

GB Railfreight Limited Terms and Conditions of Purchase

1) **Parties and Defined Terms**

a) In this Contract the following words should have the following meanings:

Anti-slavery Policy: the Buyer's anti-slavery policy which can be found at www.gbrailfreight.com as amended by from time to time;

'Buyer' shall mean GB Railfreight Limited;

'Conditions' shall mean these Terms and Conditions of Purchase;

'Contract' shall mean the contract between the Buyer and Seller consisting of the Purchase Order, the Conditions and any other documents specified in the Purchase Order;

'Goods' shall mean all goods specified in the Purchase Order;

'Purchase Order' shall mean the Buyer's Purchase Order which specifies that the Conditions apply to it;

'Seller' shall mean the person, firm or company to whom the Purchase Order is issued;

'Services' shall mean the services specified in the Purchase Order.

b) If there is any inconsistency between the documents comprising the Contract, they shall have precedence in the following order: (1) the Purchase Order; (2) the Conditions; (3) any other documents specified in the Purchase Order.

c) This Contract comprises the entire agreement between the parties and replaces any previous agreement relating to the same subject matter. The Conditions shall apply to the Contract to the exclusion of any other terms and conditions proposed by the Seller or which are implied by trade, custom, practice or course of dealing. The acceptance of Goods and/or Services by the Buyer shall not constitute acceptance of any terms or conditions of the Seller.

d) A Contract shall only come into existence when the Buyer accepts the Seller's offer to provide Goods or Services by placing a Purchase Order. The Buyer does not guarantee to place a Purchase Order or to purchase minimum quantities of Goods or Services from the Seller. Any order acknowledgement sent by the Seller shall be confirmation of receipt of the Purchase Order.

2) **Quality and fitness for purpose of Goods and Services**

a) The Seller warrants that all Goods delivered shall:

i) be of satisfactory quality and free from defects in material, design or workmanship;

ii) be fit for the purpose for which the Goods are required. If the Seller has any doubts as to the purpose for which the Buyer requires the Goods, it must seek clarification from the Buyer;

iii) conform with any specifications, drawings, descriptions and samples referred to in the Contract;

iv) be free of any third party lien, claim, title or interest; and

v) comply with all applicable statutory and regulatory to the manufacturing, labelling, packaging, storage, handling and delivery of the Goods.

b) The Seller warrants that it shall carry out the Services promptly and with all due skill, care and diligence, and that Services shall be performed by appropriately experienced, qualified and trained personnel.

c) The Seller shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under this Contract.

3) **Delivery**

a) The date for delivery of the Goods or performance of the Services shall be that specified in the Purchase Order or, if no such date is specified, within 28 days of the date of the Purchase Order. Delivery may only be made in instalments if specified in the Purchase Order. Time shall be of the essence and the Seller shall indemnify the Buyer against any loss suffered by the Buyer because of late delivery or performance of Goods or Services.

3.2 The Seller shall deliver the Goods to the Buyer's premises at such location as is set out in the Purchase Order or as instructed by the Buyer prior to delivery during normal business hours or as instructed by the Buyer.

3.3 The Seller shall be responsible for packaging the Goods safely so as to protect any item or part during transportation, unloading or storage. The Seller must separately number all cases, packages or items. The Seller shall submit an itemised packing list or delivery note with the Goods showing the packing numbers and the Buyer's Purchase Order number. The Purchase Order number and packing numbers must also be shown on the corresponding invoice and monthly statements.

3.4 Any charges for delivery and insurance must be agreed by the parties prior to placement of the Purchase Order and specified separately on the Purchase Order and the Seller's invoice. If the charges for delivery and insurance are not shown separately in the Purchase Order, the price for the Goods shall be inclusive of delivery and insurance.

3.5 The property and risk in the Goods shall remain with the Seller until they are delivered in accordance with the terms of the Contract and shall transfer to the Buyer upon delivery in accordance with its terms. The Seller shall be responsible for insuring the Goods during delivery and unloading.

4) **Price and Payment**

a) The price for the Goods or Services shall be as specified in the Purchase Order, unless the Seller's standard charges for the goods or Services are lower on the scheduled delivery date than the prices quoted in the Purchase Order. In this event, the Buyer shall purchase the Goods or Services at the lower price.

b) The Seller warrants that the price for the Goods and/or Services is at least as low as the price at which the Seller is currently selling the Goods and/or Services or similar goods and/or services in the same or similar quantity and value to its most favoured customers.

c) The price of the Goods and/or Services is exclusive of amounts in respect of value added tax (VAT), but, subject to 3.4 includes the costs of packaging, insurance and carriage of the Goods. No extra charges shall be paid unless agreed in writing and signed by the Buyer.

d) Any advance payments made by the Buyer shall be held by the Seller as a part payment and not as a deposit.

e) The Seller shall invoice the Buyer upon delivery of the Goods or performance of the Services. Payment shall be due at the end of the month following the month in which the Goods are delivered or the Services are performed, subject to receipt by the Buyer of a correctly presented invoice. The Seller shall issue the Buyer with a regular monthly statement showing amounts due or payable in respect of outstanding invoices.

5) **Acceptance**

a) The Seller acknowledges that a complete inspection of the Goods cannot be made on delivery and agrees that, by taking delivery of the Goods, the Buyer is not agreeing that their delivery constitutes satisfactory performance of the Contract and does not waive or

relinquish any rights that it may have against the Seller for failure to discharge its obligations under the Contract.

b) Where Goods delivered or Services performed by the Seller are defective for any reason, the Buyer shall give notice to the Seller of its rejection of the Goods or Services or part of them within a reasonable time of delivery or performance.

5.3 Any rejected Goods shall be returned to the Seller at the Seller's risk and expense

5.4 Without prejudice to any other remedies available to the Buyer, the Buyer shall have the option to require the Seller to replace defective Goods or re-perform defective Services promptly and at no expense to the Buyer, or to refund to the Buyer the price for the defective Goods or Services. Repaired and replaced Goods, and re-performed Services, shall be subject to the terms of the Contract.

5.5 During any warranty period specified in the Contract, software updates and corrections shall be provided by the Seller free of charge.

5.6 Without prejudice to any other remedies the Buyer may have and provided such request is made within 12 months of the date of delivery of the Goods, the Seller shall forthwith upon a request from the Buyer, replace or, at the Buyer's option, repair the Goods in which a defect has occurred.

6 Customer Property

6.1 The Seller acknowledges that all materials, equipment and tools, drawings, specifications and data supplied by the Buyer to the Seller ("**Buyer Materials**") and all rights in the Buyer material are and shall remain the exclusive property of the Buyer. The Seller shall keep the Buyer Materials in safe custody at its own risk, maintain them in good condition and until returned to the Buyer and not dispose or use the same other than in accordance with the Buyer's written instructions or authorisation.

7 Variations

7.1 Any variation to the Contract must be agreed in writing by both parties and must refer to the original Purchase Order number.

8 Order Cancellation

8.1 The Buyer shall have the right at any time to cancel any Purchase Order for standard stocked Goods or standard Services at any time prior to delivery without incurring any charge. If the Buyer cancels a Purchase Order for non-standard stocked Goods or Services the Buyer shall reimburse the Seller's reasonable costs incurred as a result of cancellation.

8.2 In addition, the Buyer may terminate the Contract immediately by giving notice in writing to the Seller if the Seller fails to supply the Goods or Services within the delivery times specified in the Purchase Order, or the Buyer reasonably believes at any time that the Seller will not supply the Goods or Services within the delivery time, and the Buyer shall have no further liability to the Seller following cancellation of the Contract for these reasons.

9 Intellectual Property Rights

9.1 The Seller warrants that it is the sole owner of the Goods and has full and unrestricted right and authority to supply the Goods and Services to the Buyer on the terms of this Contract.

9.2 The Seller will indemnify and keep indemnified the Buyer against any claim of infringement of third party intellectual property rights by the Seller's supply of or the Buyer's use of the Goods or Services

10 Assignment and Subcontracting

10.1 The Seller shall not without the Buyer's prior written consent assign, transfer or subcontract the Contract or any of its rights or obligations under the Contract to any third party.

11 Hazardous Goods and Regulatory Requirements

11.1 Any Goods having a toxic hazard or other hazard to the safety of persons or property must be marked by the Seller with appropriate internationally recognised danger symbols clearly identifying the name of the material in English, and the Seller should give the Buyer as much prior written notice as possible that the Goods to be delivered are hazardous. Transport and other documents must include a declaration of the hazard and name of the material in English. Goods must be accompanied by emergency information in English in the form of written instructions, labels or markings giving full details of precautions to be taken on the delivery of such Goods and their handling or storage. The Seller shall observe the requirements of the UK and international law relating to the packaging, labelling and carriage of all Goods.

12 Compliance

12.1 The Seller shall:

12.1.1 comply with the Buyer's Code of Conduct as amended from time to time.

12.1.2 have and shall maintain in place throughout the term of its dealings with the Buyer its own policies and procedures, including adequate procedures under the Bribery Act 2010.

12.2 In performing its obligations under the agreement, the Seller shall:

12.2.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including the Modern Slavery Act 2015; and

12.2.2 comply with the Anti-slavery policy; and

12.2.3 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and

12.2.4 include in its contracts with its direct subcontractors and suppliers anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 12.

12.3 The Seller shall implement due diligence procedures for its direct subcontractors, and suppliers, to ensure that there is no slavery or human trafficking in its supply chains.

12.4 The Seller shall indemnify the Customer against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the Buyer as a result of any breach of Anti-slavery Policy.

12.5 The Seller represents, warrants and undertakes that it conducts its business in a manner that is consistent with the Anti-slavery Policy.

12.6 The Buyer may terminate this Contract with immediate effect by giving written notice if the Seller commits a breach of this clause 12.

13 General

13.1 This Contract shall be governed by and construed in accordance with English law and shall be subject to the jurisdiction of the English courts.

13.2 Failure or delay by the Buyer to exercise any of its rights shall not be a waiver or forfeiture of such rights. Any waiver by the Buyer of any term or condition of this Contract or of any breach by the Seller may be terminated by the Buyer at any time and shall not prevent the Buyer from enforcing any term of this Contract or from acting on that or any subsequent breach