Intermail Standard Terms and Conditions

Intermail Limited ("the Company") accepts goods for storage, fulfilment, carriage, distribution and other services subject to the Standard Terms and Conditions set out below (the "Conditions"). No agent or employee of the Company is permitted to alter or vary these Conditions in any way unless expressly authorised to do so by a director of the Company.

1 DEFINITIONS
(a) In these Conditions:
   - "Additional Party" means any employee, agent or sub-contractor of the Company, or anyone entitled to an indemnity, reimbursement or contribution from the Company in respect of a claim by an Interested Party.
   - "Consignment" shall mean goods contained in one Parcel or Freight Parcel, and/or any number of separate Parcels or Freight Parcels, and/or goods on a Pallet or any number of Pallets, in each case sent at one time in one load by the Customer from one address to another.
   - "Customer" means the party requesting the services and / or items under the Contract.
   - "Contract" shall mean the contract of carriage and / or service agreement between the Customer and the Company which shall be deemed to incorporate these Conditions.
   - "Customer" shall mean the legal or natural person that enters into a Contract with the Company.
   - "Dangerous Goods" means any goods which are dangerous, hazardous or flammable, including without limitation goods treated as dangerous in any of the Classification, Packaging and Labelling of Dangerous Substances Regulations 1984, the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment (Amendment) Regulations 2011, the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009, and any other relevant legislation or regulations together with any amendments thereto.
   - "Effective Time" means the time at which the employment of any person (or liabilities relating to that person) are transferred to the Company under TUPE.
   - "Employee" means a person employed or previously employed by the Transferor and who is, or whose rights are, affected by the TUPE Transfer.
   - "Freight Parcel" subject as provided in clause 1(b), shall mean any non – palletised item weighing between 31kg and 99kg inclusive.
   - "Goods" means goods (including any associated documents, packaging and equipment) to which the Contract relates.
   - "Good Industry Practice" means standards, practices, methods and procedures in the performance of the Contract which could reasonably be expected of a provider of warehousing and logistics services.
   - "Interested Party" means the Customer and/or anyone with an interest in the Goods.
   - "Limit" means a limit per tonne gross of that part of the Goods in respect of which a claim arises.
   - "Loss" includes (without limitation) loss (including theft), destruction, damage, unavailability, contamination, deterioration, delay, non-delivery, mis-delivery, unauthorised delivery, non-compliance with instructions or obligations, incorrect advice or information, loss or corruption of data, interference with or disruption of computer systems, breach of duty; any event giving rise to any liability of an Interested Party to any other person or authority.
   - "Pallet" subject as provided in clause 1(b), shall mean any item weighing in excess of 99kg containers with a maximum weight of 1000kg.
   - "Parcel" subject as provided in clause 1(b), shall mean anything under 31kg in weight and having dimensions of less than 2.7m girth, 2.0m in length and a volume less than 0.17 m³.
   - "Services" any carriage, transport, storage, packaging, warehousing, software or related services provided by the Company or its Subcontractor or supplier, and which are specified in the Contract or otherwise agreed by the Company from time to time.
   - "Subcontractor" means a party engaged at the behest of the Company to perform some or all of the Company’s obligations.
   - "Transferor" means a transferor as defined by TUPE.
   - "TUPE" means the Transfer of Undertakings (Protection of Employment) Regulations 2006.
   - "TUPE Transfer" means a situation where the Company is a transferee as defined by TUPE as a result of providing Services to or for the benefit of the Customer (or intending to do so).

(b) Notwithstanding the definitions of "Parcel", "Pallet" and "Freight Parcel" set out in clause 1(a), the specifications set out in this Agreement shall not exceed the specifications for equivalent items set out in the terms and conditions of the Subcontractors utilised by the Company to carry or store consignments or goods on its behalf.

2 GENERAL
(a) These Conditions shall solely apply to any agreement between the Company and the Customer relating to the agreed Services and the Customer shall be deemed to have notice of these Conditions if and as soon as it places an order with, or accepts a tender, from the Company for the agreed services.
(b) Each exclusion or limitation in these Conditions exists separately and cumulatively.
(c) Signature on a delivery note is evidence that the Goods have been received in apparently good order save as noted.
(d) The Company’s duty is to the Customer only and not to any third party.
(e) The Company may revise these Conditions from time to time by posting a revised version on its website.

3 PROVISION OF SERVICES
(a) The Company shall perform the Services specified in the Contract or otherwise agreed by the Company from time to time.
(b) The Company will perform the Services in accordance with Good Industry Practice and in compliance with all applicable laws, enactments, orders, regulations, standards and other similar instruments.

(c) In the absence of prior written instructions from the Customer to the Company giving sufficient warning and detail, the Company will not take any particular precautions or provide any special treatment in respect of the Goods.

(d) Where the Services include carriage, the Company’s responsibility for the Goods starts when loading on the vehicle is complete and ends when the Goods are tendered for collection, or the Company provides notice to the Customer that the Goods must be collected in accordance with Clause 13(d). Where the Services include storage and carriage the Company shall also be responsible for the Goods while they are transferred from its vehicle into its store and vice versa. Where the Services include forwarding only, the Company’s responsibility is only to engage or propose apparently competent contractors and to give them adequate instructions (on the basis of matters known to the Company) in relation to the Goods; and in this case, or where the Contract is for advice, it is not responsible for the Goods themselves.

(e) Time of delivery shall not be of the essence for performance of the Services by the Company.

(f) The Company may open up packaging to inspect Goods in order to check for potential damage and/or prohibited items.

(g) Unless expressly agreed, the Company does not insure the Goods and the Customer shall self-insure or make arrangements to cover the Goods against all insurable risks to their full insurable value (including all duties and taxes).

(h) Subject to Condition 3(g), the Company shall have no liability for Loss however arising

4 GOODS NOT ACCEPTED FOR THE COMPANY’S SERVICES

(a) The Company does not accept any of the following goods for storage, fulfilment or carriage unless a director of the Company has notified the Customer in writing that they are accepted, and therefore unless such notice has been given in writing no liability whatsoever, including losses arising from negligent acts of the Company, shall arise in respect of them to the Customer:
   i. Dangerous Goods;
   ii. firearms, works of art, jewellery, cash, glass, negotiable instruments (including cheques and any vouchers with face value), precious metals, antiques, furs or any other valuables, wines, spirits or living animals, fish, birds or any other living organism of any type, frozen or perishable food; and
   iii. any goods prohibited by the law or regulation of any government or public or local authority of any jurisdiction where the goods are carried.

(b) The Company reserves the right to reject any Goods or Consignment (or part thereof) if, in the Company’s sole opinion, such Goods or Consignment (or part thereof) is or are unsuitable for the Services offered by the Company.

(c) The Company reserves the right to reject (or levy an additional charge in respect of) any Goods or Consignment which is presented to the Company as a Parcel, Freight Parcel or Pallet (as applicable) but which exceeds the specifications of a Parcel, Freight Parcel or Pallet (as applicable) set out in clause 1(a) (as modified by clause 1(b)).

5 CUSTOMER’S UNDERTAKINGS

(a) The Customer represents, warrants and agrees that all Goods will be properly and sufficiently packaged and labelled; and that all Goods shall be barcoded with dimensions and weights. All information required for booking in shall be supplied in an agreed format specified by the Company.

(b) The Customer represents, warrants and agrees that all orders will be transferred to the Company by the specified electronic means with all previously agreed information supplied in the specified and correct format. The Customer will be liable for and indemnify the Company for any Loss, damage or liability arising from breach of this warranty.

(c) The Customer represents, warrants and agrees that, where a Consignment is to be stored or delivered pursuant to a contract of sale under which the Customer is the seller, title to the Consignment will not pass away from the Customer (or if it is acting as agent in accordance with Clause 6(a), the owner of the Consignment) until delivery.

(d) The Customer shall indemnify the Company against any claim for Loss by an Interested Party against an Additional Party.

(e) Without prejudice to Condition 5(d), if an Additional Party pays or is liable to make a payment to an Interested Party in connection with a claim for Loss, the Customer will fully indemnify the Company against any claim (including all costs and expenses) by the Additional Party against the Company for reimbursement of, contribution to or indemnity against that payment to the extent that it exceeds the Limit applicable at the time of the event giving rise to the claim.

6 PARTIES AND SUB – CONTRACTING

(a) Where the Customer is not the owner of some or all of the Goods it warrants and represents that it is, and shall be deemed for all purposes to be, the agent of each of the owner or owners, with full authority to deal with the Goods on each such owner’s behalf and, in particular, to enter into the Contract.

(b) The Company may engage third party Subcontractors to provide the Services or the Company may provide its own services to fulfil the Contract.

(c) Notwithstanding any specification or request from the Customer, or any agreement or commitment from the Company, the Company can not guarantee to engage or keep engaged any particular Subcontractor and may at any time, without prior notice and at its complete discretion, substitute or replace any Subcontractor with an alternative provider of Services. Any such substitution or replacement shall not constitute grounds for termination or amendment of the Contract by the Customer, or require payment of any damages or compensation to the Customer, or permit a reduction to, or reimbursement of any amounts paid or payable by the Customer for the Services. The termination clauses present in the Contract and these Conditions shall prevail in that order of precedence.

(d) Any obligation of an Interested Party is borne jointly and separately.

7 TRANSIT, UNCLAIMED GOODS AND UNDELIVERED GOODS

(a) Transit shall commence when the Consignment is handed to the Company or Subcontractor at the point of collection or at the Company’s or the Subcontractor’s premises. The Company is entitled to convey Goods by any means of conveyance and by any route whatsoever.

(b) Subject to Clause 7(c), transit shall (unless otherwise previously agreed in writing by a director of the Company) end when the Consignment is offered for delivery at the usual place of delivery at the consignee’s address within the customary delivery hours of the relevant service.

(c) When for any reason whatsoever a Consignment is held by the Company or the Subcontractor as “Held for re-delivery” or “to be held until called for” or upon any like instructions and such instructions are not given, or the Consignment is not called for and removed within a reasonable time, then transit will be deemed to end. The Company or the Subcontractor (as the case may be) shall store such Consignment subject to all Goods being solely at the Customer’s risk and subject to disposal in accordance with Clause 16, unless the Contract makes provision otherwise.

(d) Where, for any reason whatsoever, the Company or the Subcontractor is unable to convey the Consignment to the address to which it is consigned, or to effect delivery at the said address:
   i. the Company shall use reasonable endeavours to communicate with the Customer and request a new address to which the Consignment can be delivered in the country in which the Consignment is lying; and
(ii) if the Company has been unable to communicate with the Customer despite using its reasonable endeavours to do so, and it is satisfied (in its sole discretion) that an appropriate amount of time has passed, the Company shall be at liberty to deal with the goods in accordance with Clause 16(a). Prior to any disposal or destruction in accordance with Clause 16 the goods shall be held solely at the risk of the Customer.

8 PAYMENT AND PRICING

(a) The Customer shall pay the Company's charges for the Services as set out in the Contract and as updated from time to time in accordance with clause 8(j).

(b) Payment of the Company’s charges is due in full without any deduction or withholding no later than 7 days from the date of the Company’s invoice / statements, subject to such other credit arrangements as may be expressly agreed to by a director of the Company under clause 8(f) below.

(c) The Customer shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part.

(d) The Company may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.

(e) In the event of payment not being received by the Company within 7 days (or such other period agreed in accordance with clause 8(e), the Company reserves the right to charge interest on all outstanding amounts at the rate of 3% per year above the Barclay’s Bank base rate accruing daily from the due date until payment (either before or after judgment).

(f) The Company may (but shall not be obliged to) offer such other credit arrangements to the Customer as may be agreed by the Company in writing and signed by a director of the Company. The Company may withdraw or vary such credit arrangements at any time if:

(i) the Company serves a notice of termination of the Contract;
(ii) the Customer ceases, or indicates expressly or implicitly its intention to cease, use of the Company’s services for delivery of goods;
(iii) there is (in the sole opinion of the Company) a material adverse change in the creditworthiness of the Customer;
(iv) the Customer fails to pay any amount which is due and payable;
(v) where the Customer pays by direct debit, it cancels the direct debit mandate; or
(vi) continuing to offer such credit arrangements would (in the sole opinion of the Company), otherwise have or be capable of having an adverse effect on the business of the Company.

(g) Notwithstanding the above provisions, if the Customer:

(i) fails to pay any charge or other amount due under these Conditions by its due date for payment;
(ii) stops or suspends payment of any of its debts;
(iii) is unable to, or admits its inability to, pay its debts as they fall due;
(iv) commences negotiations, or enters into any composition, compromise, assignment or arrangement, with one or more of its creditors because of actual or anticipated financial difficulties; or
(v) takes any action, proceeding, procedure or preparatory step in relation to suspension of payments, a moratorium of any indebtedness, winding up, dissolution, administration or reorganisation (using a voluntary arrangement, scheme of arrangement or otherwise) of the Customer,

then:

(i) on demand and without prejudice to any other right that the Company may have, all unpaid amounts invoiced by the Company to the Customer (including any accrued interest on such amounts) shall automatically become due and payable in full and without set-off or counter-claim, irrespective of any payment date that would otherwise apply, or any prior credit or payment arrangement agreed with the Customer;
(ii) the Company may exercise its rights under Clause 16(a); and
(iii) the Company may terminate the Contract and/or suspend any provision of Services to the Customer, whether under the Contract or otherwise.

(h) Except when the quotation states otherwise, all carriage quotations based on a weight rate, that weight shall be gross weight. When the volume of the goods exceeds 4 cubic metres per tonne, the Company will charge by volume in addition to weight for all Consignments consigned outside of the United Kingdom and Republic of Ireland and the Company also reserves the right to charge by volume in addition to weight for all Consignments consigned within the UK and Republic of Ireland.

(i) A claim or counterclaim by the Customer shall not be made the reason for deferring or withholding payment or monies payable, or for refusing to reimburse liabilities incurred by the Company.

(j) The Company shall be entitled at any time and from time to time to increase the Company's charges for carriage or other services by giving to the Customer notice of a rise in any taxes, charges, or rates levied by any taxing authority, or on the Company's, or the supply of any commodity or service purchased in the course of the Company's business, or on account of the manner in which the Company's business is conducted by the Company.

(k) All amounts payable by the Customer are subject to value added tax at the then-current rate.

(l) In the event that the Company pays or agrees to pay to any third party for any bespoke tasks, such as special packaging, or duty and/or taxes and/or levy in respect of any Customer’s Goods:

(i) the Company shall do so on the sole basis that in doing so it is acting as the Customer’s fully authorised agent; and
(ii) whether or not delivery of the Goods is made to the address to which they are consigned, immediately upon receipt of the Company’s duty invoice in respect of such duty and/or tax and/or levy the Customer shall settle such duty invoices in full;

(m) If the Customer fails to comply with sub-clause 8(l)(iii) above, the Company may deal with the goods in accordance with Clause 16(a).

(n) The Customer shall at all times remain liable for and shall indemnify the Company in full and against any direct, indirect, consequential, special or punitive loss, cost, damage, expense, claim or other liability (howsoever caused) (“Loss”) which is in any way attributable to a failure by the Customer to:

(i) ensure that any Consignment (and, to the extent relevant, each part thereof) is correctly labelled or specified at the point of despatch;
(ii) provide adequate instructions as to any specific storage conditions for the Goods;
(iii) correctly enter, use or apply any data relating to Company products;
(iv) check any recommended settings relating to the creation of shipping or product labels; or
(v) correctly or properly use any Company product provided to automate the creation of shipping labels by or on behalf of the Customer.

9 LIABILITY FOR LOSS AND DAMAGE

Subject to the provisions of Clauses 4, 10, 11 and 12, the Company shall be liable for any physical Loss of, or physical damage to, goods during transit as defined in Clause 7 and storage other than storage under Clause 7(c) or 7(d), except to the extent that such Loss or damage has arisen from or consists of:

(a) the Customer or consignee not taking or accepting delivery within a reasonable time;
(b) insufficient or improper packaging, labelling or addressing, including incorrect or missing postcode or weight information;
(c) damage or breakage of articles of, or the part of any articles that comprise of, china, glass, porcelain, earthenware or other similarly fragile materials;
(d) consignments containing any form of liquid;
(e) an act or omission of the Customer or owner of the goods or of the servants or agents of either;
(f) inherent liability to wastage in bulk or weight, latent defect or inherent defect, vice or natural deterioration of the goods, wear and tear, depreciation, moths, vermin or the effect of any process of cleaning, dyeing or restoring any article;
(g) an act of God;
(h) seizure under legal process;
(i) any event beyond the reasonable control of the Company including any consequence of war, invasion, act of foreign hostilities (whether war is declared or not), civil war, civil unrest, act of terrorism, rebellion, insurrection, military or usurped power or confiscation, requisition, destruction of or damage to property by or under the order of any government or public or local authority, riots, civil commotion, lockouts, traffic congestion, mechanical breakdown, general or partial stoppage or restraint of labour from whatever cause, pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds, the direct or indirect effect of ionising radiations or contamination by radioactivity, AND PROVIDED THAT:
(i) the Company shall not be under any liability of any kind for a Consignment or other goods:
(A) where there has been fraud by the Customer or the owner of the goods or the servants or agents of either; or
(B) for the avoidance of doubt, where the Consignment was not in transit (as defined in Clause 7) or stored by the Company in the course of the Services at the time of the Loss; and
(ii) the Company shall not be under any liability for physical damage to a Consignment if the point at which transit commences under clause 7(a) is not controlled by any of the Customer, the Company or the Company’s Subcontractor.

10 LIMITATION AND EXCLUSION OF LIABILITY
A. Subject to Clauses 4, 9, 11 and 12 hereof, the Company’s maximum aggregate liability for the Loss of or damage to any goods shall be limited to the lowest of:
(a) in respect of goods carried solely within the British Isles (such term to include Northern Ireland, the Republic of Ireland and all islands off the coast of Great Britain, including the Channel Islands), regardless of the mode of transport:
(i) for any Consignment to be delivered using a service which is not a tracked service with a stated level of liability, nil;
(ii) for any Consignment to be delivered using a service which is a tracked service with a stated level of liability, £100 per Consignment or the level of liability accepted by the relevant carrier, if lower; and
(iii) for Pallets, £1.50 per kg of gross weight lost or damaged up to a maximum of £1,500 per Pallet, provided that if a Pallet's weight is undeclared, or is wrongly declared, on the Consignment note, the maximum liability in respect of that Pallet is £150;
(b) in respect of all goods carried outside of the British Isles:
(i) if carriage is by road, the compensation payable under the Convention on the Contract for the International Carriage of Goods by Road (CMR) May 1956 Geneva as amended by the Protocol of July 5th 1978 Geneva;
(ii) if carriage is by air, up to £100 per Consignment, or, if applicable, the compensation payable under the Warsaw Convention of 1929 as amended by the Protocol signed in the Hague on September 28th 1955 (Warsaw Convention);
(c) in respect of goods stored either on the Company’s or on a Subcontractor’s premises the total amount paid by the Customer for the storage Services in a one year period or the value of the relevant Goods, if lower;
(d) the replacement cost of lost or damages goods; and
(e) the repair cost of the damaged goods,

PROVIDED IN EACH CASE THAT, in no circumstances exceeding the charges paid by the Customer to the Company for Services in the last 12 months.

11 CLAIMS FOR COMPENSATION
(a) The Customer must notify the Company of any Loss or damage giving rise to a claim within 14 days of the date of despatch or receipt (as the case may be) of such Loss or damage and confirm it by notice in writing within 28 days of the date of despatch otherwise than on a delivery receipt. If the Customer fails to do so, the Company shall not be liable for any Loss or damage, save and except where the Customer proves that:
(i) it was not reasonably possible for the Customer to advise the Company or make such a claim in writing within the time limit applicable; and
(ii) such advice or claim was made within a reasonable time.
(b) In the event of a claim or damage, the Customer, the consignor or the consignee (as applicable) must ensure that the Consignment and its packaging is held for inspection at the delivery point.
(c) Where the Company is liable under these Conditions for repair costs of damaged goods, such repair costs will not include the cost of labour.

12 PROVISO IN RESPECT OF THE LIABILITY OF THE COMPANY
Notwithstanding provisions of the Contract and Clauses 9, 10 and 11 the liability of the Company shall in no circumstances exceed the liability of the Subcontractor utilised by the Company to carry Consignments or goods on its behalf and any such liability will be subject to the limitations exclusions and procedures for claiming compensation set out in the terms and conditions of the Subcontractor which the Customer acknowledges that it accepts and shall comply with.

13 TERMINATION
(a) Without limiting its other rights and remedies, the either party may terminate the Contract by giving the other party 90 days’ written notice at any time and without incurring any liability to the Customer for the effects of such termination.
(b) The Company may additionally terminate the Contract with immediate effect if during the term of the Contract:
(i) the Customer approaches any third party provider or supplier used by the Company in performance of the Services with a view to procuring services similar to the Services directly from that carrier or supplier; or
(ii) the Customer continues to mis-declare Consignment weights or dimensions after receipt of one written warning from the Company.
(c) The Company will deliver any Consignments which are still in transit at the point of termination, subject to any right it may have under these Conditions to exercise its power of sale under clause 16.

(d) In the event of termination of the Contract, the Customer must collect any Goods stored at the Company’s premises or a Subcontractor’s premises within seven days of being notified of termination. If the Customer fails to collect the Goods by this date, the Company will dispose of the Goods in accordance with Clause 16(a).

14 CUSTOMER’S INDEMNITY

(a) The Customer shall indemnify and keep the Company indemnified against all Loss, damage, costs or expenses, howsoever arising, including the negligence of the Company, in respect of any damage or Loss of every nature beyond the liability of the Company under these Conditions.

(b) The Customer shall, in addition to its obligations under Clause 8, indemnify the Company against any duty, tax or levy not expressly agreed to be paid by the Company under the Contract.

(c) The Customer shall indemnify the Company against any liability arising under Sections 30(10) of the VAT Act 1994 (or any analogous provision in any other jurisdiction) or any statutory modification or re-enactment thereof in respect of a failure to export zero rated goods or to comply with any conditions in relation to zero rated goods intended to be exported.

15 EXTENSION OF PROTECTION TO EMPLOYEES AND AGENTS

The Customer acknowledges and agrees that the provisions of Clauses 4, 9, 10, 11, 14 and 16 shall extend to protect and indemnify the employees and agents of the Company and that such provisions have been entered into and shall be enforceable by the Company for itself and as trustee or agent for such employees and agents.

16 LIEN AND DISPOSAL OF GOODS

(a) Without prejudice and in addition to any lien arising by operation of law, the Company shall (on its own behalf and as agent for any assignee of its invoices) have a general and particular lien on the Goods (and any associated documentation or records) against payment of all sums (whether due or not) claimed by the Company from, or actually or prospectively payable to the Company by, the Customer or another Interested Party on any account (relating to the Goods or not), or otherwise claimed in respect of the Goods or other property of an Interested Party.

(b) Any such lien will survive any transfer of ownership of Goods, or change of Customer. Storage shall be charged for any goods detained under lien or where the Company is required by any competent authority to retain them.

(c) In respect of Goods subject to any lien in favour of the Company (howsoever arising) if the amounts owing to the Company are not satisfied within a reasonable time of the date on which payment becomes due or these Conditions otherwise permit it to do so, the Company shall be at full liberty to:

(i) sell such Goods either privately or by auction and apply proceeds of any sale in or towards any monies owing to it and the expense of the sale and shall account to the Customer for the balance remaining if any; or

(ii) destroy such Goods if any sale under sub-clause (i) is impractical in the opinion of the Company due to the value or salability of the Goods in question, or otherwise, and such sale or destruction (as the case may be) shall be a full discharge of any liability of the Company in respect of such Goods.

17 FORCE MAJEURE

The Company shall be relieved of its obligation to perform the Contract to the extent that the performance thereof is prevented or delayed by fire, severe weather conditions, industrial dispute, labour disturbance, delay by any government or public or local authority, including the customs of any country where the goods are carried and other causes beyond the reasonable control of the Company and for the avoidance of any doubt the Company’s charges shall be payable in full in such circumstances, without prejudice to the Company’s rights at common law to treat the Contract as frustrated.

18 DATA PROCESSING

(a) In this clause 18, the terms “data controller”, “data processor” and “personal data” have the meanings given to them in the Data Protection Act 1998. The Customer and the Company each agree that for the purposes of these Conditions and any Contract the Customer is the data controller and the Company is the data processor.

(b) The Company agrees that it will not process any personal data provided to it by the Customer other than in accordance with the Customer’s instructions.

(c) The Customer hereby instructs the Company to take such steps in the processing of personal data on its behalf as the Company considers necessary to the performance of the Services or any of its other rights or obligations under these Conditions or any Contract, and authorises the Company to give equivalent instructions to any carrier or other Subcontractor on its behalf.

(d) The Customer acknowledges that it is in the mutual interests of the Company, the Customer and the Company’s other customers that the Company should gather and analyse data on how its Services are used, in order to help the Company to improve the Services, to devise new services, to derive business and market intelligence and for other commercial purposes. The Customer therefore hereby further instructs the Company, to the extent that the Company may choose to do so, to process personal data on its behalf in order to extract from that personal data anonymous statistical information. For clarity, the anonymous statistical information extracted by the Company will not itself be personal data and once extracted the Company shall therefore be free to deal with it as it chooses.

19 CONFIDENTIALITY

The Company and the Customer shall each keep confidential, information or data supplied by or on behalf of the other which is expressed to be confidential or which is of such a nature that it should clearly be regarded as confidential by a reasonable person.

20 TUPE AND SERVICE PROVISION CHANGE

Where there is a TUPE Transfer, the Customer will indemnify the Company against all liability and expense which the Company may incur in connection with:

(a) the employment or the termination of employment, before the Effective Time, of any Employee;

(b) any failure by the Transferor to comply with its legal obligations in respect of any Employee;

(c) the transfer to the Company, by virtue of TUPE, of the employment of any person of the Company, the applicability of terms of employment, other than those previously notified in writing to, and previously accepted by, the Company;

(d) any act or omission of the Transferor, or before the Effective Time, for which the Company becomes liable by virtue of TUPE; or

(e) the Transferor’s failure to comply with its obligations under regulation 13 of TUPE.

21 NOTICES

Any notice shall be duly given if left at or sent by first class prepaid post to the last known address of the other party or by facsimile to the last notified number evidenced by a successful transmission record, or by email to the last address notified for the purpose of service; and shall be deemed to have been received if posted 2 working days after posting, and if sent by facsimile or email, one working day after sending subject to confirmation of successful transmission (fax) or delivery (email).
SEVERABILITY
If any of these Conditions or any part is held invalid for any purpose, it shall for that purpose be deemed to have been omitted but shall not prejudice the effectiveness of the rest of these Conditions.

INTERPRETATION AND JURISDICTION
The Contract and these Conditions shall in all respects be subject to and construed in accordance with English law and the parties to the contract hereby submit to the exclusive jurisdiction of the courts of England.