

1 July 2021

# **XPO Transport Solutions UK Limited – Terms and Conditions of Business**

## 1. Interpretation

1.1 In these Conditions, the following definitions apply:

**Acceptance:** means when:

- (a) Goods come under the control or custody of a XPO employee, agent or subcontractor in accordance with these Conditions and such XPO employee, agent or subcontractor has had reasonable opportunity to fully inspect the condition and quantity of the Goods; and
- (b) receipt of such Goods has been acknowledged in writing or in an agreed electronic form by such XPO employee, agent or

subcontractor; and

the terms **Accept**, **Accepts** and **Accepted** shall be interpreted accordingly.

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

**CDG Regs:** the Carriage of Dangerous Goods and Use of Transportable Pressure Receptacles Regulations 2009.

**CMR:** the United Nations Convention on the Contract for the International Carriage of Goods by Road (signed in Geneva on 19 May 1956) as amended.

**Charges:** the charges payable by the Customer for the supply of the Services.

**Conditions:** these terms and conditions.

**Consignee:** the person to whom XPO contracts to deliver the Goods.

**Consignment:** Goods, whether a single item or in bulk or contained in one package or container, as the case may be, or any number of separate items, packages or containers sent at one time in one load by or for the Customer from one address to another address.

**Contract:** the contract between XPO and the Customer for the supply of Services in accordance with these Conditions.

**Credit Limit:** the credit limit set on the Customer's account with XPO as determined by XPO from time to time.

**Customer:** any person at whose request or on whose behalf XPO undertakes any business or provides Services.

**Customer's Group:** the Customer, its ultimate holding company and all subsidiaries of its ultimate holding company.

**Dangerous Goods:** any goods to which the CDG Regs apply, any goods named in the Approved Carriage List issued from time to time by the Health and Safety Commission, any goods which comprise explosives or radioactive material or any goods presenting a similar hazard.

**Data Protection Legislation:** the UK Data Protection Legislation, the General Data Protection Regulation (EU) 2016/679) and any other directly applicable European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications).

**Force Majeure Event:** an event beyond the reasonable control of XPO, including strikes, lock-outs or other industrial disputes (whether involving the workforce of XPO or any other party), failure of a utility service or transport network, interruption to IT systems, an act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident

(including a road traffic accident), breakdown of vehicles, plant or machinery, fire, explosion, flood, storm, adverse weather conditions, bursting or overflowing of water tanks, apparatus or pipes, sprinkler leakage or default of suppliers or subcontractors.

**Goods:** the goods in respect of which the Services are provided.

**Order:** the Customer's order for Services, including any order by telephone or via an electronic interface.

**Personal Data:** shall have the meaning given to it in the UK Data Protection Legislation.

**RHA Conditions:** the Road Haulage Association Limited's Conditions of Carriage 2009, a copy of which can be supplied upon request.

**Replacement Value:** the lower of:

- (a) the replacement cost to the Customer of lost or damaged Goods being the manufacturing cost at the time of the loss or damage;
- (b) (in respect of damaged Goods) the cost to the Customer of repairing or reconditioning the Goods; or
- (c) the applicable limit set forth in the document mentioned in clauses 3.1(b), 3.1(c) or 3.1(d) in respect of which a claim arises, (being

£1,300 per tonne where RHA Conditions apply, 8.33 SDR per kilogram of gross weight short where CMR applies and £100 per tonne where UKWA Conditions apply).

**Services:** means all distribution, transport, storage, warehousing (including labelling, pricing, bar-coding, picking, packing and sampling) of

Goods and all other services provided by XPO to the Customer.

**Standard Pallets:** standard (1000mm x 1200mm) 4-way pallets in good condition and repair.

**Transfer Regulations:** the Transfer of Undertakings (Protection of Employment) Regulations 2006.

**UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended or any successor legislation.

**UKWA Conditions:** the United Kingdom Warehousing Association's Conditions of Contract (as amended from time to time), a copy of which can be supplied upon request.

**XPO:** XPO Transport Solutions UK Limited incorporated and registered in England and Wales with company number 6634081 whose

registered office is at Distribution House, Eldon Way, Crick, Northampton NN6 7SL.

**XPO's Group:** XPO, its ultimate holding company and all subsidiaries of its ultimate holding company.

**XPO Materials:** has the meaning set out in clause 6.1(f).

1.2 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 successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory 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; and
- (e) a reference to **writing** or **written** includes faxes but not email.

**2. Basis of Contract**

2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2 When XPO accepts the Order or commences provision of the Services (whichever is earlier) the Contract shall come into existence.

2.3 The Contract and these Conditions constitute 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 XPO which is not set out in these Conditions.

2.4 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.

2.5 Any quotation given by XPO shall not constitute an offer, and is only valid for a period of 10 Business Days from its date of issue.

**3. Services**

3.1 XPO shall provide the Services subject to and in accordance with:

- (a) these Conditions;
- (b) (to the extent that the Services involve the carriage of Goods by road within the United Kingdom) the RHA Conditions;
- (c) (to the extent that the Services involve the carriage of Goods by road outside of the United Kingdom) CMR; and
- (d) (to the extent that the Services involve warehousing services or the storage of Goods) the UKWA Conditions.

3.2 If there is any conflict or ambiguity between the terms and conditions listed in clause 3.1 above, then the conflict or ambiguity shall (to the fullest extent permitted by law) be resolved in accordance with the order of precedence listed in clause 3.1 (starting with these Conditions).

**4. Responsibility for the Goods**

4.1 The Customer warrants that:

- (a) it is or will be the owner of the Goods at the time of Acceptance by XPO or has or will have the right to allow them to be stored and transported by XPO on the terms set out in these Conditions;
- (b) the Goods are fully and accurately described to XPO, including in respect of the nature, weight, quantity, identity, condition and dimensions of the Goods;
- (c) it has informed XPO (in writing) of any peculiarity (including non-visible peculiarities) in respect of the Goods which is relevant to the transportation or storage of the Goods;
- (d) where Goods are loaded on to trailers or vehicles by the Customer, such trailers or vehicles will be loaded safely and in accordance with all applicable legislation, codes of practice and weight restrictions;
- (e) the Goods shall be presented to XPO:
  - (i) on Standard Pallets and adequately secured to the pallet and not overhanging the pallet edge;
  - (ii) in a condition that complies with all relevant statutory requirements;
  - (iii) securely and properly packed in compliance with any statutory regulations or official or recognised standards and in such condition as not to cause damage or injury or the likelihood of damage or injury to any person or property or to any other goods;
  - (iv) clearly and legibly labelled in a way that enables them to be clearly separated from other similar goods and which shows product codes, qualities and type of goods; and
  - (v) accompanied by written information specifying any precautions necessitated by the nature or condition of the Goods or any statutory duties specific to the Goods with which XPO may need to comply and, for the avoidance of doubt, the Customer shall be charged for any expenses incurred by XPO in complying with any such statutory duties or precautions; and

(f) unless expressly agreed in writing between the parties, the value of each Consignment shall not exceed:

- (i) £9,000 (nine thousand pounds sterling) per pallet; and
- (ii) £432,000 (four hundred and thirty-two thousand pounds sterling) per vehicle.

4.2 The Customer shall fully indemnify and hold harmless XPO against any losses, damages, costs, expenses and other liabilities (including legal fees) incurred, awarded against or agreed to be paid by XPO because of a breach of the warranties in clause 4.1.

4.3 Risk in the Goods shall remain at all times with the Customer.

4.4 XPO is under no obligation to insure the Goods and the Customer is advised to obtain insurance for the Goods against all risks and to the full value of the Goods.

4.5 XPO's liability for loss of or damage to the Goods is to the fullest extent permitted by law, limited to the extent to which loss of or damage to the Goods arises as a direct result of XPO's negligence from the time of Acceptance of the Goods by XPO until the Goods come under the control or custody of the Consignee or, in the case where Goods are to be carried by a third party who has been engaged directly by the Customer, at the time when the Goods come under the control or custody of such third party.

4.6 Subject to clause 4.5, if XPO Accepts wrapped pallets or bales or sealed roll cages or Goods in any other sealed container or packaging, XPO's liability for loss of or damage to the Goods shall be limited to loss of or damage to the outer packaging only. XPO shall not be liable for loss of or damage to the Goods contained within the outer packaging unless the Customer can prove that:

- (a) the Goods were not damaged and were present in the quantity claimed at the time of Acceptance by XPO; and
- (b) such loss of or damage to the Goods was caused as a direct result of XPO's negligence.

4.7 XPO shall not be responsible for any loss of or damage to the Goods if and to the extent that the Goods:

- (a) have been damaged in any way prior to XPO's Acceptance of the Goods;
- (b) have been damaged by reason of the condition of the:
  - (i) packaging of the Goods; or
  - (ii) pallet or other container in or on which the Goods were Accepted by XPO;
- (c) have been damaged in any way or lost as a result of any act or omission of the Customer or its employees, subcontractors or agents or of any third party outside XPO's control, including the Consignee, its employees, subcontractors or agents;
- (d) have been damaged in any way or lost as a result of a Force Majeure Event; or
- (e) suffer damage or loss which is covered by an insurance policy carried by the Customer.

4.8 XPO shall not be required to alter, remove, conceal or otherwise interfere with any markings on any materials in which Goods are packaged and shall deliver Goods in the same packaging in which they were Accepted by XPO unless otherwise required in the reasonable opinion of XPO in order to protect the Goods or the property of XPO or any third parties.

4.9 At any time and for any reason, XPO shall have the right (as it deems necessary) to examine Goods, open packages and rearrange the way Goods are configured on pallets.

4.10 Any Goods which (in the opinion of XPO) are not presented in accordance with these Conditions may be removed at any time by XPO at the Customer's expense without notice or the Goods may be retained by XPO for an additional charge or XPO may re-store, invert, re-pack or re-stow the Goods and/or replace the pallets and charge the Customer accordingly. XPO may, providing it is acting reasonably, at its discretion and at the Customer's expense and without any liability, arrange for destruction, storage or other disposal of such Goods.

4.11 XPO reserves the right to refuse to Accept Goods for any reason.

4.12 In the absence of specific instructions (in writing) from the Customer, XPO may transfer, treat and/or store the Goods in such manner as it decides in its absolute discretion.

4.13 XPO may (at any time) give twenty-eight days' notice to the Customer requiring the Customer to remove the Goods or in the case of perishable or otherwise sensitive (in the reasonable opinion of XPO) Goods three days' notice. If the Goods are not removed on the expiry of the relevant notice period, XPO shall be entitled to sell the Goods forthwith and deduct from the proceeds all outstanding Charges, interest thereon and the costs of disposal.

4.14 XPO shall not be required to return pallets to the Customer or to any third party.

4.15 Save as expressly provided for in the Contract, these Conditions or otherwise prohibited by law, the parties agree to exclude all XPO's obligations as a bailee of the Goods.

## 5. Supply of Services

5.1 The Customer acknowledges that time shall not be of the essence for performance of the Services.

5.2 XPO shall have the right to make any changes to the Services which XPO (in its absolute discretion) deems necessary, including changes to comply with any applicable law or safety requirement.

## 6. Customer's

**obligations** 6.1 The Customer shall:

- (a) ensure that the terms of the Order are complete and accurate;
- (b) co-operate with XPO in all matters relating to the Services;
- (c) provide XPO, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by XPO;
- (d) provide XPO with such information and materials as XPO may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- (e) obtain and maintain all necessary licences, permissions and consents as XPO may reasonably require in order to supply the Services;
- (f) keep and maintain all materials, equipment, documents and other property of XPO (**XPO Materials**) at the Customer's premises in safe custody at its own risk, maintain XPO Materials in good condition until returned to XPO, and not dispose of or use XPO Materials other than in accordance with XPO's written instructions or authorisation; and
- (g) accept sole responsibility for ensuring that all necessary and appropriate arrangements are in place in respect of loading, chocking, stowing and unloading of vehicles.

6.2 If XPO'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) XPO 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;
- (b) XPO shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from XPO's failure or delay to perform any of its obligations; and
- (c) the Customer shall reimburse XPO on written demand for any costs or losses sustained or incurred by XPO arising directly or indirectly from the Customer Default.

## 7. Charges and payment

7.1 XPO shall be entitled to invoice the Customer for the Charges at any point after an Order has been accepted by XPO and the Customer shall pay to XPO the Charges:

- (a) by BACS;
- (b) in full and in cleared funds;
- (c) on or before the 28<sup>th</sup> day from the date of invoice or such earlier day as XPO may determine in its absolute discretion upon giving the Customer 7 days written notice; and

(d) to the following bank account (or such bank account as notified (in writing) to the Customer by XPO from time to time):

- (i) Bank: HSBC;
- (ii) Payee: XPO Transport Solutions UK Limited;
- (iii) Account number: 21417703; and
- (iv) Sort code: 40-02-50.

7.2 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay XPO on the due date for payment, XPO may:

- (a) charge interest on such sum from the due date for payment at the annual rate of 8% above the base rate from time to time of Lloyds Bank Plc, accruing daily and being compounded monthly until payment is made, whether before or after any judgment; and
- (b) suspend all Services or any part of the Services until payment has been made in full.

7.3 All sums payable by either party under these Conditions shall be paid in sterling unless XPO expressly agrees (in writing) to a sum being payable in another currency.

7.4 Charges shall be stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Customer.

7.5 All amounts due from the Customer under these Conditions or the Contract shall be paid by the Customer in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

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

7.7 All sums payable to XPO under the Contract shall become due immediately upon any breach of these Conditions, non-payment of any invoices by the due date, and on its termination, despite any other provision. This clause is without prejudice to any right to claim for interest under the law, or any such right under these Conditions.

7.8 XPO reserves the right to adjust or amend the Charges at any time.

7.9 XPO reserves the right to recover from the Customer additional Charges over and above any Charges quoted in the event of:

- (a) movement in the cost of DERV or other fuels;
- (b) XPO incurring unforeseen additional costs or expenses;
- (c) XPO incurring additional costs due to legislative or regulatory changes;
- (d) changes in the Customer's requirements, including increases or decreases in volume;
- (e) changes in the delivery profile; and
- (f) changes in the storage characteristics.

7.10 The Charges are for Services provided between 8.00 am and 5.00 pm on a Business Day only. XPO reserves the right to make additional charges for Services outside these hours.

7.11 XPO shall be entitled to charge for non-delivery of Goods if it has been unable to deliver the Goods due to the fault of the Customer or the Consignee.

7.12 In respect of warehousing or storage Services:

- (a) Charges for part weeks are charged at a full weekly rate;
- (b) XPO reserves the right to issue invoices weekly or monthly in advance; and
- (c) Charges are incurred on a weekly basis (Monday to Sunday) and are payable for both the day of receipt and the day of removal.

7.13 If at any time the aggregate unpaid Charges (whether invoiced or not) for Orders placed by the Customer exceeds the Credit Limit then:

- (a) XPO shall be entitled to issue an invoice:
  - (i) immediately for all Services that have been performed but for which no invoice has been raised; and
  - (ii) in advance of performance of future Services;
- (b) the Customer shall make immediate payment upon XPO's demand of the invoice issued under clause 7.13(a) and any other invoice already issued by XPO such as to reduce the aggregate unpaid Charges to a sum below the Credit Limit or any other sum as determined by XPO in its sole discretion;
- (c) XPO shall be entitled to suspend performance of all Services until the Customer has paid the relevant invoices as determined under clause 7.13(b); and
- (d) XPO shall be entitled to refuse to accept any further Orders for Services until the relevant invoices (as determined under clause 7.13(b) have been paid; and
- (e) XPO shall be entitled to enforce clause 7.14;

and XPO shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from XPO's failure or delay to perform any of its obligations.

7.14 In the event that XPO anticipates that:

- (a) the Customer is likely to take any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors, being wound up (whether voluntarily or by order of the court), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with an analogous procedure in the relevant jurisdiction;
- (b) the Customer is likely to suspend, or threaten to suspend, or cease or threaten to cease to carry on all or a substantial part of its business; or
- (c) the Customer's financial position is likely to deteriorate to such an extent that in XPO's opinion the Customer's capability to adequately fulfil its obligations under the Contract will be placed in jeopardy; XPO may, in its sole discretion, require a director's guarantee from a director of the Customer for the purposes of guaranteeing the Customer's payment obligations under all Contracts it has with the Customer. XPO reserves the right to suspend performance of any of the Services or refuse to accept any Orders until the director's guarantee has been entered into. The form of the director's guarantee shall be on XPO's standard terms.

## **8. Confidentiality**

The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by XPO, its employees, agents or subcontractors, and any other confidential information concerning XPO's business or its products or its services which the Customer may obtain. The Customer shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Customer's obligations under these Conditions, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Customer. This clause 8 shall survive termination of the Contract.

## **9. Limitation of liability – THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

9.1 Nothing in these Conditions shall limit or exclude XPO's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or



(d) any matter in respect of which it would be unlawful for XPO to exclude or restrict liability. 9.2 Subject to clause 9.1:

(a) XPO 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 profits, loss of business opportunities, loss of contracts, loss of anticipated savings or any damage to goodwill or for any indirect, special or consequential loss or damage;

(b) XPO's total liability to the Customer in respect of all losses arising under or in connection with the Contract or these Conditions, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 10% of the Charges invoiced to the Customer in the 12-month period immediately preceding the date of the relevant claim; and

(c) in circumstances where clause 9.3 does not apply, XPO's total liability to the Customer in respect of all losses arising under or in connection with the Contract or these Conditions, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed £2,500 per event.

9.3 XPO's total liability in respect of physical loss of or damage to Goods shall be limited to the Replacement Value.

9.4 The Replacement Value may be varied by agreement (in writing) between the parties in respect of a single Consignment of Goods, provided that:

(a) the Customer serves notice (in writing) on XPO at least seven clear days before the date on which the variation is to be operative;

(b) the Customer's notice clearly and accurately specifies the single Consignment to which the variation shall apply, including the nature and maximum value of the Goods (inclusive of duty and taxes paid or payable thereon) forming the Consignment; and

(c) XPO confirms (in writing) its agreement to the variation;

(d) XPO's total liability in respect of physical loss of or damage to Goods shall be limited to the lower of:

(i) the replacement cost to the Customer (being the manufacturing cost at the time such loss or damage occurred) of such lost or damaged Goods;

(ii) (in respect of damaged Goods) the cost to the Customer of repairing or reconditioning the Goods; or

(iii) the maximum value of the Goods as stated in the Customer's notice; and

(e) XPO shall be entitled to increase the Charges to cover the cost of arranging insurance against any additional liability.

9.5 For the avoidance of doubt, any variation agreed in accordance with clause 9.4 shall only apply to the specific Consignment of Goods referred to in the Customer's notice and all other Consignments shall be subject to clause 9.3 without amendment or variation.

9.6 XPO shall not be liable to the Customer for loss of or damage to Goods unless the Customer notifies XPO of such loss of or damage to Goods within seven days of the loss or damage occurring and the claim is made in writing within fourteen days of the loss or damage occurring, provided that, if the Customer proves that:

(a) it was not reasonably possible for the Customer to notify XPO or make a claim in writing within the applicable time limit; and

(b) such notification or claim was given or made as soon as practicable;

XPO shall not have the benefit of the exclusion of liability afforded by this clause 9.6.

9.7 XPO's liability in respect of any claims, liabilities, costs and expenses suffered or incurred by the Customer arising out of XPO's failure to deliver the correct number or specification of Goods or any non-delivery or late delivery of any Goods by XPO (in each such case in circumstances where XPO is responsible for the same under these Conditions) shall be limited to redelivering at its cost and shall not include any compensation payment payable or other liability arising as a result of non-delivery, late delivery or delivery of an incorrect number or specification of Goods.

9.8 XPO shall have no liability to the Customer:

- (a) in relation to any claim that is not the direct result of the negligence of XPO or XPO's breach of these Conditions;
- (b) in relation to any claim that is the direct or indirect result of any act or omission of:
  - (i) the Customer or its employees, subcontractors or agents;
  - (ii) the Consignee, its employees, subcontractors or agents; or
  - (iii) any third party outside XPO's control;
- (c) in relation to any delay or failure to perform its obligations as a result of a Force Majeure Event;
- (d) to the extent that any loss or damage has been caused by the Customer's breach of these Conditions or any of the Customer's warranties and/or undertakings; and
- (e) in relation to any one claim or series of claims linked to an individual incident where the value of such claim or claims does not exceed £100.

9.9 In relation to warehousing services or the storage of Goods, for the avoidance of doubt, XPO's liability shall be limited in accordance with these Conditions and the UKWA Conditions.

9.10 This clause 9 shall survive termination of the Contract.

## **10. Termination**

10.1 Without limiting its other rights or remedies, XPO may terminate the Contract with immediate effect (or XPO may suspend the provision of the Services with immediate effect) by giving notice to the Customer if:

- (a) the Customer fails to pay any amount due to XPO under any Contract on the due date for payment or the Customer fails to pay any invoices which become immediately payable pursuant to clause 7.13;
- (b) the Customer commits a material breach of any other term of any Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 5 days after being notified to do so;
- (c) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors, being wound up (whether voluntarily or by order of the court, having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (d) the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (e) the Customer's financial position deteriorates to such an extent that in XPO's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

10.2 XPO may terminate the Contract at any time upon giving the Customer 7 days prior written notice and XPO shall not be liable for any direct or indirect losses suffered by the Customer because of such termination.

## **11. Consequences of termination**

On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to XPO all XPO's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, XPO shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all XPO Materials. If the Customer fails to do so, then XPO 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;
- (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.

## **12. Lien**

XPO shall have a specific lien on all Goods in its possession or under its control and a general lien entitling it to retain Goods or documents as security for payment of any amounts claimed by XPO from the Customer on any account and on the following terms:

- (a) XPO may exercise the lien immediately upon the non-payment of any Charges by their due date;
- (b) the lien shall be exercisable in connection with any Charges which have not been paid by their due date and, upon the exercise of the lien, the Charges that are due shall be deemed to include all unpaid Charges (whether invoiced or not) (the “**Debt**”);
- (c) XPO may exercise its lien by giving written notice to the Customer such notice to specify the amount of the Debt. In the event that the Debt is not fully satisfied within seven days of such notice XPO may sell or otherwise dispose of the Goods or any part of them at the Customer’s entire risk and expense by the best method reasonably available and the proceeds of any sale or disposal shall be remitted to the Customer after deduction therefrom of the Debt as well as all expenses and other amounts incurred by XPO in complying with this clause 12(c); and
- (d) Goods will only be released to the Customer where XPO has been paid all sums determined under clause 12(c).

## **13. Dangerous Goods**

13.1 The Customer shall notify XPO before XPO is due to receive any Dangerous Goods on behalf of the Customer, such written notification to include:

- (a) the name of the substance;
- (b) the overall quantity of Dangerous Goods and the size and number of receptacles in which they are presented;
- (c) the classification of the Dangerous Goods and any other particulars (if applicable) in accordance with the CDG Regs;
- (d) any substances from which the Dangerous Goods should be segregated or isolated;
- (e) any other information which it would be prudent to disclose given the nature of the Dangerous Goods and the Services being provided, including any documentation required by the CDG Regs or any other relevant legislation; and
- (f) a safety data sheet containing the information prescribed by Regulation 5 of The Chemicals (Hazard Information and Packaging for Supply) Regulations 2009.

13.2 XPO shall be entitled at its sole discretion to refuse to handle, store, carry, transport or in any other way deal with any Dangerous Goods and nothing in the Contract, these Conditions or otherwise shall entitle the Customer to any compensation in respect of such refusal but, if XPO agrees to handle, store, carry, transport or in any other way deal with any Dangerous Goods, the Customer warrants that:

- (a) all such Goods shall be classified, packed, marked, labelled and documented in accordance with the CDG Regs and all relevant statutory regulations; and
- (b) at its own expense, the Customer shall insure the Dangerous Goods against all risks (including third party risks) and keep them so insured during the period that such Dangerous Goods are in XPO’s custody and shall ensure that the Customer’s insurers waive all and any rights of subrogation against XPO’s Group and its officers, directors, employees, agents; and
- (c) the Customer shall fully indemnify XPO in respect of any claims, liabilities and costs incurred as a result of a breach of these warranties.

13.3 In the event that there occurs actual or potential damage or loss to XPO, third parties or the environment while the Dangerous Goods are in the possession of XPO and following investigation the

Customer is deemed to be responsible for such damage (whether due to faulty packaging or as a result of inappropriate handling due to non-disclosure of Dangerous Goods or otherwise) then the Customer shall be liable for and shall fully indemnify XPO against all costs arising from the incident and any corrective action that may be required.

#### **14. Employees**

14.1 The Customer shall be liable for and shall fully indemnify and keep fully indemnified XPO (and XPO's Group) against and in respect of any and all actions, proceedings, costs (including legal costs), losses, damages, fines, penalties, compensation, awards, demands, orders, expenses and liabilities whatsoever and howsoever arising which XPO (or XPO's Group) may suffer, incur, pay or be put to in respect of:

- (a) any employee who claims (at any time) to have become an employee of or have rights against XPO (or XPO's Group) under the Transfer Regulations by virtue of XPO providing the Services; and
- (b) the termination (for any reason and at any time) of the employment of any employee who becomes an employee of XPO (or XPO's Group), or claims to have become an employee of XPO (or XPO's Group), under the Transfer Regulations by virtue of XPO providing the Services.

#### **15. Assignment and subcontracting**

15.1 XPO may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

15.2 The Customer shall not, without the prior written consent of XPO, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

#### **16. Notices**

16.1 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by email to the email address provided by the other party.

16.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by email at the time of transmission, or, if this time falls on a non-Business Day, at 9.00am on the next Business Day after transmission.

16.3 This clause 16 shall not apply to the service of any proceedings or other documents in any legal action.

#### **17. Waiver**

17.1 A waiver of any right under the Contract or these Conditions is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or these Conditions or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. 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.

17.2 Unless specifically provided otherwise, rights arising under the Contract or these Conditions are cumulative and do not exclude rights provided by law.

#### **18. Severance**

18.1 If a court or any other competent authority finds that any Condition (or part of any Condition) is invalid, illegal or unenforceable, that Condition or part-Condition shall, to the extent required, be deemed deleted, and the validity and enforceability of the other Conditions shall not be affected.

18.2 If any invalid, unenforceable or illegal Condition would be valid, enforceable and legal if some part of it were deleted, the Condition shall apply with the minimum modification necessary to make it legal, valid and enforceable.

**19. No partnership**

Nothing in the Contract or these Conditions is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

**20. Third parties**

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

**21. Variation**

Except as expressly set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract or these Conditions, shall only be binding on XPO when agreed in writing and signed on behalf of XPO by a duly authorised representative of XPO.

**22. Brexit trigger, renegotiation and termination clause**

22.1 For the purposes of this clause the following definitions shall apply:

“Brexit” means the UK ceasing to be a member state of the European Union

“Brexit Trigger Event” means any of the following events occurring if caused by Brexit or any discussions, proposals, negotiations or any other steps taken by the UK government or a body in any other jurisdiction in anticipation of or related to preparation for Brexit:

- (a) a change in the law or the imposition of a new requirement for any licence to perform the Contract or to carry on their business.
- (b) an increase in the costs incurred by XPO:
  - (i) in performing the Contract; or
  - (ii) on the running of their business;
- (c) in any jurisdiction, the imposition of, or a change to, a duty, tax or levy imposed on XPO or any raw materials or components used by XPO;

22.2 If a Brexit Trigger Event occurs, XPO may upon written notice to the Customer:

- a) amend the terms of the Contract and/or these Conditions (including the Charges and or delivery date) to alleviate the Brexit Trigger Event;
- b) terminate the Contract. On termination under this clause, clause 11 (Consequences of termination) shall apply.

22.3 Save as expressly provided in clause 22.2, a Brexit Trigger Event shall not terminate or alter (or give the Customer a right to terminate or alter) the Contract, or invalidate any of its terms or discharge or excuse performance under it. If there is an inconsistency between the provisions of this clause and any other provision of these Conditions, the provisions of this clause shall prevail.

**23. Governing law and jurisdiction**

The Contract and these Conditions, and any dispute or claim arising out of or in connection with them or their 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 exclusive jurisdiction of the courts of England and Wales.

**24. Import-Export Controls and Economic Sanctions**

24.1 The Customer acknowledges that XPO must comply with applicable laws and regulations related to trade practices, including United States laws and regulations, restricting trade with countries and entities subject to United States economic sanctions, as well as entities identified on United States export controls lists. These controls extend both to XPO’s direct participation in cross-border transportation and to XPO’s “facilitation” of such transactions through services such as warehousing, packing, and preparing shipping documents. These United States controls are in addition to any controls imposed by the European Union,

the United Nations, or any other national or supranational governmental authority with jurisdiction over the shipment or associated services.

24.2 The Customer agrees to screen the countries and consignees involved in transactions subject to the Contract against government lists of countries or parties restricted under European Union, United Nations, and United States restrictive measures, trade sanctions, or export controls, and not to direct XPO to provide any services in connection with such countries and parties absent appropriate government authorization.

24.3 In the case of cross-border transactions, the Customer acknowledges that it is the Customer's responsibility to know and comply with all trade embargoes, economic sanctions, and export and import controls of any government with jurisdiction over the transaction, including providing XPO within a reasonable time before export or entry with complete and accurate information required for import and export documents, including without limitation product descriptions, quantities, weights, values, country or origin, harmonized tariff code, export classification, and any required government authorization.

24.4 The Customer agrees that XPO will not be responsible for any fines, duties, penalties, or other claims by any third party, including any government, arising from the Customer's failure to comply with applicable trade embargoes, economic sanctions, or export and import controls and that Customer will fully defend, indemnify, and hold XPO harmless from and against such claims.

## **25. Data Protection**

25.1 Both parties will comply with all applicable requirements of the Data Protection Legislation and nothing in this clause 25.1 shall limit either party's obligations under the Data Protection Legislation.

25.2 Without prejudice to the generality to clause 25.1, if and to the extent that a Party or any of its employees, staff, workers, agents or consultants collects and passes Personal Data to the other party pursuant to these Conditions, it will ensure that it has all the necessary appropriate consents and notices in place to enable the lawful transfer of the Personal Data to the other party for the duration and purposes of these Conditions and that such Personal Data will be accurate and up-to-date in all material respects.

25.3 Without prejudice to the generality of clause 25.1, if and to the extent that any party or any of its employees, staff, workers, agents or consultants processes any Personal Data supplied to it by or on behalf of the other Party, in connection with the performance by the Party of its obligations under these Conditions, the processing Party shall:

(a) process that Personal Data only on the written instructions of Party providing the Personal Data unless the processing Party is required by Applicable Laws to otherwise process that Personal Data. Where the processing Party is relying on laws of a member state of the European Union or European Union Law as the basis for processing Personal Data, the processing Party shall promptly notify the Party providing the Personal Data of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the processing Party from so notifying the Party providing the Personal Data;

(b) ensure that it has in place appropriate technical and organisational measure to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

(c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

- (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Party providing the Personal Data has been obtained and the following conditions are fulfilled:
- (i) appropriate safeguards have been provided by the Parties in relation to the transfer;
  - (ii) the data subject has enforceable rights and effective legal remedies;
  - (iii) the Party processing the Personal Data complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (iv) the Party processing the Personal Data complies with reasonable instructions notified to it in advance by the Party providing the Personal Data with respect to the processing of the Personal Data;
- (e) assist the other Party, at the other Party's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the other Party without undue delay on becoming aware of a Personal Data breach;
- (g) at the written direction of the other Party, delete or return Personal Data and copies thereof to the other Party on termination of these Conditions unless required by Applicable Law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 25.

25.4 Each Party shall:

- (a) remain fully liable for all the actions and omissions of any agent or sub-contractor of it, to whom it passes Personal Data for the purposes of the Contract (the "Sub-Processor") and that Sub-Processor agrees in writing to comply with its obligation at least equivalent to this clause 25; and
- (b) ensure that access to such Personal Data is limited to Sub-Processors who need access to it to supply or receive the Services.

**If the Customer requests or receives Services or XPO undertakes any business for (or provides Services to) the Customer, XPO shall be entitled to assume that the Customer has accepted these Conditions.**