

TERMS AND CONDITIONS OF SERVICE

Insurance may only be effected by the Company under clause 3.10 if so authorised by the Financial Services Authority or its successor

1. APPLICATION

1.1 These Terms and Conditions shall apply to the provision of Services by the Company to the Customer.

1.2 In the event of conflict between these Terms and Conditions and any other terms and conditions (of the Customer or otherwise), the former shall prevail unless expressly otherwise agreed by the Company in writing.

2. DEFINITIONS

2.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

"Business Day" - a day (excluding Saturdays and Sundays) on which banks generally are open for the transaction of normal banking business;

"The Customer" - means any individual, firm or corporate body (which expression shall, where the context so admits, include its successors and assigns) which purchases services from the Company

"The Commencement Date" - the commencement date for this agreement as set out in the schedule

"Services" - means the services to be provided by the Company to the Customers as advised from time to time

"The Company" - Access Fulfilment. Access Fulfilment is a trading style of AF Trading Ltd

"Consignee" the Person to whom the goods are consigned.

"Direct Representative" the Company acting in the name of and on behalf of the Customer and/or Owner with H.M. Revenue and Customs ("HMRC") as defined by Council Regulation 2193/92 or as amended.

"Goods" the cargo to which any business under these conditions relates "Person" natural person(s) or any body or bodies corporate.

"SDR" are Special Drawing Rights as defined by the International Monetary Fund.

"Transport Unit" packing case, pallets, container, trailer, tanker, or any other device used whatsoever for and in connection with the carriage of Goods by land, sea or air.

"Owner" the Owner of the Goods or Transport Unit and any other Person who is or may become interested in them

2.2 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

2.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2.4 If any legislation, to include regulations and directives, is compulsorily applicable to any business undertaken, these conditions shall, as regards such business, be read as subject to such legislation, 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 legislation, and if any part of these conditions be repugnant to such legislation to any extent, such part shall as regards such business be overridden to that extent and no further.

- 2.5 The Customer warrants that he is either the Owner, or the authorised agent of the Owner and, also, that he is accepting these conditions not only for himself, but also as agent for and on behalf of the Owner.

3. THE SERVICE

- 3.1 With effect from the Commencement Date the Company shall, in consideration of the Fees being paid in accordance with the Terms of Payment provide the services expressly identified in the specification if supplied or otherwise agreed under this agreement.
- 3.2 The Company will use reasonable care and skill to perform the services identified in the schedule/quotation/letter or otherwise agreed under this agreement.
- 3.3 The Company shall use all reasonable endeavours to complete its obligations under the schedule/quotation/letter, but time will not be of the essence in the performance of these obligations.
- 3.4 Subject to clauses 3.10 and 3.11 below, the Company shall be entitled to procure any or all of the services as an agent, or, to provide those services as a principal.
- 3.5 The Company reserves to itself full liberty as to the means, route and procedure to be followed in the performance of any service provided in the course of business undertaken subject to these conditions.
- 3.6 When the Company contracts as a principal for any services, it shall have full liberty to perform such services itself, or, to subcontract on any terms whatsoever, the whole or any part of such services.
- 3.7 When the Company acts as an agent on behalf of the Customer, the Company shall be entitled, and the Customer hereby expressly authorises the Company, to enter into all and any contracts on behalf of the Customer as may be necessary or desirable to fulfil the Customer's instructions, and whether such contracts are subject to the trading conditions of the parties with whom such contracts are made, or otherwise.
- 3.8 The Company shall, on demand by the Customer, provide evidence of any contract entered into as agent for the Customer. Insofar as the Company may be in default of the obligation to provide such evidence, it shall be deemed to have contracted with the Customer as a principal for the performance of the Customer's instructions.
- 3.9 In all and any dealings with HMRC for and on behalf of the Customer and/or Owner, the Company is deemed to be appointed, and acts as, Direct Representative only.
- 3.10 No insurance will be effected except upon express instructions given in writing by the Customer and accepted in writing by the Company, and all insurances effected by the Company are subject to the usual exceptions and conditions of the policies of the insurers or underwriters taking the risk. Unless otherwise agreed in writing, the Company shall not be under any obligation to effect a separate insurance on the goods, but may declare it on any open or general policy held by the Company.
- 3.10.1 Insofar as the Company agrees to effect insurance, the Company acts solely as agent for the Customer, and the limits of liability under clause 6.8 of these conditions shall not apply to the Company's obligations under clause 3.10.

- 3.11 Except under special arrangements previously made in writing by an officer of the Company so authorised, or made pursuant to or under the terms of a printed document signed by the Company, any instructions relating to the delivery or release of the Goods in specified circumstances (such as, but not limited to, against payment or against surrender of a particular document) are accepted by the Company, where the Company has to engage third parties to effect compliance with the instructions, only as agents for the Customer.
- 3.11.1 Despite the acceptance by the Company of instructions from the Customer to collect freight, duties, charges, dues, or other expenses from the Consignee, or any other Person, on receipt of evidence of proper demand by the Company, and, in the absence of evidence of payment (for whatever reason) by such Consignee, or other Person, the Customer shall remain responsible for such freight, duties, charges, dues, or other expenses.
- 3.11.2 Despite the acceptance by the Company of instructions from the Customer to collect freight, duties, charges, dues, or other expenses from the Consignee, or any other Person, on receipt of evidence of proper demand by the Company, and, in the absence of evidence of payment (for whatever reason) by such Consignee, or other Person, the Customer shall remain responsible for such freight, duties, charges, dues, or other expenses.
- 3.11.3 The Company shall not be under any liability in respect of such arrangements as are referred to under sub-clause 3.11.1 and 3.11.2 hereof save where such arrangements are made in writing, and in any event, the Company's liability in respect of the performance of, or arranging the performance of, such instructions shall not exceed the limits set out in clause 6.8 of these conditions.
- 3.12 Advice and information, in whatever form it may be given, is provided by the Company for the Customer only. The Customer shall indemnify the Company against all loss and damage suffered as a consequence of passing such advice or information on to any third party.
- 3.13 Without prior agreement in writing by an officer of the Company so authorised, the Company will not accept or deal with Goods that require special handling regarding carriage, handling, or security whether owing to their thief attractive nature or otherwise including, but not limited to bullion, coin, precious stones, jewellery, valuables, antiques, pictures, human remains, livestock, pets, plants. Should any Customer nevertheless deliver any such goods to the Company, or cause the Company to handle or deal with any such goods, otherwise than under such prior agreement, the Company shall have no liability whatsoever for or in connection with the goods, howsoever arising.
- 3.14 Except pursuant to instructions previously received in writing and accepted in writing by the Company, the Company will not accept or deal with Goods of a dangerous or damaging nature, nor with Goods likely to harbour or encourage vermin or other pests, nor with Goods liable to taint or affect other Goods. If such Goods are accepted pursuant to a special arrangement, but, thereafter, and in the opinion of the Company, constitute a risk to other goods, property, life or health, the Company shall, where reasonably practicable, contact the Customer in order to require him to remove or otherwise deal with the goods, but reserves the right, in any event, to do so at the expense of the Customer.
- 3.15 Where there is a choice of rates according to the extent or degree of the liability assumed by the Company and/or third parties, no declaration of value will be made and/or treated as having been made except under special arrangements previously made in writing by an officer of the Company so authorised as referred to in clause 6.13.

4. THE CUSTOMER

4.1 The Customer warrants:

- 4.1.1 that the description and particulars of any Goods or information furnished, or services required, by or on behalf of the Customer are full and accurate, and
- 4.1.2 that any Transport Unit and/or equipment supplied by the Customer in relation to the performance of any requested service is fit for purpose, and
- 4.1.3 that all Goods have been properly and sufficiently prepared, packed, stowed, labelled and/or marked, and that the preparation, packing, stowage, labelling and marking are appropriate to any operations or transactions affecting the Goods and the characteristics of the Goods.
- 4.1.4 that where the Company receives the Goods from the Customer already stowed in or on a Transport Unit, the Transport Unit is in good condition, and is suitable for the carriage to the intended destination of the Goods loaded therein, or thereon, and
- 4.1.5 that where the Company provides the Transport Unit, on loading by the Customer, the Transport Unit is in good condition, and is suitable for the carriage to the intended destination of the Goods loaded therein, or thereon.
- 4.2 Without prejudice to any rights under clause 15, where the Customer delivers to the Company, or causes the Company to deal with or handle Goods of a dangerous or damaging nature, or Goods likely to harbour or encourage vermin or other pests, or Goods liable to taint or affect other goods, whether declared to the Company or not, he shall be liable for all loss or damage arising in connection with such Goods, and shall indemnify the Company against all penalties, claims, damages, costs and expenses whatsoever arising in connection therewith, and the Goods may be dealt with in such manner as the Company, or any other person in whose custody they may be at any relevant time, shall think fit.
- 4.3 The Customer undertakes that no claim shall be made against any director, servant, or employee of the Company which imposes, or attempts to impose, upon them any liability in connection with any services which are the subject of these conditions, and, if any such claim should nevertheless be made, to indemnify the Company against all consequences thereof.
- 4.4 The Customer shall save harmless and keep the Company indemnified from and against:-
 - 4.4.1 all liability, loss, damage, costs and expenses whatsoever (including, without prejudice to the generality of the foregoing, all duties, taxes, imposts, levies, deposits and outlays of whatsoever nature levied by any authority in relation to the Goods) arising out of the Company acting in accordance with the Customer's instructions, or arising from any breach by the Customer of any warranty contained in these conditions, or from the negligence of the Customer, and
 - 4.4.2 without derogation from sub-clause 4.4.1 above, any liability assumed, or incurred by the Company when, by reason of carrying out the Customer's instructions, the Company has become liable to any other party, and
 - 4.4.3 all claims, costs and demands whatsoever and by whomsoever made or preferred, in excess of the liability of the Company under the terms of these conditions, regardless of whether such claims, costs, and/or demands arise from, or in connection with, the breach of contract, negligence or breach of duty of the Company, its servants, sub-contractors or agents, and
 - 4.4.4 Any claims of a general average nature which may be made on the Company.

5. PAYMENT

- 5.1 The Customer shall pay to the Company in cash, or as otherwise agreed, all sums when due, immediately and without reduction or deferment on account of any claim, counterclaim or set-off.
 - 5.1.1 The Late Payment of Commercial Debts (Interest) Act 1998, as amended, shall apply to all sums due from the Customer
- 5.2 Where liability arises in respect of claims of a general average nature in connection with the Goods, the Customer shall promptly provide security to the Company, or to any other party designated by the Company, in a form acceptable to the Company.
- 5.3 In addition the Company shall be entitled to recover from the Customer his reasonable incidental expenses for materials used and for third party goods and services supplied in connection with the provision of the Services.
- 5.4 The Customer will pay the Company for any additional services provided by the Company that are not specified in accordance with the Company's then current, applicable daily rate in effect at the time of the performance or such other rate as may be agreed. Any charge for additional services will be supplemental to the amounts that may be due for the Expenses.
- 5.5 All sums payable by either party pursuant to this Agreement are exclusive of any value added or other tax (except corporation tax) or other taxes on profit, for which that party shall be additionally liable.
- 5.6 Subject to sub-clause 5.6.4 below, the Company:
 - 5.6.1 has a general lien on all Goods and documents relating to Goods in its possession, custody or control for all sums due at any time to the Company from the Customer and/or Owner on any account whatsoever, whether relating to Goods belonging to, or services provided by or on behalf of the Company to the Customer or Owner. Storage charges shall continue to accrue on any Goods detained under lien;
 - 5.6.2 shall be entitled, on at least 28 days notice in writing to the Customer, to sell or dispose of or deal with such Goods or documents as agent for, and at the expense of, the Customer and apply the proceeds in or towards the payment of such sums;
 - 5.6.3 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 and/or dealing, be discharged of any liability whatsoever in respect of the Goods or documents.
 - 5.6.4 When the Goods are liable to perish or deteriorate, the Company's right to sell or dispose of or deal with the Goods shall arise immediately upon any sum becoming due to the Company, subject only to the Company taking reasonable steps to bring to the Customer's attention its intention to sell or dispose of the Goods before doing so.
- 5.7 The Company shall be entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by, or paid to, freight forwarders.
- 5.8 Should the Customer, Consignee or Owner of the Goods fail to take delivery at the appointed time and place when and where the company is entitled to deliver, the Company shall be entitled to store the Goods, or any part thereof, at the sole risk of the Customer or Consignee or Owner, whereupon the Company's liability in respect of the Goods, or that part thereof, stored as aforesaid, shall wholly cease.

The Company's liability, if any, in relation to such storage, shall be governed by these conditions. All costs incurred by the Company as a result of the failure to take delivery shall be deemed as freight earned, and such costs shall, upon demand, be paid by the Customer.

- 5.9 The Company shall be entitled at the expense of the Customer to dispose of or deal with (by sale or otherwise as may be reasonable in all the circumstances):-
 - 5.9.1 after at least 28 days notice in writing to the Customer, or (where the Customer cannot be traced and reasonable efforts have been made to contact any parties who may reasonably be supposed by the Company to have any interest in the Goods) without notice, any Goods which have been held by the Company for 90 days and which cannot be delivered as instructed; and
 - 5.9.2 without prior notice, any Goods which have perished, deteriorated, or altered, or are in immediate prospect of doing so in a manner which has caused or may reasonably be expected to cause loss or damage to the Company, or third parties, or to contravene any applicable laws or regulations.

6. **LIABILITY AND LIMITATION**

- 6.1 The Company shall perform its duties with a reasonable degree of care, diligence, skill and judgment.
- 6.2 The Company shall be relieved of liability for any loss or damage if, and to the extent that, such loss or damage is caused by:-
 - 6.3 strike, lock-out, stoppage or restraint of labour, the consequences of which the Company is unable to avoid by the exercise of reasonable diligence; or
 - 6.4 Any cause or event which the Company is unable to avoid, and the consequences of which the company is unable to prevent by the exercise of reasonable diligence.
- 6.5 Except under special arrangements previously made in writing by an officer of the Company so authorised, the Company accepts no responsibility with regard to any failure to adhere to agreed departure or arrival dates of Goods.
- 6.6 Subject to clause 2.4 and 3.10.1 above and sub-clause 6.13 below, the Company's liability howsoever arising and, notwithstanding that the cause of loss or damage be unexplained, shall not exceed
 - 6.7 in the case of claims for loss or damage to Goods:
 - (a) The value of any loss or damage, or
 - (b) A sum at the rate of 2 SDR per kilo of the gross weight of any Goods lost or damaged whichever shall be the lower.
 - 6.8 subject to 6.9 below, in the case of all other claims:
 - (a) The value of the subject Goods of the relevant transaction between the Company and its Customer, or
 - (b) Where the weight can be defined, a sum calculated at the rate of two SDR per kilo of the gross weight of the subject Goods of the said transaction, or
 - (c) 75,000 SDR in respect of any one transaction, whichever shall be the least.
- 6.9 in the case of an error and/or omission, or a series of errors and/or omissions which are repetitions of or represent the continuation of an original error, and/or omission
 - (a) The loss incurred, or

- (b) 75,000 SDR in the aggregate of any one trading year commencing from the time of the making of the original error, and /or omission, whichever shall be the lower.
- 6.10 For the purposes of clause 6.6, the value of the Goods shall be their value when they were, or should have been shipped. The value of SDR shall be calculated as at the date when the claim is received by the Company in writing.
- 6.11 Subject to clause 2.4 above and sub-clause 6.13 below, the Company's liability for loss or damage as a result of failure to deliver, or arrange delivery of goods, in a reasonable time, or (where there is a special arrangement under Clause 6.5 to adhere to agreed departure or arrival dates, shall not in any circumstances whatever exceed a sum equal to twice the amount of the Company's charges in respect of the relevant contract.
- 6.12 Save in respect of such loss or damage as is referred to at sub-clause 6.11, and subject to clause 2.4 above and Sub- Clause 6.13 below, the Company shall not in any circumstances whatsoever be liable for indirect or consequential loss such as (but not limited to) loss of profit, loss of market, or the consequences of delay or deviation, however caused.
- 6.13 On express instructions in writing declaring the commodity and its value, received from the Customer and accepted by the Company, the Company may accept liability in excess of the limits set out in sub-clauses 6.6 to 6.12 above upon the Customer agreeing to pay the Company's additional charges for accepting such increased liability. Details of the Company's additional charges will be provided upon request.
- 6.14 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, except where the Customer can show that it was impossible for him to comply with this time limit, and that he has made the claim as soon as it was reasonably possible for him to do so.
- 6.15 Notwithstanding the provisions of sub-paragraph 6.14 above, 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 suit be brought and written notice thereof given to the Company within nine months from the date of the event or occurrence alleged to give rise to a cause of action against the Company.

7. VARIATION AND AMENDMENTS

- 7.1 If the Customer wishes to vary any details of the schedule/quotation/letter it must notify the Company in writing as soon as possible. The Company shall endeavour to make any required changes and any additional costs thereby incurred shall be invoiced to the Customer.
- 7.2 If, due to circumstances beyond the Company's control, it has to make any change in the arrangements relating to the provision of the Services it shall notify the Customer forthwith. The Company shall endeavour to keep such changes to a minimum and shall seek to offer the Customer arrangements as close to the original as is reasonably possible in the circumstances.

8. TERMINATION

- 8.1 The Company may terminate the agreement forthwith if:

- 8.1.1 the Customer is in breach of any of its obligations hereunder; or
 - 8.1.2 the Customer has entered into liquidation (other than for the purposes of a bona fide amalgamation or reconstruction) whether compulsory or voluntarily or compounds with its creditors generally or has an administrator, administrative receiver or receiver appointed over all or a substantial part of its undertaking or assets; or
 - 8.1.3 the Customer has become bankrupt or shall be deemed unable to pay its debts by virtue of Section 123 of the Insolvency Act 1986; or
 - 8.1.4 the Customer ceases or threatens to cease to carry on business; or
 - 8.1.5 Any circumstances whatsoever beyond the reasonable control of the Company (including but not limited to the termination of the service through no fault of the Company) arise that necessitate for whatever reason the termination of the provision of services.
- 8.2 In the event of termination under clause 7.1 the Company shall retain any sums already paid to it by the Customer without prejudice to any other rights the Company may have whether at law or otherwise.

9. **SUB-CONTRACTING**

- 9.1 Either party may sub-contract the performance of any of its obligations under this Agreement without the prior written consent of the other party. Where either party sub-contracts the performance of any of its obligation under this Agreement to any person with the prior consent of the other party, that party shall not be responsible for every act or omission of the sub-contractor as if it were an act or omission of the party itself.

10. **LIABILITY**

- 10.1 Except in respect of death or personal injury caused by the Company's negligence, the Company will not by reason of any representation, implied warranty, condition or other term, or any duty at common law or under express terms of this contract, be liable for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the Company's servants or agents or otherwise) in connection with the performance of this contract or with the use by the Customer of the Services supplied.
- 10.2 The Customer shall indemnify the Company against all damages, costs, claims and expenses suffered by the Company arising from loss or damage to any equipment (including that of third parties) caused by the Customer, or its agent or employees.
- 10.3 The Company shall not be liable to the Customer or be deemed to be in breach of these terms and conditions by reason of any delay in performing, or any failure to perform, any of the Company's obligations if the delay or failure was due to any cause beyond the Company's reasonable control.
- 10.4 Where the Customer consists of two or more persons such expression throughout shall mean and include such two or more persons and each or any of them. All obligations on the part of such a Customer shall be joint and several obligations of such persons.

11. **FORCE MAJEURE**

- 11.1 Neither the Company nor the Customer shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Services, if the delay or

failure was due to any cause beyond that party's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond either party's reasonable control:-

- 11.2 act of God, explosion, flood, tempest, fire or accident;
- 11.3 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 11.4 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 11.5 import or export regulations or embargoes;
- 11.6 strikes, lock-outs, or other industrial actions or trade disputes (whether involving employees of either the Company or the Customer or of a third party);
- 11.7 difficulties in obtaining raw materials, labour, fuel, part or machinery;
- 11.8 Power failure or breakdown in machinery.

12. WAIVER

- 12.1 No waiver by the Company of any breach of these terms and conditions by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision. A waiver of any term, provision or condition of this agreement shall be effective only if given in writing and signed by the waiving party and then only in the instance and for the purpose for which the waiver is given.
- 12.2 No failure or delay on the part of any party in exercising any right, power or privilege under this agreement shall operate as a waiver of, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise of or the exercise of any other right, power or privilege.

13. SEVERANCE

- 13.1 If any provision of these terms and conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these terms and conditions and the remainder of the provision in question shall not be affected thereby.

14. COPYRIGHT

- 14.1 The Company reserves all copyright and any other rights (if any) which may subsist in the products of, or in connection with, the provision of the Company's services or facilities. The Company reserves the right to take such actions as may be appropriate to restrain or prevent infringement of such copyright.

15. NOTICES AND SERVICE

- 15.1 Any notice or other information required or authorised by this Agreement to be given by either party to the other shall be given by sending via pre-paid registered post, email, facsimile transmission or other comparable means of communication.
- 15.2 Any notice or information given by post in the manner provided by Clause 14.1 which is not returned to the sender as undelivered shall be deemed to have been given on the 3rd day after the envelope containing it was so posted; and proof that the envelope containing any such notice or information was properly addressed, pre-paid, registered and posted, and that it has not been so returned to the sender, shall be sufficient evidence that the notice or information has been duly given.
- 15.3 Any notice or information sent by e-mail, telex, cable, facsimile transmission or

comparable means of communication shall be deemed to have been duly given on the date of transmission, provided that a confirming copy of it is sent to the other party 24 hours after transmission.

- 15.4 Service of any document for the purposes of any legal proceedings concerning or arising out of this Agreement shall be effected by either party by causing such document to be delivered to the other party at its registered or principal office, or to such other address as may be notified to one party by the other party in writing from time to time.

16. **JURISDICTION AND LAW**

- 16.1 These conditions and any act or contract to which they apply shall be governed by English law and any dispute arising out of any act or contract to which these Conditions apply shall be subject to the exclusive jurisdiction of the English courts.