



GENERAL CONDITIONS OF CARRIAGE OR ‘GCOC’

These Conditions shall apply to all transportation, logistics, warehousing, storage and other services provided by DBC UK (the "**Services**" as defined below). DBC UK is not and does not contract as a common or successive carrier. A copy of these Conditions is available at <http://uk.dbcargo.com/> or on request.

Please note that these Conditions contain limitations and exclusions of liability on the part of DBC UK. In order to minimise its charges DBC UK considers it reasonable to limit its liability and to share risk with the Customer in the manner set out in these Conditions.

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 DBC UK to apply a fuel surcharge.

1 Definitions and Application

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

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| “Applicable Data Protection Law” | (a) prior to 25 May 2018, the EU Data Protection Directive (Directive 95/46/EC), as implemented into the law of each relevant EU Member State including the Data Protection Act 1998 in the UK; and

(b) on and after 25 May 2018, the EU General Data Protection Regulation (Regulation 2016/679) and any legislation which supplements or implements this regulation in the UK; |
| "Arrival Point" | the location to which a Consignment is to be transported by DBC UK pursuant to the Contract; |
| "Cancellation Charges" | has the meaning assigned to that expression in Condition 8.11; |
| "Charges" | the charges payable by the Customer for provision of the Services by DBC UK as set out in the Specification (as may be varied in accordance with these Conditions or as otherwise agreed in writing between DBC UK and the Customer from time to time), together with any other charges or sums which may become due from the Customer to DBC UK under the Contract; |
| "CIM" | the CIM Uniform Rules and the General Terms and Conditions of Carriage for International Traffic (GTC-CIM); |



"CMR"	the International Convention concerning Carriage of Goods by Road;
"Commencement Date"	the date expressly identified as such in the Specification or (if earlier) the date on which Services first commence in accordance with Condition 2.2;
"Conditions"	these General Conditions of Carriage;
"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 DBC UK delivers the Goods;
"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 DBC UK collects the Goods;
"Container(s)"	containers (including tank and refrigerated containers) and any other similar unit or device in which Goods are to be transported;
"Contract"	the contract between DBC UK and the Customer for the provision of Services, which includes: (a) any Specification agreed by the parties and these Conditions; and (b) in relation to any international carriage of Goods, CIM and CMR (as applicable);
"Contract Officer"	the individual designated as such in the Specification;
"Contract Year"	the 12 month period from and including the Commencement Date and each successive 12 month period;
"Customer(s)"	the person named on the Specification who contracts with DBC UK for the provision of Services;
"Customer's Equipment"	has the meaning assigned to that expression in



	Condition 19;
"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;
"Data Protection Addendum"	has the meaning assigned to that expression in Condition 23;
"DBC UK"	DB Cargo (UK) Limited (registered number 2938988) whose registered office address is Lakeside Business Park, Carolina Way, Doncaster, DN4 5PN or DB Cargo International Limited (registered number 3232475) whose registered office address is Lakeside Business Park, Carolina Way, Doncaster, DN4 5PN (whichever is to provide the Services);
"DBC UK Group"	any holding company of DBC UK and any subsidiary of DBC UK 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);
"DBC UK Loading Standards"	the standards for the loading and unloading of Wagons, Containers and any other equipment used to transport Goods, a copy of which is available upon request from DBC UK;
"Departure Point(s)"	means the location from which a Consignment is to be transported by DBC UK 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; any IT Disruption; 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 DBC UK is to provide



Services pursuant to the Contract;

"Indemnified Amount"

£5,000,000 or such other sum as shall be agreed in writing between DBC UK and the Customer;

"Insolvent"

means, for the purpose of Condition 17.1.2, that a Defaulting Party:

- (a) has a receiver, administrator or provisional liquidator appointed;
- (b) is subject to a notice of intention to appoint an administrator;
- (c) passes a resolution for its winding-up (save for the purpose of a solvent restructuring previously approved in writing by the other party);
- (d) has a winding up order made by a court in respect of it;
- (e) enters into any composition or arrangement with creditors (other than relating to a solvent restructuring previously approved in writing by the other party);
- (f) ceases to carry on business; or
- (g) has any steps or actions taken in connection with any of these procedures; or
- (h) is the subject of anything analogous to the foregoing under the laws of any applicable jurisdiction; or;
- (i) is the subject of any proceeding in any Member State of the European Union which is capable of recognition under the EC Regulation on Insolvency Proceedings (EC 1346/2000) or the EU Regulation on Insolvency Proceedings (Recast) (EU 2015/848); or
- (j) is the subject of an application for the recognition of a foreign insolvency proceeding under the Cross-Border Insolvency Regulations 2006 (SI 2006/1030).

"IT Disruption"

any interference, disruption, damage and/or outage of any nature to IT systems and communication networks owned and/or used by DBC UK and/or its subcontractors and/or assignees including but not



limited to: a cyber-attack or other malicious act; destruction, corruption or theft of electronic or other information assets and/or data; failure of or denial of access to a computer system or network used by DBC UK and/ or its subcontractors and/or assignees;

"Network Rail"

Network Rail Limited (no. 4402220) or Network Rail Infrastructure Limited (no. 2904587) each of whose registered office is at 1 Eversholt Street, London NW1 2DN or either of their successors or assigns;

"Performance Measures"

the key performance indicators or other measures expressly identified as such in the Specification (if any);

"Private Siding"

a railway or siding not owned by or leased to DBC UK or Network Rail;

"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 by DBC UK including the carriage of Goods by rail and/or road, and any other services DBC UK has expressly agreed to provide pursuant to the Contract;

"Specification"

the completed DBC UK "Specification" or other document, which sets out terms agreed between the parties for provision of the Services and which incorporates by reference these Conditions;

"Term"

the duration of the Contract as set out in Condition 2.3;

"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.

- 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/or subcontractors.
- 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.
- 1.7 Any reference to the singular includes the plural and vice versa; references to any gender include every gender; and references to persons include corporations, partnerships and other unincorporated associations or bodies of persons.

2 Scope and Commencement

- 2.1 The Services to be provided by DBC UK shall be as set out in the Contract.
- 2.2 Unless otherwise agreed in writing by DBC UK, the making available of Goods 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 Specification or until terminated in accordance with the Contract ("**the Term**").
- 2.4 Save where provided elsewhere in the Contract, the Customer shall confirm to DBC UK in writing by an order deadline of 17:00 Wednesday of each week ("**Week A**") the Services required for the following week ("**Week B**"). Following receipt of this notice, DBC UK shall issue a written confirmation of order to the Customer on Friday of Week A in respect of the Services that it is able to provide for the relevant Week B. The Customer and DBC UK may agree an alternative order deadline in Week A provided that such agreement is expressly stated in the Specification. In the event of an order deadline falling on a public or bank holiday in the United Kingdom in a particular Week A, the order deadline shall be deemed to be 9:00 on the Working Day immediately preceding the normal deadline. Once the confirmation of order has been issued by DBC UK it shall be binding on the Customer insofar as its obligations under the Contract are measured and applied (including the application of Cancellation Charges in accordance with Condition 8.11). Any changes to an order and/or requests for additional Services shall be subject to prior written agreement of DBC UK and must be confirmed in the plan issued by DBC UK on Friday of Week A.

3 Priority

- 3.1 In the event of a conflict or inconsistency between:
 - 3.1.1 a term of these Conditions, and a term of the Specification, the relevant term of the Specification or its appendices shall prevail and apply; and
 - 3.1.2 in relation to international carriage of Goods, a term of these Conditions and/or the Specification, and a provision of CIM and/or CMR, the relevant provision of CIM and/or CMR shall prevail and apply, and the Contract shall

be treated as modified only to the extent necessary to give effect to the relevant provision of CIM and/or CMR.

4 DBC UK's Obligations

4.1 DBC UK shall during the Term and in consideration of payment of the Charges:

4.1.1 transport each Consignment from the Departure Point to the Arrival Point, subject to the terms of the Contract. DBC UK shall be entitled to transport each Consignment by such route and means as it shall decide;

4.1.2 be the train operator, as defined in the Railways Act 1993, for the purposes of the Contract;

4.1.3 provide the Services with reasonable skill and care and in accordance with applicable Railway Industry Standards;

4.1.4 provide the equipment specified in the Contract as to be provided by DBC UK, such equipment to be safe and functional in respect of its designed purpose and in accordance with applicable Railway Industry Standards;

4.1.5 permit or procure access on the terms of Condition 18 for the Customer (provided the identity of any employees, agents, and/or subcontractors of the Customer is notified to DBC UK and approved by DBC UK in advance of them seeking such access) to DBC UK's land or premises for the purposes of fulfilling the Customer's obligations under the Contract;

4.1.6 if the Departure Point and/or Arrival Point is/are located at any land or premises owned or leased by DBC UK (save where such land is leased to DBC UK by the Customer, Consignee or Consignor), use its reasonable endeavours to ensure that:

4.1.6.1 such land or premises are safe, free from defects and, where appropriate, are kept and operated in an appropriate condition for use as part of a railway network and comply with applicable Railway Industry Standards; and

4.1.6.2 such land or premises are connected to Network Rail's network enabling safe transfer on to the Network Rail network; and

4.1.7 use its reasonable endeavours not to cause damage to the Customer's or any third party's infrastructure, land or premises in the performance of the Contract.

4.2 DBC UK may sub-contract any part(s) or the whole of the Services.

4.3 To the extent that DBC UK exercises its right to sub-contract under Condition 4.2 in order to transport Goods by road and where loss or damage has occurred during this road transport, DBC UK's liability shall (unless otherwise agreed in the Specification) be determined in accordance with the Road Haulage Association Terms and Conditions 2009 or (if different)

such other terms and conditions in place between DBC UK and the relevant road haulier ("**the Road Conditions**").

- 4.4 Save as provided in Condition 4.3, in the event of a conflict between a term of the Road Conditions and a term of these Conditions and/or the Specification, then the relevant term of these Conditions and/or the Specification shall prevail and apply.
- 4.5 The Customer acknowledges that other than as expressly set out in the Specification, DBC UK shall have no obligation to provide and/or procure any fixed, minimum and/or guaranteed volume of Services pursuant to the Contract and nothing within the Contract or implied by custom, practice or otherwise shall be construed as giving rise to any such commitment.

5 Loading and Unloading

- 5.1 If the Specification states that DBC UK is responsible for loading and/or unloading the Containers and/or the Goods on the Wagons, then the Customer shall make the Containers and/or Goods accessible to DBC UK at the Departure Point and/or Arrival Point (as applicable), packaged and labelled as set out in Condition 6 and at the times stated in the Specification.
- 5.2 If the Customer or its Consignor or Consignee loads or reloads the Wagons and/or the Containers then the Customer shall:
- 5.2.1 procure that each Wagon and/or Container is loaded or reloaded in a manner which complies with all applicable laws, regulations, Railway Industry Standards and DBC UK Loading Standards;
 - 5.2.2 procure that each Wagon and/or Container is loaded or reloaded evenly (with the weight distributed evenly over the Wagon) and that each Wagon is not overloaded;
 - 5.2.3 procure that each Wagon and/or Container is loaded or reloaded in a manner which will not cause any injury or damage to any property or person during transportation of the Goods or any delay in transportation;
 - 5.2.4 procure that any dunnage, stanchions, straps or other loose equipment is not damaged and is secured to the Wagons and/or Containers; and
 - 5.2.5 without prejudice to any other provision of the Contract be liable for and indemnify DBC UK in full against all claims arising out of: (1) the Customer's breach of Conditions 5.2.1, 5.2.2, 5.2.3 and/or 5.2.4; (2) the Customer's negligent or wilful act or omissions; or (3) any breach of statutory duty by the Customer in relation to loading, unloading or reloading the Goods.
- 5.3 DBC UK's employees, agents and/or subcontractors shall have no authority to give assistance beyond that agreed in writing by DBC UK and DBC UK shall not be liable for any loss or damage howsoever caused (including if caused by negligence) by the giving of any other assistance.
- 5.4 If the Customer, the Consignor, or the Consignee (or any of their respective employees, agents and/or subcontractors) is to load, unload or reload Containers



and/or Goods from the Wagons the Customer shall ensure that the same is carried out expeditiously, in sufficient time to enable DBC UK to perform the Contract and so as not to delay the use of DBC UK's equipment elsewhere by DBC UK.

- 5.5 DBC UK shall have the right to carry out a brief visual inspection of any Wagons loaded by or on behalf of the Customer and/or any Containers or Goods, which DBC UK is to transport. Any such brief visual inspection shall not relieve the Customer of any of its obligations under the Contract or at law in relation to loading or packaging of, or otherwise relating to the Goods and shall not be deemed to be acceptance by DBC UK that the Customer has complied with such obligations. DBC UK shall have the right to refuse carriage of any Wagons, Containers and/or Goods to the extent they are not, in DBC UK's reasonable opinion, securely loaded or otherwise suitable for transport.
- 5.6 Where the Customer is responsible for providing Wagons for the transportation of Goods, the Customer shall provide covered Wagons where reasonably specified by DBC UK having regard to the nature and value of the Goods.
- 5.7 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 in accordance with best industry practice (from time to time). Responsibility for setting the correct temperature or environment for the Goods shall remain with the Customer, regardless of which party loads the Goods. DBC UK 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 these 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 DBC UK such details for each Consignment as DBC UK may require from time to time. The Customer will issue DBC UK 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 DBC UK's requirements. If the Customer should change any aspect of a Consignment after advising DBC UK of the information required in this Condition 6.2, then the Customer shall as soon as practicable notify DBC UK of such changes (and in any event shall notify DBC UK prior to the movement of such Consignment).
- 6.3 DBC UK shall, if agreed in the Specification, 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 DBC UK.

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 and at all times whilst in the custody or control of DBC UK remain 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 and/or storage.

6.5 The Customer shall indemnify DBC UK against all loss or damage 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 DBC UK 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 DBC UK, 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 DBC UK, there are and will be no special requirements for the transport of the Goods. Accordingly DBC UK 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 DBC UK of any such special requirement DBC UK shall have no obligation to transport such Goods unless it agrees to do so in writing. If DBC UK agrees to carry any Goods for which there is a special requirement it may charge the Customer additional sums.

7 Dangerous Goods

7.1 DBC UK shall have no obligation to accept any Dangerous Goods for carriage. DBC UK shall have no liability for any loss or damage (including where arising as a result of negligence) in respect of any Dangerous Goods unless, prior to loading, DBC UK 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 DBC UK 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 DBC UK 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 DBC UK in full against all loss or damage arising out of or in connection with the carriage of Dangerous Goods:
- 7.3.1 which DBC UK 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 DBC UK; 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 DBC UK.
- 7.4 DBC UK shall have the right to enter and have access to any premises not owned by DBC UK 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 DBC UK shall have such right to enter and access such premises.

8 Charges

- 8.1 The Customer shall pay to DBC UK the Charges in accordance with the Contract.
- 8.2 DBC UK 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 DBC UK 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). Payment should be made as follows (the details of which may be varied from time to time by written notice from DBC UK):
- 8.3.1 Payment by CHAPS or BACS should be made to the bank account expressly nominated on the relevant invoice.
 - 8.3.2 All CHAPS or BACS remittance advices to be posted to DB Cargo (UK) Limited Credit Control, Lakeside Business Park, Carolina Way, Doncaster, DN4 5PN.
- 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 DBC UK 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 DBC UK.
- 8.6 If:

- 8.6.1 the Customer or the Consignor fails to make any Goods available for collection and/or loading at the specified time; or
- 8.6.2 the Consignee fails to take delivery of any Goods immediately on arrival at the Delivery Point; or
- 8.6.3 the Customer breaches its obligations under Condition 5.4,
- then DBC UK may charge the Customer additional charges.
- 8.7 The parties acknowledge that a reasonable allowance for the price of fuel used by DBC UK in providing all its services is provided for within the Charges. However given continuing uncertainties and constant fluctuations in global oil markets the parties agree that if in any month the average price of fuel delivered to DBC UK inclusive of fuel duty exceeds £275 per tonne, then DBC UK may by written notice invoice a fuel surcharge to the Customer for the following month ("**Fuel Surcharge**"). The purpose of this Condition 8.7 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 DBC UK in accordance with the mechanism as published from time to time by DBC UK at <http://uk.dbcargo.com/> or as made available on reasonable request. Fuel Surcharge invoices shall be paid by the Customer in accordance with the terms of the Contract.
- 8.8 The Customer acknowledges that DBC UK 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 DBC UK ("**Access Charges**"). DBC UK shall be entitled to increase the Charges and payments under the Contract in direct proportion to any increase in the level of Access Charges due as a result of DBC UK fulfilling its obligations under this Contract from the date of any such increase.
- 8.9 At the end of the 12 month period starting on the Commencement Date and each subsequent 12 month period of the Term, and subject to any alternative provisions expressly agreed in the Specification, DBC UK 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 Condition 8 shall not apply to the fuel element of the Charges which shall be governed by the fuel surcharge provisions under Condition 8.7.
- 8.10 Save where provided elsewhere in the Contract, DBC UK will not vary its Charges without the prior consent of the Customer, save where the cost to DBC UK 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.

DBC UK will give as much notice as reasonably practicable of any such change in these Conditions.

- 8.11 Save where provided otherwise in the Specification, if at any time after the confirmation of order is issued by DBC UK (in accordance with Condition 2.4 or otherwise in accordance with the Specification) the Customer seeks to cancel any (or all) of the Services confirmed in the confirmation of order, it shall be liable to pay to DBC UK a sum equivalent to seventy five per cent (75%) of the total Charges 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 DBC UK 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, DBC UK 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 DBC UK pursuant to the Contract are fully paid for in advance (for such time as DBC UK 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 16 and/or 17.
- 9.2 If DBC UK 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, DBC UK 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 DBC UK deems appropriate (including individual or parent company guarantees). Failure to provide such security within the time period stipulated by DBC UK shall be deemed to be a material breach of the Contract.
- 9.3 DBC UK shall have a general as well as a particular lien on all Consignments (and associated documents) in DBC UK's possession for all sums due to DBC UK from the Customer, whether under the Contract or otherwise. DBC UK 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 DBC UK 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 DBC UK in exercising the lien and DBC UK will account to the Customer for any surplus.

10 Loss of or Damage to Goods

- 10.1 DBC UK 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 employees, agents and/or subcontractors);
 - 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 DBC UK 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 DBC UK or a subcontractor or assignee of DBC UK.
- 10.3 Unless otherwise agreed in writing between the Customer and DBC UK the liability of DBC UK 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; or
 - 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. DBC UK shall have no other liability for any loss of or damage to Goods even if caused by its negligence or that of its employees, agents and/or subcontractors.
- 10.4 DBC UK shall be entitled to and the Customer shall as a pre-condition to the acceptance of any liability by DBC UK as soon as reasonably practicable provide objective proof to the satisfaction of DBC UK acting reasonably 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 on demand and hold harmless DBC UK in full against all loss or damage, incurred or suffered from time to time by DBC UK or a third party (including without limitation any subcontractors or assignees of DBC UK) and claimed against DBC UK arising directly or indirectly from any negligent or wrongful act or omission on the part of the Customer, the Consignee or the Consignor and/or their employees, agents and/or subcontractors, and/or arising directly or indirectly 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 production (including (a) any line stoppage including the costs of stoppage and/or start up; (b) loss of or damage to, or extra costs of working associated with the completion of any work in progress affected by any delay in delivery, or mis-delivery of Goods by DBC UK; or (c) loss of or damage to raw products, depletion or reduction of stock levels or any other similar event);

12.2.1.5 loss of goodwill;

12.2.1.6 loss of reputation; or

12.2.1.7 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 DBC UK a required volume of Goods set out in the Contract);

- 12.2.2 DBC UK's maximum liability for or arising out of or in connection with a failure by DBC UK to deliver a Consignment within the time stated in the Specification, or if no time is so specified, then within a reasonable period of time, shall be the Charges (excluding VAT) the Customer paid to DBC UK for carriage of such Consignment. To the extent liquidated damages or other payments are expressly agreed in the Specification as payable by DBC UK in the event of delay or cancellation, such payments shall be the Customer's sole and exclusive remedy, and DBC UK'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 should not reasonably be construed as a penalty;
 - 12.2.3 DBC UK's maximum liability for the loss of or damage to Goods shall be as set out in Condition 10;
 - 12.2.4 DBC UK shall have no liability for loss of use, payment of hire or demurrage on any Customer Containers;
 - 12.2.5 where both parties to the Contract are signatories to the Claims Allocation and Handling Agreement (dated 1 April 1994 and as amended from time to time) ("**CAHA**") neither party's liability to the other in respect of the relevant matter shall exceed the liability of such party pursuant to or allocated in accordance with CAHA for such matter.
 - 12.2.6 DBC UK shall have no contractual or non-contractual liability whether under this Contract or otherwise for loss or damage arising directly or indirectly from or in connection with any IT Disruption provided that DBC UK shall use its reasonable endeavours to rectify or procure the rectification of such IT Disruption as soon as reasonably practicable.
- 12.3 Unless otherwise agreed in the Specification, the maximum aggregate liability of DBC UK 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 one million pounds sterling (£1,000,000).
- 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 and/or subcontractors 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 one party's liability to the other for:
- 12.7.1 death or personal injury resulting from its negligence or the negligence of a person for whom it is vicariously liable (negligence being as defined in section 1(1) Unfair Contract Terms Act 1977);
 - 12.7.2 fraud or fraudulent misrepresentation or fraud or fraudulent misrepresentation by a person for whom it is vicariously liable ;
 - 12.7.3 for breach of its obligations arising under section 2 Supply of Goods and Services Act 1982 ;or
 - 12.7.4 any other matter for which it is not permitted by law to exclude or limit or to attempt to exclude or limit its liability.
- 12.8 The exclusions and limitations of liability contained in the Contract shall extend to members of DBC UK Group and DBC UK's employees, agents and/or subcontractors 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.
- 12.9 DBC UK does not accept liability for the acts or omissions of other carriers unless such other carriers have been specifically engaged by DBC UK as subcontractors or assignees in respect of performing DBC UK's obligations under the Contract.

13 Claims Procedure

- 13.1 DBC UK 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 seven (7) days of the completion or termination of carriage by DBC UK 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 DBC UK in writing within the above time period; and
 - 13.1.2 the Customer did notify DBC UK of the same within a reasonable time, then DBC UK shall not have the benefit of this Condition.
- 13.2 Notwithstanding Condition 13.1, DBC UK 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 DBC UK) within 12 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 post to the Claims Manager, DB Cargo (UK) Limited, Carolina Way, Doncaster, DN4 5PN or faxed on 01302 575786 (or such other person, address or fax number as shall be notified by DBC UK from time to time) and copied to the Contract Officer.

14 Storage

- 14.1 If the Services include storage of Goods by DBC UK on the Customer's behalf:
- 14.1.1 unless otherwise agreed in the Specification, risk in the Goods shall remain with the Customer during any such storage (including any related loading activities) and the Customer shall maintain, or arrange for the relevant Consignee or Consignor to maintain insurances for full replacement value of the relevant Goods in the event of loss or damage;
 - 14.1.2 subject always to Condition 14.1.1, DBC UK shall exercise reasonable skill and care to ensure the safe custody of Goods during any agreed period(s) of storage.
- 14.2 Where Goods are held by DBC UK after transit or whilst transit is suspended DBC UK shall store the Goods at the Customer's cost in such storage facility as DBC UK shall deem appropriate. DBC UK shall have no liability for any loss of or damage to Goods (even if caused by negligence) occurring during the period of storage.
- 14.3 Where Goods which are held by DBC UK after transit or whilst transit is suspended are Dangerous Goods, then DBC UK will hold such Goods at the Customer's sole risk and DBC UK may, if it is satisfied it is reasonable to do so, destroy the Goods and/or return them to the Customer or its Consignor or its Consignee (who shall receive them at once) or otherwise dispose of them (all of the foregoing at the Customer's cost).

15 Insurance

- 15.1 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.

- 15.2 The insurance cover required to be held by the Customer shall be primary in respect of the Customer's liabilities arising under the Contract.
- 15.3 At DBC UK's request, the Customer shall provide current certificates of insurance in order to satisfy DBC UK that such insurance coverage is in effect. In the event of the required insurance cover being withdrawn or terminated the Customer will immediately inform DBC UK who may terminate the Contract forthwith without prejudice to any rights it may have under the Contract.
- 15.4 DBC UK 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.
- 15.5 The insurance cover required to be held by DBC UK shall be primary in respect of DBC UK's liabilities arising under the Contract.
- 15.6 At the Customer's request, DBC UK shall provide a 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 DBC UK will immediately inform the Customer who may terminate the Contract forthwith without prejudice to any rights it may have under the Contract.
- 15.7 In the event that liability is determined to be split in some proportion between DBC UK and the Customer then the insurance held by each party in compliance with this Condition 15 will be primary in respect of that party's liability.

16 Suspension and Performance Improvement

- 16.1 DBC UK 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.
- 16.2 Unless and until the Customer fully remedies the material breach and DBC UK resumes provision of the relevant Services:
 - 16.2.1 DBC UK's obligations and liability under any Performance Measures (including any liability to pay liquidated damages or other payments in accordance with the Specification) shall cease to apply during any period in which the relevant Services are suspended; and
 - 16.2.2 the Customer shall be liable for any committed costs and resources that DBC UK incurs as a direct result of Services being suspended in accordance with this Condition 16, and which it is unable to reallocate or recover (having used reasonable endeavours to do so).

- 16.3 If a party has failed to materially comply with any Performance Measures, the other party may give written notice (an “**Improvement Notice**”) setting out:
- 16.3.1 the matter or matters giving rise to such notice and specifying the measures required to remedy such failure (if such failure is capable of remedy); and/or
 - 16.3.2 such action as is necessary to prevent the similar failures in the future and the reasonable timescale within which the other party shall remedy the failure (the “**Remedial Period**”).
- 16.4 If, on the service of an Improvement Notice, the party in receipt of the Improvement Notice fails to remedy the failure with the Remedial Period, then the other party may serve a written warning notice (a “**Warning Notice**”). The Warning Notice shall set out the matter or matters giving rise to such notice. Upon receipt of a Warning Notice, the recipient party shall propose a written programme specifying in detail the manner and timescales in which it proposes to remedy the relevant failure.
- 16.5 If the party in receipt of the Warning Notice fails to remedy the matters referred to in the Warning Notice within a further 20 Business Days (or other such period as the parties may agree is appropriate to the relevant failure), the party serving the Warning Notice may terminate the Contract on the basis of material breach for the purpose of Condition 17.1.1 below.

17 Termination

- 17.1 A party may by notice in writing served on the other party (“**Defaulting Party**”) terminate the Contract forthwith if:
- 17.1.1 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
 - 17.1.2 the Defaulting Party is Insolvent.
- For the avoidance of doubt, the Customer may not exercise any right conferred on it by Condition 17.1.1 unless and until the remedial process set out in Condition 16 has been exhausted (where circumstances giving rise to such remedial process exist and apply).
- 17.2 Without prejudice to Conditions 16 and 17.1, DBC UK 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.
- 17.3 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.
- 17.4 The termination of the Contract howsoever arising is without prejudice to the rights, duties and liabilities of the parties accrued prior to termination.



- 17.5 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.

18 Access to Premises

- 18.1 The Customer shall procure that none of its employees, agents and/or subcontractors or the Consignee or the Consignor enter onto any part of any land or premises owned or controlled by DBC UK without the prior consent of DBC UK and being accompanied by a member of DBC UK staff. The Customer shall procure that any person who enters onto DBC UK's land or premises or that of the subcontractors and/or assignees of DBC UK complies with all applicable DBC UK regulations and instructions (including but not limited to those relating to alcohol and drugs) copies of which are available on request from DBC UK and where applicable the regulations and instructions of the subcontractors and/or assignees of DBC UK.
- 18.2 The Customer shall procure such access to its, its subcontractors', or the Consignor's or the Consignee's land as is necessary for DBC UK to perform the Services. DBC UK shall procure that none of its employees, agents and/or subcontractors enter onto any part of the Customer's, the Consignor's or the Consignee's land without the Customer having procured the aforementioned consent. DBC UK shall procure that any person entering into the Customer's, its subcontractors', the Consignor's or the Consignee's land or premises on behalf of DBC UK shall comply with all applicable regulations and instructions that are brought to the attention of DBC UK in writing.
- 18.3 Each party shall take all reasonable steps to ensure the health and safety of the other party's employees, agents and/or subcontractors 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.
- 18.4 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.

19 Customer's Equipment and Private Sidings

- 19.1 This Condition shall apply where it is agreed between DBC UK and the Customer that:
- 19.1.1 the Customer or one of its contractors, Consignees or Consignors is to provide any equipment for DBC UK to use in transporting Goods including but not limited to Wagons and Containers (whether such equipment is owned by the Customer or any other person), in these Conditions such equipment shall be "**Customer's Equipment**"; and/or
- 19.1.2 where the Departure Point and/or the Arrival Point is located at any Private Sidings (save where access to such Private Sidings is governed by a separate private sidings agreement to which DBC UK is a party).

For the avoidance of doubt where Wagons are the subject of a separate contract of use agreement between the parties, such contract of use agreement shall take precedence over any conflicting term of this Condition 19.

- 19.2 The Customer shall ensure that:
- 19.2.1 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;
 - 19.2.2 the Private Sidings are safe, free from defects and are kept in an appropriate condition for use as part of a railway network and comply with all applicable Railway Industry Standards;
 - 19.2.3 the Private Sidings are connected to the Network Rail network enabling safe transfer onto the Network Rail network and do not allow risk to be imported onto the Network Rail network; and
 - 19.2.4 DBC UK has the access to the Private Sidings and to the Network Rail network from the Private Sidings reasonably required by DBC UK to enable it to provide Services in accordance with the Contract.
- 19.3 DBC UK may refuse to accept any Customer Equipment if it does not comply with Condition 19.2.1. The Customer shall not rely upon DBC UK carrying out any checks upon the Customer's Equipment and the Customer acknowledges that DBC UK relies upon the Customer's obligations under Condition 19.2.1. To the extent DBC UK 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 DBC UK shall have no liability for failing to report any damage not reasonably capable of discovery on a brief visual inspection.
- 19.4 Any Wagons or Containers provided by DBC UK shall be used by the Customer, Consignee and/or Consignor, and their respective subcontractors (as applicable) only in connection with the Services.
- 19.5 The Customer shall promptly (and in any event within two (2) business days) notify the DBC UK Contract Officer (identified as such in the Specification) 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.
- 19.6 DBC UK may refuse to collect or deliver any Consignment if there is any breach of Condition 19.2.2, 19.2.3 or 19.2.4. The Customer shall not rely upon DBC UK carrying out any checks upon Private Sidings and the Customer acknowledges that DBC UK relies upon the Customer's obligations in Conditions 19.2.2, 19.2.3 and 19.2.4.
- 19.7 DBC UK's liability for any loss of or damage to any Customer's Equipment caused by its 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. DBC UK shall have no other liability arising from any loss or damage to Customer's Equipment even if caused by negligence. The Customer shall give DBC UK a reasonable opportunity to inspect any damage for which it is claimed DBC UK is responsible under this Condition 19.

19.8 If DBC UK damages any Private Sidings by its proven negligence it shall be liable for the reasonable repair costs of the same. DBC UK shall have no other liability arising from damage to Private Sidings even if caused by its negligence.

19.9 Where any of the Goods, the Customer's Equipment or the Private Sidings are not the property of the Customer, the Customer shall procure that DBC UK 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 DBC UK under the express terms of the Contract and the Customer shall indemnify DBC UK from any claim to any such person.

20 Confidentiality

20.1 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 20.1.

20.2 The obligations on a party set out in Condition 20.1 shall not apply to any information which:

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

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

21 Intellectual Property

All intellectual property rights in the services provided by DBC UK (including any software supplied by DBC UK), all documents, drawings and information supplied by DBC UK to the Customer in connection with this Contract remain the absolute property of DBC UK. 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 DBC UK. No licence or other right is granted by DBC UK to the Customer with regard to the intellectual property of DBC UK except as expressly set out in this Contract and for the purpose of performing the Services by DBC UK or as otherwise permitted at law.

22 Personnel Matters

22.1 Unless otherwise expressly stated in the Specification, the parties do not intend that the employment of any individual will transfer to DBC UK on the Commencement Date pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended from time to time, "TUPE") or otherwise and the Customer warrants and represents that no individuals are employed or engaged by any incumbent or existing service provider that may give rise to such a transfer.

- 22.2 Notwithstanding Condition 22.1, to the extent any individual or individuals allege that their employment (or liabilities for that employment) has transferred to DBC UK pursuant to TUPE, the Customer will indemnify and hold harmless DBC UK from all and any loss or damage that DBC UK incurs or suffers, directly or indirectly, in any way whatsoever as a result of or in connection with the employment, any proposed or actual changes to the terms and conditions of employment, or termination of employment, of any such individual or individuals.

23 Data Privacy

Each party shall have the rights and obligations set out in the “**Data Protection Addendum**”, which is available at <http://uk.dbcargo.com/> (or otherwise on request) and which is incorporated by reference into these Conditions.

24 Compliance

- 24.1 The Customer warrants and represents that all Wagons provided to DBC UK are maintained by an Entity in Charge of Maintenance (“**ECM**”) (whether by the Customer or a third party retained on its behalf) with a valid and up to date registration and system of maintenance for the purposes of The Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2011 (as amended and supplemented from time to time) (“**the ECM Regulations**”).
- 24.2 Without prejudice to any other right or remedy under the Contract, DBC UK shall be entitled to refuse acceptance of Wagons if at any time during the Contract it becomes aware that the relevant ECM has not fulfilled the requirements of Condition 24 or the ECM Regulations. Where reasonably requested by the Customer, DBC UK shall provide support (at the Customer's cost) to the Customer and any ECM to the extent necessary for compliance with Condition 24.
- 24.3 DBC UK is committed to responsible and ethical business practices and does not engage in, facilitate or accept the conduct of any activity that may constitute bribery, corruption or fraud, as such terms are defined in the Bribery Act 2010 and other related international laws and regulations, and by responsible Governmental and enforcement authorities (together “**Corrupt Practices**”). A copy of the DBC UK Anti-Bribery and Corruption Policy is available at <http://uk.dbcargo.com/> or on request.
- 24.4 The Customer shall not engage in any Corrupt Practices. The Customer acknowledges and agrees that any act or omission on its part in the performance of the Contract, and which constitutes a Corrupt Practice and/or a breach of the DBC UK Anti-Bribery Policy, shall entitle DBC UK to terminate the Contract on notice and with immediate effect.

25 General

- 25.1 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.

- 25.2 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.
- 25.3 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.
- 25.4 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.
- 25.5 The express terms of this 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.
- 25.6 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 25 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.
- 25.7 Subject to any variation agreed pursuant to Condition 25.8, these Conditions (including the Data Protection Addendum) together with the Specification shall form the Contract and contain all the terms which the parties have agreed to the exclusion of all other terms and conditions, previous agreements or understandings in relation to the subject matter of the Contract. DBC UK shall not be deemed to accept any other conditions or any modification or waiver of these Conditions by failing to object to any conditions contained in a communication from the Customer.
- 25.8 Any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by the authorised representatives of the parties.
- 25.9 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 fax number or email address detailed in the Specification. 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:



Delivery Method	Deemed Delivery Date and Time
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.
Fax	At the time of transmission, provided the sender receives confirmation that the transmission of the fax was successful.
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 or bank holiday or on any day after 5.00 pm, receipt is deemed to take place at 9.00am on the next business 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.

- 25.10 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.
- 25.11 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 DBC UK under the Contract to any third party. The Customer may not sub-contract any of its obligations under the Contract without DBC UK'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.
- 25.12 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.
- 25.13 This Contract and any non-contractual obligations arising under or in connection with it shall be governed by English law and the parties subject to the exclusive jurisdiction of the English Courts.

----ENDS----