

TERMS AND CONDITIONS ("CONDITIONS")

THE CUSTOMER'S ATTENTION IS DRAWN TO CONDITION 8 WHICH CONTAINS EXCLUSIONS AND LIMITS ON THE COMPANY'S LIABILITY AND WHICH REQUIRE THE CUSTOMER TO INDEMNIFY THE COMPANY IN CERTAIN CIRCUMSTANCES

1. APPLICATION OF THESE CONDITIONS

1.1 Application - These Conditions shall apply to:

- 1.1.1 all Services of any nature whatsoever performed by, or undertaken on behalf of, Solent Stevedores Limited (the "**Company**") in relation to Cargo or Vessels (or any combination of the foregoing);
- 1.1.2 all Vessels which call at a Berth;
- 1.1.3 any person who visits the Premises, utilises, receives or benefits from the Services or the Facilities (or any combination of the foregoing) (the "**Customer**").

Definitions - For the purposes of these Conditions: (a) "**Berth**" means any berth, quay, wharf, pier, jetty, docks, ramp, landing place and any wall and building adjoining the foreshore, sea-bed or river bed; (b) "**Cargo**" means baggage, stores and goods of any kind, size or weight/measurement whatsoever, whether dry bulk, liquid bulk, break bulk, project cargo, unitised or in a Container (including any packaging or Containers within which the said goods may be contained); (c) "**Container**" means any empty article of transport equipment (including but not limited to dry, flat-rack, open top, pallet-wide, platform, reefer and tank containers) constructed to the specification of the International Standards Organisation (ISO) with ISO recommended lifting arrangements; (d) "**Facilities**" means all berths, loading/unloading areas, storage areas, roads, paths, buildings and any other facilities operated or managed by the Company at the Premises; (e) "**Premises**" means any Berth or other premises from where the Company provides Services; (f) "**Services**" shall include without limitation the following: (i) in relation to Cargo, the receiving, discharging, delivering, unloading, loading, stowing, tallying, lashing, handling, inside and outside storage of the Cargo and related documentary and information technology processes; and (ii) in relation to Vessels, the berthing, unberthing and moving of Vessels; (g) "**Vessels**" means any waterborne craft including but not limited to ocean vessels, feeder vessels and inland waterway vessels.

1.2 Interpretation - In these Conditions: (a) a reference to a party or a Condition shall be to a party subject to, or a condition of, these Conditions; (b) a reference to a person shall include a natural person, corporate or unincorporated body (whether or not having separate legal personality) and (c) words in the singular include the plural and words in the plural include the singular.

1.3 Deemed acceptance - Use of the Facilities or the Services by the Customer, entry into the Premises or berthing of any Vessel at a Berth (or any combination of the foregoing) shall be treated as acceptance of these Conditions.

1.4 Compulsory Legislation - If any international convention, national law or regulation is compulsorily applicable to any of the Services these Conditions shall, as regards such Services, be read as subject to such convention, law or regulation, and nothing in these Conditions shall be construed as a surrender by the Company of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such convention, law or regulation. Any part of these Conditions which contravenes such convention, law or regulation to any extent, shall in respect of the Services to which such convention, law or regulation applies compulsorily be overridden to that extent and no further.

2. REQUEST FOR SERVICES AND INFORMATION REQUIREMENTS

2.1 Request for Services - At least forty-eight hours or such other reasonable period as may be agreed in writing by the Company before: (i) the estimated arrival of a Vessel; or (ii) the first date from which the Services are required, whichever is the earlier, the Customer will provide the Company with written details by electronic communication or by post of the Services required and (as appropriate):

- 2.1.1 the name of the Vessel, the Vessel particulars (type, length, draught, beam and any special berthing requirements), information about the import Cargo (type/description, any special characteristics, weight, number and dimensions), the estimated time of arrival ("**ETA**") of the Vessel and details of the on-carriage from the Premises; or
- 2.1.2 information about export Cargo (type/description, any special characteristics, weight, number and dimensions), details of the pre-carriage to the Premises, the name of the Vessel, the Vessel particulars (type, length, draught, beam and any special berthing requirements) and the ETA of the Vessel.

2.2 Acceptance of request for Services - The Company may accept or reject, in whole or in part, any request for Services and/or any Vessel (whether previously accepted or not). The Company shall not be obliged to provide a Berth and/or any Services until it has accepted the request for Services in writing by electronic communication or by post.

2.3 Pre-advice information - At least twenty-four hours or such other reasonable period as may be agreed in writing by the Company prior to the ETA of a Vessel or the first date from which the Services are required, the Customer will provide a bill of lading or other form of written notification including all the information relating to the Cargo and the Vessel set out in Condition 2.1 above and confirmation together with supporting documents that the Cargo has been cleared for the purposes of any relevant customs authority (where applicable).

3. PROVISION OF THE SERVICES BY THE COMPANY

3.1 The Company's obligations - The Company will provide the Services using a reasonable degree of care, diligence, skill and judgment. The Company will provide the Services subject to and in accordance with these Conditions and any applicable laws. The Company will obtain all necessary licences and permits required to provide the Services.

3.2 Means and procedures - Subject to specific written instructions given by the Customer and accepted by the Company in writing, the Company reserves to itself full liberty in respect of the means and procedures to be employed in the provision of the Services. The Company may deviate from the Customer's instructions (whether or not accepted by the Company) in any respect if the Company considers it is necessary in the interest of the Customer or health and safety (or any combination of the foregoing), and the Customer shall reimburse the Company with all reasonable expenses incurred thereby.

3.3 Operating and working hours - The normal working hours of the Premises are available on request from the Company. Any Services required outside the normal working hours must be pre-agreed with the Company together with any applicable overtime rates that the Company may apply.

- 3.4 **Inspection** – The Company (or its nominated representatives) may at any time on reasonable notice in writing by electronic communication or by post, inspect any Vessel, Cargo (whether in a Container or not), Containers and any vehicle at the Premises for the purpose of ensuring compliance with these Conditions.
4. **CUSTOMER'S WARRANTIES AND RESPONSIBILITIES**
- 4.1 **Authority of the Customer** – The Customer represents and warrants that it is authorised to contract with the Company on the terms of these Conditions in respect of the Vessel, the Cargo and the Containers (as appropriate) and that it is accepting these Conditions not only for itself, but also as agent for and on behalf of the owners, operators, charterers or agents (as appropriate) of the Vessel and owners of the Cargo and any other person who is or may become interested in the Cargo (as appropriate).
- 4.2 **Information accuracy** - The Customer represents and warrants that any description, particulars, information and documentation provided by the Customer in relation to the Vessel and the Cargo is accurate and complete.
- 4.3 **Warranties about the Cargo** - The Customer represents and warrants that the Cargo: (a) has been properly and sufficiently prepared, packed, stowed, labelled or marked, and that the preparation, packing, stowage, labelling and marking are appropriate to any operations or transactions affecting the Cargo; (b) requires for its safekeeping no special protection (other than as may be agreed in writing between the parties) arising from vulnerability to heat, cold, moisture, salt, pilferage or proximity to other cargo or from inflammability but will remain safe if left standing in the open or in covered accommodation at the Premises; (c) will not contaminate or cause danger, injury or pollution or damage to any person, the Premises, the Facilities or any other cargo, equipment or ship or the environment adjacent thereto or generally; (d) is not infested, verminous, rotten or subject to fungal attack and not liable to become so while being handled; (e) (other than as may be agreed in writing between the parties) is not toxic or liable to give off any injurious emission, including dust, gas, fumes, liquid or radiation; (f) is not overheated or under-heated or liable to become so whilst at the Premises; and (g) contains no drugs, prohibited or stolen goods, contraband, pornographic or other illegal matter or substances or stowaways.
- 4.4 **Duties and taxes** – The Customer shall be responsible for, and reimburse the Company for, all duties, taxes, imposts, levies, deposits and outlays of whatever nature levied by any authority and/or any expenses incurred in complying with the requirement of any authority in relation to the Cargo or the Vessel or both. In the event that any part of the Berth or any part of the Premises which are being used mainly by the Customer is separately assessed to non domestic / local authority rates or other such charges as a result of such activities by the Customer, the Customer will be responsible for paying such rates in full. It is not the intention of the Company or the Customer that the Customer be granted exclusive use of any part of the Berth or Premises and in carrying out the Services the Company will use any area of the Berth and Premises which is convenient to it at the relevant time.
- 4.5 **Compliance with laws and directions** – The Customer shall ensure that it, and shall procure that any person acting on its behalf, shall comply with all: (a) applicable laws and legal requirements relating to the Vessel, the Cargo, the Premises or the use of the Facilities; (b) the provisions of all licences, permits, consents and all directions given by any competent authority in respect of the Vessel, the Cargo, the Premises or the use of the Facilities; and (c) the directions, instructions, notifications, signage and marking, security, health and safety and environmental procedures and policies notified or published by the Company or its landlord from time to time (each of which will be deemed to be incorporated into these Conditions).
5. **RESTRICTIONS REGARDING CARGO**
- 5.1 **Dangerous Goods** – The Company will not deal with Cargo which is or may become dangerous, hazardous, noxious (including radioactive materials), inflammable, explosive, or which is or may become liable to damage any property or person whatsoever ("**Dangerous Cargo**") unless it is given prior written notice of the nature of the Dangerous Cargo and it expressly accepts in writing to deal with the Dangerous Cargo. The Customer's notice will include such information as is necessary for it to perform its obligation in connection with the Dangerous Cargo in accordance with all applicable laws, regulations or requirements (or any combination of the foregoing), including without limitation information about the characteristics of the Dangerous Cargo, the appropriate manner and method of storage, handling and transportation and the Dangerous Cargo (when unitised or in a Container) must be distinctly marked on the outside so as to indicate the nature and characteristics of the Dangerous Cargo and so as to comply with all applicable laws, regulations and requirements. Additional charges may apply to the handling of Dangerous Cargo.
- 5.2 **Failure to notify the dangerous nature of any Dangerous Cargo** - If the Customer fails to give prior written notice of the nature of any Dangerous Cargo and the Company is unaware of its nature and the necessary precautions to be taken and if, at any time, it is deemed to be a hazard to life or property, the Dangerous Cargo may, in the Company's sole discretion and as circumstances may require, be destroyed or rendered harmless without compensation to the Customer. The Customer shall be liable for all loss, damage, delay or expenses arising out of the destruction or rendering the Dangerous Cargo harmless.
- 5.3 **Temperature control** - The Company will not deal with Cargo which requires temperature control unless it is given prior notice of the temperature control requirement and it expressly accepts in writing to deal with such Cargo. The Customer's notice will include the nature of the Cargo and the particular temperature range to be maintained. The Customer undertakes that any Container, Vessel or vehicle has been properly pre-cooled and its thermostatic controls have been properly set by the Customer (or any person acting on its behalf) before receipt of the Cargo by the Company. If the above requirements are not complied with the Company shall not be liable for any loss of or damage to the Cargo caused by the Cargo not being at the required temperature. The Company shall not be liable for any loss of or damage to the Cargo arising from defects in or failure, breakdown, stoppage of the temperature controlling machinery, plant, insulation or any apparatus of any Container, Vessel or vehicle.
- 5.4 **Weather sensitive Cargo** – The Company will not deal with Cargo which is sensitive to the weather unless it receives a prior letter of indemnity given to the Company by the Customer, in a form acceptable to the Company, indemnifying the Company, its servants and agents and holding such harmless in respect of any liability, loss, damage or expense of whatsoever nature which the Company, its servants or agents may sustain by complying with the Customer's request of dealing with weather sensitive Cargo.
6. **BERTHS AND SERVICES**
- 6.1 **Allocation of Berth** - Allocation of Berths requested by the Customer is always subject to availability.
- 6.2 **Berthing** - Upon berthing, the Vessel shall immediately and at all times provide adequate lighting, equipment, and appropriate officers and crew aboard to permit loading and unloading (as appropriate) at any time of the day or night. Where the Vessel's gear is used the winches,

derricks, deck cranes, tackle and other gear will be ready for use, in good working order and in accordance with UK law and regulations and the Vessel shall be in possession of valid certificates to establish compliance with such law and regulations.

- 6.3 **Right to move a Vessel** - The Company may in its absolute discretion require a Vessel to be moved from its Berth and/or require a Vessel to be moved from one Berth to another, including without limitation on the grounds of safety, in order to avoid disruption to the operation of the Premises or in the event of Vessel breakdown.
- 6.4 **Right to suspend Services** - The Company reserves the right to suspend the provision of any Services at any time in the event of any breach of these Conditions.
- 6.5 **Right to refuse to handle Cargo** - The Company may refuse to handle any Cargo: (a) with a weight which exceeds its stated weight or the safe working load of any cargo handling equipment; or (b) where, in the reasonable opinion of the Company, the handling or the storage of the Cargo is or would be dangerous, hazardous or unsafe due to its size, weight, dimension or any other reason. The Customer shall (at its expense) remove or otherwise deal with any Cargo which the Company has refused to handle under this Condition.
- 6.6 **Departure** – The Customer shall procure that the Vessel shall vacate the Berth without undue delay upon completion of the Services unless otherwise agreed in writing by the Company or by the owner or operator of the Berth with notice and a copy of such written agreement received by the Company.
7. **REMOVAL AND DISPOSAL OF CARGO**
- 7.1 **Perishable Cargo** - Perishable Cargo which is unclaimed for a period of more than five (5) working days following arrival or which is insufficiently addressed or marked or otherwise not readily identifiable may be sold or otherwise disposed of by the Company without any notice to the Customer and the Company will apply the proceeds in, or towards the payment of, any sums due to the Company. The Company shall, upon accounting to the Customer for any balance remaining after payment of any sum due to the Company, and for the cost of sale and/or disposal of the perishable Cargo, be discharged of any liability whatsoever in respect of the Cargo. The Customer shall remain liable for any Charges or other amount due to the Company which are still outstanding.
- 7.2 **Non-perishable Cargo** – Non-perishable Cargo which is unclaimed for a period of more than twenty-one (21) days following arrival or which is insufficiently addressed or marked or otherwise not readily identifiable may be sold or otherwise disposed of by the Company without any notice to the Customer and the Company will apply the proceeds in, or towards the payment of, any sums due to the Company. The Company shall, upon accounting to the Customer for any balance remaining after payment of any sum due to the Company, and for the cost of sale and/or disposal of the non-perishable Cargo, be discharged of any liability whatsoever in respect of the Cargo. The Customer shall remain liable for any Charges or other amount due to the Company which are still outstanding.
8. **LIABILITY**
- 8.1 **Loss or damage to Cargo** – The Company will only be liable for loss, contamination, deterioration of, or damage to, any Cargo to the extent the same is caused by the negligence or wilful misconduct of the Company (or any other person for whom it is responsible) and such liability shall be limited to the lesser of: (a) the value of the Cargo lost, contaminated, deteriorated or damaged (which shall be net invoice price (excluding value added tax) to the Customer or the manufacturing cost (excluding value added tax) incurred by the Customer for such Cargo (as the case may be)) or in the case of contaminated, deteriorated or damaged Cargo, the reduction in value of the Cargo; and (b) £1,300 per tonne of gross weight of the Cargo lost or damaged.
- 8.2 **Loss or damage to Vessels** - The Company will only be liable for loss of or damage to any Vessel including its gear and all other equipment to the extent the same was caused by the negligence or wilful misconduct of the Company (or any other person for whom it is responsible) and such liability shall be limited to the lesser of: (a) the reasonable repair cost or replacement cost (with an item of the same age and in the same condition) of the Vessel; and (b) £5,000,000 per incident or series of connected incidents.
- 8.3 **Containers** – The Company will only be liable for loss of or damage to any Container to the extent the same was caused by the negligence or wilful misconduct of the Company (or any other person for whom it is responsible) and such liability shall be limited to the lesser of: (a) the reasonable repair cost or replacement cost (with an item of the same age and in the same condition) of the Container; and (b) £2,000 per 20' Container, £3,000 for any other size/type of Container and £5,000 per reefer Container.
- 8.4 **Proof of liability** - The Company shall not be liable under Conditions 8.1, 8.2 or 8.3 unless the Customer can establish that the loss, damage or, where relevant, the contamination or deterioration was caused by the negligence or wilful misconduct of the Company (or any other person for whom it is responsible). If the loss or damage was contributed to by the act or omission of the Customer or any other person, the Company shall be exonerated from liability under Conditions 8.1, 8.2 and 8.3 to the extent that such act or omission contributed to the loss or damage.
- 8.5 **Delay** – The Company accepts no responsibility whatsoever and howsoever arising (including negligence) with regard to any failure to adhere to any timeframe or any delay in the performance of the Services (including in relation to the Cargo or the Vessel) or for any demurrage or detention charges incurred (whether in relation to the Vessel, Containers, rail wagons, road haulage or otherwise) by the Customer.
- 8.6 **Contract of carriage limitations to apply** – The Customer shall ensure that all bills of lading or other document to be issued by the Customer, its carrier, principal, agents or subcontractors or the carrier of the Customer's counterparty incorporate a clause to the effect that the Company, its employees, agents and subcontractors will have the benefit of the provisions of that bill of lading or other document to the extent such provisions benefit the Company.
- 8.7 **Entire liability** - Save as set out in Condition 8, the Company shall not be liable for loss of or damage to any Vessel, Cargo or Container howsoever arising (whether caused by negligence or otherwise).
- 8.8 **Exclusion of liability for certain losses** - Notwithstanding any other provision of these Conditions, but subject to Condition 8.10, the Company shall have no liability for any loss of profit, loss of sales, loss of business, loss of goodwill or reputation, third party claims (in each case whether direct or indirect) or for any indirect or consequential loss in respect of all claims, losses or damages, whether arising in tort (including negligence), bailment, breach of contract, breach of statutory duty or otherwise under or in connection with these Conditions, performance or any failure or delay in performance of the Services or any obligation under these Conditions ("**Claims**").
- 8.9 **Overall liability limit** - Notwithstanding any other provision of these Conditions, but subject to Condition 8.10, the liability of the Company in respect of any Claim shall be limited to the Charges payable in respect of that part of the Services to which the Claim relates.

- 8.10 **Exceptions** - Nothing in these Conditions shall exclude or restrict the Company's liability for death or personal injury caused by its negligence, fraudulent misrepresentation or any other act or omission for which liability may not be excluded or limited under applicable law. The overall liability limit contained in Condition 8.9 shall not apply to the Company's liability under Conditions 8.1, 8.2 and 8.3.
- 8.11 **Notification of claims and time limits** - Any Claim by the Customer against the Company arising in respect of any Service provided for the Customer, or which the Company has undertaken to provide, shall be made in writing and notified to the Company within 14 days of the date upon which the Customer became, or ought reasonably to have become, aware of any event or occurrence alleged to give rise to such Claim, and any Claim not made and notified as aforesaid shall be deemed to be waived and absolutely barred. The Company shall in any event be discharged of all liability whatsoever and howsoever arising in respect of any Service provided for the Customer, or which the Company has undertaken to provide, unless legal proceedings are commenced and written notice thereof given to the Company within 12 months from the date of the event or occurrence alleged to give rise to a cause of action against the Company.
- 8.12 **Joint and several liability** - These Conditions are between the Company and the Customer. Every person defined as the Customer is jointly and severally liable to the Company for all the Customer's undertakings, responsibilities and liabilities under or in connection with these Conditions and to pay the Charges.
- 8.13 **Indemnity from Customer** - The Customer shall indemnify the Company against any and all costs (including the costs of investigating and defending any claims), expenses, claims, demands, losses, damages, liabilities, orders, awards, fines, penalties, proceedings and judgments of whatsoever nature howsoever assumed, incurred or suffered by the Company, its employees or Subcontractors, as a result of or in connection with: (a) any claim made by any third party (including without limitation a claim made by the owner of the Cargo, the Vessel or the Containers or any other person who is or may become interested in the Cargo, the Vessel or the Containers or any customs authority) when such claim arises from or in connection with the Services (whether caused by the Company's negligence or otherwise) and to the extent such claim exceeds the Company's liability to the Customer under the Conditions; (b) any breach by the Customer of the obligations or warranties given in Condition 4 (or any combination of the foregoing); (c) the Company acting in accordance with the Customer's instructions; and (d) any death or personal injury of any person or damage to any property whatsoever arising from the presence of the Customer at the Premises, the use by the Customer of the Facilities, the presence of the Vessel at the Berth or the presence of the Cargo on the Vessel (whilst the Vessel is at the Berth) or within the Facilities (and whether or not the Cargo was Dangerous Cargo which the Company had accepted under Condition 5.1).
9. **INSURANCE**
- 9.1 Unless expressly agreed, the Company does not insure Cargo, Vessels or Containers, and the Customer shall self-insure or make arrangements to cover Cargo, Vessels and Containers against all insurable risks to their full insurable value (including all duties and taxes).
- 9.2 The Company will, at its own expense, procure and maintain policies of insurance covering:
- 9.2.1 any liabilities assumed by it under these Conditions; and
- 9.2.2 any requirements by law, including employer's liability and public liability.
10. **CHARGES AND PAYMENT**
- 10.1 **Charges** - The charges payable by the Customer for the Services shall be calculated in accordance with the rates agreed by the parties and annexed to these Conditions ("**Charges**"). The Company shall be entitled to vary the Charges at any time by giving written notice of any such variation to the Customer at least fourteen (14) days before the date on which the varied Charges will become effective. All Charges are exclusive of value added tax and any other tax which shall be paid by the Customer at the rate and in the manner prescribed by law.
- 10.2 **Invoices and payment terms** - The Company shall issue invoices in arrears. In respect of any of the element of the Charges which relate to storage, part weeks are charged at full weekly rates. Unless otherwise agreed in writing by the parties, invoices issued by the Company shall be payable within thirty (30) days of invoice date. Invoices shall be paid in full without any set-off, counterclaim, restriction, condition, deduction or withholding (except for any deduction or withholding required by law). If payment is not received by the Company within thirty (30) days of the relevant invoice date or by any other date agreed in writing by the parties as may be applicable, the Company shall charge interest on the overdue amount at the rate of four per cent. (4%) per annum above the Bank of England's base rate. Such interest shall accrue on a daily basis from the date due until actual payment of the overdue amount and shall be payable together with the overdue amount.
- 10.3 **Lien and right to sell** - Without prejudice to any other rights and remedies the Company may have under these Conditions or otherwise, the Company shall have a general as well as a specific lien on the Cargo, and any documents relating thereto, and the Containers for all sums whatsoever due at any time to the Company under these Conditions or otherwise. To enforce and satisfy the Company's lien, the Company shall have the right, at the Customer's expense, to sell the aforementioned Cargo, documents and Containers, without notice to the Customer and without any liability to the Customer and to apply the proceeds in, or towards the payment of, such sums. The Company shall, upon accounting to the Customer for any balance remaining after payment of any sum due to the Company, and for the cost of sale, be discharged of any liability whatsoever in respect of the Cargo, the documents and the Containers. The Customer shall remain liable for any Charges or other amount due to the Company which are still outstanding.
11. **FORCE MAJEURE**
- Neither party shall be liable to the other for any loss or damage to any Cargo, Vessels or Containers, delay or non-performance of its obligations under these Conditions (or any combination of the foregoing) to the extent that such, loss or damage, delay or non-performance is due to any acts of God, flood, severe weather condition, storm, tempest, epidemic, pandemic, compliance with any law, order, rule or regulation of any governmental or other authority, acts of any governmental or super-national authority, war or national emergency, riots, civil commotion, acts of terrorism, piracy, fire, explosion, heat or cold (including heat within the Cargo itself and unintended exposure to natural or artificial light), inherent vice of the Cargo, criminal acts, computer viruses, lock-outs, strikes and other industrial disputes (in each case, whether or not relating to that party's workforce), shortages of labour, materials and services and inability or delay in obtaining supplies and other events beyond a party's reasonable control.
12. **GENERAL PROVISIONS**
- 12.1 **Assignment** - Subject to the remainder of this Condition 12.1 and to Condition 12.2, neither party may assign, transfer, mortgage, charge, subcontract or declare a trust over or deal in any other manner with its rights or obligations under these Conditions or any part thereof

without the prior written consent of the other party (such consent not to be unreasonably withheld or unduly delayed). Either party may assign or transfer its rights and obligations under these Conditions to an affiliate which is capable of meeting the liabilities of the assigning party ("**Assignee**"). If at any time after the assignment under this Condition 12.1, the Assignee ceases to be an affiliate of the assigning party or if it is no longer capable of meeting the liabilities of the assigning party, the obligations of the Assignee shall immediately revert to the assigning party. For the purpose of this Condition an affiliate means a company or other legal entity which controls or is controlled by a party, or which is controlled by an entity which controls a party, and control means the ownership, directly or indirectly, of fifty per cent. (50%) or more of the shares or voting rights in a company or legal entity.

- 12.2 **Subcontracting** - Notwithstanding the provisions of Condition 12.1, the Company may sub-contract on any terms whatsoever the whole or any part of the Services. The Customer agrees (to the extent that it is entitled to bring claims against any contractor, servant or agent employed by the Company in performance of the Services ("**Subcontractors**")) that any Subcontractor can, at its option, apply its own terms of contract with the Company to defend claims brought by the Customer.
- 12.3 **Agency** - Nothing in these Conditions shall be construed as creating a partnership, association or joint venture between the parties, or to make one party an agent or representative of the other party. Neither party shall: (a) hold itself out as an agent of the other party; and (b) have the authority to act on behalf of the other, except to the extent necessary for the Company to accomplish its obligations under these Conditions.
- 12.4 **Entire agreement** - These Conditions (together with any document expressly incorporated or annexed by the parties (if any) and any document incorporating these Conditions (if any)) comprises the entire agreement between the parties with respect to the provision of the Services and supersedes all previous agreements and arrangements between the parties with respect to the provision of the Services. If the Customer's documentation contains terms or conditions additional to or at variance with these Conditions, every such additional or varying term or condition shall be of no effect. Any representation, statement, warranty or other undertaking whether made orally or written elsewhere which is not fully reflected in these Conditions is hereby excluded (including without limitation where such representations or statements were made negligently) provided always that this Condition shall not exclude or limit any liability or any right which any party may have in respect of pre-contractual statements made or given fraudulently. All conditions, warranties of other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.
- 12.5 **Third party** - The Subcontractors shall have the benefit of all the warranties, indemnities, exclusions and limits of liability contained herein and which benefit the Company, and shall have the right to enforce them in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999. Except as stated in this Condition, a person who is not a party to these Conditions may not enforce, or otherwise have the benefit of, any provision of these Conditions under the Contracts (Rights of Third Parties) Act 1999. The parties reserve the right to rescind or vary these Conditions or vary any term of them without the consent of any of the Subcontractors.
- 12.6 **Severability** - If any provision of these Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, then these Conditions will be deemed amended to the minimum extent necessary to render the otherwise unenforceable provision, and the rest of the Conditions, valid, legal and enforceable. If a court declines to amend these Conditions as provided herein, the invalid, illegal or unenforceable provision will be severed and the remainder of the provisions hereof will continue in full force and effect as if these Conditions had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of any such severance as described in this Condition 12.6, the parties will negotiate in good faith with a view to replacing the provisions so severed with valid, legal and enforceable provisions that have similar economic and commercial effects to the provisions so severed.
- 12.7 **Waiver** - The failure of either party to insist upon strict performance of any provision of these Conditions, or the failure of either party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by these Conditions. A waiver of any breach of contract shall not constitute a waiver of any subsequent breach of contract. No waiver of any of the provisions of these Conditions shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing in accordance with the provisions of Condition 12.9.
- 12.8 **Variation** - Any modification, variation, amendment or addition to these Conditions must be in writing and signed by a duly authorised representative of each party.
- 12.9 **Notice** - Any notice to be given to a party under these Conditions shall be in writing in English and addressed to that party at its registered office or its principal place of business. Such notice shall be served by hand, courier, registered mail or by fax. Notice shall be deemed served: (a) if delivered by hand, at the time of delivery; (b) if sent by courier, on the date and at the time of signature of the courier's delivery receipt; (c) if sent by registered mail, at 9:00 am on the third working day after posting; or (d) if sent by fax when the sender receives one or more transmission reports showing the whole of the notice to have been transmitted to the correct fax number.
- 12.10 **Governing law** - These Conditions and any disputes or claims arising out of or in connection with their subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of England and Wales.
- 12.11 **Jurisdiction** - Any claims against the Company under these Conditions or otherwise arising from the Services shall be determined exclusively by the courts of England and Wales to which jurisdiction the Customer irrevocably submits. The Company shall be entitled to bring legal proceedings against the Customer in the courts of England and Wales or in any other jurisdiction (including jurisdiction(s) where the Customer has a place of business or assets) and legal proceedings by the Company in one or more jurisdictions shall not preclude legal proceedings by it in any other jurisdiction, whether concurrent or not.