

TERMS AND CONDITIONS OF SERVICE

BY PLACING AN ORDER THE CUSTOMER HEREBY ACCEPTS THESE TERMS AND CONDITIONS.
THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF *CLAUSE 14*
(LIMITATION OF LIABILITY).

1. Interpretation

The following definitions and rules of interpretation apply in this Agreement.

1.1 Definitions:

Agreement: means the agreement between the parties, comprising the Order form and the Terms and Conditions.

APC Overnight: The Alternative Parcels Company Limited, trading as APC Overnight, a company incorporated and registered in England and Wales with company number 2855735, whose registered office is at National Sortation Centre Blakeney Way, Kingswood Lakeside, Cannock, Staffordshire, WS11 8LD;

Applicable Laws: the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the exercise of the parties' rights or the performance of their obligations.

Business Day: a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Business Hours: the period from 9.00 am to 5.00 pm on any Business Day.

Charges: the sums payable for the Services as set out in the Price List or the Preferential Rate Agreement as applicable and any ILC chosen by the Customer.

Claims Policy: the document setting out the specific steps the Customer must follow when making a claim against the Supplier as are relevant to the carrier type applicable to the Order, a copy of which is available at <https://wey-group.co.uk/download/ILC.pdf>.

Collection Address: the location for collection specified in the Delivery Instruction.

Collection Slot: the time for collection specified in the Delivery Instruction.

Commencement Date: has the meaning given to it in clause 2.2.

Consents: all permissions, consents, approvals, certificates, permits, licences, agreements and authorities (whether statutory, regulatory, contractual or otherwise) necessary for the provision of the Services on the terms of this Agreement.

Consignee: the person to whom the Customer instructs the Supplier to deliver a Consignment.

Consignment: any consignment of Goods that are the subject of a Delivery Instruction.

Customer: means the Customer who has placed the Order for the Services pursuant to these Terms and Conditions.

Customer's Intellectual Property: Intellectual Property owned by or licensed to the Customer and used on or in relation to the Goods.

Dangerous Goods: means goods which require a “UN” classification, or any substance the possession, storage or delivery of which is a criminal offence or a breach of the provisions of any relevant statute regulation or by-law under the Applicable Laws or of any jurisdiction to or through which the Consignment is to be delivered or carried or in which they may be stored.

Delivery: the transfer of physical possession of a Consignment to the Consignee or its agent.

Delivery Instruction: a written instruction from the Customer to the Supplier to deliver Goods to a Consignee.

Delivery Point: the location for Delivery specified in the Delivery Instruction.

Goods: goods delivered to the Supplier for storage and subsequent Delivery.

High Risk Goods: means dangerous, hazardous, combustible or explosive materials, gold and silver bullion, platinum and other precious and semi-precious metals and stones including commercial carbons or industrial diamonds, dangerous drugs, uninstalled computer chips, memory cards, mobile phones, tickets and vouchers that cannot be cancelled and reissued for a nominal fee, bankers drafts of any denomination whether English or foreign, treasury notes, money orders, negotiable securities, instruments or securities of any kind, stocks, bonds, certificates, deeds, uncanceled postage or revenue stamps, war saving or thrift stamps, blank or endorsed blank cashiers cheques, money orders or travellers cheques, letters, antiques, pictures, works of art, jewellery, watches, livestock, pets, living creatures, perishables or plants, cigarettes and tobacco products, wines and spirits, furs, firearms, glass, ceramics, pottery, memorabilia, fibreglass or non-CRT screens such as Plasma and LCD Televisions and VDU monitors.

ILC: means any increased liability cover which is requested by the Customer at the time of placing an Order.

Insolvency Event: in respect of the Customer:

- a) other than for the purposes of a bona fide reconstruction or amalgamation, the Customer passing a resolution for its winding up, or a court of competent jurisdiction making an order for it to be wound up or dissolved, or that party being otherwise dissolved;
- b) the appointment of an administrator of, or the making of an administration order in relation to, the Customer, or the appointment of a receiver or administrative receiver of, or an encumbrancer taking possession of or selling, the whole or any part of the entity's undertaking, assets, rights or revenue;
- c) the Customer applying to court for, or obtaining a moratorium under Part A1 of the Insolvency Act 1986;
- d) the Customer entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them, or taking steps to obtain a moratorium, or making an application to a court of competent jurisdiction for protection from its creditors;
- e) the Customer being unable to pay its debts, or being capable of being deemed unable to pay its debts, within the meaning of section 123 of the Insolvency Act 1986; or
- f) the Customer entering into any arrangement, compromise or composition in satisfaction of its debts with its creditors.

Intellectual Property: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other

intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: an order placed by the Customer or a person authorised to do so on its behalf for the Services pursuant to these Terms and Conditions.

Owner: the person who owns or is entitled to possession of the Goods.

Overnight Carriage Services: has the meaning given to it in clause 9.1.

Preferential Rate Agreement: an agreement between the Supplier and the Customer for the provision of any of the Services hereunder to be provided on a specified rate, subject to the terms of contained therein.

Price List: the list made available by the Supplier when a Customer places an Order which sets out the applicable rates for the mileage and vehicle type used for the provision of the Services.

Product Guide: means the document setting out the specific terms relevant to the carrier type applicable for the Order, a copy of which is available at <https://wey-group.co.uk/download/pg.pdf>.

Prohibited Goods: means Dangerous Goods, all knives (including but not limited to cutlery and for craft, all types of swords including decorative, bladed articles, e.g. pizza cutters and needles); ammunition; animals and livestock / carcass; any item which is illegal under UK law; bicycles that are not boxed; controlled drugs; crossbows, long bows and arrows; dry ice; explosives; firearms; fireworks; furniture unless in flat pack form; gearboxes, or any other mechanical part if contains oil or invasive liquid; human remains or ashes;; currency (paper or coin) of any nationality, bank notes; vehicle parts that are not boxed, and any other goods specified in the Product Guide as prohibited for the applicable Consignment.

Services: the carriage services to be provided by the Supplier in respect of the Goods, the scope of which is more particularly set out in the Order, including services which are incidental or ancillary to such services.

Subcontract: any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any services from that third party for the performance of part of the Services.

Subcontractors: those persons with whom the Supplier enters into a Subcontract, and any third party with whom that third party enters into a subcontract.

Supplier: means Wey Group International Limited, a company incorporated in England and Wales with company number 03955165, whose registered address is at 111 Chertsey Road, Byfleet, West Byfleet, England, KT14 7AX.

Supplier's Personnel: all employees, staff, other workers, agents and consultants of the Supplier who are engaged in the provision of the Services from time to time.

Term: the period commencing on the Commencement Date and ending on the expiry or termination of this Agreement in accordance with its terms.

Terms and Conditions: these terms and conditions of service.

Termination Date: the date of termination or expiry of this Agreement.

Termination Notice: any notice to terminate this Agreement which is given by either party in accordance with clause 18.

Territory: the United Kingdom.

VAT: value added tax or any equivalent tax chargeable in the UK or elsewhere.

Waste: has the meaning given in section 75 of the Environmental Protection Act 1990.

1.2 A reference to legislation or a legislative provision:

- (a) is a reference to it as amended, extended or re-enacted from time to time; and
- (b) shall include all subordinate legislation made from time to time under that legislation or legislative provision.

1.3 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.4 A reference to **writing** or **written** includes email.

2. Commencement and duration

2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Terms and Conditions. All Orders shall be subject to these Terms and Conditions, which together constitute the Agreement.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date a contract shall come into existence (**Commencement Date**).

2.3 This Agreement shall commence on the Commencement Date and shall continue, unless terminated earlier by either party in accordance with clause **18**, for the Term.

3. Services

3.1 The Supplier shall provide the Services to the Customer on the terms of this Agreement and in consideration of the payment of the Charges by the Customer.

3.2 The Supplier shall provide the Overnight Carriage Services in the Territory only.

3.3 The Supplier shall not accept delivery of Goods that are Prohibited Goods.

3.4 The Supplier is not and does not contract as a common carrier.

3.5 The Customer confirms that that they have read and hereby accept:

- (a) the additional requirements which may be applicable to their Order as specified in the Product Guide; and
- (b) the Claims Policy.

And shall review them before placing each Order. The Supplier shall use reasonable endeavours to notify the Customer if there is an update to either document.

4. Supplier's general obligations

4.1 The Supplier shall at all times:

- (a) provide the Services in accordance with the Delivery Instructions;
- (b) Provide the Services with reasonable care and skill;
- (c) use all reasonable endeavours to comply with all reasonable instructions in writing which the Customer may give to the Supplier concerning the Goods;
- (d) provide such reasonable co-operation and information in relation to the Services to such of the Customer's other suppliers as the Customer may reasonably require for the purposes of enabling any such person to create and maintain any interfaces that the Customer may reasonably require;
- (e) be responsible for the Goods from the start of loading of the Goods onto the vehicle to at the Collection Address completion of unloading at the Delivery Point; and
- (f) subject to clause 8.4 or 12.3, do nothing to prejudice the Customer's, or if the Customer is not the Owner, the Owner's title or rights to the Goods.

5. Customer's responsibilities

5.1 The Customer shall:

- (a) co-operate to the extent that it is reasonable to do so with the Supplier in all matters relating to the Services;
- (b) read the Product Guide before placing any Orders and comply with any additional or specific requirements relevant to the Goods in the Consignment which is subject to that Order;
- (c) notify the Supplier in the Delivery Instructions if the Goods constitute High Risk Goods; and
- (d) notify the Supplier in the Delivery Instructions if the replacement or compensation value of the Consignment exceeds
 - (i) £50.00 (fifty pounds Sterling) for Overnight Carriage Services where the Consignment is sent using the Mailpack, Courierpack or Lightweight Services; and/or
 - (ii) £100.00 (one hundred pounds Sterling) for all other Services;
- (e) ensure that the Collection Address is accessible by the Supplier Personnel at the Collection Time, and that there is an individual of suitable authority available at the Collection Address at the Collection Time to ensure that the Consignment is collected;
- (f) ensure that the Delivery Point is accessible by the Supplier Personnel at the estimated delivery time and that there is an individual of suitable authority available at the Delivery Point at the estimated delivery time to ensure that the Consignment is delivered;
- (g) co-operate with all relevant authorities on all matters relating to the Services;
- (h) be responsible for providing the packaging for ensuring that each Consignment is securely packed so as to render them wind and watertight and stowed in a way that is suitable for the mode of transport being used to provide the Services, correctly and clearly labelled, and that the packaging is clean and in good condition;
- (i) ensure that any liquids contained in a Consignment are:
 - (i) sent using the LP Service of the Overnight Carriage Service;
 - (ii) sealed in a watertight container and properly packaged to ensure the integrity of the Goods and that they will not damage any of the other Goods in the Consignment or the materials used to package the Consignment;

- (j) take photographs of the Consignment immediately prior to Collection, and require the Consignee or its appointed agents take photographs immediately after Delivery of the Consignment;
- (k) provide all documents and information reasonably requested by the Supplier to enable it to provide the Services in accordance with this Agreement within a reasonable time of any request for such information being received;
- (l) provide details of any special precautions for storage, handling or carriage of the Goods, required by the nature, weight or condition of the Goods or by any Applicable Law;
- (m) act at all times in compliance with the Applicable Laws;
- (n) use all reasonable endeavours to procure that the Consignee or its appointed agent accepts Delivery in accordance with the Delivery Instruction;
- (o) ensure that the Collection Address is safe and accessible for the Supplier Personnel and any subcontractor and use best endeavours to ensure that the Delivery Point is safe and accessible for any Supplier Personnel and any subcontractor to enter and carry out the Services at; and
- (p) comply with all steps and requirements set out in the Claims Policy before making any claim against the Supplier.

6. Warranties

6.1 Each party warrants that:

- (a) it has full capacity and authority to enter into and to perform this Agreement;
- (b) this Agreement is executed by a duly authorised representative of that party;
- (c) there are no actions, suits or proceedings or regulatory investigations pending or, to that party's knowledge, threatened against or affecting that party before any court or administrative body or arbitration tribunal that might affect the ability of that party to meet and carry out its obligations under this Agreement; and
- (d) once duly executed, this Agreement will constitute legal, valid and binding obligations.

6.2 The Customer warrants on an ongoing basis that:

- (a) it is either the Owner or is authorised by the Owner to deal with the Goods on the terms of this Agreement and the applicable Order;
- (b) it has supplied to the Supplier all material information relating to its requirements for the Services and such information is accurate in all respects;
- (c) it shall provide full and accurate descriptions and particulars, weights and measurements of all deliveries of Goods; and
- (d) none of the Goods will constitute Waste or Prohibited Goods;
- (e) the Collection Address and the Delivery Point will comply with all relevant health and safety regulations and be safe for the Supplier Personnel or any subcontractor to carry out the Services.

7. Delivery Instructions

- 7.1 The Customer shall issue a Delivery Instruction when it places an Order. The Delivery Instruction shall contain:
- (a) the Collection Address;
 - (b) the name of the Consignee;
 - (c) the Delivery Point; and
 - (d) any special instructions concerning the Delivery including but not limited to whether the Goods contain any High Risk Goods, any required delivery time, or any individuals who are solely authorised to accept Delivery.
- 7.2 The Supplier shall use reasonable endeavours to comply with the Delivery Instruction.

8. Delivery

- 8.1 The Supplier shall be responsible for loading the Goods at the Collection Address and unloading them at the Delivery Point. The Supplier shall not be liable for loss or damage caused as a result of negligent acts committed by the Consignee or its servants or agents in assisting with unloading.
- 8.2 Unless otherwise specified in the Product Guide, receipt by the Consignee, or any appointed agent, entitled to take Delivery of a Consignment without complaint shall constitute prima facie evidence that the Consignment was delivered in good condition in accordance with this Agreement.
- 8.3 Where the Customer has requested a same day delivery service, if the Consignee, or any appointed agent, fails to take Delivery at the Delivery Point, then the Supplier shall seek further instructions from the Customer and comply with those instructions where reasonable to do so. Except where that failure is caused by the Supplier's failure to comply with its obligations under this Agreement, the Supplier shall charge the Customer, at the rates set out in this Agreement, for the cost of retaining, insuring and storing the Consignment pending receipt and fulfilment of the Customer's instructions. The provisions of clause 11 and 12 shall apply to payment of such charges.
- 8.4 Where the Customer has requested the Overnight Carriage Services, or international delivery, or where the Supplier continues to be unable to deliver the Consignment as instructed and is unable to obtain instructions from the Customer in accordance with clause 8.3 within 5 days, the Supplier shall be entitled, as agent of the Customer and at the cost of the Customer, to return the Goods to the Customer, sell or otherwise dispose of the Goods forming the Consignment, or part of a Consignment, following not less than 14 days' written notice to the Customer. The Supplier shall not be liable for the price obtained for the sale or disposal of the Goods constituting the Consignment. The Supplier shall remit the proceeds of sale or disposal of such Goods to the Customer after deduction of all amounts due to the Supplier and the expenses incurred by the Supplier for the storage, insurance and subsequent sale or disposal of the Goods.
- 8.5 Where the Goods constituting a Consignment are liable to perish or deteriorate, the Supplier's right to sell or otherwise dispose of the Goods in clause 8.4 shall arise immediately following the failure by the Consignee or any appointed agent to take Delivery in accordance with the Order subject only to the Supplier taking reasonable steps to notify the Customer of its intention to sell or otherwise dispose of the Goods before doing so.

9. Subcontracting

- 9.1 Where the Customer places an Order for Services where the Consignment are to be carried to the Delivery Point the following Business Day (or calendar day if agreed between the parties), (the “**Overnight Carriage Services**”) the Supplier shall be entitled to sub-contract the performance of the Overnight Carriage Services to APC Overnight or any other third party in its sole discretion.
- 9.2 Where the Overnight Carriage Services are carried out by APC Overnight, the provision of the Overnight Carriage Services shall be subject to APC Overnight’s Terms and Conditions of Carriage, available at https://apc-overnight.com/sending-a-parcel/terms_and_conditions_of_carriage. (the “**APC Overnight Terms and Conditions**”). The Customer warrants that it shall comply with the APC Overnight Terms and Conditions and recognises that it shall be solely responsible for any failure by it to do so.
- 9.3 The Supplier shall be entitled to sub-contract the performance of the whole or part of the Agreement with the Customer without prior notice. Where the Supplier appoints a different sub-contractor in respect of any of the Services provided under this Agreement, the provision of those services may be subject to that third party contractor’s terms and conditions.
- 9.4 The Customer acknowledges that any failure by it to accept the APC Overnight Terms and Conditions or any other third party terms and conditions where notified to do so by the Supplier, APC Overnight or the relevant third party, this may result in the inability of the Supplier to accept the Order, or to provide the Overnight Carriage Services or any other services which have been agreed pursuant to this Agreement and that any such failure by the Customer to accept such terms shall be deemed to be a breach of clause 5.1(a).

10. Compliance with laws

- 10.1 The Customer shall at all times act in compliance with the Applicable Laws. Breach of this clause 10.1 shall constitute a material breach of this Agreement, which is irremediable, under clause 18.1.
- 10.2 The Supplier shall monitor and shall keep the Customer informed in writing of any changes in the Applicable Laws which may impact the performance of the Services.

11. Charges

- 11.1 In consideration of the provision of the Services by the Supplier, the Customer shall pay the Charges. The Charges shall be as specified in the Price List unless the parties have otherwise entered into a Preferential Rate Agreement. The Customer acknowledges that where a Preferential Rate Agreement has expired, the Charges will be based on the rates specified in the Price List.
- 11.2 Any estimates given for the Services in the Order shall be an estimate only and shall not be binding on the Supplier. The Charges payable by the Customer shall be calculated as set out in this clause 11.
- 11.3 Notwithstanding that the Supplier may from time to time agree to collect freight, duties, charges, dues or other expenses in respect of a Consignment from the Consignee, the Customer shall remain liable to the Supplier for any such freight, duties, charges, dues or other expenses in the event of default by the Consignee and the Supplier shall not be required to take steps to obtain payment from the Consignee other than one written request for payment.

- 11.4 Where the Supplier accepts an Order for the Carriage of Goods which constitute High Risk Goods, or if the replacement or compensation value of the Consignment exceeds £50.00 (fifty pounds Sterling) for Overnight Carriage Services where the Consignment is sent using the Mailpack, Courierpack or Lightweight Services; and/or and £100.00 (one hundred pounds Sterling) for all other Services the Supplier shall be entitled to charge an additional fee for Carriage of such Goods. The Supplier will use reasonable endeavours to notify the Customer of any applicable additional fees pursuant to this clause 11.4 prior to accepting the Order.
- 11.5 Where the Services are to be carried out by a third party, the Supplier shall be entitled to charge an additional fee for Carriage of such Goods where such additional fee is charged by that third party. The Supplier will use reasonable endeavours to notify the Customer of any applicable additional fees pursuant to this clause 11.4 prior to accepting the Order.
- 11.6 The Supplier shall be entitled to charge a waiting fee where the Supplier Personnel are delayed during picking up the Consignment or Delivering the Consignment where such delay is caused by the Customer, which will be charged at the prevailing rate or as otherwise specified in the Price List.
- 11.7 All Charges are stated exclusive of VAT which shall be paid by the Customer at the rate and from time to time in the manner prescribed by law.

12. Invoicing and payment

- 12.1 The Supplier shall invoice the Customer on completion of the Delivery.
- 12.2 The Customer shall pay each invoice submitted to it by the Supplier within 30 days of receipt to a bank account nominated in writing by the Supplier from time to time.
- 12.3 The Supplier shall have a general and particular lien on the Goods in its possession as security for payment of all sums claimed by the Supplier from the Customer. The Charges shall continue to accrue on any Goods detained under lien. If an invoice for the Charges is not paid in full on its due date for payment, the Supplier may, without prejudice to its other rights and remedies, give notice in writing to the Customer of its intention to sell or otherwise dispose of some or all of the Goods in its possession if the amount outstanding is not paid in full within 14 days of the notice. If the amount due is not paid by the expiry of such period, the Supplier may sell or otherwise dispose of some or all of the Goods in its possession, as agent of the Customer and at the Customer's expense and risk, and shall remit the proceeds of sale or disposal of such Goods to the Customer after deduction of all amounts due to the Supplier and the expenses incurred by the Supplier for the sale or disposal of the Goods. The Supplier shall not be liable for the price obtained for the sale or disposal of the Goods.
- 12.4 Where the Goods are liable to perish or deteriorate, the Supplier's right to sell or otherwise dispose of such Goods under clause 12.3 shall arise immediately on any sum becoming due subject only to the Supplier taking all reasonable steps to notify the Customer of its intention to sell or otherwise dispose of the Goods before doing so.
- 12.5 If the Customer fails to make any payment due to the Supplier under this Agreement by the due date for payment, then, without limiting the Supplier's remedies under clause 18:
- (a) the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%; and

- (b) the Supplier may suspend performance of part or all the Services until payment has been made in full.

12.6 The Supplier may at its absolute discretion withdraw any credit facilities it has provided to the Customer at any time.

12.7 The Supplier may at any time, without notice to the other party, set off any liability owed by the other party to it against any liability owed by it to the other party, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Agreement. If the liabilities to be set off are expressed in different currencies, the Supplier may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Supplier of its rights under this clause shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.

13. Customer's Intellectual Property

13.1 The Supplier acknowledges that the Customer's rights to the Intellectual Property used on or in relation to the Goods are the Customer's property and the Customer grants to the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to Supplier for the purpose of providing the Services to the Customer.

13.2 The Supplier accepts that:

- (a) it is permitted to use the Customer's Intellectual Property only for the Term and for the purposes of this Agreement and only as authorised by the Customer under this Agreement;
- (b) other than to the extent set out in clause 13.2(a), it has and shall have no right to use or to allow others to use the Customer's Intellectual Property or any part of it;
- (c) it shall not use any trade marks, trade names or get-up which resemble the Customer's trade marks, trade names or get-up and which would therefore be likely to confuse or mislead the public or any section of the public;
- (d) it shall not remove, alter or otherwise tamper with any trade marks, trade names, logos, numbers or other means of identification on the Goods or the packaging for the Goods which come into the Supplier's possession, custody or control, and shall not place any trade mark or trade name of its own on the Goods or any packaging or other materials used in connection with the Goods; and
- (e) it shall not do or omit to do, or authorise any third party to do or omit to do, anything which could invalidate or be inconsistent with the rights that the Customer has in the Customer's Intellectual Property.

14. Limitation of liability

14.1 The Supplier has obtained insurance cover in respect of its own legal liability. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange. The Customer is advised to add appropriate ILC when placing an Order. The Customer shall have sole responsibility for determining what is an appropriate level of ILC cover for the relevant Goods. The Customer is responsible for making its own arrangements for the insurance of any excess loss.

- 14.2 References to liability in this clause 14 include every liability arising under or in connection with this Agreement including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 14.3 Nothing in this clause 14 shall limit the Customer's payment obligations under this Agreement.
- 14.4 Nothing in this Agreement limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; and
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 14.5 Subject to clause 14.4, the Supplier shall not be liable for loss or damage caused by:
- (a) inherent liability due to wastage in bulk or weight, latent or inherent defect, vice or natural deterioration of the Goods;
 - (b) any failure by the Customer to comply with any of its obligations specified under clause 5; or
 - (c) any special handling or storage requirements in respect of the Goods not notified in writing to the Supplier by the Customer.
- 14.6 Subject to clause 14.4 and 14.7, the Supplier's total aggregate liability:
- (a) in respect of physical damage to the Customer's (or third party's) property (other than Goods) caused or arising by reason of any act or omission of the Supplier or Supplier's Personnel or Subcontractors;
 - (b) in respect of loss or damage to Goods caused or arising by reason of any act or omission of the Supplier or Supplier's Personnel or Subcontractors;
 - (c) in respect of loss or damage arising from delay or incorrect delivery of a Consignment, caused or arising by reason of any act or omission of the Supplier or Supplier's Personnel or Subcontractors; or
 - (d) for all other loss or damage,
- shall not exceed the respective payout value of the ILC chosen by the Customer at the time of placing an Order (if any), or, where no ILC has been chosen by the Customer, the lower of:
- (i) three times the value of the Charges paid by the Customer in respect of that Consignment; or
 - (ii) £100 for any one event or any series of connected events.
- 14.7 The Customer accepts that the Supplier does not accept ILC in respect of Goods which are being delivered for the purpose of repair or assessment prior to repair. Any ILC purchased by the Customer in respect of such Goods shall be invalid and the Supplier's total aggregate liability for any loss or damage to such Goods is limited to the reasonable market value of such Goods.
- 14.8 If the same loss falls within more than one category set out in clause 14.6, the Customer shall not be entitled to claim more than once in respect of the same loss.

14.9 By Agreement in writing, the Supplier may accept liability in excess of the limits set out in clause 14.6 in respect of particular Goods or a particular Consignment in return for the Customer paying such additional Charges as shall be agreed by the parties.

14.10 Subject to clause 14.3 and clause 14.4, the following types of loss are wholly excluded:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of Agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.

14.11 The Supplier has given commitments as to compliance of the Services with relevant specifications in clause 4.1(a). In view of these commitments, the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Agreement.

14.12 The Supplier shall have no liability for:

- (a) damage to the whole or part of a Consignment unless the Customer notifies the Supplier that it intends to make a claim within 14 days of Delivery; and
- (b) delay in Delivery of the whole or part of a Consignment unless the Customer notifies the Supplier that it intends to make a claim within 14 days of any estimated delivery times provided by the Supplier (or such other notice period as may be specified in the Claims Policy).

The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

14.13 Subject to clause 14.12, unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the party wishing to make a claim became, or ought reasonably to have become aware of the event having occurred (as opposed to it having become aware of its having grounds to make a claim in respect of it) and shall expire 12 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

14.14 In order to commence a claim, the Customer must follow the relevant steps set out in the Claims Policy.

15. Insurance

During the Term and for a period of three years afterwards the Customer shall maintain in force with reputable insurance companies adequate product liability, professional indemnity and public liability insurance. The Customer shall promptly send a copy of the receipt for the premiums to the Supplier. On the Customer's written request, the Customer shall provide the Supplier with a copy of the receipt

for the premiums and copies of the insurance policy certificates and details of the cover provided for the insurance required under this clause 15.

16. Customer's indemnities

- 16.1 The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with:
- (a) any claim made against the Supplier in respect of damage to property, death or personal injury arising out of or in connection with the storage, handling or carriage of any Goods which are Waste, High Risk Goods or Prohibited Goods;
 - (b) any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property rights arising out of or in connection with the storage, handling or carriage of any of the Goods;
 - (c) any claim made against the Supplier arising out of the Customer's failure to comply with any statutory or His Majesty's Revenue & Customs requirements, including administrative requirements, concerning the payment of tax, customs or duties in respect of any of the Goods; and
 - (d) any claim made against the Supplier arising out of or in connection with the storage, handling or carriage of any of the Goods in accordance with the Customer's instructions.

17. Data protection

- 17.1 The following definitions apply in this clause 17:
- (a) **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.
 - (b) **Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.
 - (c) **Domestic Law:** the law of the United Kingdom or a part of the United Kingdom.
 - (d) **UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.
- 17.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 17 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 17.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor.
- 17.4 Without prejudice to the generality of clause 17.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this Agreement.

- 17.5 Without prejudice to the generality of clause 17.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this Agreement:
- (a) process that Personal Data only on the documented written instructions of the Customer unless the Supplier is required by Domestic Law to otherwise process that Personal Data. Where the Supplier is relying on Domestic Law as the basis for processing Personal Data, the Supplier shall notify the Customer of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Supplier from so notifying the Customer;
 - (b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - (d) not transfer any Personal Data outside of the UK unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
 - (e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (f) notify the Customer without undue delay on becoming aware of a Personal Data Breach;
 - (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on the Termination Date unless required by Domestic Law to store the Personal Data; and
 - (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 17.

17.6 The Customer consents to the Supplier appointing APC Overnight as a third-party processor of Personal Data under this Agreement. The Supplier confirms that it has entered or (as the case may be) will enter into a written Agreement with the third-party processor substantially on that third party's standard terms of business.

18. Termination

- 18.1 Without affecting any other right or remedy available to it, the Supplier may terminate this Agreement with immediate effect or on the expiry of the period specified in the Termination Notice by giving written notice to the Customer if one or more of the following circumstances occurs or exists:
- (a) the Customer fails to pay any undisputed amount due under this Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
 - (b) the Customer commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified to do so;
 - (c) the Customer suffers an Insolvency Event; or
 - (d) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy.

For the purposes of clause 19.1(b), a **material breach** means a breach of any of the obligations set out in clauses 10.1 and 6.

19. Obligations on termination and survival

- 19.1 On the Termination Date, the Customer shall immediately pay any outstanding unpaid invoices and interest due to the Supplier. The Supplier shall submit invoices for any Services that it has supplied, but for which no invoice has been submitted, and the Customer shall pay these invoices immediately on receipt.
- 19.2 On the Termination Date, each party shall return to the other party all confidential information of the other party and erase all of the other party's confidential information from its computer systems (to the extent possible) and shall certify that it does not retain the other party's confidential information.
- 19.3 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry shall remain in full force and effect.
- 19.4 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the Termination Date, including the right to claim damages in respect of any breach of the Agreement which existed at or before the Termination Date.

20. Confidentiality

- 20.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 20.2.
- 20.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 20; and

- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

20.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

21. Force majeure

21.1 **Force Majeure Event** means any circumstance not within a party's reasonable control including:

- (a) road traffic accidents, traffic congestion, obstruction of a highway, road closures, roadworks, of airports or ports, flight or ferry cancellations or delays, mechanical, technical faults of any vehicles, damage to any vehicle which would render that vehicle unsafe or unfit to operate;
- (b) acts of God, flood, drought, earthquake, extreme weather or other natural disaster;
- (c) epidemic or pandemic;
- (d) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (e) nuclear, chemical or biological contamination or sonic boom;
- (f) any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (g) collapse of buildings, fire, explosion or accident;
- (h) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause);
- (i) non-performance by suppliers or subcontractors; and
- (j) interruption or failure of utility service.

21.2 If the Supplier is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event, the Supplier shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

22. General

22.1 Entire agreement

- (a) This Agreement constitutes the entire agreement between the parties.
- (b) Each party acknowledges that in entering into this Agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

22.2 Variation

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

22.3 Assignment and other dealings

- (a) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement without the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed).
- (b) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement, provided that it gives prior written notice of such dealing to the Customer.

22.4 Waiver

- (a) A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

22.5 Severance

- (a) If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- (b) If any provision or part-provision of this Agreement is deemed deleted under clause 22.5(a) the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

22.6 Notices

- (a) Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:
 - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (ii) sent by email to the address specified in the Order, or in the Supplier's notification of acceptance of the Order.
- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- (c) This clause 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.

22.7 Third party rights

- (a) Unless it expressly states otherwise, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

- (b) The rights of the parties to rescind or vary this Agreement are not subject to the consent of any other person.

22.8 No partnership or agency

- (a) Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other party, or authorise either party to make or enter into any commitments for or on behalf of the other.
- (b) Each party confirms it is acting on its own behalf and not for the benefit of any other person.

22.9 Conflict

If there is an inconsistency between any of the provisions in these Terms and Conditions and the Order, the provisions in the Order shall prevail.

22.10 Rights and remedies

The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

22.11 Further assurance

Each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.

22.12 Governing law

This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

22.13 Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.