

## GB RAILFREIGHT LIMITED – STANDARD CONDITIONS OF CARRIAGE

## 1 DEFINITIONS AND INTERPRETATION

1.1 In these Conditions the following words and expressions have the following meanings:

“**Applicable Laws**” all national, supranational, foreign or local laws (including case law), legislation, regulations, statutes, statutory instruments, rules, regulations, edicts, by-laws or directions or guidance from government or governmental agencies including any rules, regulations, guidelines or other requirements of relevant regulatory authorities which have the force of law in effect from time to time;

“**Arrival Point**” the location to which a Consignment is to be transported by GBRf as set out in the Order Form;

“**Business Day**” means any day which is not a Saturday, a Sunday or a bank or public holiday in England;

“**Charges**” the charges payable by the Customer for provision of the Services by GBRf as set out in the Order Form (as may be varied in accordance with these Conditions or as otherwise agreed in writing between GBRf and the Customer from time to time);

“**CMR**” the International Convention concerning Carriage of Goods by Road;

“**Commencement Date**” the date expressly identified as such in the Order Form or (if earlier) the date on which Services first commence in accordance with Condition 2.2;

“**Conditions**” means these terms and conditions and any special terms and conditions agreed in writing between the Customer and GBRf;

“**Confidential Information**” means the provisions of the Contract and all information which is secret or otherwise not publicly available (in both cases either in its entirety or in part) including commercial, financial, marketing or technical information, know-how, trade secrets or business methods, or any data, in all cases whether disclosed orally or in writing before or after the date of the Contract;

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

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

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

“**Container(s)**” any container, trailer, storage tank or any other similar unit or device in which Goods are to be transported;

“**Contract**” the contract between GBRf and the Customer for the provision of Services, which includes: (i) any Order Form agreed by the parties and these Conditions; and (ii) in relation to any international carriage of Goods, COTIF and CMR (as applicable);

“**COTIF**” the International Convention concerning International Carriage by Rail;

“**Customer**” means the person(s), firm or company named in the Order Form who purchases the Services from GBRf;

“**Customer's Equipment**” has the meaning set out in Condition 10.1(a);

“**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 2009 (as amended) as supplemented by the Dangerous Goods – Rail Conditions of Acceptance (GO/RT3421) issued by the Rail Safety and Standards Board, as amended, re-issued or replaced from time to time;

“**Departure Point**” means the location from which a Consignment is to be transported by GBRf as set out in the Order Form;

“**Excluded Goods**” means bullion, drugs to which international conventions apply, living creatures, money (meaning Cash, treasury notes, bank notes, currency notes, cheques, bankers drafts, postal orders, money orders, bonds, current postage stamps and revenue stamps, National Insurance stamps, National Savings stamps and certificates, holiday savings stamps, luncheon vouchers, credit company sales vouchers, VAT purchase invoices, Premium Bonds, bills of exchange, giro cheques and drafts, gift tokens, trading stamps, lottery tickets, game cards, unused units in franking machines, consumer redemption vouchers, prepaid vouchers, credit cards, debit cards, charge cards, fuel cards, cash dispenser cards and tickets of any kind), negotiable instruments or securities, works of art, cigars, cigarettes and tobacco, non-ferrous metal in raw, scrap, bar or ingot form, precious stones or metals or items containing such;

“**Force Majeure Event**” means any event outside the reasonable control of either party affecting its ability to perform any of its obligations (other than payment) under the Contract including act of God, fire, flood, lightning, compliance with any law or governmental order, rule, regulation or direction war, revolution, act of terrorism, riot or civil commotion, strikes, locks outs and industrial action, failure of supplies of power, fuel, transport, equipment, raw materials or other goods or services;

“**GBRf**” means GB Railfreight Limited, a company incorporated in England and Wales with company registration number 3707899 whose registered office is at 3<sup>rd</sup> Floor 55 Old Broad Street, London EC2M1RX;

“**Goods**” the goods in relation to which GBRf is to provide Services as set out in the Order Form;

“**Intellectual Property Rights**” means any patent, copyright, trade mark, service mark or trade name, right in software, right in design, right in databases, image right, moral right, right in an invention, right relating to passing off, domain name, right in confidential information (including trade secrets) or right of privacy, and all similar or equivalent rights in each case whether registered or not and including all applications (or rights to apply) for, or renewal or extension of, such rights which exist now or which will exist in the future in the United Kingdom and all other countries in the world in each case whether registered or not and including any application for registration of the foregoing;

“**Network Rail**” Network Rail Limited (no. 4402220) or Network Rail Infrastructure Limited (no. 2904587) each of whose registered office is at 1 Eversholt Street, London NW1 2DN or either of their successors or assigns;

“**Order Form**” means the GBRf Customer Information Pack and such other documents which set out the commercial terms agreed between the parties for provision of the Services;

“**Private Siding**” a railway or siding not owned by or leased to GBRf 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;

“**Relevant Third Party**” the Customer's employees, servants and agents, Consignees, Consignors, subcontractors, the owner of the Goods (and any person with an interest in the Goods of any kind) and any person to whom the Customer transfers, delegates or otherwise permits the benefit of the Contract;

“**Services**” the service(s) to be provided by GBRf including the carriage of Goods by rail and/or road, and any other services GBRf has expressly agreed as set out in the Order Form;

“**VAT**” means value added tax charged in accordance with the Value Added Tax Act 1994 (as amended); and

“**Wagon(s)**” the railway wagons in which Goods are to be transported.

12 The headings to Conditions are inserted for convenience only and shall not affect the interpretation or construction of these Conditions.

13 Words expressed in the singular shall include the plural and vice versa. Words referring to a particular gender include every gender. References to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity.

14 The words “other”, “including” and “in particular” shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible.

15 References to any statute or statutory provision shall include (i) any subordinate legislation made under it, (ii) any provision which it has modified or re-enacted (whether with or without modification), and (iii) any provision which subsequently supersedes it or re-enacts it (whether with or without modification).

## 2 BASIS OF CONTRACT

21 The Services to be provided by GBRf shall be as set out in the Contract.

22 Unless otherwise agreed in writing by GBRf, the making available of Goods for commencement of the Services shall be deemed acceptance of these Conditions by the Customer (notwithstanding that the necessary contractual documentation may not have been signed by the Customer).

23 The Contract shall commence on the Commencement Date and shall (unless agreed otherwise, and subject to the provisions for early termination set out in these Conditions) continue in force until the agreed date for delivery or collection of the Goods at the Arrival Point as specified in the Order Form, or payment of the Charges, whichever is latest (the “**Term**”). The Contract will be subject to these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document whatsoever and whenever).

24 The Customer shall ensure the Relevant Third Parties are aware of, are subject to, and comply with the provisions of the Contract (including the Conditions), and the Relevant Third Parties' attention is drawn in particular to Condition 16.4. The Customer shall ensure that GBRf can enforce the provisions of the Contract directly against the Relevant Third Parties. The Customer shall indemnify GBRf against all or any claims from any Relevant Third Party (regardless of whether GBRf is in breach of the Contract or not) or any loss or damage incurred by GBRf arising from breach by the Customer of this Condition 24.

## 3 PRIORITY

3.1 In the event of a conflict or inconsistency between:

- a term of these Conditions, and a term of the Order Form, the relevant term of these Conditions shall prevail and apply (unless otherwise specifically agreed by GBRf in the Order Form);
- in relation to international carriage of Goods, a term of these Conditions and/or the Order Form, and a provision of CMR and/or COTIF, the relevant provision of CMR and/or COTIF shall prevail and apply, and the Contract shall be treated as modified only to the extent necessary to give effect to the relevant provision of CMR and/or COTIF.

## 4 GB RAILFREIGHT'S OBLIGATIONS

4.1 GBRf warrants to the Customer that it is the holder of a non-passenger operating licence in compliance with the Railways Act 1993 (as amended) and is the holder of a valid railway safety certificate.

4.2 GBRf shall during the Term and in consideration of payment of the Charges:

- transport each Consignment from the Departure Point to the Arrival Point, subject to the terms of the Contract. GBRf shall be entitled to transport each Consignment by such route and means as it shall decide;
- be the train Operator, as defined in the Railways Act 1993, for the purposes of the Contract;
- provide the Services with reasonable skill and care and in accordance with Applicable Laws and applicable Railway Industry Standards;
- use reasonable endeavours to avoid causing the loss of or damage to any Consignment;
- procure at its own cost the access to Network Rail's Network necessary to provide the Services;
- permit or procure access for the Customer, the Consignor or the Consignee (provided the identity of any agents or subcontractors of the Customer is notified to GBRf and approved by GBRf in advance of them seeking such access) to the Departure Point and/or Arrival Point to enable the collection or delivery of a Consignment.

4.3 GBRf may sub-contract any part(s) or the whole of the Services.

4.4 To the extent that GBRf exercises its right to sub-contract under Condition 4.3 in order to transport Goods by road and where loss or damage has occurred during this road transport, GBRf's liability shall (unless otherwise agreed in the Order Form) be

- determined in accordance with the Road Haulage Association Terms and Conditions 2009 or (if different) such other terms and conditions in place between GBRf and the relevant road haulier (the "Road Conditions").
- 45 Save as provided in Condition 4.4, in the event of a conflict between a term of the Road Conditions and a term of these Conditions and/or the Order Form, then the relevant term of these Conditions and/or the Order Form shall prevail and apply.
- 5 LOADING, UNLOADING AND DELIVERY**
- 51 The Customer shall make the Containers and/or Goods accessible to GBRf at the Departure Point, packaged and labelled as set out in Condition 6 and at the times stated in the Order Form, and GBRf shall be responsible for loading the Containers and/or the Goods on the Wagon.
- 52 Subject to Condition 5.5, Condition 8.1(a), and unless otherwise specified in the Order Form, GBRf shall deliver the Goods to the Arrival Point DAT (Incoterms 2010).
- 53 Any times specified by GBRf for delivery of the Goods are intended to be an estimate only and time for delivery shall not be of the essence. GBRf shall have no liability (and therefore excludes all liability) for delay of delivery of the Goods.
- 54 If for any reason the Customer does not accept delivery of any of the Goods when they are ready for delivery, or GBRf is unable to deliver the Goods on time because the Customer has not provided appropriate access to a Private Siding, instructions, documents, licences or authorisations then:
- the Goods will be deemed to have been delivered, risk passing to the Customer (including for loss or damage caused by GBRf's negligence); and
  - GBRf may store the Goods until actual delivery whereupon the Customer will be liable for all related costs and expenses (including transport, storage and insurance).
- 55 Where the Customer loads the Goods at the Departure Point, the Customer shall also be responsible for unloading the Goods, and GBRf shall deliver the Goods to the Arrival Point DAP (Incoterms 2010) unless GBRf specifically agrees otherwise in writing.
- 6 THE GOODS, LABELLING AND PACKAGING**
- 61 The Customer warrants and represents 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; and
  - the description and particulars relating to the Goods are complete, true and accurate in all respects.
- 62 The Customer shall give GBRf such details for each Consignment as GBRf may require from time to time. The Customer will issue GBRf 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 GBRf's requirements. If the Customer should change any aspect of a Consignment after advising GBRf of the information required in this Condition 6.2, then the Customer shall as soon as practicable notify GBRf of such changes (and in any event shall notify GBRf prior to the movement of such Consignment).
- 63 GBRf shall, if agreed in the Order Form, sign a document prepared by the Customer or Consignor acknowledging receipt of the Consignment, however any such document shall not constitute evidence of the condition, correctness or declared nature, quantity or weight of the Consignment at the time it is received by GBRf.
- 64 The Customer shall ensure that all Goods:
- are adequately and properly packaged and that such packaging complies with Applicable Laws, rules, regulations and Railway Industry Standards;
  - will be safe and fit to be transported; and
  - will not cause death or personal injury to any person or damage to any property or other Goods during transportation.
- 65 The Customer shall ensure that the Consignment is free from infestation by vermin, insect and pest of any description and from contamination from any cause whatever.
- 66 If GBRf, in its reasonable opinion, considers that a Consignment or any part thereof cannot be safely or properly carried or stored, GBRf shall be entitled to request that the Customer inspects any part thereof and takes any remedial steps as are reasonably necessary prior to GBRf being required to haul the Consignment. In the event that such steps result in the train being delayed beyond its scheduled departure time, any costs and/or penalties incurred by GBRf shall be payable by the Customer.
- 67 The Customer shall indemnify GBRf against all claims arising from a breach of Condition 6 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 GBRf 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 GBRf, the Customer shall be deemed to be in breach of Condition 6.
- 68 The Customer confirms that, other than as agreed in writing with GBRf, there are and will be no special requirements for the transport of the Goods. Accordingly GBRf 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 GBRf of any such special requirement GBRf shall have no obligation to transport such Goods unless it agrees to do so in writing. If GBRf agrees to carry any Goods for which there is a special requirement it may charge the Customer additional sums.
- 7 DANGEROUS GOODS AND EXCLUDED GOODS**
- 71 GBRf shall have no obligation to accept any Dangerous Goods or Excluded Goods for carriage. GBRf shall have no liability for any claims (including in negligence) in respect of any Dangerous Goods or Excluded Goods unless, prior to loading, GBRf has received in writing precise and correct identification of the Goods and has further agreed in writing to accept the same for carriage.
- 72 If GBRf accepts (in its absolute discretion) any Dangerous Goods or Excluded 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 GBRf for the time being in force regarding carriage of Dangerous Goods or Excluded Goods.
- 73 Without prejudice to any other provision of the Contract the Customer shall indemnify GBRf in full against all claims arising out of or in connection with the carriage of Dangerous Goods or Excluded Goods:
- which GBRf has not expressly accepted for carriage in writing; or
  - in respect of which the Customer has not complied with its obligations under Condition 7.2 even where caused by the negligence of GBRf; or
  - where damage or injury is caused by the Dangerous Goods or Excluded Goods other than as a result of any negligence or act or omission of GBRf.
- 74 GBRf shall have the right to enter and have access to any premises not owned by GBRf where Dangerous Goods or Excluded 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 or Excluded Goods and where such premises are not owned by the Customer, the Customer shall procure that GBRf shall have such right to enter and access such premises.
- 8 STORAGE**
- 81 If the Services include storage of Goods by GBRf on the Customer's behalf:
- unless otherwise agreed in the Order Form, risk in the Goods shall remain with GBRf during any such storage (including any related loading activities) until the earlier of:
    - the date and time when the Customer collects the Goods; or
    - the date and time when the Customer was due to have collected the Goods (as specified in the Order Form or as otherwise agreed);
  - GBRf shall exercise reasonable skill and care to ensure the safe custody of Goods during any agreed period(s) of storage.
- 82 Where Goods are held by GBRf after transit or whilst transit is suspended, GBRf shall store the Goods at the Customer's cost in such storage facility as GBRf shall deem appropriate. GBRf shall have no liability for any loss of or damage to Goods (even if caused by negligence) occurring during the period of storage.
- 83 Where Goods which are held by GBRf after transit or whilst transit is suspended are Dangerous Goods, then GBRf will hold such Goods at the Customer's sole risk and GBRf, 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 (all of the foregoing at the Customer's cost).
- 9 ACCESS TO PREMISES**
- 91 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 GBRf without the prior consent of GBRf and (where required by GBRf) being accompanied by a member of GBRf staff. The Customer shall procure that any person who enters onto GBRf's land or premises complies with all applicable GBRf regulations and instructions (including but not limited to those relating to alcohol and drugs) copies of which are available on request from GBRf.
- 92 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 GBRf to perform the Services. GBRf 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 consent. GBRf 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 GBRf shall comply with all applicable regulations and instructions that are brought to the attention of GBRf in writing.
- 93 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.
- 94 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 the Contract.
- 10 PRIVATE SIDINGS AND CUSTOMER EQUIPMENT**
- 101 This Condition shall apply where it is agreed between GBRf and the Customer that:
- the Customer or one of its contractors, Consignees or Consignors is to provide any equipment for GBRf to use in transporting Goods including but not limited to Wagons and Containers (whether such equipment is owned by the Customer or any other person), in these Conditions such equipment shall be "Customer's Equipment"; and/or
  - 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 GBRf is a party).
- 102 The Customer shall 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;
  - 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;
  - 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
  - GBRf has the access to the Private Sidings and to the Network Rail network from the Private Sidings reasonably required by GBRf to enable it to provide Services in accordance with the Contract.
- 103 GBRf may refuse to accept any Customer Equipment if it does not comply with Condition

- 10.2(a). The Customer shall not rely upon GBRf carrying out any checks upon the Customer's Equipment and the Customer acknowledges that GBRf relies upon the Customer's obligations under Condition 10.2(a). To the extent GBRf is expressly required under the Contract to undertake an inspection of a Consignment in order to notify the Customer of any damage to the relevant Wagons and/or Containers and/or Goods, the Customer agrees that such activities shall be on the basis of a brief visual inspection only and GBRf shall have no liability for failing to report any damage not reasonably capable of discovery on a brief visual inspection.
- 104 GBRf may refuse to collect or deliver any Consignment if there is any breach of Condition 10.2(b), 10.2(c) or 10.2(d). The Customer shall not rely upon GBRf carrying out any checks upon Private Sidings and the Customer acknowledges that GBRf relies upon the Customer's obligations in Conditions 10.2(b), 10.2(c) or 10.2(d).
- 105 Subject to Condition 16.1, GBRf'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. GBRf shall have no other liability arising from any loss or damage to Customer's Equipment even if caused by negligence. The Customer shall give GBRf a reasonable opportunity to inspect any damage for which it is claimed GBRf is responsible under this Condition.
- 106 Subject to Condition 16.1, if GBRf damages any Private Sidings by its proven negligence it shall be liable for the reasonable repair costs of the same. GBRf shall have no other liability arising from damage to Private Sidings even if caused by its negligence.
- 107 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 GBRf 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 GBRf's liability to the Customer under the express terms of the Contract and the Customer shall indemnify GBRf from any claim to any such person.
- 11 GBRF EQUIPMENT**
- 111 To the extent that the Customer, or its employees, agents or subcontractors takes possession or control of any Wagons and/or Containers belonging to GBRf whether for loading or unloading any Goods, or for any other purpose associated with the Contract:
- title to such Wagons and/or Containers shall not pass to the Customer or its employees, agents or subcontractors and shall remain vested in GBRf; and
  - risk in the Wagons and/or Containers shall pass to the Customer or its employees, agents or subcontractors upon taking possession of such Wagons and/or Containers.
- 112 Whilst the Customer, or its employees, agents or subcontractors is in possession or control of the Wagons and/or Containers pursuant to Condition 11.1 it shall, and shall procure that that its employees, agents and subcontractors:
- hold the Wagons and/or Containers on a fiduciary basis as the Supplier's bailee;
  - only use such Wagons and Containers in connection with the Services.
  - store the Wagons and/or Containers separately from all other goods and equipment held by the Customer or its employees, agents or subcontractors so that they remain readily identifiable as GBRf's property;
  - not remove, deface or obscure any identifying mark or packaging on or relating to the Wagons and/or Containers;
  - maintain the Wagons and/or Containers in satisfactory condition and keep them insured against all risks for their full value from the date of delivery;
  - notify GBRf immediately if it becomes subject to any of the events listed in Condition 17.1(c);
  - give GBRf such information relating to the Wagons and/or Containers as GBRf may require from time to time; and
  - promptly (and in any event within two (2) Business Days of the date of damage) notify GBRf of any damage to the Wagons and/or Containers.
- 113 If the Customer or its employees, agents or subcontractors becomes subject to any of the events listed in Condition 17.1(c), or GBRf reasonably believes that any such event is about to happen and notifies the Customer accordingly, then without limiting any other right or remedy GBRf may have, GBRf may at any time require the Customer to, or procure that its employees, agents or subcontractors shall deliver up the Wagons and/or Containers and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Wagons and/or Containers are stored in order to recover them.
- 12 CHARGES AND PAYMENT**
- 121 In consideration of the provision of the Services the Customer shall pay to GBRf (subject to the terms of the Contract) the Charges detailed in the Order Form. Subject to Condition 12.2 GBRf shall invoice the Customer on or at any time after the performance of the Services for or on behalf of the Customer.
- 122 GBRf reserves the right to implement alternative charging arrangements, including requiring the Customer to pay the Charges prior to provision of the Services, if it has any reasonable doubt as to the creditworthiness of the Customer or its ability to pay the Charges. Such alternative arrangements shall be set out in the Order Form, if applicable.
- 123 Subject to Condition 12.2 and unless otherwise stated in an Order Form or agreed by GBRf in writing, the Customer shall pay all invoices in full and cleared funds without any deduction, or withholding, within 28 days of the date of the invoice. Time for payment shall be of the essence.
- 124 All payments shall be in Pounds Sterling by electronic transfer to GBRf's bank account as set out in the Order Form, or such other bank account as GBRf may from time to time notify to the Customer with any applicable charges on such payments being at the Customer's expense. No payment shall be deemed to have been received until GBRf has received cleared funds.
- 125 All sums payable under the Contract are exclusive of VAT or any other applicable tax or duty which must be paid in addition at the rate and in the manner prevailing at the relevant tax point.
- 126 The Customer shall make all payments due under the Contract without any deduction whether by way of set-off, withholding, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by GBRf to the Customer.
- 127 No indulgence granted by GBRf to the Customer concerning the Customer's obligations under this Condition 12 shall be or be deemed to be a credit facility but if any such facility is granted to the Customer by GBRf, GBRf may withdraw it at its sole discretion at any time.
- 128 If any sum due from the Customer to GBRf under the Contract or any other contract is not paid on or before the due date for payment then all sums then owing by the Customer to GBRf shall become due and payable immediately and, without prejudice to any other right or remedy available to GBRf, GBRf shall be entitled to:
- cancel or suspend its performance of the Contract until arrangements as to payment or credit have been established which are satisfactory to GBRf;
  - charge the Customer:
    - interest on the overdue amount from the due date until payment is made in full both before and after any judgment, at four percent (4%) per annum over the HSBC Bank plc base lending rate from time to time (accruing on a daily basis and compounded quarterly);
    - the cost of obtaining judgment or payment to include all reasonable professional costs (including legal fees) and other costs of issuing proceedings or otherwise pursuing a debt recovery procedure;
  - exercise its lien in accordance with Condition 13.
- 129 All payments payable by the Customer to GBRf under these Conditions will become due immediately on its termination.
- 1210 The parties acknowledge that a reasonable allowance for the price of fuel used by GBRf in providing the 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 GBRf inclusive of fuel duty exceeds fuel price assumptions notified to the Customer by GBRf from time to time, then GBRf may by written notice invoice a fuel surcharge to the Customer ("Fuel Surcharge"). The Fuel Surcharge may be invoiced on a weekly basis and will be calculated to reflect the increase in the average price of fuel delivered to GBRf. Fuel Surcharge invoices shall be paid by the Customer in accordance with Condition 12.3.
- 1211 The Customer acknowledges that GBRf is obliged to pay certain access charges levied by Network Rail or any other infrastructure manager or service provider in respect of its access requirements for the provision of the Services, through an access contract between Network Rail or any other infrastructure manager or service provider and GBRf ("Access Charges"). GBRf shall be entitled to increase the Charges and payments under the Contract in direct proportion to any increase in the level of Access Charges due as a result of GBRf fulfilling its obligations under the Contract from the date of any such increase.
- 13 LIEN**
- 131 GBRf shall have:
- a particular lien on all and each part of a Consignment; and
  - a general lien on all and each part of Consignments in GBRf's possession for all sums due to GBRf from the Customer, whether under the Contract or otherwise.
- 132 If GBRf's lien is not satisfied within 28 days from the date upon which GBRf 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 GBRf in exercising the lien and GBRf will account to the Customer for any surplus.
- 133 GBRf may exercise its lien on its own behalf or as agent for any assignee of its invoices at any time and at any place at its sole discretion whether or not sums have become payable in accordance with Condition 12 and whether or not the contractual carriage has been completed and these Conditions shall continue to apply during the period of exercise of such lien.
- 14 COMPLIANCE**
- 141 Anti-Bribery and Compliance**
- The Customer shall:
- comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption as amended from time to time, including but not limited to the Bribery Act 2010;
  - comply with GBRf's Anti-Bribery and Corruption Policy and Code of Conduct as amended from time to time; and
  - promptly report to GBRf's Compliance Team, in writing at [compliance@gbraillfreight.com](mailto:compliance@gbraillfreight.com), any request or demand for any undue financial or other advantage of any kind received by the Customer in connection with the performance of the Contract.
- 142 Anti-facilitation of tax evasion**
- The Customer shall:
- not engage in any activity, practice or conduct which would constitute either:
    - a UK tax evasion facilitation offence under section 45(5) of the Criminal Finances Act 2017; or
    - a foreign tax evasion facilitation offence under section 46(6) of the Criminal Finances Act 2017;
  - promptly report to GBRf's Compliance Team, in writing at [compliance@gbraillfreight.com](mailto:compliance@gbraillfreight.com), any request or demand from a third party to

facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017; and

- c) be directly liable to GBRf for any breach of Condition 14.2a) by the Customer or any of its 'associated persons' within the meaning of Part 3 of the Criminal Finances Act 2017.

#### 14.3 Data Protection

The Customer shall:

- a) comply with all applicable laws, statutes, regulations and codes relating to the processing of Personal Data (as defined in the relevant legislation) including but not limited to the Data Protection Act 2018 or the General Data Protection Regulation ((EU) 2016/679) as amended and updated from time to time;
- b) ensure that it has and shall continue to maintain adequate security measures (including any reasonable security measures proposed by GBRf from time to time) to safeguard the Personal Data from unauthorised processing or access. Unless agreed otherwise with GBRf, the Customer shall apply equivalent security measures and a degree of care to the Personal Data as the Customer applies to its own Personal Data, which the Customer warrants as providing adequate protection from unauthorised processing or access;
- c) notify GBRf's Data Compliance Team, in writing at [data.compliance@gbrailfreight.com](mailto:data.compliance@gbrailfreight.com), as soon as possible and in any event not later than 24 hours after becoming aware of any potential Personal Data breaches;
- d) at the written direction of GBRf, delete or return the Personal Data and all copies thereof to GBRf on termination of the Contract and /or upon delivery of the Goods and/or Services, unless the Customer is required by law to retain a copy of the Personal Data;
- e) assist GBRf in ensuring compliance with this Condition 14.3.

144 Breach of this Condition 14 by the Customer shall be deemed a material breach of the Contract incapable of remedy.

#### 15 FORCE MAJEURE

15.1 GBRf shall not be liable to the Customer as a result of any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event.

15.2 If the Force Majeure Event prevents GBRf from providing any of the Services for more than three (3) months, GBRf shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Customer.

#### 16 LIABILITY

16.1 Nothing in these Conditions excludes or limits GBRf's liability for:

- a) death or personal injury caused by GBRf's negligence;
- b) fraud or fraudulent misrepresentation;
- c) any liability which cannot be legally excluded or limited.

16.2 Subject to Condition 16.1, GBRf is not liable, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise in connection with the Contract for any indirect, special or consequential loss or damage, howsoever arising.

16.3 Subject to Condition 16.1 GBRf is not liable for any loss or damage to Goods which arises from any of the following:

- a) inherent liability to wastage in bulk or weight, latent defect or inherent defect, vice or natural deterioration of the Goods;
- b) any act or omission of the Customer, the Consignor or the Consignee (or any of their agents or sub-contractors);
- c) any loss of or damage to Goods which occurs at any time before commencement of transit at the Departure Point or after delivery at the Arrival Point.

16.4 GBRf is only liable for the Goods subject to and in accordance with these provisions to the Customer and shall have no liability for the Goods or otherwise under the Contract to any Relevant Third Party.

16.5 Subject to Condition 16.1 where an international convention does not compulsorily apply to govern GBRf's liability for loss or damage to the Goods, GBRf's total liability for loss or damage to the Goods shall be limited to £1,300 per tonne of Goods or the cost of the Goods (being the manufacturing, production or purchasing cost excluding VAT), whichever is lesser, capped at £1,000,000 (one million pounds) per incident or series of related incidents. Any declaration of increased value of the Goods by the Customer shall be ineffective.

16.6 Subject to Conditions 16.1, 16.2, 16.3 and 16.5 the total aggregate liability of GBRf in any calendar year arising out of, or in connection with the performance or contemplated performance of the Contract whether for negligence or breach of contract or any case whatsoever shall in no event exceed the lower of the value of the Charges paid or payable to GBRf for the Services and £250,000 (two hundred and fifty thousand pounds).

16.7 The Charges have been calculated on the basis that GBRf will exclude or limit its liability as set out in these Conditions and the Customer by placing an order agrees that such exclusions and limitations are reasonable and warrants that the Customer shall insure against or bear itself any loss for which GBRf has excluded or limited its liability in these Conditions and GBRf shall have no further liability to the Customer.

16.8 Where an international convention applies compulsorily to govern GBRf's liability for loss, damage or delay to Goods and the convention prevents derogation from its terms, then if this Condition 16 conflicts with the convention, the terms in such convention will govern GBRf's liability to the Customer.

#### 17 TERMINATION

17.1 GBRf may immediately terminate the Contract without payment of compensation or

other damages caused to the Customer solely by such termination by giving notice in writing to the Customer if any one of the following events happens:

- a) the Customer commits a material breach of any of its obligations under the Contract which is incapable of remedy;
- b) the Customer commits a material breach of its obligations under the Contract which is capable of remedy and fails to remedy it or persists in such breach after 30 days of having been required in writing to remedy or desist;
- c) the Customer:
- i. suspends, or threatens to suspend, payment of its debts (whether principal or interest) or is deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;
  - ii. calls a meeting, gives a notice, passes a resolution or files a petition, or an order is made, in connection with the winding up of that party (save for the sole purpose of a solvent voluntary reconstruction or amalgamation);
  - iii. has an application to appoint an administrator made or a notice of intention to appoint an administrator filed or an administrator is appointed in respect of it or all or any part of its assets;
  - iv. has a receiver or administrative receiver appointed over all or any part of its assets or a person becomes entitled to appoint a receiver or administrative receiver over such assets;
  - v. takes any steps in connection with proposing a company voluntary arrangement or a company voluntary arrangement is passed in relation to it, or it commences negotiations with all or any of its creditors with a view to rescheduling any of its debts;
  - vi. has any steps taken by a secured lender to obtain possession of the property on which it has security or otherwise to enforce its security;
  - vii. has any distress, execution or sequestration or other such process levied or enforced on any of its assets; or
  - viii. has any proceeding taken, with respect to it in any jurisdiction to which it is subject, or any event happens in such jurisdiction that has an effect equivalent or similar to any of the events in this Condition 17.1(c); and/or
- d) the Customer ceases, or appears in the reasonable opinion of GBRf likely or is threatening to cease, to carry on all or a substantial part of its business.

#### 18 CONSEQUENCES OF TERMINATION

18.1 The termination of the Contract will be without prejudice to the rights and remedies of either party which may have accrued up to the date of termination.

18.2 On termination of the Contract for any reason whatsoever:

- a) the Customer shall immediately pay to GBRf all of GBRf's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, GBRf shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- b) subject to Condition 18.1, the relationship of the parties will cease save as (and to the extent) expressly provided for in this Condition 18.2;
- c) any provision which expressly or by implication is intended to come into or remain in force on or after termination will continue in full force and effect;
- d) the Customer shall immediately return to GBRf (or, if GBRf so requests by notice in writing, destroy) all of GBRf's property in its possession at the date of termination, including all of its Confidential Information, together with all copies of such Confidential Information and shall certify that it has done so, and shall make no further use of such Confidential Information.

#### 19 CONFIDENTIALITY

19.1 The Customer shall keep and procure to be kept secret and confidential all Confidential Information disclosed or obtained as a result of the relationship of the parties under the Contract and shall not use nor disclose the same save for the purposes of the proper performance of the Contract or with the prior written consent of GBRf.

19.2 The obligations of confidentiality in this Condition 19 do not extend to any Confidential Information which the Customer can show:

- a) is or becomes generally available to the public other than as a result of a breach of the obligations of confidentiality under the Contract; or
- b) was in its written records prior to entering into the Contract and not subject to any confidentiality obligations; or
- c) was or is disclosed to it by a third party entitled to do so; or
- d) the parties agree in writing is not Confidential Information or may be disclosed; or
- e) is required to be disclosed under any Applicable Law, or by order of a court or governmental body or authority of competent jurisdiction.

19.3 The Customer shall not make any announcement or otherwise publicise the existence of or disclose to any person the provisions of the Contract without the prior written consent of GBRf.

#### 20 GENERAL

20.1 The Contract is personal to the Customer. The Customer may not assign, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under the Contract without the prior written consent of GBRf.

20.2 The benefit of the Contract is freely assignable by GBRf and, in the event of any such assignment, all references in the Contract to GBRf are deemed to include its assigns. GBRf may at any time transfer, mortgage, charge or deal with in any manner any or all of its rights and obligations under the Contract to any third party.

20.3 GBRf may sub-contract any or all of its rights and obligations under the Contract as it in its

absolute discretion sees fit.

20.4 No person who is not a party to the Contract (including any employee, officer, agent, representative or subcontractor of either party) shall have the right (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce any provision of the Contract.

20.5 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under the Contract are not subject to the consent of any person that is not a party to the Contract.

20.6 Neither party may pledge the credit of the other party nor represent itself as being the other party nor an agent, partner, employee or representative of the other party and neither party may hold itself out as such nor as having any power or authority to incur any obligation of any nature, express or implied, on behalf of the other. Nothing in the Contract, and no action taken by the parties pursuant to the Contract creates, or is deemed to create, a partnership or joint venture or relationship of employer and employee or principal and agent between the parties and no employee of either party will be deemed to be or have become an employee of the other party.

**20.7 Entire Agreement**

- a) The Contract contains the entire agreement between the parties in relation to its subject matter and supersedes any prior arrangement, understanding written or oral agreements between the parties in relation to such subject matter.
- b) The parties acknowledge that the Contract has not been entered into wholly or partly in reliance on, nor has either party been given, any warranty, statement, promise or representation by the other or on its behalf other than as expressly set out in the Contract.
- c) Each party agrees that the only rights and remedies available to it arising out of or in connection with any warranties, statements, promises or representations will be for breach of contract and irrevocably and unconditionally waives any right it may have to any claim, rights or remedies including any right to rescind the Contract which it might otherwise have had in relation to them.
- d) All warranties and conditions, terms and conditions not set out in the Contract whether implied by statute or otherwise are excluded to the extent permitted by law.
- e) Nothing in this Condition 20.7 will exclude any liability in respect of misrepresentations made fraudulently.

**20.8 Severability of Provisions**

If at any time any part of the Contract is held to be or becomes void or otherwise unenforceable for any reason under any applicable law, the same shall be deemed omitted from the Contract and the validity and/or enforceability of the remaining provisions of the Contract shall not in any way be affected or impaired as a result of that omission.

**20.9 Waiver**

The rights and remedies of either party in respect of the Contract shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by that party to the other nor by any failure of, or delay in ascertaining or exercising any such rights or remedies. Any waiver of any breach of the Contract shall be in writing. The waiver by either party of any breach of the Contract shall not prevent the subsequent enforcement of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

**20.10 Variation**

No purported alteration or variation of the Contract shall be effective unless it is in writing, refers specifically to the Contract and is signed by a duly authorised representative of each of the parties to the Contract.

**20.11 Notices**

- a) Any notices sent under the Contract must be in writing.
- b) Notices may be served in the ways set out in the table below at the addresses set out in the Contract or at such other address as the relevant party may give notice to the other party for the purpose of service of notices under the Contract and, the following table sets out the respective deemed time and proof of service:

Manner of Delivery	Deemed time of delivery	Proof of Service
Personal delivery	On delivery provided delivery is between 9.00am and 5.00pm on a Business Day	properly addressed and delivered
Prepaid first class recorded delivery domestic postal service	9.00am on the second Business Day after posting or at the time and date recorded by the delivery service;	properly addressed prepaid and posted

**21 CLAIMS PROCEDURE**

21.1 GBRf shall have no liability for any loss of, damage to or delay in the delivery of any Goods and/or Containers unless it is advised of the same in writing within 14 days of the completion or termination of carriage by GBRf of the relevant Consignment or of the expected date of completion or termination of carriage provided that in any particular case:

- a) the Customer proves that it was not reasonably possible for the Customer to advise GBRf in writing within the above time period; and
- b) the Customer did notify GBRf of the same within a reasonable time,

then GBRf shall not have the benefit of this Condition 21.1.

21.2 Notwithstanding Condition 21.1, GBRf shall have no liability to the Customer for any claim (including loss of, damage to or delay in the delivery of any Goods and/or Containers) where proceedings have not been commenced (and notified to GBRf) within 12 months of the date of the event allegedly giving rise to the relevant Claim.

**22 LAW AND JURISDICTION**

22.1 The Contract, these Conditions and any issues, disputes or claims arising out of or in connection with it (whether contractual or non-contractual in nature such as claims in tort, from breach of statute or regulation or otherwise) shall be governed by, and construed in accordance with, English law.

22.2 All disputes or claims arising out of or relating to the Contract shall be subject to the exclusive jurisdiction of the English Courts to which the parties irrevocably submit.