

**PD INTERMODAL SOLUTIONS LIMITED (CRN 06429115) ("PD")  
GENERAL CONDITIONS FOR THE PROCUREMENT OF CARRIAGE BY RAIL ("RAIL CONDITIONS")  
(26<sup>th</sup> March 2019)**

These Conditions shall apply to any booking service, all transportation by rail from Arrival Point to Departure Point and the unloading or loading of Containers and/or Goods at Grangemouth and/or Mossend, ("Services" as defined below). A copy of these Conditions can be found on our website [www.pdports.co.uk/legalterms](http://www.pdports.co.uk/legalterms) or a copy can be obtained from PD on request.

Please note that these Conditions contain limitations and exclusions of liability in favour of PD.

Customers are recommended to take professional advice and to consider their insurance arrangements for risks that fall to them under these Conditions.

Customers' attention is drawn to the rights of PD to apply a fuel surcharge.

**1. DEFINITIONS AND APPLICATION**

1.1 In these Conditions the following words shall have the following meanings:

**"Arrival Point"** the location to which a Consignment is to be transported by PD's Rail Carrier pursuant to the Contract;

**"Cancellation Charges"** has the meaning assigned to that expression in Condition 8.12;

**"Charges"** the charges payable by the Customer for provision of the Services by PD as set out in the Contract;

**"Claims"** claims, losses, damages, liabilities, demands, judgments, costs and expenses (including legal costs) incurred or suffered by a party (including death or personal injury);

**"Commencement Date"** the date expressly identified as such in the Contract or (if earlier) the date on which the Services first commence in accordance with the Contract;

**"Conditions"** these Rail Conditions;

**"Confidential Information"** all information in respect of the business of each of the parties including, without prejudice to the generality of the foregoing, business methods; prices; business, financial, marketing, development or manpower plans; or customer lists that arise through the negotiation or performance of the Contract;

**"Consignee"** the person (who may or may not be the Customer) to whom PD arranges delivery of the Goods and/or Containers;

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

**"Consignor"** the person (who may or may not be the Customer) from whom PD arranges collection of the Goods and/or Containers;

**"Container(s)"** International Standards Organisation Shipping containers either empty or loaded (including tank and refrigerated containers) and any other similar unit or device in which Goods are to be transported;

**"Contract"** the contract between PD and the Customer for the provision of Services, which includes these Conditions;

**"Contract Year"** the 12 month period from and including the Commencement Date and each successive 12 month period;

**"Customer"** the person named on the Contract who contracts with PD for the provision of Services;

**"Customer's Equipment"** any equipment provided by the Customer or one of its contractors, Consignees or Consignors for the use by PD or its Rail Carrier in the transportation of Goods including but not limited to Wagons and Containers (whether such equipment is owned by the Customer or any other person);

**"Dangerous Goods"** goods of any nature falling within the definition of "dangerous goods" given in the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007 as supplemented by the *Dangerous Goods – Rail Conditions of Acceptance* (GO/RT3421) issued by the Rail Safety and Standards Board, as amended, re-issued or replaced from time to time;

**"Departure Point"** means the location from which a Consignment is to be transported by PD's Rail Carrier pursuant to the Contract;

**"Force Majeure"** any circumstance beyond the reasonable control of either party including: strikes and any other industrial action or dispute; acts of God; war; riot; terrorism; crime; civil commotion; compliance with any law or governmental order, rule, regulation or direction or any overriding emergency procedures; accident; fire; flood; adverse weather conditions; failure of, material reduction in utility of or inability to use a third party's infrastructure or refusal due to a physical or operational impediment of any such third party to allow such use;

**"Goods"** the goods in relation to which PD is to provide Services pursuant to the Contract;

**"Group"** any holding company of PD and any subsidiary of PD or any such holding company from time to time ("holding company" and "subsidiary" having the meaning given in section 1159 of the Companies Act 2006);

**"Indemnified Amount"** £5,000,000 or such other sum as shall be agreed in writing between PD and the Customer;

**"Loss"** the actual loss or destruction of Goods;

**"Network Rail"** Network Rail Limited (no. 4402220) or Network Rail Infrastructure Limited (no. 2904587) each of whose registered office is at Kings Place 90 York Way London N1 9AG or either of their successors or assigns;

**"Rail Carrier"** means DB Cargo (UK) Limited (registered number 2938988) whose registered office address is Lakeside Business Park, Carolina Way, Doncaster, DN4 5PN or such other replacement rail carrier as may be agreed from time to time;

**"Railway Industry Standards"** as the context requires the applicable published rules and regulations including codes of practice and conduct in force from time to time relating to any equipment or activity or service to be provided under or used in connection with the Contract;

**"Services"** the service(s) to be provided or procured by PD including booking service, the carriage of Containers and/or Goods by rail and/or road from the Arrival Point to the Departure Point and the loading/unloading of Containers at Grangemouth and/or Mossend;

**"Wagon(s)"** the railway wagons in which Goods are to be transported;

**"Working Day"** a day of the week except for: Saturday; Sunday; and public and bank holidays in England.

- 1.2 Any reference in these Conditions to a statute or statutory provision shall be construed as a reference to the same as amended, consolidated, modified, extended, re-enacted or replaced from time to time.
- 1.3 The headings in these Conditions are for convenience only and shall not affect the construction of these Conditions.
- 1.4 The expression "person" includes any individual, firm, company, unincorporated association and partnership and vice versa.
- 1.5 The expression, Consignee, Consignor and Customer shall include such person's principals, agents, employees and sub-contractors.
- 1.6 The words "include", "including" or "includes" are to be construed as if they were immediately followed by the words "without limitation" and so shall not limit the meaning of the words preceding them.

## **2. SCOPE AND COMMENCEMENT**

- 2.1 The Services to be provided by PD (or its nominated sub-contractor) shall be as set out in the Contract.
- 2.2 Unless otherwise agreed in writing by PD, the making available of Goods and/or Containers for commencement of the Services shall be deemed acceptance of these Conditions by the Customer (notwithstanding that the necessary contractual documentation may not have been signed by the Customer).
- 2.3 The Contract shall commence on the Commencement Date and shall continue in force until the date specified in the Contract (as varied by the agreement of the parties) or until terminated in accordance with the Contract ("the Term").
- 2.4 Save where provided elsewhere in the Contract, the cut off times for the Customer to place bookings with PD for the provision of Services will be 14:00 hours on the Working Day prior to departure. Such bookings should be made by the Customer using a dedicated email address as notified to the Customer by PD from time to time. Following receipt of this notice, PD shall issue a written confirmation of order to the Customer in respect of the Services that it is able to provide. Once the confirmation of order has been issued it shall be binding on the Customer insofar as its obligations under the Contract are measured and applied. For the avoidance of any doubt, the provision of any Service(s) by PD to the Customer is subject always to availability.

3. **PRIORITY**

In the event of a conflict or inconsistency between a term of these Conditions, and a term of the Contract, the relevant term of the Contract shall prevail and apply.

4. **PD'S OBLIGATIONS**

4.1 PD shall during the Term of the Contract and in consideration of payment of the Charges procure the transport of each Consignment from the Departure Point to the Arrival Point, subject to the terms of the Contract. PD's Rail Carrier shall be entitled to transport each Consignment by such route and means as it shall decide.

4.2 PD's Rail Carrier shall be the train Operator, as defined in the Railways Act 1993, for the purposes of the Contract.

4.3 PD shall procure that the Rail Carrier:

4.3.1 provides the Services with reasonable skill and care and in accordance with applicable Railway Industry Standards;

4.3.2 provides the equipment specified in the Contract as to be provided by the Rail Carrier, such equipment to be safe and functional in respect of its designed purpose and in accordance with applicable Railway Industry Standards; and

4.3.3 permits or procures access on the terms of Condition 17 for the Customer (provided the identity of any agents or subcontractors of the Customer is notified to the Rail Carrier and approved by the Rail Carrier in advance of them seeking such access) to the Rail Carrier's land or premises for the purposes of fulfilling the Customer's obligations under the Contract;

4.4. Subject to Condition 21, PD may sub-contract any part(s) or the whole of the Services.

4.5. To the extent that PD exercises its right to sub-contract under Condition 4.4 in order to transport Goods by road and where loss or damage has occurred during this road transport, PD's liability shall (unless otherwise agreed in the Contract) be determined in accordance with the Road Haulage Association Terms and Conditions 2009 or (if different) such other terms and conditions in place between PD and the relevant road haulier ("**the Road Conditions**").

4.6. Save as provided in Condition 4.5, in the event of a conflict between a term of the Road Conditions and a term of these Conditions and/or the Contract, then the relevant term of these Conditions and/or the Contract shall prevail and apply.

5. **LOADING/ UNLOADING**

5.1 The Customer shall make the Containers and/or Goods accessible for loading to PD and/or its Rail Operator at the Departure Point, packaged and labelled as set out in Condition 6 and at the times stated in the Contract.

5.2 PD shall have the right to refuse carriage of any Wagons, Containers and/or Goods to the extent they are not, in the Rail Carrier's reasonable opinion, securely loaded or otherwise suitable for transport.

5.3 The Customer shall be responsible for ensuring that the Goods are loaded into Containers at the correct temperature and in accordance with any other environmental conditions necessary to safeguard the condition of the Goods during transit having regard to best industry practice. Responsibility for setting the correct temperature or environment for the Goods shall remain with the Customer. PD shall not be liable for any loss of or damage to Goods to the extent caused by the incorrect setting or preparation of Containers (including thermostats on refrigerated Containers), or where the loss or damage concerns latent defects,

derangements, breakdown, defrosting or failed ventilation of or in a Container.

## 6. **THE GOODS, LABELLING AND PACKAGING**

6.1 The Customer warrants and represents that:

6.1.1 either it is the legal owner of the Goods or that it has the authority of the legal owner(s) and/or all persons having an interest in the Goods to enter into the Contract and to accept the Conditions for the transport of the Goods; and

6.1.2 the description and particulars relating to the Goods are complete, true and accurate in all respects.

6.2 The Customer shall give PD such details for each Consignment as PD may require from time to time. The Customer will issue PD with adequate forwarding instructions for each Consignment. The Customer shall procure that each Consignment shall be clearly and properly addressed and labelled in accordance with PD's requirements. If the Customer should change any aspect of a Consignment after advising PD of the information required in this Condition 6.2, then the Customer shall as soon as practicable notify PD of such changes (and in any event shall notify PD prior to the movement of such Consignment).

6.3 PD shall, if agreed in the Contract, sign a document prepared by the Customer or Consignor acknowledging receipt of the Consignment, however any such document shall not constitute evidence of the condition, correctness or declared nature, quantity or weight of the Consignment at the time it is received by PD.

6.4 The Customer shall ensure that all Goods:

6.4.1 are adequately and properly packaged and that such packaging complies with all applicable laws, rules, regulations and Railway Industry Standards;

6.4.2 will be safe and fit to be transported; and

6.4.3 will not cause death or personal injury to any person or damage to any property or other Goods during transportation.

6.5 The Customer shall indemnify PD against all Claims arising from a breach of Condition 6 by the Customer or its Consignor or Consignee and in the event that there is a dispute as to the cause of a Claim the Customer shall be required to establish to the reasonable satisfaction of PD that the cause of the Claim was other than the Goods not being adequately and properly packaged and other than the Goods not being safe and fit to be transported. Where no cause of a Claim can be established to the reasonable satisfaction of PD, the Customer shall be deemed to be in breach of Condition 6.

6.6 The Customer confirms that, other than as agreed in writing between it and PD, there are and will be no special requirements for the transport of the Goods. Accordingly PD shall have no liability for any deterioration or Loss of or damage to the Goods resulting from any such special requirement not so agreed in writing. If the Customer notifies PD of any such special requirement PD shall have no obligation to arrange for transport of such Goods unless it agrees to do so in writing. If PD agrees to carry any Goods for which there is a special requirement it may charge the Customer additional sums.

## 7. **DANGEROUS GOODS**

7.1 PD shall have no obligation to accept any Dangerous Goods for carriage. PD shall have no liability for any Claims (including in negligence) in respect of any Dangerous Goods unless, prior to loading, PD has received in writing precise and correct identification of the Goods and has further agreed in writing to accept the same for carriage.

7.2 If PD accepts any Dangerous Goods for carriage the Customer shall ensure that the

Goods are safely packaged and labelled with the precise and correct identity of the relevant substances and/or articles and all other relevant information as specified by any statutory or regulatory requirements from time to time and that a certificate of readiness is issued by the Customer prior to carriage commencing and the Customer complies with any other requirements of PD's Rail Carrier for the time being in force regarding carriage of Dangerous Goods.

7.3 Without prejudice to any other provision of the Contract the Customer shall indemnify PD in full against all Claims arising out of or in connection with the carriage of Dangerous Goods:

7.3.1 which PD has not expressly accepted for carriage in writing; or

7.3.2 in respect of which the Customer has not complied with its obligations under Condition 7.2 even where caused by the negligence of PD or its Rail Carrier; or

7.3.3 where damage or injury is caused by the Dangerous Goods other than as a result of any negligence or act or omission of PD or its Rail Carrier.

7.4 The Customer hereby grants the right to PD and its Rail Carrier to enter and have access to any premises not owned by PD or its Rail Carrier where Dangerous Goods are or are to be loaded or unloaded to audit the loading and unloading procedures that are in place and/or which occur in relation to Dangerous Goods and where such premises are not owned by the Customer, the Customer shall procure that PD and its Rail Carrier shall have such right to enter and access such premises.

## 8. **CHARGES**

8.1 The Customer shall pay to PD the Charges in accordance with the Contract.

8.2 PD may issue an invoice at any time in respect of any individual Consignment the subject of the Contract following carriage of such Consignment or as otherwise agreed in accordance with the terms of the Contract.

8.3 All Charges shall be paid by the Customer to PD in the currency of the invoice in cleared funds within 14 days of the date of the relevant invoice. All remittances should include a reference to the relevant invoice (including its number).

8.4 All Charges and/or payments payable pursuant to the Contract are exclusive of value added tax and any other tax, duty or fee imposed from time to time by any government or other authority and are subject to the addition of value added tax and any other tax, duty or fee at the appropriate rate.

8.5 All payments to be made by the Customer to PD under the Contract shall be made in full without any set-off, restriction or condition and without any deduction for or on account of any counterclaim unless such deduction has been agreed in advance in writing by PD.

8.6 If PD accepts any change to the Contract proposed by the Customer, PD may charge the Customer an additional reasonable charge in respect of such change (and such charges shall automatically be deemed part of the Charges and payable in accordance with this Condition 8). PD will inform the Customer as soon as reasonably practicable of such additional charges.

8.7 If: (a) the Customer or the Consignor fails to make any Goods and/or Container available for collection and/or loading at the specified time; or (b) the Consignee fails to take delivery of any Goods immediately on arrival at the Delivery Point; then PD may charge the Customer additional charges.

8.8 The parties acknowledge that PD may be obliged to pay a fuel surcharge levied by its Rail Carrier. The parties agree that if in any month the average price of fuel delivered to PD's Rail Carrier inclusive of fuel duty exceeds £500 per tonne, then PD may by written notice invoice a

fuel surcharge to the Customer for the next following month ("Fuel Surcharge"). The purpose of this Condition 8.8 is to transfer to the Customer the risk in respect of the cost of fuel (inclusive of fuel duty). The Fuel Surcharge may be invoiced on a weekly basis and will be calculated to reflect the increase in the average price of fuel delivered to PD's Rail Carrier in accordance with the mechanism as published from time to time by PD's Rail Carrier at [http://uk.dbcargo.com/file/rail-uk-en/6962116/oA0hU2GRvooomZFhT9nxowug1tl/8642304/data/fuel\\_surcharge.pdf](http://uk.dbcargo.com/file/rail-uk-en/6962116/oA0hU2GRvooomZFhT9nxowug1tl/8642304/data/fuel_surcharge.pdf) or as made available on reasonable request, save that any reference in the published mechanism to £275 per tonne shall be deleted and replaced with £500 per tonne. Fuel Surcharge invoices shall be paid by the Customer in accordance with the terms of the Contract.

- 8.9 The Customer acknowledges that PD's Rail Carrier is obliged to pay certain access charges levied by Network Rail or any other infrastructure manager or service provider in respect of its access requirements for the operation of the Contract, through an access contract between Network Rail or any other infrastructure manager or service provider and the Rail Carrier ("Access Charges") and that in the contract between PD and its Rail Carrier ("the Rail Contract"), the Rail Carrier is entitled to increase the Charges and payments under the Rail Contract in direct proportion to any increase in the level of Access Charges due as a result of the Rail Carrier fulfilling its obligations to PD under the Rail Contract from the date of any such increase. PD shall be entitled to increase the charges and payments under the Contract by the same amount as any increase imposed by the Rail Carrier under the Rail Contract.
- 8.10 On each 14<sup>th</sup> May during the Term, and subject to any alternative provisions expressly agreed in the Contract, PD shall be entitled to increase the Charges by a percentage equivalent to the increase in the retail price index all items published by the Office for National Statistics (reference "CHAW") over the 12 month period ending at the end of the month before the increase is to take effect. Any increase shall take effect from the commencement of the following 12 month period until a further variation (if any) is made in accordance with this Condition 8. For the avoidance of doubt, the right to increase charges under this Conditions 8 shall not apply to the fuel element of the Charges which shall be governed by the fuel surcharge provisions under Condition 8.8.
- 8.11 Save where provided elsewhere in the Contract PD will not vary its Charges without the prior consent of the Customer, save where the cost to PD of providing the Services increases directly as a consequence of a change in law, manner or rate of taxation or as a result of decision by any competent legal or regulatory authority. PD will give as much notice as reasonably practicable of any such change in these Conditions.
- 8.12 Save where provided elsewhere in the Contract, if at any time after the confirmation of order is issued by or on behalf of PD (in accordance with Condition 2.4 or otherwise in accordance with the Contract) the Customer seeks to cancel any (or all) of the Services confirmed in the confirmation of order, it shall be liable to pay to PD a sum equivalent to seventy five per cent (75%) of the total Charges paid and payable in respect of the cancelled Services ("**Cancellation Charges**"). The parties acknowledge and agree that the Cancellation Charges represent a genuine pre-estimate of the losses which PD would incur in the event of a cancellation of the Services and should not be construed as a penalty.

## **9. PAYMENT REMEDIES**

- 9.1 If the Customer fails to pay monies due under an invoice by the due date for payment of such invoice, PD may, without limitation and in addition to any other rights or remedies granted to it by the Contract or applicable law:
- 9.1.1 withdraw the Customer's terms of payment under Condition 8.3 (whether 14 days or such other period agreed between the parties under the Contract) and require that any future carriage of Goods and other Services to be performed by PD pursuant to the Contract are fully paid for in advance (for such time as PD acting reasonably deems appropriate); and/or

- 9.1.2 charge the Customer interest (accruing on a daily basis) and/or compensation in accordance with the Late Payment of Commercial Debts (Interest) Act 1998, from the due date of payment until payment (whether before or after judgment); and/or
- 9.1.3 terminate or suspend the Services in accordance with Conditions 15 and 16.
- 9.2 If PD reasonably determines that it would be commercially prudent to obtain financial or performance security against the Customer failing to perform any of its obligations hereunder, PD shall be entitled to require the Customer to provide such financial security against the failure of the Customer to perform any of its obligations under the Contract as PD deems appropriate (including individual or parent company guarantees). Failure to provide such security within the time period stipulated by PD shall be deemed to be a material breach of the Contract.
- 9.3 PD shall have a general as well as a particular lien on all Consignments (and associated documents) in PD or its Rail Carrier's possession for all sums due to PD from the Customer, whether under the Contract or otherwise. PD shall be entitled to charge the Customer its costs associated with asserting and exercising its lien. If the lien is not satisfied within a reasonable period of time from the date upon which PD first gives notice of its exercise to the Customer then the Goods the subject of the lien may be sold and the proceeds of sale applied in satisfaction of the lien and all proper and related charges and expenses of PD in exercising the lien and PD will account to the Customer for any surplus.

**10. LOSS OR DAMAGE OF GOODS**

- 10.1 PD shall have no liability for any Loss of or damage to Goods which arises from any of the following:
  - 10.1.1 inherent liability to wastage in bulk or weight, latent defect or inherent defect, vice or natural deterioration of the Goods;
  - 10.1.2 any act or omission of the Customer, the Consignor or the Consignee (or any of their agents or sub-contractors);
  - 10.1.3 any event of Force Majeure; or
  - 10.1.4 any Loss of or damage to Goods which occurs at any time before commencement of transit at the Departure Point or after completion of Transit at the Arrival Point.
- 10.2 PD shall have no liability for any Loss of or damage to Goods caused by the manner in which the same are loaded or unloaded by a person other than PD or its Rail Carrier.
- 10.3 Unless otherwise agreed in writing between the Customer and PD the liability of PD for Loss of or damage to Goods whilst in its custody or control in accordance with this Condition 10 shall be limited to:
  - 10.3.1 in the case of Loss, the cost (being the manufacturing, production or purchasing cost excluding VAT) to the Customer of the relevant Goods;
  - 10.3.2 in the case of damage, the reduction in value,
 subject to (in all cases) a maximum of £1,300 per tonne of Goods. PD shall have no other liability for any Loss of or damage to Goods even if caused by its negligence.
- 10.4 PD shall be entitled to proof of the actual value or reduction in value (as the case may be) of any Goods the subject of Loss or damage.



## **11. FORCE MAJEURE**

11.1 Neither party shall be deemed to be in breach of the Contract or otherwise liable to the other for any failure or delay in performing its obligations under the Contract due to Force Majeure. If a party's performance of its obligations under the Contract is affected by Force Majeure:

11.1.1 it shall give notice to the other party, specifying the nature and extent of the Force Majeure, as soon as reasonably possible upon becoming aware of the Force Majeure and will at all times use reasonable endeavours to mitigate the severity of the Force Majeure;

11.1.2 the date for performance of such obligation shall be deemed suspended for a period equal to the delay caused by such Force Majeure and (if necessary) for a reasonable period after the event of Force Majeure has ceased;

11.1.3 it shall not be entitled to payment from the other party in respect of extra costs and expenses incurred by virtue of the Force Majeure.

11.2 For the avoidance of doubt, failure or inability to pay the Charges or any sum due under the Contract shall not be excused by any event of Force Majeure.

## **12. LIABILITY**

12.1 The Customer shall be liable for and shall indemnify and hold harmless PD in full against all Claims, incurred or suffered by PD or suffered or incurred by a third party and claimed against PD arising from any negligent or wrongful act or omission on the part of the Customer, the Consignee or the Consignor, or their suppliers or arising from any defect in Wagons or Containers supplied by the Customer (or a third party nominated by the Customer).

12.2 The parties' liability to each other in respect of any breach of the Contract and breach of any other obligation or duty whether in contract, tort, by statute or otherwise arising out of or in connection with the Contract or its performance (in each case whether caused by negligence or otherwise) shall be limited as follows:

12.2.1 neither party shall have liability to the other for:

12.2.1.1 loss of profit;

12.2.1.2 customer claims;

12.2.1.3 loss of business;

12.2.1.4 loss of goodwill;

12.2.1.5 loss of reputation; or

12.2.1.6 any special, indirect or consequential loss whatsoever

(save that this Condition 12.2.1 shall not apply in respect of any loss of profit arising from the Customer's breach of the Contract or any payment due to be made by the Customer as a consequence of the Contract terminating or loss of profit or arising from any failure by the Customer to provide to PD a required volume of Goods set out in the Contract);

12.2.2 PD's maximum liability for or arising out of or in connection with a failure by PD to deliver a Consignment within the time stated in the Contract, or if no time is so specified, then within a reasonable period of time, shall be the Charges (excluding VAT) the Customer paid to PD for carriage of such Consignment. To the extent liquidated damages or other payments are expressly agreed in the Contract as payable by PD in the event of delay, such payments shall be the Customer's sole and

exclusive remedy, and PD's sole and exclusive liability for the relevant delay. The parties agree that any such liquidated damages or payments are a genuine pre-estimate of all Losses suffered by the Customer in the circumstances in which they become due and could not reasonably be construed as a penalty;

- 12.2.3 PD's maximum liability for the Loss of or damage to Goods shall be as set out in Condition 10;
- 12.2.4 PD shall have no liability for loss of use, payment of hire or demurrage on any Customer Containers;
- 12.3 Unless otherwise agreed in the Contract, the maximum aggregate liability of PD in respect of all claims in a Contract Year concerning breach of the Contract or breach of any other obligation whether in contract, tort, by statute or otherwise arising out of or in connection with the Contract or its performance or non-performance (in each case whether caused by negligence or otherwise) shall be the lower of the Charges paid and/or payable in the relevant Contract Year and five hundred thousand pounds sterling (£500,000).
- 12.4 Nothing herein shall in any way diminish either party's common law duty to mitigate their respective losses (and each party shall be obliged to mitigate its losses where such losses are the subject of any indemnity contained in the Contract).
- 12.5 Each party's liability to the other under the Contract shall be reduced proportionally to the extent that the act or omission of the other party, its employees, agents or sub-contractors may have contributed to the event which gives rise to the relevant liability.
- 12.6 Where either party ("the indemnitee") becomes aware that matters have arisen which will or are likely to give rise to a Claim against it which will or is likely to give rise to a Claim against the other ("the indemnifier") under the indemnities contained in the Contract the indemnitee will:
- 12.6.1 as soon as practicable notify the indemnifier in writing of the potential Claim and of the matters which will or are likely to give rise to such Claim;
- 12.6.2 not make any admission of liability, agreement or compromise with any person, body or authority in relation to the potential Claim without prior written agreement of the indemnifier; and
- 12.6.3 at all times on reasonable demand disclose in writing to the indemnifier all information and documents relating to the potential Claim or the matters which will or are likely to give rise to such Claim.
- 12.7 Nothing in these Conditions shall exclude or restrict either party's liability for:
- 12.7.1 death or personal injury caused by its negligence;
- 12.7.2 fraud or fraudulent representations made by it; or
- 12.7.3 any other matter for which it would be unlawful for a party to exclude or restrict its liability.
- 12.8 The exclusions and limitations of liability contained in the Contract shall extend to members of PD's Group and PD's employees, agents and sub-contractors all of whom shall be entitled to the benefit of such exclusions and limitations set out in this Contract and shall rely on these provisions in the event that the Customer brings any claim against those third parties directly. For the purpose of this clause, PD's Group means any holding company or subsidiary of PD, or any company which is a subsidiary of the holding company of PD for the time being (subsidiary and holding company having the meanings set out in section 1159 of the Companies Act 2006).

- 12.9 PD does not accept liability for the acts or omissions of other carriers unless such other carriers have been specifically engaged by PD as subcontractors or assignees in respect of performing PD's obligations under the Contract.
- 12.10 The parties agree that damages are an adequate remedy for a breach of any obligation, warranty or covenant contained in the Contract.

**13. CLAIMS PROCEDURE**

- 13.1 PD shall have no liability for any loss of, damage to or delay in the delivery of any Goods and/or Containers unless it is advised of the same in writing within 3 days of the completion or termination of carriage by PD's Rail Carrier of the relevant Consignment or of the expected date of completion or termination of carriage provided that if in any particular case:

13.1.1 the Customer proves that it was not reasonably possible for the Customer to advise PD in writing within the above time period; and

13.1.2 the Customer did notify PD of the same within a reasonable time,  
then PD shall not have the benefit of this Condition.

- 13.2 Notwithstanding Condition 13.1, PD shall have no liability to the Customer for any Claim (including loss of, damage to or delay in the delivery of any Goods and/or Containers) where proceedings have not been commenced (and notified to PD) within 9 months of the date of the event allegedly giving rise to the relevant Claim.

- 13.3 Notices of any losses, damages or delays in the delivery of Goods and/or Containers should be sent by email to [Unitised.Claims@pdports.co.uk](mailto:Unitised.Claims@pdports.co.uk)

**14. INSURANCE**

- 14.1 The Customer shall maintain, at its own expense, comprehensive insurance (covering loss or damage to persons or property) to an amount which is not less than the Indemnified Amount together with employer's liability insurance in an amount no less than the statutory minimum. Such insurance is to be held with a reputable insurance company.

- 14.2 The insurance cover required to be held by the Customer shall be primary in respect of the Customer's liabilities arising under the Contract.

- 14.3 At PD's request, the Customer shall provide current certificates of insurance in order to satisfy PD that such insurance coverage is in effect. In the event of the required insurance cover being withdrawn or terminated the Customer will immediately inform PD who may terminate the Contract forthwith without prejudice to any rights it may have under the Contract.

- 14.4 PD shall procure that its Rail Carrier shall maintain, at its own expense, insurance (covering loss or damage to persons or property) to an amount which is consistent with prudent railway practice and as required by all applicable laws and regulations. Such insurance shall include employer's liability insurance in an amount no less than the statutory minimum and is to be held with a reputable insurance company.

- 14.5 At the Customer's request, PD shall provide a copy of the Rail Carrier's current certificate of insurance in order to satisfy the Customer that such insurance coverage is in effect. In the event of this insurance cover being withdrawn or terminated PD will immediately inform the Customer who may terminate the Contract forthwith without prejudice to any rights it may have under the Contract.

## **15. SUSPENSION**

- 15.1 PD may, exercising its reasonable discretion, suspend some or all of the Services in the event that the Customer commits a material breach of the Contract which (being capable of remedy) has not been remedied.
- 15.2 Unless and until the Customer fully remedies the material breach and PD resumes provision of the relevant Services:
- 15.2.1 PD's obligations and liability under any service levels or other performance measures (including any liability to pay liquidated damages or other payments in accordance with the Contract) shall cease to apply during any period in which the relevant Services are suspended;
- 15.2.2 the Customer shall be liable for any committed costs and resources that PD incurs as a direct result of Services being suspended in accordance with this Condition 15, and which it is unable to reallocate or recover (having used reasonable endeavours to do so).

## **16. TERMINATION**

- 16.1 A party may by notice in writing served on the other party ("**Defaulting Party**") terminate the Contract forthwith if :
- 16.1.1 the Defaulting Party shall be in material breach of any of the terms of the Contract and, where the breach is capable of remedy, the Defaulting Party fails to remedy such breach within 28 days of service of a written notice from the party not in breach, specifying the breach and requiring the Defaulting Party to remedy such breach; or
- 16.1.2 bankruptcy or insolvency proceedings are brought against the Defaulting Party or if an arrangement with its creditors is made, or if a receiver or administrator is appointed over any of the Defaulting Party's assets or if the Defaulting Party goes into liquidation.
- 16.1.3 an event of Force Majeure prevents a Defaulting Party from materially complying with its obligations under the Contract and it continues for more than 90 days.
- 16.2 Without prejudice to Conditions 15.1 and 16.1 PD may by notice in writing served on the Customer terminate the Contract forthwith if the Customer fails to pay monies due under an invoice by the due date for payment of such invoice.
- 16.3 For the purposes of these Conditions a breach shall be capable of remedy if it can be remedied in all respects other than time of performance.
- 16.4 The termination of the Contract howsoever arising is without prejudice to the rights, duties and liabilities of the parties accrued prior to termination.
- 16.5 Any provision of the Contract which expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

## **17. ACCESS TO PREMISES**

- 17.1 The Customer shall procure that none of its employees, agents, sub-contractors or contractors or the Consignee or the Consignor enter onto any part of any land or premises owned or controlled by its Rail Carrier without the prior consent of PD and its Rail Carrier and being accompanied by a member of the Rail Carrier's staff. The Customer shall procure that any person who enters onto the Rail Carrier's land or premises complies with all applicable regulations and instructions of the Rail Carrier (including but not limited to those relating to alcohol and drugs) copies of which are available on request.

- 17.2 The Customer shall procure such access to its, its sub-contractor's, or the Consignor's or the Consignee's land as is necessary for PD or its Rail Carrier to perform the Services. PD shall procure that none of its employees, agents, sub-contractors or contractors enter onto any part of the Customer's, the Consignor's or the Consignee's land without the Customer having procured the aforementioned consent. PD shall procure that any person entering into the Customer's, its sub-contractor's, the Consignor's or the Consignee's land or premises on behalf of PD shall comply with all applicable regulations and instructions that are brought to the attention of PD in writing.
- 17.3 Each party shall take all reasonable steps to ensure the health and safety of the other party's employees, agents or sub contractors, and in the case of the Customer, this shall extend to PD's Rail Carrier, whilst on their premises and shall consult and liaise with each other with a view to maintaining a safe system of work at such premises.
- 17.4 No party shall acquire any interest (whether legal or equitable) in any land or premises belonging to the other party or any third party as a consequence of the Contract.

**18. CUSTOMER'S EQUIPMENT**

- 18.1 The Customer shall ensure that the Customer's Equipment is registered with the appropriate authority and is safe and fit to run, is free from defects and complies with and is maintained in accordance with all applicable Railway Industry Standards.
- 18.2 PD or its Rail Carrier may refuse to accept any Customer Equipment if it does not comply with Condition 18.1. The Customer shall not rely upon PD or its Rail Carrier carrying out any checks upon the Customer's Equipment and the Customer acknowledges that PD and its Rail Carrier relies upon the Customer's obligations under Condition 18.1. To the extent PD or its Rail Carrier is expressly required under the Contract to undertake an inspection of a Consignment in order to notify the Customer of any damage to the relevant Wagons and/or Containers and/or Goods, the Customer agrees that such activities shall be on the basis of a brief visual inspection only and PD and its Rail Carrier shall have no liability for failing to report any damage not reasonably capable of discovery on a brief visual inspection.
- 18.3 Any Wagons or Containers provided by PD shall be used by the Customer, Consignee and/or Consignor, and their respective sub-contractors (as applicable) only in connection with the Services.
- 18.4 The Customer shall promptly (and in any event within three (3) Working Days) notify PD of any damage to the Wagons and/or Containers and/or Goods at the point of delivery. Failure to notify any damage shall be deemed prima facie evidence that the relevant Wagons, Containers and/or Goods were delivered in good condition.
- 18.5 PD's liability for any loss of or damage to any Customer's Equipment caused by its or its Rail Carrier's proven negligence shall be limited to the reasonable cost of repair and in any event shall be limited to the depreciated value of that Customer's Equipment. PD shall have no other liability arising from any loss or damage to Customer's Equipment even if caused by negligence. The Customer shall give PD and its Rail Carrier a reasonable opportunity to inspect any damage for which it is claimed PD is responsible under this Condition.
- 18.6 Where any of the Goods or the Customer's Equipment are not the property of the Customer, the Customer shall procure that PD and its Rail Carrier has no liability for any loss or destruction of or damage to the same whether caused by negligence or otherwise) to any other person owning or having an interest therein (including but not limited to any insurer of any such person) in addition to the Customer's liability to PD under the express terms of the Contract and the Customer shall indemnify PD from any Claim to any such person.

**19. CONFIDENTIALITY**

19.1 Each party shall keep confidential the terms of the Contract and any and all Confidential Information that it may acquire in relation to the other party. Neither party shall use the other party's Confidential Information for any purpose other than to perform its obligations under the Contract. Each party shall ensure that its agents and employees comply with the provisions of this Condition 19.1.

19.2 The obligations on a party set out in Condition 19.1 shall not apply to any information which:

19.2.1 is publicly available or becomes publicly available through no act or omission of that party; or

19.2.2 a party is required to disclose by law or by competent legal or regulatory authority.

**20. INTELLECTUAL PROPERTY**

All intellectual property rights in the Services provided by PD or its Rail Carrier, all documents, drawings and information supplied by PD or its Rail Carrier to the Customer in connection with this Contract remain the absolute property of PD or its Rail Carrier (as appropriate). Such documents, drawings and information will not be copied, disclosed or used (except for the purpose for which they were supplied) without the prior written consent of PD and its Rail Carrier. No licence or other right is granted by PD or its Rail Carrier to the Customer with regard to the intellectual property of PD or the Rail Carrier (as appropriate) except as expressly set out in this Contract and for the purpose of performing the Services by PD's Rail Carrier or as otherwise permitted at law.

**21. DATA PROTECTION**

21.1 The Customer agrees that PD may use and disclose all information the Customer supplies to PD about any individual ("Shared Personal Data"), for the purpose of PD exercising its rights and performing its obligations under the Contract. Shared Personal Data shall be confined to the following categories of information relevant to the following categories of Data Subject:

21.1.1 the names and addresses of current and potential recipients of PD's services;

21.1.2 the geographical and email address of potential recipients of PD's services;

21.1.3 the home and mobile telephone numbers of potential recipients of PD's services; and

21.1.4 general information relating to potential recipients of PD's services such as access information in relation to their premises for purposes of deliveries.

21.2 Where the Customer provides PD with any Shared Personal Data about any individual, the Customer warrants and undertakes that it is permitted under Data Protection Legislation (as defined in Condition 21.3) to transfer the Shared Personal Data to PD for the purpose of performance of Condition 21.1 and has in place all necessary notices to ensure such transfer is fair and lawful.

21.3 The Customer warrants and represents that it has complied in all respects with the provisions of (1) the Data Protection Act 1998, until the date of its repeal (ii) the General Data Protection Regulation (EU 2016/679) and any national implementing laws, regulations and secondary legislation, for so long as the GDPR is effective in the UK, and (iii) any successor or supplemental legislation to the Data Protection Act 1998 and the GDPR, in particular the Data Protection Bill 2017-2019, once it becomes law ("Data Protection Legislation").

21.4 The Customer shall:-

21.4.1 maintain records of all processing operations under its responsibility that contain at least the minimum information required by the Data Protection Legislation, and shall make such information available to any relevant supervisory authority as defined in Data Protection Legislation on request; and

21.4.2 implement and maintain technical and organisational measures and procedures to ensure an appropriate level of security for such Shared Personal Data, including protecting such Shared Personal Data against the risks of accidental, unlawful or unauthorised destruction, loss, alteration, disclosure, dissemination or access.

21.5 If either party receives any complaint, notice or communication which relates directly or indirectly to the processing of Shared Personal Data by PD or to either party's compliance with the Data Protection Legislation in relation to the Shared Personal Data, it shall, as soon as reasonably practicable, notify the other party and it shall provide the other party with reasonable co-operation and assistance in relation to any such complaint, notice or communication.

21.6 Insofar as it is acting as processor on behalf of the Customer in respect of the Shared Personal Data, PD shall:

21.6.1 implement appropriate technical and organisational measures to ensure that the Shared Personal Data is subject to a level of security appropriate to the risks arising from its processing by PD or its sub-processors;

21.6.2 process such Shared Personal Data (i) only in accordance with the Customer's written instructions from time to time and (ii) only for the duration of the provision of Services by PD under these Conditions, unless required to so by law in which event PD shall inform the Customer of such legal requirement unless prohibited from doing so by law;

21.6.3 not process such Shared Personal Data for any purpose other than those set out in this Contract or otherwise expressly authorised by the Customer;

21.6.4 immediately inform the Customer if, in PD's opinion, an instruction given by the Customer to PD infringes Data Protection Legislation;

21.6.5 take reasonable steps to ensure the reliability of all its personnel who have access to such Shared Personal Data, and ensure that any such personnel are committed to binding obligations of confidentiality when processing such Personal Data;

21.6.6 not transfer any Shared Personal Data outside the European Economic Area without the prior written consent of the Customer;

21.6.7 inform the Customer within 48 hours of PD becoming aware that any such Shared Personal Data is (while within PD's or its subcontractors' or affiliates' possession or control) subject to a personal data breach (as defined in Article 4 of GDPR) or is lost or destroyed or becomes damaged, corrupted or unusable;

21.6.8 PD shall be entitled to sub-contract any part of the Services requiring the processing of Shared Personal Data, provided that PD shall notify Customer in writing of its intention to engage such sub-contractor. Such notice shall give details of the identity of such sub-contractor and the Services to be supplied by it. The Customer shall be deemed to have approved the engagement of the sub-contractor if it has not served a notice in writing on PD objecting (acting reasonably) to such appointment within 7 days of the date that the notice is deemed to be received by the Customer. PD shall ensure that any sub-contracts it enters shall be on terms that provide sufficient guarantees that such third party will implement appropriate technical and organisational measures in such a manner as to meet the requirements of the Data Protection Legislation;

- 21.6.9 not disclose any Shared Personal Data to any Data Subject or to a third party other than at the written request of the Customer or as expressly provided for in this Contract or as required by law;
- 21.6.10 as the Customer so directs, return or irretrievably delete all Shared Personal Data on termination or expiry of the Services provided under the Contract, and not make any further use of such Shared Personal Data (except to the extent applicable law requires continued storage of the Shared Personal Data by PD);
- 21.6.11 provide to the Customer and any supervisory authority (as defined in Data Protection Legislation) all information and assistance necessary or desirable to demonstrate or ensure compliance with the obligations in this Condition 21.6 and/or the Data Protection Legislation;
- 21.6.12 permit the Customer or their representatives to access any relevant premises, personnel or records of PD on reasonable notice and during PD's normal working hours to audit and otherwise verify compliance with this Condition 21.6. Such right may be exercised no more than once per 12 month period and in exercising such right the Customer shall not interfere in the normal business activities of PD;
- 21.6.13 taking into account the nature of the processing, PD shall assist the Customer by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Customer's obligation to respond to requests for exercising a Data Subject's rights under the GDPR;
- 21.6.14 take such steps as are reasonably required to assist the Customer in ensuring compliance with its obligations under Articles 32 to 36 (inclusive) of GDPR;
- 21.6.15 notify the Customer promptly if it receives a request from a Data Subject to exercise its rights under the Data Protection Laws in relation to that person's Shared Personal Data; and
- 21.6.16 provide the Customer with its full co-operation and assistance in relation to any request made by a Data Subject to exercise its rights under the Data Protection Laws in relation to that person's Shared Personal Data.

## **22 ANTI-BRIBERY AND ANTI-CORRUPTION**

- 22.1 Both parties warrant that they will comply with all applicable UK anti-bribery and anti-corruption legislation.
- 22.2 The Customer acknowledges and agrees that any act or omission on its part in the performance of the Contract, and which constitutes a breach of UK anti-bribery and anti-corruption legislation, shall entitle PD to terminate the Contract on notice and with immediate effect.

## **23 GENERAL**

- 23.1 If at any time any Condition or part of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable in any respect that shall not affect or impair the legality, validity or enforceability of any other provision of these Conditions or the Contract.
- 23.2 If any illegal, invalid or unenforceable provision of these Conditions or any part of the Contract would be legal, valid and enforceable if some part of it was deleted or amended, the parties shall negotiate in good faith in order to agree the terms of a mutually satisfactory provision, achieving as nearly as possible the same commercial effect, to be substituted for the Condition or part of the Contract, which is found to be illegal, invalid or unenforceable.
- 23.3 The failure or delay by a party in exercising any right, power or remedy available to it under the



Contract shall not in any circumstances impair such right, power or remedy nor operate as a waiver of it. The single or partial exercise by either party of any right, power or remedy under the Contract shall not in any circumstances preclude any other or further exercise of it or the exercise of any other right, power or remedy.

- 23.4 Any waiver of a breach of, or default under, any of the terms of the Contract shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 23.5 The express terms of any Contract are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.
- 23.6 Each party warrants that it has not been induced to enter into the Contract by a statement, promise, representation or misrepresentation (if established) not contained within the Contract and whether or not made innocently or negligently by the other party. To the extent that contrary to any such warranty, any statements, promises, representations or misrepresentations are shown to have been given, each party unconditionally waives any claims, rights or remedies which it might otherwise have had in relation to them. Nothing in this Condition 23 shall exclude or restrict any liability which a party would otherwise have to the other in respect of any statements, promises or representations made fraudulently by that party.
- 23.7 Any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by the authorised representatives of the parties.
- 23.8 Subject always to Condition 13.3, any demand, notice or other communication given or made under or in connection with the Contract will be made in writing and sent to the usual trading address or registered office of the receiving party or to any email address detailed in the Contract. By any of the following methods of delivery and in each case shall be deemed to have been served on the date and at the time specified below, provided that all other requirements of this Condition have been met:

<b>Delivery Method</b>	<b>Deemed Delivery Date and Time</b>
Delivered by hand	At the time the notice is left at the address.
Pre-paid first class post or other next working day delivery service	9.00am on the third Working Day after posting.
Pre-paid airmail	9.00am on the fifth Working Day after posting.
Email	At the time of transmission provided the sender receives a manually sent confirmation of receipt.

For the purpose of calculating deemed receipt, all references to time are to local time in the place of deemed receipt and if deemed receipt would occur in the place of deemed receipt on a Saturday or Sunday or public holiday or on any day after 5.00 pm, receipt is deemed to take place at 9.00am on the next Working Day. This Condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

- 23.9 No publicity or advertising shall be released or public announcements made by either party in connection with the Contract without the prior written approval of the other party.
- 23.10 The Contract may not be assigned, charged or transferred by the Customer and the Customer agrees that it will not resell or seek to resell services afforded to it by PD under the Contract to any third party. The Customer may not sub-contract any of its obligations under the Contract without PD's prior written consent and if it does sub-contract its obligations it will not be relieved of any of its obligations as a result.
- 23.11 This Contract is personal to the parties and is not for the benefit of third parties. Any rights of any person to enforce the terms of the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded save as expressly set out otherwise in Condition 12.8.
- 23.12 These Conditions and any non-contractual obligations arising under or in connection with them shall be governed by English law and the parties subject to the exclusive jurisdiction of the English Courts.