

Standard Conditions of Contract for The Supply of Goods and Services

**1. INTERPRETATION**

- 1.1. 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 10.
- Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 19.8.
- Consumable Goods:** Goods which are deemed to be consumable goods by Unipart Rail.
- 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.
- Design or Endemic Defect:** a defect to a Good either:
- (i) in the original design;
  - (ii) in the Specification; and/or
  - (iii) caused by a change in the use of the railway vehicle to which the Good is fitted.
- Force Majeure Event:** has the meaning given in clause 16.
- 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.
- 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, or overleaf, as the case may be.
- 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.
- Repairable Goods:** Goods which are deemed to be repairable goods by Unipart Rail.
- ROSCO:** means Angel Trains Limited, Eversholt Rail (UK) Limited, Porterbrook Maintenance Limited and/or Porterbrook Leasing Company Limited and/or any of them.
- 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 provided or requested by the Customer and 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 9.1(g).
- 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 or begins to perform the Contract (whichever is the earlier), 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.
- 3. SUPPLY OF GOODS**
- 3.1** The Goods are described in the Specification, which shall be provided by the Customer in the Order.
- 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 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 provided that pallets, collars, stillages, cradles and other specialist equipment shall at all times remain the property of Unipart Rail. 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. Failure by the Customer to make such packaging materials available for collection in accordance with this clause shall entitle Unipart Rail to levy a reasonable charge on the Customer in respect of the cost of Unipart Rail having to purchase replacement materials.
- 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.
- 4.3** Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location. 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 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).
- 4.6** 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.
- 4.7** 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.
- 4.8** 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 the Consumable Goods shall conform in all material respects with their Specification.

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- 5.2 Unipart Rail warrants that on delivery and for such period as Unipart Rail has the benefit of a warranty from its supplier (if any) (the "**Warranty Period**"), the Repairable Goods shall:
- conform in all material respects with their Specification; and
  - be free from material defects in material and workmanship.
- 5.3 Subject to clause 5.4, if:
- 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 Repairable Goods do not comply with the warranty set out in clause 5.2;
  - Unipart Rail is given a reasonable opportunity of examining such Repairable Goods; and
  - the Customer (if asked to do so by Unipart Rail) returns such Repairable Goods to Unipart Rail's place of business at Unipart Rail's cost.
- Unipart Rail shall, at its option, repair or replace the defective Repairable Goods, or refund the price of the defective Repairable Goods in full.
- 5.4 Unipart Rail shall not be liable for Repairable Goods' failure to comply with the warranty set out in clause 5.2 in any of the following events:
- the Customer makes any further use of such Repairable Goods after giving notice in accordance with clause 5.3;
  - 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 Repairable Goods or (if there are none) good trade practice regarding the same;
  - the defect arises as a result of Unipart Rail following any drawing, design or Specification supplied by the Customer or where the Specification is inadequate;
  - the defect arises as a result of the Customer's fitting of, alterations to or repairs to such Repairable Goods;
  - the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;
  - the Repairable Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirement or Railway Group Standards;
  - the Repairable Goods are used outside of their historic usage;
  - the Repairable Goods have been used in breach of clause 6;
  - the defect arises as a result of a Design or Endemic Defect; or
  - the defect arises as a result of the failure of another Good.
- 5.5 Except as provided in this clause 5, Unipart Rail shall have no liability to the Customer in respect of the Repairable Goods' failure to comply with the warranty set out in clause 5.2.
- 5.6 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.
- 5.7 These Conditions shall apply to any repaired or replacement Goods supplied by Unipart Rail.
- 6. PERMITTED USE OF REPAIRABLE GOODS**
- 6.1 The Customer shall be entitled to take possession of and use the Repairable Goods supplied under a Contract to comply with its obligations in respect of the maintenance and repair of railway vehicles. The right to use the Repairable Goods expressly excludes the right to carry out or procure any repairs, modifications or additions to the Repairable Goods and the Customer shall not part with possession of, nor purport to lease the Repairable Goods or any of them, charge, pledge, mortgage or otherwise dispose of or deal in the Repairable Goods. The Customer hereby acknowledges and agrees that it shall not contract nor procure the repair or overhaul of any Repairable Goods other than with Unipart Rail.
- 6.2 The Customer acknowledges that there is a limited supply of float of Repairable Goods (the "**Float**") and that from time to time the Float may be in a shortage of supply. The Customer agrees that it shall not unreasonably refuse a request by Unipart Rail to deliver up to Unipart Rail such of the Repairable Goods in the Customer's possession as have not been used or fitted to a railway vehicle or are not intended for immediate use. Unipart Rail shall pay the Customer an amount equal to the value of the price paid for the Repairable Good, once it is returned to Unipart Rail, subject to the condition of the Good when loaded by the Customer on Unipart Rail's vehicles being commensurate with that when delivered by Unipart Rail to the Customer, in default of which Unipart Rail shall pay a reasonable amount to the Customer.
- 6.3 Upon delivery of a Repairable Good to the Customer, the Customer shall immediately make a failed Repairable Good available for collection by Unipart Rail. Under no circumstances shall the Customer be entitled to disassemble any Repairable Good and use it for the repair of other Goods.
- 6.4 Without prejudice to the other rights of Unipart Rail, if the Customer uses a Repairable Good other than in accordance with this clause 6, Unipart Rail may at its discretion and upon reasonable notice charge the Customer either for the cost of a replacement Repairable Good of the same type or for the value of the benefit to the Customer of the use of the Good, but in any event, title in and ownership of any non-returned Repairable Good shall always remain with Unipart Rail and/or a ROSCO (as the case may be) and in the event that the Customer subsequently locates any such non-returned Repairable Good such shall immediately be made available free of charge for collection by Unipart Rail.
- 6.5 Should Unipart Rail determine that a returned Repairable Good is incomplete or damaged (an "**Incomplete or Damaged Repairable Good**"), Unipart Rail may carry out such work as is necessary to return that Good to a condition such that repair, overhaul and maintenance work can begin and the cost of such work shall be charged to the Customer.
- 6.6 The Customer shall indemnify Unipart Rail on demand against:
- any reasonable costs, losses, claims and expenses incurred by Unipart Rail as a result of the return of an Incomplete or Damaged Repairable Good, including Unipart Rail's liability to third parties for liquidated damages for late delivery; and
  - any reasonable costs and expenses incurred by Unipart Rail as a result of the failure by the Customer properly to label and identify a failed Repairable Good.
- 7. TITLE AND RISK (GOODS)**
- 7.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 7.2 Title to the Consumable Goods shall not pass to the Customer until Unipart Rail has received payment in full (in cash or cleared funds) for:
- the Consumable Goods; and
  - any other goods or services that Unipart Rail has supplied to the Customer.
- 7.3 Until title to the Consumable Goods has passed to the Customer, the Customer shall:
- hold the Consumable Goods in a fiduciary capacity on trust for Unipart Rail;
  - store the Consumable Goods separately from all other goods held by the Customer so that they remain readily identifiable as Unipart Rail's property;
  - permit and facilitate Unipart Rail at any time to enter any premises of the Customer or of any third party where the Consumable Goods are stored in order to inspect them;
  - not remove, deface or obscure any identifying mark or packaging on or relating to the Consumable Goods;
  - maintain the Consumable 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;
  - notify Unipart Rail immediately if it becomes subject to any of the events listed in clause 11.2; and
  - give Unipart Rail such information relating to the Consumable Goods as Unipart Rail may require from time to time.
- 7.4 If the Customer becomes subject to any of the events listed in clause 11.2, or Unipart Rail reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that title to the Goods has not passed to the Customer and 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, 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.
- 7.5 Title to Repairable Goods shall at all times remain vested in Unipart Rail or the relevant ROSCO and shall at no time pass to the Customer.
- 8. SUPPLY OF SERVICES**
- 8.1 Unipart Rail shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 8.2 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.
- 8.3 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.
- 8.4 Unipart Rail warrants to the Customer that the Services will be provided using reasonable care and skill.
- 9. CUSTOMER OBLIGATIONS (SERVICES)**
- 9.1 The Customer shall:
- ensure that the terms of the Order for Services and any information it provides in the Specification are complete and accurate;
  - co-operate with Unipart Rail in all matters relating to the Services;
  - 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;
  - 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;
  - 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;
  - obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start; and
  - 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.
- 9.2 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**):
- 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

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- 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 9.2; 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.
- 10. PRICE AND PAYMENT**
- 10.1 The price of the Goods shall be the price set out or confirmed in Unipart Rail's written acceptance of the Order.
- 10.2 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.
- 10.3 Unless otherwise specified in the Contract, the Charges for the Services shall be on a time and materials basis:
- (a) the Charges shall be calculated in accordance with Unipart Rail's hourly fee rates, as set out in Unipart Rail's quotation or if no quotation has been provided, as otherwise incorporated in an accepted Order;
- (b) Unipart Rail's standard hourly fee rates for each individual are calculated on the basis of a normal working day from 8.00 am to 5.00 pm worked on Business Days;
- (c) Unipart Rail shall be entitled to charge an enhanced fee rate for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 10.3(b); and
- (d) 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.
- 10.4 Unipart Rail reserves the right to increase its standard fee rates for Services, provided that such charges will not be increased more than once in any 12 month period. 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.
- 10.5 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.
- 10.6 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.
- 10.7 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 by the end of the month following the month the invoice was dated. Payment shall be made to the bank account nominated in writing by Unipart Rail. Time of payment is of the essence.
- 10.8 The Customer shall notify Unipart Rail in writing within ten (10) days of the date of the invoice if the invoice is to be disputed, stating the reason for the dispute (supported by documentary evidence), the amount of the dispute and the invoice number in dispute. The Customer is precluded from disputing any invoice after such ten (10) day period has expired.
- 10.9 Where an invoice is partially disputed, Unipart Rail shall have the right to require the Customer to pay the balance of the invoice in accordance with clause 10.7.
- 10.10 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 provided for by the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after 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.
- 10.11 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.
- 11. INSOLVENCY INCAPACITY AND TERMINATION**
- 11.1 If the Customer becomes subject to any of the events listed in clause 11.2, 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.
- 11.2 For the purposes of clause 11.1, 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 11.2(a) to clause 11.2(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.
- 11.3 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 11.2.
- 11.4 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.
- 11.5 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, provided that the Customer shall reimburse Unipart Rail on demand for any costs, expenses or other liabilities incurred by Unipart Rail in connection with the Contract (whether arising before or after the date of termination).
- 11.6 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.
- 11.7 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;

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- (c) at Unipart Rail's option, the Customer shall be obliged to make full payment for or to make available for collection within five (5) days any and/or all Repairable Goods which have been delivered but not paid for;
- (d) 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
- (e) clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 12. LIMITATION OF LIABILITY**
- 12.1 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.
- 12.2 Subject to clause 12.1:
- (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 100% of the price of the Goods and/or Services.
- 13. INDEMNITY**
- 13.1 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.
- 14. CONFIDENTIAL INFORMATION**
- 14.1 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.
- 14.2 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.
- 15. INTELLECTUAL PROPERTY**
- 15.1 In respect of the Goods, Unipart Rail grants to the Customer a revocable, non-exclusive, non-transferable licence to use Unipart Rail's IPRs only to the extent necessary and then solely for the purpose of using and operating the Goods.
- 15.2 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.
- 15.3 The licence in clause 15.1 is without any warranty or obligation on Unipart Rail's part in respect of the validity of the IPRs or the non-infringement of the rights of any other person.
- 15.4 The Customer will not do anything or act in any way that is or may be inconsistent with or prejudicial to Unipart Rail's ownership of its IPRs.
- 15.5 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.
- 15.6 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.
- 15.7 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
- 16. 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.
- 17. CORRUPTION**
- 17.1 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 17.1(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.
- 17.2 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 17 (**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.
- 17.3 Breach of this clause 17 shall be deemed a material breach of this agreement.
- 17.4 For the purpose of this clause 17, 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.
- 18. DISPUTES AND MEDIATION**
- 18.1 Before resorting to litigation, the parties shall attempt to negotiate a settlement to any dispute between them arising out of or in connection with this Contract.
- 18.2 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.
- 18.3 If the parties reach agreement on the resolution of their dispute the agreement shall be reduced to writing and shall be binding.
- 19. GENERAL**
- 19.1 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.
- 19.2 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 Legal Counsel, Unipart Rail Limited, Jupiter Building, First Point, Balby Carr Bank, Doncaster, DN4 5JQ; 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 19.2(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.

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**19.3 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.

**19.4 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.

**19.5 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.

**19.6 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.

**19.7 Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.

**19.8 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.

**19.9 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.