



The Food Storage and Distribution Federation

RECOMMENDED CONDITIONS
FOR STORAGE SERVICES

&

RECOMMENDED CONDITIONS
FOR DISTRIBUTION SERVICES

2014 Issue



The Food Storage and Distribution Federation

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The Food Storage and Distribution Federation

The following pages contain our fully revised Recommended Conditions of Business for Storage Services and Recommended Conditions of Business for Distribution Services. Both sets of Conditions have been revised and updated by the FSDF's Legal Advisors to reflect the latest position in respect of applicable legislation and case law.

**WE UNDERLINE THAT THE RECOMMENDED
CONDITIONS OF BUSINESS ARE FOR THE
EXCLUSIVE USE OF FSDF MEMBER
COMPANIES**



The Food Storage and Distribution Federation

EFFECTIVE USE OF THE FSDF RECOMMENDED CONDITIONS FOR STORAGE SERVICES AND DISTRIBUTION SERVICES

Incorporated and used properly, the two sets of recommended conditions lay down sets of rules for the operation of your business. As is generally the case in life, playing according to those rules does not necessarily guarantee that your position will always be upheld but it is possible to increase the prospects for you of achieving the best possible outcome in the event of there being a dispute. The purpose of this document is to clarify the thinking behind them.

This code does not purport to cover comprehensively each and every clause or every eventuality in business life. What it does is to focus on those matters where problems are most likely to arise.

INCORPORATION

You must ensure that the recommended conditions form part of your contract with your customer. Otherwise our conditions will be of no value to you whatsoever. Problems primarily arise with new customers where the first contract may be conducted orally by telephone. Ensure that your staff are trained specifically to draw the attention of new customers to the conditions and confirm this immediately in writing. For future business and existing customers, all company stationery, including quotations, invoices, faxes and emails should carry the following wording:-

"All business of this Company is transacted under the recommended conditions for storage and distribution services of the Food Storage and Distribution Federation, copies of which are available on request"

It is also prudent to ensure that your staff confirm in writing all quotations and/or contracts.

LIMITATION OF LIABILITY

It is always open to you to increase your level of liability to your customers either generally or in relation to specific customers or products and the terms enable the customer to ask for an increased level of liability (and for them to cover the cost of additional insurance up to that increased level). However, under our recommended conditions, your liability is limited to £250 per metric tonne for storage and £2,000 per metric tonne for distribution: see clause 11.7 in both sets of conditions. The difference in limit reflects the differing levels of risk for the two types of service. These limits will always be subject to satisfying the test of "reasonableness" under the Unfair Contracts Terms Act 1977 and they may also be overridden if any legislation is compulsorily applicable, e.g. for international movements where CMR, CIM, Hague-Visby or the Warsaw Convention may apply.

INSURING THE GOODS

Whilst it is always the case that you should have goods in transit liability insurance, or if you are storing, insurance up to the level of the limit in relation to storage of goods provided for in terms (£250 per tonne), under clause 11.9 the responsibility for taking out the normal form of marine insurance is left to your customer. This is the general division of responsibility we recommend although you may decide to opt for a different policy. However, if you do and then forget to insure, there is a risk you may not be able to invoke the limitation of liability in clause 11.7. Our recommendation, in any event, is that you should not offer to insure goods but if you do you must ensure that you have an insurance policy that covers the full value of the goods (check with your broker or insurer). We also recommend that when negotiating cover, it should be agreed with your insurer that they will waive any rights of subrogation against you in the event of a claim.

CUSTOMER OBLIGATIONS

It is important to note that your customers give various warranties regarding such matters as ownership of goods as well as description, condition and packing. These can be particularly important when goods are collected, already secured, for example, in a container: see clause 4. Arising out of any breach by your customer are then the rights vested in you in clause 6 entitling you, amongst other things, either not to collect the goods, to reject them or to require them to be removed.

PAYMENT

Clearly payment for your services is crucial. To encourage prompt payment, provision is made in clause 10.5 for interest pursuant to the Late Payment of Commercial Debts legislation to be added. Furthermore, when your customer may put forward some form of claim, counterclaim or set off in relation to a consignment, the customer is still duty bound to settle your invoices in full in accordance with the usual credit terms.

YOUR LIEN

This is a very important tool in your armoury for ensuring payment. Clause 15 (13 in the Distribution Conditions) gives you a general lien which therefore covers charges outstanding on any consignments whether they are still in your possession or not. Obviously this can only be exercised when goods consigned to you by the customer are still in your possession. When exercising a lien, you should give notice to all parties. Before doing so, you should take legal advice, otherwise you might find that someone who is not your customer is claiming ownership of the goods or that your customer is in administration and either of these situations complicates matters and can lead to costly legal disputes. Investing in legal advice at an early stage can help to mitigate this.

INSURANCE CLAIMS

Should a customer make a claim against you:-

1. Advise the customer to notify his own marine insurers. Also notify your insurers immediately. Your policy will most probably contain a condition that you do so, and if you forget, your insurer may be able to walk away from the claim.
2. If sub-contractors were used, immediately notify them that you will be seeking an indemnity for any liability you may have and ask them to notify their insurers. If they go bust you want their insurer to cover the claim and if they have not notified their insurer that could prejudice your position.
3. Do not allow your customer to withhold payment of your outstanding invoices.
4. If you have, by agreement, insured the goods on behalf of your customer, immediately notify the marine risk insurers, as above.

LAW AND JURISDICTION

The FSDF Conditions, and any contract into which they are incorporated, are governed by and construed in accordance with English law. However, any claim brought by a customer, goods owner or any other party (or by you against another party in relation to the contract to which the terms apply), must be brought in the Courts where the Company/Member has its principal place of business, wherever that may be. For example, if your principal place of business is in Scotland and a customer brings a claim against you, the proceedings must be commenced by the customer in the Courts of Scotland. However, the dispute itself will be subject to the laws of England. The same applies if your principal place of business is in Ireland. The customer must bring his claim before the Irish Courts, but it will still be subject to English law. This prevents you having to sue the customer in their own jurisdiction in relation to a claim to which these terms apply as that could be inconvenient.

SUMMARY

This memorandum is intended to improve your awareness of key provisions within the two sets of recommended conditions and to help you and your staff to incorporate and apply them. They are, however, issued for guidance only and do not have any contractual or legal effect. Should you require further advice or information on specific or general issues please contact the FSDF Offices who can put you in touch with legal advisors.

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The Food Storage and Distribution Federation

Recommended Conditions For Storage Services

The FSDF Recommended Conditions for Storage Services are for the use of FSDF Member Companies only. Enquiries from non-member companies that may wish to use the Conditions of Business should be directed to the FSDF Chief Executive, tel: 0118 988 4468, fax: 0118 988 7035, e-mail: info@fsdf.org.uk

The Customer's attention is drawn specifically to conditions 4, 5, 7, 10, 11, 13, 14, 17, 19 and 21 which exclude or limit the Company's and the Company's subcontractors' liability or require the Customer to indemnify the Company and/or its sub-contractors in certain circumstances. There are also strict time limits within which claims for loss or damage must be notified and proceedings brought. Clause 15 entitles the Company to exercise a lien over goods consigned to it and provides for consequential rights.

To enable the Company to provide the Services to the Customer for the charges quoted the Company excludes and/or limits it's liability for certain types of loss and damage and places a limit on any liability to the Customer.

The Company will not insure the Goods and the Customer and/or the Owner are advised to check their own insurance arrangements having regard to the limitations on the Company's liability and the indemnities being given by the Customer in the Conditions

1. DEFINITIONS

In these Conditions:

the "Company" means the person, body or other entity (including but not limited to a sole trader, partnership, limited partnership, limited liability partnership or company including its servants, employees and agents) agreeing to undertake the Services;

the "Conditions " means these terms and conditions together with any schedule attached to them;

the "Contract" means any agreement by which the Company agrees to and / or does provide the Services;

the "Customer" means the person requesting Services from the Company (and if different, also the person to whom they are supplied) who may or may not also be the Owner of the Goods but

contracts on his own behalf and as agent for such Owner and any person deriving title from such Owner;

“Distribution” means carriage of the Goods. Distribution commences when loading of the delivery or collection vehicle (as appropriate) is complete and ceases when the Goods (or that part thereof forming the particular consignment) are tendered for unloading.

“Distribution Conditions” means the Food Storage and Distribution Federation’s Recommended Conditions for Distribution Services.

“Effective Time” means the time at which the employment of any person (or liabilities relating to that person) are transferred to the Company under TUPE;

“Employee” means a person employed or previously employed by the Transferor and who is, or whose rights are, affected by the TUPE Transfer;

the “Goods ” means the goods and any part thereof (including packaging, pallets, palletainers, converters, associated documents and all other equipment provided with the Goods) to which the Contract relates or which are in the possession of the Company;

the “Owner” means the legal owner of the Goods (including any documents relating thereto, packaging, containers or equipment) and any other person who is or may become entitled to or claims any interest in the Goods including but not limited to possession of the Goods;

“Outside the Scope of the Services” means any treatment which is not capable of performance save with unreasonable inconvenience or extra cost to the Company;

the “Regulations” means the regulations and other literature (if any) published by the Company from time to time which describe the Services provided by the Company and regulate the provision of those Services and as notified to the Customer from time to time in writing. Any changes in such Regulations will be a variation of the Contract and shall take effect as a variation of the Contract immediately upon receipt by the Customer. The Regulations shall form part of the Contract;

the “Services ” means all services which the Company has agreed to provide or does provide for the Customer, except Distribution. Services includes but is not limited to loading and / or unloading that the Company has agreed to or does provide whether loading at the Company’s premises, loading at a collection address, unloading at the Company’s premises or unloading at the delivery address or elsewhere as directed by the Customer or as permitted under these conditions or the Distribution Conditions or as is otherwise appropriate;

“Transferor” means a transferor as defined by TUPE;

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

“TUPE Transfer” means a situation where the Company is a transferee as defined by TUPE as a result of providing or agreeing to provide Services to or for the benefit of the Customer;

the “Value ” means the cost of the Goods to the Customer, the Owner or the Customer’s principal (if he, she or it is not the Owner) at the time of receipt of the Goods by the Company for the performance of the Services.

2. **APPLICATION**

2.1 These Conditions shall apply to every Contract for the provision of Services by the Company to the Customer to the exclusion of all other terms and conditions, including the Customer's own.

2.2

(a) The failure or delay by any party in exercising any right, power or remedy under these Conditions shall not in any circumstances impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise of any right power or remedy under these Conditions shall not in any circumstances preclude any other or further exercise of it or the exercise of any other right, power or remedy.

(b) Any waiver of a breach of, or default under any of the terms of these Conditions shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of these Conditions.

3. **COMPANY'S RESPONSIBILITY FOR GOODS**

3.1 The Company shall provide the Services subject to these Conditions and the Regulations.

3.2 The Company shall perform the Services with reasonable care and skill.

3.3 The Company's responsibilities and obligations in respect of the Goods shall commence as follows:

(a) where the Company has agreed to unload the vehicle which delivers the goods to the Company, at the point at which unloading by the Company commences;

(b) where the Company has not agreed to unload the vehicle which delivers the Goods to the Company, at the point at which all the Goods are unloaded from the delivery vehicle into the Company's loading bay.

3.4 The Company's responsibilities and obligations in respect of the Goods shall cease as follows:

(a) where the Company has agreed to load the Goods onto the delivery vehicle, at the point at which the loading of the Goods (or that part thereof forming the particular consignment) is complete; or

(b) where the Company has not agreed to load the Goods onto the delivery vehicle and does not do so, at the point at which the Goods (or that part thereof forming the particular consignment) are tendered to the carrier for loading; or

(c) when notice is given requiring the Goods to be removed from the Company's possession, custody or control under these Conditions or otherwise as required or permitted by law.

3.5 where the Company agrees to or does undertake Distribution for the Customer, the Distribution Conditions shall apply to that Distribution.

3.6 Where the Company loads the Goods and is also responsible for Distribution, these conditions cease to apply at the point indicated in clause 3.4(a). Once loading is complete the Distribution Conditions apply and the Company's obligations in respect of the Goods are from that point determined under the Distribution Conditions. These Conditions will, however, apply to any unloading carried out by or on behalf of the Company at the delivery address or elsewhere as directed by the Customer or as permitted by these Conditions or the Distribution Conditions or as is otherwise appropriate.

3.7 The Company's obligations are owed to the Customer only.

3.8 Acceptance of possession of the Goods or signature of any consignment note relating to the Goods confirming receipt of the same by the Company is not confirmation by the Company that the Goods are in satisfactory condition or are undamaged or that they are as described in the consignment note or confirmation of the accuracy of the documents accompanying the Goods.

3.9 Absence of a delivery or consignment note shall not justify a refusal by the Customer to pay any of the Company's charges.

3.10 Time shall not be of the essence as regards the performance of the Services.

4. **CUSTOMER'S OBLIGATIONS**

4.1 The Customer accepts these Conditions on its own behalf and as agent for and on behalf of the Owner and warrants to the Company that it has authority to bind such Owner to these conditions in all respects.

4.2 The Customer shall comply with the Regulations.

4.3 The Customer warrants that the Goods are as described to the Company in the consignment note or equivalent document particularly as regards to their nature, weight, quantity, condition and dimensions.

4.4 Without prejudice to Condition 7 below, the Customer warrants that the Goods (including any pallets) are:

- (a) in a wholesome condition;
- (b) properly packed for the performance of the Services;
- (c) in the form, and have at all material times been maintained at, the temperature as may be required by the minimum standards stipulated under the applicable statutory regime for goods of that type then in force;
- (d) not such as to require any special treatment Outside the Scope of the Services or as provided for in the Regulations or otherwise, for instance by virtue of the size, weight, nature or condition of the Goods;
- (e) in a condition where any operation or process to be carried out by the Company can be carried out without further work (other than unpacking) by the Company;

(f) in (and will remain in) a condition in which they can be safely handled and stored without causing damage or injury to persons, premises, equipment or other goods; and

(g) not hazardous or contaminated, do not require a license to handle and do not constitute waste as defined in all applicable legislation.

4.5 The Company shall be entitled to reject Goods that are not in the condition set out in Condition 4.4, are not as warranted in Condition 4.3, or where the Customer is in breach of Condition 4.6.

4.6 The Customer confirms as a condition of the Contract that all information provided by the Customer to the Company whether in relation to the Goods or otherwise will be materially accurate and complete.

4.7 The Company's duties and obligations, including but not limited to in relation to any advice given, are to the Customer only. No third party shall be entitled to rely on any advice given by the Company to the Customer.

4.8 The Customer shall indemnify the Company against any claims, losses, damages, costs, fines, liabilities, penalties, taxes and duties (and all costs and expenses reasonably incurred relating thereto) incurred by or made against the Company resulting wholly or in part from a claim against the Company by a third party who has relied on advice provided to the Customer by the Company.

5. SPECIAL TREATMENT

5.1 If Goods require special treatment (due to their size, weight, nature or condition or any other factor) or where the Goods require treatment that is otherwise Outside the Scope of the Services of the Company then the Customer shall contact the Company and obtain the Company's agreement in writing prior to presentation of the Goods. If this is not done and the Company does not agree in advance to provide such special treatment then the Company shall be entitled to refuse to take delivery of the Goods, or if it discovers the position after having taken delivery, to require the Customer to immediately collect the Goods and in any event the Company shall not be liable for any loss of or damage to the Goods or any associated losses including but not limited to indirect loss, financial loss, consequential loss, loss of profits, loss of goodwill or loss of anticipated savings caused by failure to provide such special treatment.

5.2 The Customer shall indemnify the Company against any losses, damages, claims, fines, penalties, duties, taxes, costs or expenses incurred by or made against the Company as a result (wholly or in part) of the Goods requiring special treatment as envisaged by this clause.

5.3 In the event that the Company elects to provide Services in relation to the Goods notwithstanding the need for special treatment the Company shall be entitled to charge a reasonable sum for the provision of such special treatment over and above its other charges.

6. GOODS IN UNACCEPTABLE CONDITION

If the Company determines that the Goods are not in a condition as required by Condition 4.4 or are likely not to be in such condition and such failure may or is likely to cause damage to other goods or property then;

- (a) the Company shall be entitled either not to collect the Goods or to reject the Goods;
- (b) the Company shall be entitled to serve notice on the Customer and upon receipt of such notice the Customer shall remove the Goods forthwith; or
- (c) if the Company is unable to give such a notice for any reason or if in the Company's reasonable opinion the Goods require immediate removal to avoid or mitigate damage or if the Customer fails to remove the Goods as required under Condition 6(b) then the Company may at the Customer's expense and risk arrange for alternative storage, disposal or destruction of the Goods.

7. **CUSTOMER INDEMNITY**

7.1 In the event that a third party brings a claim against the Company in relation to the Goods and / or the Services and in respect of which these Conditions are held not to apply the Customer shall indemnify and hold harmless the Company and its employees, agents and subcontractors against all claims, losses, damages, costs, fines, liabilities, penalties, taxes and duties (and all costs and expenses reasonably incurred relating thereto) incurred by or made against the Company which exceed the liability and/or the limits of liability that the Company would have incurred or which would have applied had these Conditions applied in respect of the Company's liability to the third party.

7.2 The Customer shall indemnify and hold harmless the Company, its employees, agents and sub-contractors against all claims, losses, damages, costs, fines, liabilities, penalties, taxes and duties (and all costs and expenses reasonably incurred relating thereto) incurred by or made against the Company relating wholly or in part to the nature or condition of the Goods save to the extent that the Company, its employees, agents or sub-contractors may be liable under these Conditions.

7.3 The Customer shall indemnify and hold harmless the Company, its employees, agents and subcontractors against all claims, losses, damages, costs, fines, liabilities, penalties, taxes and duties (and all costs and expenses reasonably incurred relating thereto) incurred by or made against the Company caused wholly or in part by any breach by the Customer of its obligations under the Contract or by the Company complying with the Customer's instructions.

7.4 The Customer shall indemnify the Company against any taxation or duty payable or paid by or demanded from the Company in relation to the Goods together with any costs and expenses which the Company reasonably incurs in connection with any such liability.

8. **RIGHT OF EXAMINATION**

The Company may, but shall not be obliged to, break bulk and open packages and examine the Goods when Goods are presented and at any time thereafter for the purposes of determining whether or not the Goods are in the condition required under Condition 4.4.

9. **STORAGE**

In the absence of agreement by the Company for any special treatment of the Goods pursuant to Condition 5, the Company:

9.1 may treat the Goods in such a way as in its opinion is best able to preserve them and the Company shall exercise reasonable skill and care in exercising its opinion.

9.2 Shall be entitled to store in bulk all Goods of apparently similar nature received from the same Customer and shall not be required to identify individual consignments of Goods so stored. If the Customer requires the Company not to store the Goods in bulk then the Company shall (if prepared to comply) be entitled to a reasonable upward adjustment of its charge for complying with such requirements.

10. **CHARGES**

10.1 The Company shall be entitled to payment of charges in accordance with rates agreed with the Customer, or in default thereof at its usual rates or a reasonable rate. The Company's charges are subject to VAT which shall be paid in addition to the Company's charges.

10.2 The Company may vary its charges at any time by giving written notice to the Customer.

10.3. The Company's charges shall be payable upon demand, by presentation of an invoice, unless otherwise agreed in writing. Where the Company agrees to provide a credit facility such facility shall always be provided on terms that the Company is entitled to withdraw the same with immediate effect in the event of the Customer's breach of the credit terms in respect of any one or more invoices or if the Customer is required or requested in accordance with these Conditions to remove the Goods or the Customer enters into any insolvency process or otherwise seeks to make arrangements with its creditors.

10.4 Where the Company has agreed to fix its charges for a stated period the Company shall nevertheless be entitled to vary such charges in the event that during the period in which the charges are fixed there is an increase in the unit cost to the Company of its energy supply (including but not limited to gas, electricity, diesel or other fuel) which exceeds 5%. In such event the Company shall be entitled to pass on to the Customer that part of the actual increase in the Company's energy costs that relates to or is reasonably apportioned by the Company to the Services. If requested by the Customer the Company shall provide evidence of the unit cost at the date that the charges were fixed and evidence of the increase since that date

10.5 Interest shall be payable in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended from time to time) save that interest calculated at the rates prescribed by the Act shall be payable on all overdue amounts both before and after judgement.

10.6 The Customer shall pay to the Company all the Company's charges to the Customer immediately when due (whether pursuant to any agreed credit period or as provided for in these Conditions or otherwise) without reduction, deferment on account of any claim, counterclaim or set-off.

10.7 The Customer will be charged a reasonable proportion, calculated by the Company, of any expenses necessarily incurred by the Company in complying with the Prevention of Damage by Pests Act 1949 (as amended or re-enacted from time to time) or in complying with any other statutory duties imposed from time to time in relation to the Goods provided

that if the Goods are the direct cause of introduction of pests into the store the Customer shall indemnify the Company against (or reimburse as may be the case) the whole of the expenses of complying with the said Act.

10.8 All the Company's charges, whether invoiced or not, shall become immediately due for payment prior to any Goods ceasing to be in the Company's care, control or possession irrespective of any previously agreed credit period.

10.9 Time shall be of the essence as regards payment of any sums due to or claimed by the Company.

11. **LIMITATION OF LIABILITY**

11.1 The Company shall not be liable for any loss or damage that occurs because of:

- a) acts or omissions by the Customer which directly or indirectly result in loss or damage;
- b) strike, lock out, industrial dispute or other labour disturbance;
- c) factors beyond its reasonable control including but not limited to act of God, earthquake, fire, storm, flood, ice or other inclement weather, war, explosion, actual or threatened acts of terrorism, strike, acts of any government or other lawful authority, riot, civil commotion, epidemic or trade embargo or any failure of electricity or other fuel or equipment;
- d) any cause or event over which the Company has no control and which the Company is unable to prevent with the exercise of reasonable care and effort;
- e) the Company complying with the Customer's or Owner's instructions;
- f) any breach by the Customer of its obligations under the Contract; and / or
- g) the actions of any person for whom the Company is not responsible.

11.2 The Company shall not be liable for any loss or damage that occurs other than because of the Company's negligence, breach of its obligations under the Contract or other duties as imposed by law, wilful misconduct or fraudulent act or omission.

11.3 In no event shall the Company be liable or responsible for indirect, incidental, special or consequential loss or damage, loss of profit, loss of revenue, loss of goodwill or loss of anticipated savings of the Customer or Owner or any other party, howsoever caused, whether or not the Company was aware or should have been aware that such loss or damage may arise.

11.4 The Company shall have no liability for any claim unless;

- a) the Company receives written notice of it within 10 days of the date upon which the Customer became aware of the event giving rise to such claim or would have become aware of the event had the Customer acted with reasonable diligence ("*the Date*"); and

- b) a detailed claim giving sufficient details of the claim and alleged loss to allow the Company to investigate the claim including but not limited to the weight, value and date of delivery into store is submitted to the Company in writing within 21 days of the Date.

11.5 The limitations and exclusions set out in these Conditions shall not apply to death or personal injury caused by the negligence of the Company or resulting from fraud by the Company.

11.6 Except as expressly provided in these Conditions (and except where a person within the United Kingdom deals as a consumer within the meaning of the Unfair Contract Terms Act 1977) all warranties, conditions and other terms implied by law are excluded.

11.7 In any event and subject to the rest of this Condition 11 and save where a higher limit is agreed pursuant to Condition 11.9, the Company's liability to the Customer, Owner or any other party with an interest in the Goods arising out of or in connection with the Services and / or the Goods whether based in contract, tort (including but not limited to negligence), bailment, restitution, equity, arising from statute or otherwise and including but not limited to in respect of loss (including theft), destruction, damage, unavailability, contamination, deterioration, delay, non-delivery, mis-delivery, unauthorised delivery, non-compliance with instructions or obligations, incorrect advice or information, loss or corruption of data, interference with or disruption of computer systems or any event giving rise to any liability of the Customer or Owner to any other person or authority shall never exceed:

- (a) the Value of the Goods or the part thereof that is lost or damaged; or
- (b) £250 per metric tonne of gross weight of that part of the Goods to which the claim relates;

whichever shall be the lesser.

11.8 The Company does not insure the Goods and the Customer shall be responsible for insuring

- (a) the Goods against all risks to their full insurable value and
- (b) any liabilities to the Company arising out of these Conditions or otherwise.

11.9 Where the Customer requires a higher limit of liability than that provided for in Condition 11.7 it must notify the Company in writing of the higher limit it requires and must pay the Company's costs and expenses of obtaining insurance against the Company's increased liabilities by virtue of that higher limit. The higher limit specified will take effect 21 days after receipt of the notice by the Company (and may cease to have effect if it has already taken effect in the circumstances set out in 11.9(a) below) unless:

- (a) the Company notifies the Customer that the Company is unable to obtain insurance cover for the higher limit specified by the Customer in relation to the Company's liabilities in connection with the Goods and / or Services on terms reasonably acceptable to the Company. In the event that the Company serves such notice the higher limit shall not come into effect if it has not already done so or, if it has come into effect, the higher limit shall cease immediately upon receipt

of the notice by the Customer and shall revert to the limit set out in Condition 11.7;

- (b) the Customer has failed to pay the Company's costs and expenses of obtaining insurance for the higher limit of liability specified by the Customer within 7 days of receipt of the Company's invoice in respect of the same.

In either of the situations described in Condition 11.9(a) and 11.9(b) the limit of liability shall be as set out in Condition 11.7 and any increase or potential increase shall not be effective.

11.10 No legal proceedings may be brought against the Company whether by a claim, counterclaim, Part 20 claim or otherwise unless they are issued and/or served within nine months of the event giving rise to the claim.

11.11 Without prejudice to the Company's rights under Condition 10.6 to be paid free from deduction or set off, any limitation of the Company's liability shall be applied to any claim made against the Company by the Customer in determining the value of such claim before any set off or counterclaim is asserted against money due to the Company.

12. **TRANSFER OF GOODS**

12.1 Subject to Conditions 12.2 and 12.4 below the Company will transfer the Goods to another party ("Transferee") on receipt of written authorisation from the Owner or the Customer save that the Company shall be entitled to refuse such transfer until all sums due to or claimed by the Company from the Customer have been paid..

12.2 The transfer of the Goods will only occur when the Company has received from the Transferee a written notification of the Transferee's acceptance of these Conditions and the Regulations (together with any revised rate of charging referred to in the note to this Condition) and any other provisions of the Contract stating that the Transferee shall be bound as if he were the original Customer.

12.3 The Transferee or the Owner or the Customer shall pay to the Company the reasonable costs of transferring the Goods.

12.4 The Owner and / or Customer guarantees payment to the Company of any charges accruing in respect of the Goods and / or Services provided to the Transferee during the period of 14 days after the transfer and the Company shall be entitled to exercise and / or maintain any lien to which the Company was entitled prior to the transfer whether such lien had been exercised prior to the transfer or not.

12.5 Any transfer requested pursuant to Condition 12 shall constitute a removal of the Goods (or part thereof to which the requested transfer relates) under Condition 10.8.

(Note: Charges made to the Transferee will not necessarily be at the same rate as the charges to the original Customer).

13. **SUB-CONTRACTORS**

13.1 The Company may engage sub-contractors for the purpose of fulfilling the Contract in whole or in part and may transfer at its own expense any Goods between or within

stores. The Company contracts for itself and as agent of and trustee for its sub-contractors and any such sub-contractors shall be entitled to the benefit of these Conditions and the Regulations and shall be under no greater liability than and in addition to that of the Company under the Conditions.

13.2 The Customer and the Owner agree not to bring any claim against any sub-contractor, employee or agent.

13.3 If the Customer requests that the Company arranges for another party to perform for the Customer any services (including but not limited to the Services or any part thereof) any services arranged pursuant to such a request are arranged by the Company on the terms that the Company acts as the agent of the Customer and is in no way responsible for or liable to the Customer for the provision of the services so arranged.

13.4 The Customer and the Owner jointly and severally indemnify the Company against all claims, losses, damages, costs, fines, liabilities, penalties, taxes and duties (and all costs and expenses reasonably incurred relating thereto) incurred by or made against the Company arising as a result (wholly or in part) of:

- (a) a breach by the Customer or the Owner of Conditions 13.1, 13.2 or 13.3; or
- (b) a claim by a third party engaged pursuant to clause 13.3; or
- (c) a claim by a subcontractor, agent or employee against the Company in relation to the Contract and / or the Goods and / or the Services to the extent that such claim exceeds the amount for which the Company is liable under these Conditions.

14. **REMOVAL AND DISPOSAL OF GOODS**

14.1 The Company may at any time give not less than 14 days' written notice to the Customer requiring the Customer to remove the Goods. In the case of perishable goods, the Company shall only be required to give the Customer 3 days' written notice.

14.2 If the Goods are not so removed then the Company shall be entitled after the expiration of such notice (or with immediate effect if reasonably necessary) to give not less than 14 days' written notice (3 days in the case of perishable goods) of the Company's intention to sell or otherwise dispose of the Goods and deduct from any proceeds (if the Goods are sold) all outstanding charges, any interest due, and the cost of disposal and upon the expiration of such further notice, so to deal (accounting to the Customer for the net proceeds of sale, if any, after such deductions).

14.3 If the Goods are not removed (all sums due to or claimed by the Company from the Company having been paid in full in cleared funds) upon the expiry of the notice given under clause 14.2 then the Company may sell or otherwise dispose of the Goods.

14.4 Notice or action by the Company under this Condition shall not in itself terminate the Contract.

14.5 The Company's charges shall continue to accrue after the service of any notice under Condition 14 and shall continue to do so until the Goods are removed, whether by the Customer or pursuant to action by the Company under Condition 14.2. The Customer

will pay the Company the costs of sale or other disposal of the Goods or any part thereof in addition.

14.6 For the avoidance of doubt, neither the Customer, the Owner or any other party will be entitled to remove the Goods until all sums due to or claimed by the Company from the Customer have been paid in full in cleared funds.

14.7 The Company shall also be entitled to sell the Goods where any tax or duty in relation to them or in relation to other Goods in the Company's possession pursuant to arrangements with the Customer and / or the Owner is claimed or demanded from or is paid or is payable by the Company and the Customer fails to pay the same within 7 days of being notified of the liability in writing.

14.8 The Company shall not be liable for any alleged failure to achieve a sufficient sale price for the Goods in the event that they are sold or otherwise disposed of by the Company. Any sale or disposal of the Goods or any part thereof pursuant to Condition 14 or as otherwise permitted by law shall be at the Customer's entire risk and expense and the Company is entitled to sell or dispose of the Goods or any part thereof in such manner, by such method and at such price (if a sale is appropriate and achievable in the Company's reasonable opinion as opposed to other forms of disposal) as the Company considers appropriate.

15. **LIEN**

15.1 The Company shall (on its own behalf and as agent for any assignee of its invoices) have a general and a particular lien on the Goods and any documents relating thereto for all sums (whether due or not) payable to or claimed by the Company from the Customer or the Owner on any account (whether relating to the Goods or not) or otherwise claimed in respect of the Goods or other property of the Owner.

15.2 When the Company accounts to the Customer for any balance remaining after payment of any sum due to the Company and the costs of sale or disposal the Company shall be discharged of any liability whatsoever in respect of the Goods.

15.3 Where a lien secures sums payable to or claimed by the Company it shall continue to apply in relation to those sums notwithstanding any transfer of ownership of the Goods or a change of customer.

15.4 Charges shall continue to accrue in respect of any Goods detained under a lien or where the Company is required to retain them by any competent authority.

16. **NOTICES**

Any notice given pursuant to the Contract or otherwise in relation to the Goods or Services shall be duly given if left at or sent by first class pre-paid post to the last known address of the other party or by facsimile to the last notified number evidenced by a successful transmission record, or by e-mail to the last address from which the other party corresponded; and shall if posted be deemed to have been given 2 working days after posting and if by facsimile or e-mail, one working day after sending.

17. **FORCE MAJEURE**

The Company shall not in any event be responsible for any delay in or failure to perform the Services which is caused (wholly or in part) by factors beyond its reasonable control including but not limited to act of God, earthquake, fire, storm, flood, ice or other inclement weather, war, explosion, actual or threatened acts of terrorism, strike, acts of any government or other lawful authority, riot, civil commotion, epidemic, defaults or omissions of the Customer or the Owner (or their agents, employees or subcontractors) or trade embargo or any failure of electricity or other fuel or equipment.

18. **DATA AND CONFIDENTIALITY**

18.1 The Company may use data supplied by or on behalf of the Customer for any purpose appropriate in connection with the performance of the Company's obligations or the exercise of the Company's rights or for business planning by the Company. The Company may share that data with any party providing services to the Company for the purposes of that provision, with any government authority where appropriate and as otherwise required or permitted by law.

18.2 Subject to 18.1, the Company and the Customer shall each keep confidential information or data supplied by or on behalf of the other which is expressed to be confidential or which is of such a nature that it would be regarded as confidential by a reasonable person, except as required by law or to the extent that such data or confidential information is already in the public domain otherwise than as a result of a breach of this or any other obligation of confidentiality on the part of the disclosing party.

19. **TUPE AND SERVICE PROVISION CHANGE**

19.1 Where there is a TUPE Transfer, the Customer will indemnify the Company against all liability and expense which the Company may incur in connection with:

- (a) the employment or the termination of employment before the Effective Time of any Employee;
- (b) any failure by the Transferor to comply with its legal obligations in respect of any of the Employees;
- (c) the transfer to the Company by virtue of TUPE of the employment of any person or the applicability of terms of employment, other than those previously notified in writing to, and previously accepted by, the Company;
- (d) any act or omission of the Transferor on or before the Effective Time for which the Company becomes liable by virtue of TUPE; or
- (e) the Transferor's failure to comply with its obligations under regulation 13 of TUPE.

20. **SEVERABILITY**

If any part of these Conditions is judged by any competent court or Arbitration Tribunal to be invalid or unenforceable, the remaining part or parts shall continue in full force and effect.

21. **ENTIRE AGREEMENT**

21.1 These Conditions, the Regulations and any document in which the Company's charges or services are set out, quoted or agreed set out the entire agreement between the Company and the Customer in relation to the matters to which they relate and the Customer hereby acknowledges that it has not relied upon any oral or written representations made to it by the Company, any of its employees, representatives or agents and there are no agreements, understandings, promises or conditions between the parties other than as set out in these Conditions and the Regulations.

21.2 The Customer irrevocably and unconditionally waives, releases and discharges any right it may have to seek rescission or termination of the Contract or to claim damages for any misrepresentation whether or not contained in these Conditions or for breach of any warranty not contained in these Conditions unless such misrepresentation or warranty was made fraudulently.

22. **GOVERNING LAW**

These Conditions and any Contract to which they apply shall be governed by and construed in accordance with English law and any claim arising out of or relating to the Contract, the Services or the Goods shall be subject to the exclusive jurisdiction of the Courts where the Company has its principal place of business.

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The Food Storage and Distribution Federation

Recommended Conditions For Distribution Services

The FSDF Recommended Conditions for Storage Services are for the use of FSDF Member Companies only. Enquiries from non-member companies that may wish to use the Conditions of Business should be directed to the FSDF Chief Executive, tel: 0118 988 4468, fax: 0118 988 7035, e-mail: info@fsdf.org.uk

The Customer's attention is drawn specifically to conditions 4, 5, 7, 10, 11, 12, 15, 17 and 19 which exclude or limit the Company's and the Company's subcontractors' liability and require the Customer to indemnify the Company and/or its sub-contractors in certain circumstances. There are also strict time limits within which claims for loss or damage must be notified and proceedings brought. Clause 13 entitles the Company to exercise a lien over goods consigned to it and provides for consequential rights.

To enable the Company to provide the Services to the Customer for the charges quoted the Company excludes and/or limits its liability for certain types of loss and damage and places a limit on any liability to the Customer.

The Company will not insure the Goods and the Customer and/or the Owner are advised to check their own insurance arrangements having regard to the limitations on the Company's liability and the indemnities being given by the Customer in the Conditions

1. DEFINITIONS

In these Conditions:

the "Company" means the person, body or other entity (including but not limited to a sole trader, partnership, limited partnership, limited liability partnership or company including its servants, employees and agents) agreeing to undertake the Services to which these Conditions apply;

the "Conditions " means these terms and conditions together with any schedule attached to them;

the "Contract" means any agreement by which the Company agrees to (and / or does) provide the Services;

the "Customer" means the person requesting Services from the Company (and if different, also the person to whom they are supplied) who may or may not also be the Owner of the Goods but contracts on his own behalf and as agent for such Owner and any person deriving title from such Owner or otherwise having an interest in or the right to possession of the Goods;

“Distribution” means carriage of the Goods. Distribution commences when loading of the delivery or collection vehicle (as appropriate) is complete and ceases when the Goods (or that part therefore forming the particular consignment) are tendered for unloading;

“Effective Time” means the time at which the employment of any person (or liabilities relating to that person) are transferred to the Company under TUPE;

“Employee” means a person employed or previously employed by the Transferor and who is, or whose rights are, affected by the TUPE Transfer;

the “Goods ” means the goods or any part thereof (including packaging, pallets, palletainers, converters, associated documents and all other equipment provided with the Goods) to which the Contract relates or which are in the possession of the Company;

the “Owner” means the legal owner of the Goods (including any documents relating thereto, packaging, containers or equipment) and any other person who is or may become entitled to or claims any interest in the Goods including but not limited to possession of the Goods;

“Outside the Scope of the Services” means any treatment which is not capable of performance save with unreasonable inconvenience or extra cost to the Company;

the “Regulations” means the regulations and other literature (if any) published by the Company from time to time which describe the Services provided by the Company and regulate the provision of those Services and as notified to the Customer from time to time in writing. Any changes in such Regulations will be a variation of the Contract and shall take effect as a variation of the Contract immediately upon receipt by the Customer. The Regulations shall form part of the Contract;

the “Services ” means Distribution which the Company agrees to or does provide;

the “Storage Conditions” means the Food Storage and Distribution Federation’s Recommended Conditions for Storage Services;

“Transferor” means a transferor as defined by TUPE;

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

“TUPE Transfer” means a situation where the Company is a transferee as defined by TUPE as a result of providing or agreeing to provide Services to or for the benefit of the Customer;

the “Value ” means the cost of the Goods to the Customer, the Owner or the Customer’s principal (if he, she or it is not the Owner) at the time of receipt of the Goods by the Company for the performance of the Services.

2. **APPLICATION**

2.1 These Conditions shall apply to every Contract for the provision of Services by the Company to the Customer to the exclusion of all other terms and conditions, including the Customer's own.

2.2

- (a) The failure or delay by any party in exercising any right, power or remedy under these Conditions shall not in any circumstances impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise of any right power or remedy under these Conditions shall not in any circumstances preclude any other or further exercise of it or the exercise of any other right, power or remedy.
- (b) Any waiver of a breach of, or default under any of the terms of these Conditions shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of these Conditions.

3. **COMPANY'S RESPONSIBILITY FOR GOODS**

3.1 The Company is not and does not contract as a common carrier. All Services are provided subject to these Conditions and the Regulations.

3.2 The Company shall perform the Services with reasonable care and skill.

3.3 The Company's responsibilities and obligations in respect of the Goods commence when loading of the Goods (or that part thereof forming the particular consignment) onto the delivery vehicle is complete and cease when either:

- (a) the Goods are tendered for unloading; or
- (b) the Goods are required to be removed from the Company's possession, custody or control under these Conditions or otherwise as required or permitted by law.

3.4 Where the Company agrees to or does undertake any services beyond the Services (including but not limited to where the Company loads the Goods on to the delivery vehicle and where the Goods are not delivered for any reason and are retained by the Company or by a third party on its behalf) for the Customer the Storage Conditions shall apply to those services.

3.5 Where the Company loads the Goods onto the delivery vehicle the Company's obligations and responsibilities in respect of each distinct part of the Goods (for instance, each box or pallet) commences at the point at which that part of the Goods is first handled by the Company. Such loading shall be carried out under the Storage Conditions.

3.6 Acceptance of possession of the Goods or signature of any consignment note relating to the Goods confirming receipt of the same by the Company is not confirmation by the Company that the Goods are in satisfactory condition or are undamaged or that they are as described in the consignment note or confirmation of the accuracy of the documents accompanying the Goods.

3.7 Unless agreed otherwise in writing by the Company and the Customer, the Customer will provide (or will procure that the consignor or the consignee as appropriate will provide) suitable facilities and equipment for and will procure the safe and prompt loading and unloading of the Goods.

3.8 The Customer will pay demurrage at the Company's standard rate if the vehicle is delayed for more than 30 minutes beyond the time reasonably needed for loading or unloading or if adequate facilities and equipment are not present at the collection or delivery address as appropriate so as to prevent loading or unloading within a reasonable time or at

all. The Customer will pay demurrage and the Company's standard storage charges (or in the absence of the Company having any or adequate storage facilities or space available within such facilities, such sum as the Company is charged by a third party for storage of the Goods plus a 10% arrangement fee) if delivery is refused. Any such storage will be subject to the Storage Conditions.

3.9 Where the Company is unable (or unwilling) to deliver the Goods because:

- (a) there is nobody available to take delivery at the delivery address notified to the Company by the Customer; or
- (b) delivery is refused for any reason; or
- (c) it is not possible to make delivery at all or within a reasonable time because of the absence of appropriate facilities or equipment for unloading; or
- (d) the Customer has failed to remove the Goods from the Company's possession having been requested to do so under Condition 6;

to the extent that the Company remains in possession of the Goods after an event referred to in this clause the Storage Conditions shall apply including as regards the ability of the Company to sell or otherwise dispose of the Goods.

3.10 Notice or action by the Company under this Condition shall not in itself terminate the Contract.

3.11 The Company's charges shall continue to accrue after the service of any notice under the Storage Conditions and shall continue to do so until the Goods are removed, whether by the Customer or pursuant to action by the Company under the Storage Conditions.

3.12 Absence of a delivery or consignment note shall not justify a refusal by the Customer to pay any of the Company's charges.

3.13 Time shall not be of the essence as regards the performance of the Services.

4. **CUSTOMER'S OBLIGATIONS**

4.1 The Customer accepts these Conditions on its own behalf and as agent for and on behalf of the Owner and warrants to the Company that it has authority to bind such Owner to these conditions in all respects.

4.2 The Customer shall comply with the Regulations.

4.3 The Customer warrants that the Goods are as described to the Company in the consignment note or equivalent document particularly as regards to their nature, weight, quantity, condition and dimensions.

4.4 Without prejudice to Condition 7 below, the Customer warrants that the Goods (including any pallets) are:

- (a) in a wholesome condition;

- (b) properly packed for the performance of the Services;
- (c) in the form, and have at all material times been maintained at, the temperature as may be required by the minimum standards stipulated under the applicable statutory regime for goods of that type then in force;
- (d) not such as to require any special treatment Outside the Scope of the Services or as provided for in such as to the Regulations or otherwise, for instance by virtue of the size, weight, nature or condition of the Goods;
- (e) in a condition where any operation or process to be carried out by the Company can be carried out without further work (other than unpacking) by the Company;
- (f) in (and will remain in) a condition in which they can be safely handled and stored without causing damage or injury to persons, premises, equipment or other goods; and
- (g) not hazardous or contaminated, do not require a license to handle and do not constitute waste as defined in all applicable legislation.

4.5 The Company shall be entitled to reject Goods that are not in the condition set out in Condition 4.4, are not as warranted in Condition 4.3, or where the Customer is in breach of Condition 4.6.

4.6 The Customer confirms as a condition of the Contract that all information provided by the Customer to the Company whether in relation to the Goods or otherwise will be materially accurate and complete.

4.7 The Company's duties and obligations, including but not limited to in relation to any advice given, are to the Customer only and no third party shall be entitled to rely on any advice given by the Company to the Customer.

4.8 The Customer shall indemnify the Company against any claims, losses, damages, costs, fines, liabilities, penalties, taxes and duties (and all costs and expenses reasonably incurred relating thereto) incurred by or made against the Company resulting wholly or in part from a claim against the Company by a third party who has relied on advice provided to the Customer by the Company.

5. **SPECIAL TREATMENT**

5.1 If Goods require special treatment (due to their size, weight, nature or condition or any other factor) or where the Goods require treatment that is otherwise Outside the Scope of the Services of the Company then the Customer shall contact the Company and obtain the Company's agreement in writing prior to presentation of the Goods. If this is not done and the Company does not agree in advance to provide such special treatment then the Company shall be entitled to refuse to take delivery of the Goods, or if it discovers the position after having taken delivery, to require the Customer to immediately collect the Goods and in any event the Company shall not be liable for any loss of or damage to the Goods or any associated losses including but not limited to indirect loss, financial loss, consequential loss, loss of profits, loss of goodwill or loss of anticipated savings caused by failure to provide such special treatment.

5.2 The Customer shall indemnify the Company against any losses, damages, claims, fines, penalties, duties, taxes, costs or expenses incurred by or made against the Company as a result (wholly or in part) of the Goods requiring special treatment as envisaged by this clause.

5.3 In the event that the Company elects to provide Services in relation to the Goods notwithstanding the need for special treatment the Company shall be entitled to charge a reasonable sum for the provision of such special treatment over and above its other charges.

6. **GOODS IN UNACCEPTABLE CONDITION**

If the Company determines that the Goods are not in a condition as required by Condition 4.4 or are likely not to be in such condition and such failure may or is likely to cause damage to other goods or property then;

- (a) the Company shall be entitled either not to collect the Goods or to reject the Goods;
- (b) the Company shall be entitled to serve notice on the Customer and upon receipt of such notice the Customer shall remove the Goods forthwith (any storage pending such removal shall be under the Storage Conditions); or
- (c) if the Company is unable to give such a notice for any reason or if in the Company's reasonable opinion the Goods require immediate removal to avoid or mitigate damage or if the Customer fails to remove the Goods as required under Condition 6(b) then the Company may at the Customer's expense and risk arrange for alternative storage, disposal or destruction of the Goods.

7. **CUSTOMER INDEMNITY**

7.1 In the event that a third party brings a claim against the Company in relation to the Goods and / or the Services and in respect of which these Conditions are held not to apply the Customer shall indemnify and hold harmless the Company and its employees, agents and subcontractors against all claims, losses, damages, costs, fines, liabilities, penalties, taxes and duties (and all costs and expenses reasonably incurred relating thereto) incurred by or made against the Company which exceed the liability and/or the limits of liability that the Company would have incurred or which would have applied had these Conditions applied in respect of the Company's liability to the third party.

7.2 The Customer shall indemnify and hold harmless the Company, its employees, agents and sub-contractors against all claims, losses, damages, costs, fines, liabilities, penalties, taxes and duties (and all costs and expenses reasonably incurred relating thereto) incurred by or made against the Company relating wholly or in part to the nature or condition of the Goods save to the extent that the Company, its employees, agents or sub-contractors may be liable under these Conditions.

7.3 The Customer shall indemnify and hold harmless the Company, its employees, agents and subcontractors against all claims, losses, damages, costs, fines, liabilities, penalties, taxes and duties (and all costs and expenses reasonably incurred relating thereto) incurred by or made against the Company caused wholly or in part by any breach by the Customer of its obligations under the Contract or by the Company complying with the Customer's instructions.

7.4 The Customer shall indemnify the Company against any taxation or duty payable or paid by or demanded from the Company in relation to the Goods together with any costs and expenses which the Company reasonably incurs in connection with any such liability.

8. **RIGHT OF EXAMINATION**

The Company may, but shall not be obliged to, break bulk and open packages and examine the Goods when Goods are presented and at any time thereafter for the purposes of determining whether or not the Goods are in the condition required under Condition 4.4.

9. **STORAGE**

In the absence of agreement by the Company for any special treatment of the Goods pursuant to Condition 5, the Company may treat the Goods in such a way as in its opinion is best able to preserve them and the Company shall exercise reasonable skill and care in exercising its opinion. Any and all charges occasioned thereby will be for the account of the Customer. All storage or services beyond the Services will be carried out under the Storage Conditions.

10. **CHARGES**

10.1 The Company shall be entitled to payment of charges in accordance with rates agreed with the Customer, or in default thereof at its usual rates or a reasonable rate. The Company's charges are subject to VAT which shall be paid in addition to the Company's charges.

10.2 The Company may vary its charges at any time by giving written notice to the Customer.

10.3. The Company's charges shall be payable upon demand, by presentation of an invoice, unless otherwise agreed in writing. Where the Company agrees to provide a credit facility such facility shall always be provided on terms that the Company is entitled to withdraw the same with immediate effect in the event of the Customer's breach of the credit terms in respect of any one or more invoices or if the Customer is required or requested in accordance with these Conditions to remove the Goods or the Customer enters into any insolvency process or otherwise seeks to make arrangements with its creditors.

10.4 Where the Company has agreed to fix its charges for a stated period the Company shall nevertheless be entitled to vary such charges in the event that during the period in which the charges are fixed there is an increase in the unit cost to the Company of its energy supply (including but not limited to gas, electricity, diesel or other fuel) which exceeds 5%. In such event the Company shall be entitled to pass on to the Customer that part of the actual increase in the Company's energy costs that relates to or is reasonably apportioned by the Company to the Services. If requested by the Customer the Company shall provide evidence of the unit cost at the date that the charges were fixed and evidence of the increase since that date

10.5 Interest shall be payable in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended from time to time) save that interest calculated at the rates prescribed by the Act shall be payable on all overdue amounts both before and after judgement.

10.6 The Customer shall pay to the Company the Company's charges to the Customer immediately when due (whether pursuant to any agreed credit period or as provided for in these Conditions or otherwise) without reduction, deferment on account of any claim, counterclaim or set-off.

10.7 The Customer will be charged a reasonable proportion, calculated by the Company, of any expenses necessarily incurred by the Company in complying with the Prevention of Damage by Pests Act 1949 (as amended or re-enacted from time to time) or in complying with any other statutory duties imposed from time to time in relation to the Goods provided that if the Goods are the direct cause of introduction of pests into the store the Customer shall indemnify the Company against (or reimburse as may be the case) the whole of the expenses of complying with the said Act.

10.8 All the Company's charges in relation to these Goods, whether invoiced or not, shall become immediately due for payment prior to unloading of the Goods (or any part thereof forming a particular consignment) commencing irrespective of any previously agreed credit period.

10.9 Time shall be of the essence as regards payment of any sum due to or claimed by the Company.

11. **LIMITATION OF LIABILITY**

11.1

The Company shall not be liable for any loss or damage that occurs because of:

- (a) acts or omissions by the Customer which directly or indirectly result in loss or damage;
- (b) strike, lock out, industrial dispute or other labour disturbance;
- (c) factors beyond its reasonable control including but not limited to act of God, earthquake, fire, storm, flood, ice or other inclement weather, war, explosion, actual or threatened acts of terrorism, strike, acts of any government or other lawful authority, riot, civil commotion, epidemic or trade embargo or any failure of electricity or other fuel or equipment;
- (d) any cause or event over which the Company has no control and which the Company is unable to prevent with the exercise of reasonable care and effort;
- (e) the Company complying with the Customer's or Owner's instructions;
- (f) any breach by the Customer of its obligations under the Contract; and / or
- (g) the actions of any person for whom the Company is not responsible.

11.2 The Company shall not be liable for any loss or damage that occurs other than because of the Company's negligence, breach of its obligations under the Contract or other duties as imposed by law, wilful misconduct or fraudulent act or omission.

11.3 In no event shall the Company be liable or responsible for indirect, incidental, special or consequential loss or damage, loss of profit, loss of revenue, loss of goodwill or loss of

anticipated savings of the Customer or Owner or any other party, howsoever caused, whether or not the Company was aware or should have been aware that such loss or damage may arise.

11.4 The Company shall have no liability for any claim unless;

- a) the Company receives written notice of it within 10 days of the date upon which the Customer became aware of the event giving rise to such claim or would have become aware of the event had the Customer acted with reasonable diligence (“*the Date*”); and
- b) a detailed claim giving sufficient details of the claim and alleged loss to allow the Company to investigate the claim including but not limited to the weight, value and date of delivery into store is submitted to the Company in writing within 21 days of the Date.

11.5 The limitations and exclusions set out in these Conditions shall not apply to death or personal injury caused by the negligence of the Company or resulting from fraud by the Company.

11.6 Except as expressly provided in these Conditions (and except where a person within the United Kingdom deals as a consumer within the meaning of the Unfair Contract Terms Act 1977) all warranties, conditions and other terms implied by law are excluded.

11.7 In any event and subject to the rest of this Condition 11 and save where a higher limit is agreed pursuant to Condition 11.10, the Company's liability to the Customer, Owner or any other party with an interest in the Goods arising out of or in connection with the Services and / or the Goods whether based in contract, tort (including but not limited to negligence), bailment, restitution, equity, arising from statute or otherwise and including but not limited to in respect of loss (including theft), destruction, damage, unavailability, contamination, deterioration, delay, non-delivery, mis-delivery, unauthorised delivery, non-compliance with instructions or obligations, incorrect advice or information, loss or corruption of data, interference with or disruption of computer systems or any event giving rise to any liability of the Customer or Owner to any other person or authority shall never exceed:

- (a) the Value of the Goods or the part thereof that is lost or damaged; or
- (b) £2,000 per metric tonne of gross weight of the Goods or that part of the Goods to which the claim relates;

whichever shall be the lesser.

11.8 Subject to the rest of this Condition 11 the Company's liability for loss or damage as a result of failure to deliver or arrange to deliver the Goods in a reasonable time shall never exceed the amount of the Company's charges in respect of the carriage in question.

11.9 The Company does not insure the Goods and the Customer shall be responsible for insuring

- (a) the Goods against all risks to their full insurable value and

(b) any liabilities to the Company arising out of these Conditions or otherwise.

11.10 Where the Customer requires a higher limit of liability than that provided for in Condition 11.7 it must notify the Company in writing of the higher limit it requires and must pay the Company's costs and expenses of obtaining insurance against the Company's increased liabilities by virtue of that higher limit. The higher limit specified will take effect 21 days after receipt of the notice by the Company (and may cease to have effect if it has already taken effect in the circumstances set out in 11.10(a) below) unless:

- (c) the Company notifies the Customer that the Company is unable to obtain insurance cover for the higher limit specified by the Customer in relation to the Company's liabilities in connection with the Goods and / or Services on terms reasonably acceptable to the Company. In the event that the Company serves such notice the higher limit shall not come into effect if it has not already done so or, if it has come into effect, the higher limit shall cease immediately upon receipt of the notice by the Customer and shall revert to the limit set out in Condition 11.7;
- (d) the Customer has failed to pay the Company's costs and expenses of obtaining insurance for the higher limit of liability specified by the Customer within 7 days of receipt of the Company's invoice in respect of the same.

In either of the situations described in Condition 11.10(a) and 11.10(b) the limit of liability shall be as set out in Condition 11.7 and any increase or potential increase shall not be effective.

11.11 No legal proceedings may be brought against the Company whether by a claim, counterclaim, Part 20 claim or otherwise unless they are issued and/or served within nine months of the event giving rise to the claim.

11.12 Without prejudice to the Company's rights under Condition 10.6 to be paid free from deduction or set off, any limitation of the Company's liability shall be applied to any claim made against the Company by the Customer in determining the value of such claim before any set off or counterclaim is asserted against money due to the Company.

12. **SUB-CONTRACTORS**

12.1 The Company may engage sub-contractors for the purpose of fulfilling the Contract in whole or in part and may transfer at its own expense any Goods between or within stores. The Company contracts for itself and as agent of and trustee for its sub-contractors and any such sub-contractors shall be entitled to the benefit of these Conditions and the Regulations and shall be under no greater liability than and in addition to that of the Company under the Conditions.

12.2 The Customer and the Owner agree not to bring any claim against any sub-contractor, employee or agent.

12.3 If the Customer requests that the Company arranges for another party to perform for the Customer any services (including but not limited to the Services or any part thereof) any services arranged pursuant to such a request are arranged by the Company on

the terms that the Company acts as the agent of the Customer and is in no way responsible for or liable to the Customer for the provision of the services so arranged.

12.4 The Customer and the Owner jointly and severally indemnify the Company against all claims, losses, damages, costs, fines, liabilities, penalties, taxes and duties (and all costs and expenses reasonably incurred relating thereto) incurred by or made against the Company arising as a result (wholly or in part) of:

- (a) a breach by the Customer or the Owner of Conditions 12.1, 12.2 or 12.3; or
- (b) a claim by a third party engaged pursuant to clause 12.3; or
- (c) a claim by a subcontractor, agent or employee against the Company in relation to the Contract and / or the Goods and / or the Services to the extent that such claim exceeds the amount for which the Company is liable under these Conditions.

13. **LIEN**

13.1 The Company shall (on its own behalf and as agent for any assignee of its invoices) have a general and a particular lien on the Goods and any documents relating thereto for all sums (whether due or not) payable to or claimed by the Company from the Customer or the Owner on any account (whether relating to the Goods or not) or otherwise claimed in respect of the Goods or other property of the Owner.

13.2 When the Company accounts to the Customer for any balance remaining after payment of any sum due to the Company and the costs of sale or disposal the Company shall be discharged of any liability whatsoever in respect of the Goods.

13.3 Where a lien secures sums payable to or claimed by the Company it shall continue to apply in relation to those sums notwithstanding any transfer of ownership of the Goods or a change of customer.

13.4 Charges shall continue to accrue in respect of any Goods detained under a lien or where the Company is required to retain them by any competent authority.

14. **NOTICES**

Any notice given pursuant to the Contract or otherwise in relation to the Goods or Services shall be duly given if left at or sent by first class pre-paid post to the last known address of the other party or by facsimile to the last notified number evidenced by a successful transmission record, or by e-mail to the last address from which the other party corresponded; and shall if posted be deemed to have been given 2 working days after posting and if by facsimile or e-mail, one working day after sending.

15. **FORCE MAJEURE**

The Company shall not in any event be responsible for any delay in or failure to perform the Services which is caused (wholly or in part) by factors beyond its reasonable control including but not limited to act of God, earthquake, fire, storm, flood, ice or other inclement weather, war, explosion, actual or threatened acts of terrorism, strike, acts of any government or other

lawful authority, riot, civil commotion, epidemic, defaults or omissions of the Customer or the Owner (or their agents, employees or subcontractors) or trade embargo or any failure of electricity or other fuel or equipment.

16. **DATA AND CONFIDENTIALITY**

16.1 The Company may use data supplied by or on behalf of the Customer for any purpose appropriate in connection with the performance of the Company's obligations or the exercise of the Company's rights or for business planning by the Company. The Company may share that data with any party providing services to the Company for the purposes of that provision, and with any government authority where appropriate and as otherwise required or permitted by law.

16.2 Subject to 16.1, the Company and the Customer shall each keep confidential information or data supplied by or on behalf of the other which is expressed to be confidential or which is of such a nature that it would be regarded as confidential by a reasonable person, except as required by law or to the extent that such data or confidential information is already in the public domain otherwise than as a result of a breach of this or any other obligation of confidentiality on the part of the disclosing party.

17. **TUPE AND SERVICE PROVISION CHANGE**

17.1 Where there is a TUPE Transfer, the Customer will indemnify the Company against all liability and expense which the Company may incur in connection with:

- (a) the employment or the termination of employment before the Effective Time of any Employee;
- (b) any failure by the Transferor to comply with its legal obligations in respect of any of the Employees;
- (c) the transfer to the Company by virtue of TUPE of the employment of any person or the applicability of terms of employment, other than those previously notified in writing to, and previously accepted by, the Company;
- (d) any act or omission of the Transferor on or before the Effective Time for which the Company becomes liable by virtue of TUPE; or
- (e) the Transferor's failure to comply with its obligations under regulation 13 of TUPE.

18. **SEVERABILITY**

If any part of these Conditions is judged by any competent court or Arbitration Tribunal to be invalid or unenforceable, the remaining part or parts shall continue in full force and effect.

19. **ENTIRE AGREEMENT**

19.1 These Conditions, the Regulations and any document in which the Company's charges or services are set out, quoted or agreed set out the entire agreement between the Company and the Customer in relation to the matters to which they relate and the

Customer hereby acknowledges that it has not relied upon any oral or written representations made to it by the Company, any of its employees, representatives or agents and there are no agreements, understandings, promises or conditions between the parties other than as set out in these Conditions and the Regulations.

19.2 The Customer irrevocably and unconditionally waives, releases and discharges any right it may have to seek rescission or termination of the Contract or to claim damages for any misrepresentation whether or not contained in these Conditions or for breach of any warranty not contained in these Conditions unless such misrepresentation or warranty was made fraudulently.

20. GOVERNING LAW

These Conditions and any Contract to which they apply shall be governed by and construed in accordance with English law and any claim arising out of or relating to the Contract, the Services or the Goods shall be subject to the exclusive jurisdiction of the Courts where the Company has its principal place of business.

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