

Unipart Rail Limited (Infrastructure) Standard Conditions of Contract for the Supply of Goods and Services

I. INTERPRETATION

I.1 **Definitions.** In these Conditions, the following definitions apply:

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

Charges: the charges payable by the Customer for the supply of Services in accordance with clause 9.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 18.8.

Contract: the contract between Unipart Rail and the Customer for the sale and purchase of the Goods and/or Services in accordance with these Conditions.

Customer: the person or firm who purchases the Goods and/or Services from Unipart Rail.

Deliverables: the deliverables set out in the Order produced by Unipart Rail for the Customer.

Force Majeure Event: has the meaning given in clause 15.

Goods: the goods (or any part of them) set out in the Order.

IPR: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world

Network Rail Standards: the standards specified by Network Rail as amended and updated from time to time.

Order: the Customer's order for the Goods and/or Services, as set out in the Customer's purchase order form, the Customer's written acceptance of Unipart Rail's quotation.

Railway Group Standards: all and any of the Railway Group Standards, Rail Industry Approved Codes of Practice, Guidance Notes and Rail Industry Standards issued from time to time by the Railway Safety and Standards Board Ltd.

Services: the services, including the Deliverables, supplied by Unipart Rail to the Customer as set out in the Specification.

Specification: any description or specification for the Goods and/or the Services, including any related plans and drawings, that is agreed in writing by the Customer and Unipart Rail.

Unipart Rail: Unipart Rail Limited incorporated and registered in England and Wales with company number 3038418 whose registered office is at Unipart House, Garsington Road, Cowley, Oxford OX4 2PG.

Unipart Rail Materials: has the meaning set out in clause 8.1(g).

Warranty Period: has the meaning given to it clause 5.1.

1.2 **Construction.** In these Conditions, the following rules apply:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors or permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (d) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** includes faxes but not e-mails.

2. **BASIS OF CONTRACT**

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Goods and/or the Services in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

2.3 The Order shall only be deemed to be accepted when Unipart Rail issues a written acceptance of the Order, at which point the Contract shall come into existence.

2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Unipart Rail which is not set out in the Contract.

2.5 Any samples, drawings, descriptive matter, or advertising produced by Unipart Rail and any descriptions or illustrations contained in Unipart Rail's catalogues, brochures or website are produced for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract nor have any contractual force.

2.6 Any quotation given by Unipart Rail shall not constitute an offer. A quotation shall only be valid for a period of 30 Business Days from its date of issue unless expressly stated otherwise by Unipart Rail.

3. **SUPPLY OF GOODS**

3.1 The Goods are described in Unipart Rail's Specification or catalogue as modified by any applicable Specification.

3.2 The Customer shall indemnify Unipart Rail against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Unipart Rail in connection with any claim made against Unipart Rail for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Unipart Rail's use of the Specification supplied by the Customer. This clause 3.2 shall survive termination of the Contract.

3.3 Unipart Rail reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

4. **DELIVERY OF GOODS**

4.1 Unipart Rail shall ensure that:

- (a) each delivery of the Goods is accompanied by a delivery manifest which shows details to include, the date, Order number, the type and quantity of the Goods and special storage instructions (if any); and
- (b) if Unipart Rail requires the Customer to return any packaging materials to Unipart Rail, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as Unipart Rail shall reasonably request. Returns of packaging materials shall be at Unipart Rail's expense.

4.2 Unipart Rail shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Goods are ready. Where delivery is not to an agreed designated site, additional charges may be applied.

- 4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location. Except where the Contract expressly provides that Unipart Rail is to provide specialist delivery vehicles or offloading equipment, the Customer shall be responsible for the offloading of all deliveries from delivery vehicles.
- 4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Unipart Rail shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Unipart Rail with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If the Goods are not delivered on the Unipart Rail's acknowledged date, the Customer may claim 1% of the price of the Goods for each complete week's delay in delivery by way of liquidated damages, up to a maximum of 5% of the total price of the Goods where the delay is solely attributable to Unipart Rail. Such liquidated damages will be calculated only for those Goods or portion of thereof within an Order deemed to be delivered late and will not be applied to the order as a whole. This shall be the Customer's sole and exclusive remedy for late delivery and it shall not be entitled to any other remedy in respect of the Goods' late delivery.
- 4.6 If the Customer fails to take delivery of the Goods on their arrival at the Delivery Location, then, except where such failure is caused by a Force Majeure Event or Unipart Rail's failure to comply with its obligations under the Contract:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which Unipart Rail notified the Customer that the Goods were ready; and
 - (b) Unipart Rail shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If 10 Business Days after the day on which Unipart Rail notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, Unipart Rail may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.8 Unipart Rail may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.9 Unipart Rail may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- (a) any factor beyond Unipart Rail's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give Unipart Rail adequate or accurate information or instructions.

5. QUALITY OF GOODS

5.1 Unipart Rail warrants that on delivery, and for a period of 15 months from the earlier of the date of delivery (**Warranty Period**), the Goods shall:

- (a) conform in all material respects with their description and any applicable Specification;
- (b) be free from material defects in design, material and workmanship.

5.2 Subject to clause 5.3, if:

- (a) the Customer gives notice in writing to Unipart Rail during the Warranty Period within three Business Days of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (b) Unipart Rail is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by Unipart Rail) returns such Goods to Unipart Rail's place of business at Unipart Rail's cost.

Unipart Rail shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 Unipart Rail shall not be liable for Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow Unipart Rail's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of Unipart Rail following any drawing, design or Specification supplied by the Customer;
- (d) the defect arises as a result of the Customer's alterations or repairs to such Goods;

- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - (f) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements, Network Rail Standards or Railway Group Standards.
- 5.4 Except as provided in this clause 5, Unipart Rail shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.6 These Conditions shall apply to any repaired or replacement Goods supplied by Unipart Rail.

6. TITLE AND RISK (GOODS)

- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Customer until Unipart Rail has received payment in full (in cash or cleared funds) for:
- (a) the Goods; and
 - (b) any other goods or services that Unipart Rail has supplied to the Customer.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) hold the Goods in a fiduciary capacity on trust for Unipart Rail;
 - (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Unipart Rail's property;
 - (c) permit and facilitate Unipart Rail at any time to enter any premises of the Customer or of any third party where the Goods are stored in order to inspect them;
 - (d) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (e) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery and on request allow Unipart Rail to inspect the insurance policy;
 - (f) notify Unipart Rail immediately if it becomes subject to any of the events listed in clause 10.2; and

- (g) give Unipart Rail such information relating to the Goods as Unipart Rail may require from time to time.

6.4 Notwithstanding clause 6.3, the Customer may resell or use the Goods in the ordinary course of its business provided that if the Goods are resold the Customer shall hold the entire sale proceeds as nominee for and to the order of Unipart Rail.

6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 10.2, or Unipart Rail reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Unipart Rail may have:

- (a) the Customer's right to resell Products or use them in the ordinary course of its business ceases immediately; and
- (b) Unipart Rail may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. SUPPLY OF SERVICES

7.1 Unipart Rail shall supply the Services to the Customer in accordance with the Specification in all material respects.

7.2 Unipart Rail shall use its reasonable endeavours to meet any performance dates specified in the Order or the Specification (as the case may be), but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

7.3 Unipart Rail shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Unipart Rail shall notify the Customer in any such event.

7.4 Unipart Rail warrants to the Customer that the Services will be provided using reasonable care and skill.

8. CUSTOMER OBLIGATIONS (SERVICES)

8.1 The Customer shall:

- (a) ensure that the terms of the Order for Services and any information it provides in the Specification are complete and accurate;
- (b) co-operate with Unipart Rail in all matters relating to the Services;

- (c) provide Unipart Rail, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Unipart Rail;
- (d) provide Unipart Rail with such information and materials as Unipart Rail may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- (e) prepare the Customer's premises and/or the location at which the Services are to be performed for the supply of the Services including the obtaining of railway possessions, the positioning of vehicles and equipment and suitable site access if applicable;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start; and
- (g) keep and maintain all materials, equipment, documents and other property of Unipart Rail (**Unipart Rail Materials**) at the Customer's premises in safe custody at its own risk, maintain Unipart Rail Materials in good condition until returned to Unipart Rail, and not dispose of or use Unipart Rail Materials other than in accordance with Unipart Rail's written instructions or authorisation.

8.2 If Unipart Rail's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) Unipart Rail shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Unipart Rail's performance of any of its obligations;
- (b) Unipart Rail shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Unipart Rail's failure or delay to perform any of its obligations as set out in this clause 8.2; and
- (c) the Customer shall reimburse Unipart Rail on written demand for any costs or losses sustained or incurred by Unipart Rail arising directly or indirectly from the Customer Default.

9. PRICE AND PAYMENT

9.1 The price of the Goods shall be the price set out or confirmed in Unipart Rail's written acceptance of the Order

9.2 Unless otherwise expressly stated in Unipart's written acceptance of the Order, for all deliveries to the UK mainland, the price of the Goods is inclusive of the costs and

charges of packaging, insurance and transport of the Goods. For deliveries to destinations outside the UK mainland additional charges will apply. For deliveries where Unipart Rail is providing specialist delivery vehicles or offloading equipment, additional charges will apply.

- 9.3 Charges for the Services shall be specified in the Contract.
- 9.4 Unipart Rail shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Unipart Rail engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Unipart Rail for the performance of the Services, and for the cost of any materials.
- 9.5 Unipart Rail reserves the right to increase its charges at any time. Unipart Rail will give the Customer written notice of any such increase at least one month before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify Unipart Rail in writing within one week of the date of Unipart Rail's notice and Unipart Rail shall have the right without limiting its other rights or remedies to terminate the Contract by giving two weeks' written notice to the Customer.
- 9.6 The price of the Goods and the Charges for the Services are exclusive of amounts in respect of value added tax (**VAT**). The Customer shall, on receipt of a valid VAT invoice from Unipart Rail, pay to Unipart Rail such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services.
- 9.7 Unipart Rail may invoice the Customer for the Goods on or at any time after the completion of delivery and for the Services monthly in arrears.
- 9.8 Except where the Customer has previously agreed in writing with Unipart Rail particular credit terms in which event, those credit terms will apply, the Customer shall pay the invoice in full and in cleared funds within 28 days of date the invoice was dated, unless otherwise agreed in writing with the Customer. Payment shall be made to the bank account nominated in writing by Unipart Rail. Time of payment is of the essence.
- 9.9 If the Customer fails to make any payment due to Unipart Rail under the Contract by the due date for payment (**due date**), then, without limiting Unipart Rail's other rights or remedies:
- (a) the Customer shall pay interest on the overdue amount at the rate of 8% above the base lending rate from time to time of Royal Bank of Scotland Plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Customer shall pay the interest together with the overdue amount; and/or

- (b) Unipart Rail may suspend the performance of any or all of its obligations under the Contract.

9.10 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Unipart Rail in order to justify withholding payment of any such amount in whole or in part. Unipart Rail may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer under the Contract or under any other agreement with the Customer against any amount payable by Unipart Rail to the Customer.

10. INSOLVENCY INCAPACITY AND TERMINATION

10.1 If the Customer becomes subject to any of the events listed in clause 10.2, or Unipart Rail reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to Unipart Rail, Unipart Rail may cancel or suspend all further deliveries and/or Services under the Contract or under any other contract between the Customer and Unipart Rail without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered and/or Services provided to the Customer shall become immediately due.

10.2 For the purposes of clause 10.1, the relevant events are:

- (a) the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

- (d) (being an individual) the Customer is the subject of a bankruptcy petition or order;
- (e) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (f) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- (g) (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- (i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.2(a) to clause 10.2(h) (inclusive);
- (j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
- (k) the Customer's financial position deteriorates to such an extent that in Unipart Rail's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- (l) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

10.3 Without limiting its other rights or remedies, Unipart Rail may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of being notified in writing of the breach;
- (b) the Customer becomes subject to any of the events listed in clause 10.2.

10.4 Without limiting its other rights or remedies, Unipart Rail may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

- 10.5 Without limiting its other rights or remedies, the Customer shall have the right to terminate the Contract, but only in relation to the provision of Services, by giving Unipart Rail three months' written notice.
- 10.6 Without limiting its other rights or remedies, Unipart Rail shall have the right to terminate the Contract, but only in relation to the provision of Services, by giving the Customer one week's written notice.
- 10.7 On termination of the Contract for any reason:
- (a) the Customer shall immediately pay to Unipart Rail all of Unipart Rail's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Unipart Rail shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - (b) the Customer shall return all of the Unipart Rail Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then Unipart Rail may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
 - (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
 - (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

11. LIMITATION OF LIABILITY

- 11.1 Nothing in these Conditions shall limit or exclude Unipart Rail's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - (d) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982;
 - (e) defective products under the Consumer Protection Act 1987; or
 - (f) any matter in respect of which it would be unlawful for Unipart Rail to exclude or restrict liability.

- 11.2 Subject to clause 11.1:

- (a) Unipart Rail shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) Unipart Rail's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 10% of the price of the Goods and/or Services.

12. INDEMNITY

12.1 The Customer shall indemnify and keep indemnified Unipart Rail against all and any claims, liabilities, costs, expenses, damages and losses howsoever arising (including any direct, indirect or consequential losses and all interest, penalties and legal and other reasonable professional costs and expenses) arising from:

- (a) injury (including death) to any persons and any loss and/or damage as a result of any act, default or negligence by the Customer or its employees, agents and sub-contractors with respect to the use or handling of the Goods and/or the Deliverables including any related damages, proceedings, costs and expenses;
- (b) injury (including death) to any persons and any loss and/or damage as a result of any act, default or negligence by the Customer or its employees, agents and sub-contractors in connection with the supply or use of the Services including any related damages, proceedings, costs and expenses; and
- (c) any breach by the Customer of the Contract.

13. CONFIDENTIAL INFORMATION

13.1 A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, Specifications, inventions, processes, prices, costs or initiatives which are disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products or its services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents or subcontractors who need to know the same for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors shall keep such information confidential.

13.2 The Customer shall not disclose the existence and terms of this agreement, nor shall it make any disclosure of its commercial relationship with Unipart Rail without the prior written consent of Unipart Rail.

14. INTELLECTUAL PROPERTY

- 14.1 The Customer shall not without the prior written consent of Unipart Rail use any of Unipart Rail's IPRs other than for reasonable and proper purposes in connection with the provision of Goods under the Contract.
- 14.2 In respect of the Services, all IPRs in or arising out of or in connection with the Services shall be owned by Unipart Rail. All Unipart Rail Materials are the exclusive property of Unipart Rail.
- 14.3 The Customer hereby grants Unipart Rail an irrevocable royalty free licence (with the power to grant sub-licences on the same terms) to use all Customer's IPRs in connection with Goods and/or Services provided under the Contract (including all designs drawings, software, Specifications and other documents in respect of those Goods and/or Services) for all reasonable and proper purposes in connection with the Contract.
- 14.4 Except as expressly provided herein, nothing in the Contract shall grant or be deemed to grant to either party any right, title or interest in the other party's IPR and except as expressly stated in the Contract, neither party shall have any right to use the other party's trade marks, service marks or logos without the prior written consent of the other party.

15. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, failure or paralysis of banking systems, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

16. CORRUPTION

- 16.1 The Customer shall:
- (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);

- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) have and shall maintain in place its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and clause 16.1(b), and will enforce them where appropriate;
- (d) promptly report to Unipart Rail any request or demand for any undue financial or other advantage of any kind received by the Customer in connection with the performance of the Contract;

16.2 The Customer shall ensure that any person associated with the Customer who benefits directly or indirectly from the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Customer in this clause 16 (**Relevant Terms**). The Customer shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to Unipart Rail for any breach by such persons of any of the Relevant Terms.

16.3 Breach of this clause 16 shall be deemed a material breach of this agreement.

16.4 For the purpose of this clause 16, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.

17. DISPUTES AND MEDIATION

17.1 Before resorting to litigation, the parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Contract.

17.2 If the parties are unable to resolve the dispute, either party may, at any time, refer the dispute to mediation by a neutral advisor or mediator (“the Mediator”). If the parties are unable to agree on a Mediator within 7 days of the request by one party to refer the dispute to mediation, they shall apply to the Centre for Dispute Resolution (“CEDR”) to appoint a Mediator. The parties shall seek to agree directions as to how the mediation is to be conducted and, failing agreement, they shall seek and adhere to directions from the Mediator.

17.3 If the parties reach agreement on the resolution of their dispute the agreement shall be reduced to writing and shall be binding.

18. GENERAL

18.1 Assignment and subcontracting.

- (a) Unipart Rail may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Unipart Rail.

18.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed (i) in the case of Unipart Rail to FAO the Commercial Manager, Unipart Rail Ltd, Gresty Road, Crewe CW2 6EH; and (ii) in the case of the Customer to its registered office (if it is a company) or its principal place of business (in any other case) or such other address as the Customer may have specified to Unipart Rail in writing in accordance with this clause, and shall be delivered personally, sent by recorded delivery or commercial courier or fax.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 18.2(a); if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed or, if sent by fax, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

18.3 Severance.

- (a) If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

18.4 **Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided

under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

- 18.5 **Minor errors.** A minor or administrative error by Unipart Rail shall not be a breach of the Contract and if the Customer is aware of such an error it shall forthwith notify Unipart Rail which shall use its reasonable endeavours to rectify the error.
- 18.6 **Data protection.** The parties shall at all times comply with the provisions and obligations imposed by the Data Protection Act 1998 in storing and processing personal data.
- 18.7 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 18.8 **Variation.** Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by Unipart Rail.
- 18.9 **Governing law and jurisdiction.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of England and Wales. Notwithstanding the foregoing, the Customer shall not be entitled to bring any proceedings, disputes or claims against Unipart Rail in any jurisdiction other than the jurisdiction of the courts of England and Wales.