 17.2 The obligations on a party set out in Condition 17.1 shall not apply to any information which:
- 17.2.1 is publicly available or becomes publicly available through no act or omission of that party; or
 - 17.2.2 a party is required to disclose by law or by competent legal or regulatory authority.

18. INTELLECTUAL PROPERTY

All intellectual property rights in the services provided by DB Schenker (including any software supplied by DB Schenker), all documents, drawings and information supplied by DB Schenker to the Customer in connection with this Contract remain the absolute property of DB Schenker. Such documents, drawings and information will not be copied, disclosed or used (except for the purpose for which they were supplied) without the prior written consent of DB Schenker. No licence or other right is granted by DB Schenker to the Customer with regard to the intellectual property of DB Schenker except as expressly set out in this Contract and for the purpose of performing the services by DB Schenker or as otherwise permitted at law.

19. GENERAL

- 19.1 If at any time any Condition or part of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable in any respect that shall not affect or impair the legality, validity or

enforceability of any other provision of these Conditions or the Contract. In any such circumstances the parties shall negotiate in good faith in order to agree the terms of a mutually satisfactory provision, achieving as nearly as possible the same commercial effect, to be substituted for the Condition or part of the Contract, which is found to be illegal, invalid or unenforceable

- 19.2 The failure or delay by a party in exercising any right, power or remedy available to it under the Contract shall not in any circumstances impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise by either party of any right, power or remedy under the Contract shall not in any circumstances preclude any other or further exercise of it or the exercise of any other right, power or remedy.
- 19.3 Any waiver of a breach of, or default under, any of the terms of the Contract shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 19.4 The express terms of this Contract are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.
- 19.5 Each party warrants that it has not been induced to enter into the Contract by a statement or promise which the Contract does not contain save that this Condition shall not exclude any liability which a party would otherwise have to the other in respect of any statements made fraudulently by that party.
- 19.6 Subject to any variation agreed pursuant to Condition 19.7 these Conditions together with the Specification shall form the Contract and contain all the terms which the parties have agreed in relation to the subject matter of the Contract to the exclusion of all other terms and conditions. DB Schenker shall not be deemed to accept any other conditions or any modification or waiver of these Conditions by failing to object to any conditions contained in a communication from the Customer.
- 19.7 Any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by the authorised representatives of the parties.
- 19.8 Any demand, notice or other communication given or made under or in connection with the Contract will be in writing to the usual trading address or registered office of the party stipulated in such notice and will be deemed to have been given or made when delivered personally if properly addressed and if posted within three business days of posting and/or if sent by fax upon being sent or if sent by e-mail or other electronic means upon such communication being acknowledged as having been received.
- 19.9 The Contract may not be assigned by the Customer. The Customer may not sub-contract any of its obligations without DB Schenker's prior written consent and if it does sub contract its obligations it will not be relieved of any of its obligations as a result.
- 19.10 This Contract is personal to the parties and is not for the benefit of third parties. The Customer agrees that it will not assign or transfer any of its rights or obligations under this Contract and specifically that it will not re sell or seek to re sell services afforded to it by DB Schenker under the Contract to any third party. Any rights of any person to enforce the terms of the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded save as expressly set out otherwise in Condition 10.9.

19.11 This Contract shall be considered as a contract made in England according to English law and subject to the exclusive jurisdiction of the English Courts to which the parties hereby submit.